

RECEIVED

Oct 20 2025

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Court of Appeals Case No. 2023-002006
Circuit Court Case No. 2023-CP-40-01759

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

Plaintiffs,

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Hesterton Company; ABB Inc.; Air & Liquid Systems Corporation; AIW-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited ASCO, L.P.; Atlas Asbestos Co.; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas CT, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Lowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services; Orporation Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply,

Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Incl; SPX Corporation; Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable, LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; and Zurn Industries, LLC, ...	Defendants,

of which

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

and

Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas,.....	Third-Party Plaintiff/ Respondent,

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa Ltd.; DeBeers PLC; DeBeers Centenary AG; DeBeers Consolidated Mines Ltd.; DeBeers S.A.; DeBeers UK Ltd.; DeBeers Jewelers US, Inc.; Angle American US Holdings Inc.; Element Six US Corp.; Element Six Technologies US Corp.; Element Six Technologies (OR) Corp.; First Mode Holdings, Inc.; Platinum Guild International (USA) Jewelry Inc.; Forevermark US Inc.; Anglo American Crop Nutrients (USA), LLC; Charter Consolidated Ltd.; ESAB Corporation; Central Mining & Investment Corporation Ltd.; Cape Holdco Ltd.; The Law Debenture Corporation PLC; Cape Industrial Services Group Ltd.; Mohed Altrad; Altrad UK Ltd.; Cape UK Holdings Newco Ltd.; Altrad Services Ltd., f/k/a Cape Industrial Services Ltd.; Altrad Investment Authority SAS; Sparrows Offshore Group Ltd.; Hawk Bidco US Inc.; Arranco US, LLC; Sparrows Offshore, LLC; The Sparrows Group, LLC, ...	Third-Party Defendants,

of which

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

APPENDIX IN SUPPORT OF ALTRAD DEFENDANTS’
PETITION FOR A WRIT OF CERTIORARI
(VOLUME II)

WOMBLE BOND DICKINSON (US) LLP

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 Petitioners Mohed Altrad and Altrad
Investment Authority SAS*

September 10, 2024

TABLE OF CONTENTS

Document

Page

Volume I

Circuit Court Materials

Cape PLC Receiver's Third Party Complaint (June 30, 2023).....	1
Altrad Defendants' Motion to Dissolve Receivership (Sept. 1, 2023)	68

Volume II

Receiver's Memorandum in Opposition to Motion to Dissolve Receivership (Oct. 18, 2023) (without exhibits)	560
Order Denying Motion to Dissolve Receivership (Dec. 6, 2023).....	597
Receiver's Complaint Against Winston & Strawn (Sept. 5, 2024)	671
Instructions from Cape PLC and Cape Intermediate Holdings Limited Advising that the Receivership is Invalid and Without Authority (Aug. 30, 2024).....	698
Receiver's Amended Complaint Against Locke Lord in <i>Park</i> (Aug. 9, 2023) (without exhibits)	708
Locke Lord's Motion to Dissolve Receivership in <i>Park</i> (Sept. 15, 2023) (without exhibits)...	717

Court of Appeals Materials

Notice of Appeal (Dec. 18, 2023).....	738
Altrad Defendants' Initial Appellate Brief (Feb. 22, 2024).....	756
Receiver's Motion to Dismiss Appeal (Apr. 16, 2024)	814
Altrad Defendants' Opposition to Motion to Dismiss Appeal (May 6, 2024).....	843
Order Dismissing Appeal (May 9, 2024).....	862
Altrad Defendants' Petition for Rehearing (May 24, 2024)	866
Receiver's Opposition to Petition for Rehearing (June 10, 2024)	890
Altrad Defendants' Reply in Support of Rehearing (June 17, 2024).....	903
Order Denying Petition for Rehearing (July 1, 2024).....	914

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

JOHN A. TIBBS and
MARGARET B. TIBBS

Plaintiffs,

v.

3M COMPANY

4520 CORP., INC.

A.O. SMITH CORPORATION

AIR & LIQUID SYSTEMS CORPORATION

AMENTUM ENVIRONMENT & ENERGY,
INC.

ANCHOR/DARLING VALVE COMPANY

ARMSTRONG INTERNATIONAL, INC.

ASBESTOS CORPORATION LIMITED

ASCO, L.P.

ATLAS ASBESTOS CO

ATLAS TURNER, INC.

AWT AIR COMPANY, INC.

BAHNSON, INC.

BANNER INDUSTRIES INTERNATIONAL,
INC.

BEATY INVESTMENTS, INC.

BECHTEL CORPORATION

THE BONITZ COMPANY

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

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

SUMMONS

BW/IP INC.	)
	)
CANVAS CT, LLC	)
	)
CAPE PLC	)
	)
CARBOLINE COMPANY	)
	)
CB&I LAURENS, INC.	)
	)
CLEAVER-BROOKS, INC.	)
	)
COPEES-VULCAN, INC.	)
	)
COVIL CORPORATION	)
	)
CRANE INSTRUMENTATION & SAMPLING, INC.	)
	)
CROSBY VALVE, LLC	)
	)
DANIEL INTERNATIONAL CORPORATION	)
	)
DAVIS MECHANICAL CONTRACTORS, INC.	)
	)
DEZURIK, INC.	)
	)
DUKE ENERGY CAROLINAS, LLC	)
	)
DUKE ENERGY CORPORATION	)
	)
ELLINGTON INSULATION COMPANY, INC.	)
	)
EMERSON ELECTRIC CO.	)
	)
FISHER CONTROLS INTERNATIONAL LLC	)
	)
FLAME REFRACTORIES, INC.	)
	)
FLOWERVE CORPORATION	)
	)
FLOWERVE US INC.	)
	)
FLUOR CONSTRUCTORS INTERNATIONAL	)

FLUOR CONSTRUCTORS
INTERNATIONAL, INC.

FLUOR DANIEL SERVICES CORPORATION

FLUOR ENTERPRISES, INC.

FMC CORPORATION

FOSTER WHEELER ENERGY
CORPORATION

GARDNER DENVER NASH, LLC

GENERAL BOILER CASING COMPANY,
INC.

GENERAL ELECTRIC COMPANY

GOULDS PUMPS, INCORPORATED

GOULDS PUMPS LLC

GREAT BARRIER INSULATION CO.

GRINNELL LLC

HAJOCA CORPORATION

HOWDEN NORTH AMERICA INC.

IMO INDUSTRIES INC.

ITT LLC

JOY GLOBAL UNDERGROUND MINING
LLC

K-MAC SERVICES INCORPORATED

METROPOLITAN LIFE INSURANCE
COMPANY

MINE SAFETY APPLIANCES COMPANY,
LLC

THE NASH ENGINEERING COMPANY)
)
PARAMOUNT GLOBAL)
)
PATTERSON PUMP COMPANY)
)
PIEDMONT INSULATION, INC.)
)
PRESNELL INSULATION CO., INC.)
)
REDCO CORPORATION)
)
RILEY POWER INC.)
)
SEQUOIA VENTURES INC.)
)
SPIRAX SARCO, INC.)
)
SPX CORPORATION)
)
STAFFORD INSULATION COMPANY)
)
STANDARD INSULATION COMPANY OF)
N. C., INC.)
)
STARR DAVIS COMPANY, INC.)
)
STARR DAVIS COMPANY OF S.C., INC.)
)
STERLING FLUID SYSTEMS (USA) LLC)
)
UNION CARBIDE CORPORATION)
)
VALVES AND CONTROLS US, INC.)
)
VELAN VALVE CORP.)
)
VIKING PUMP, INC.)
)
VISTRA INTERMEDIATE COMPANY LLC)
)
THE WILLIAM POWELL COMPANY)
)
WIND UP, LTD.)
)
YUBA HEAT TRANSFER LLC)
)

ZURN INDUSTRIES, LLC)
)
Defendants.)
_____)

SUMMONS

TO DEFENDANTS ABOVE-NAMED:

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

Respectfully submitted,

/s/ Theile B. McVey

Theile B. McVey (SC Bar No. 16682)

Jamie D. Rutkoski (SC Bar No. 103270)

KASSEL MCVEY ATTORNEYS AT LAW

1330 Laurel Street

Post Office Box 1476

Columbia, South Carolina 29202-1476

T: 803-256-4242

F: 803-256-1952

tmcvey@kassellaw.com

jrutkoski@kassellaw.com

Other email: emoultrie@kassellaw.com

and

Charles W. Branham, III (*To Be Admitted PHV*)

DEAN OMAR BRANHAM SHIRLEY, LLP

302 N. Market Street, Suite 300

Dallas, Texas 75202

T: 214-722-5990

F: 214-722-5991

tbranham@dobslegal.com

ATTORNEYS FOR PLAINTIFFS

April 5, 2023
Columbia, South Carolina

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

JOHN A. TIBBS and
MARGARET B. TIBBS

Plaintiffs,

v.

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

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

A.O. SMITH CORPORATION

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

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

ANCHOR/DARLING VALVE COMPANY

ARMSTRONG INTERNATIONAL, INC.

ASBESTOS CORPORATION LIMITED

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

ATLAS ASBESTOS CO

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

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

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

Living Lung Cancer

COMPLAINT

(Jury Trial Demanded)

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

CROSBY VALVE, LLC

**DANIEL INTERNATIONAL
CORPORATION**

**DAVIS MECHANICAL CONTRACTORS,
INC.**

DEZURIK, INC.

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

DUKE ENERGY CORPORATION

**ELLINGTON INSULATION COMPANY,
INC.**

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

**FISHER CONTROLS INTERNATIONAL
LLC**

FLAME REFRACTORIES, INC.

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

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

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

**FLUOR CONSTRUCTORS
INTERNATIONAL, INC.**

**FLUOR DANIEL SERVICES
CORPORATION**

FLUOR ENTERPRISES, INC.

FMC CORPORATION

on behalf of its former Peerless Pump business

FOSTER WHEELER ENERGY CORPORATION

GARDNER DENVER NASH, LLC

individually and as successor-in-interest to THE NASH ENGINEERING COMPANY

GENERAL BOILER CASING COMPANY, INC.

GENERAL ELECTRIC COMPANY

GOULDS PUMPS, INCORPORATED

GOULDS PUMPS LLC

f/k/a GOULDS PUMPS INC.

GREAT BARRIER INSULATION CO.

GRINNELL LLC

d/b/a GRINNELL CORPORATION

HAJOCA CORPORATION

HOWDEN NORTH AMERICA INC.

f/k/a HOWDEN BUFFALO, INC., individually and as successor-in-interest to BUFFALO FORGE COMPANY and NEW PHILADELPHIA FAN CO.

IMO INDUSTRIES INC.

ITT LLC

f/k/a ITT CORPORATION, ITT INDUSTRIES INC., ITT FLUID PRODUCTS CORP., HOFFMAN SPECIALTY MFG. CORP., BELL & GOSSETT COMPANY, ITT MARLOW and KENNEDY VALVE COMPANY

JOY GLOBAL UNDERGROUND MINING LLC

f/k/a JOY TECHNOLOGIES, INC., f/k/a JOY TECHNOLOGIES LLC

K-MAC SERVICES INCORPORATED

**METROPOLITAN LIFE INSURANCE
 COMPANY**

a wholly owned subsidiary of METLIFE INC.

**MINE SAFETY APPLIANCES COMPANY,
 LLC**

THE NASH ENGINEERING COMPANY

PARAMOUNT GLOBAL

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

PATTERSON PUMP COMPANY

PIEDMONT INSULATION, INC.

PRESNELL INSULATION CO., INC.

REDCO CORPORATION

f/k/a CRANE CO.

RILEY POWER INC.

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

SEQUOIA VENTURES INC.

f/k/a BECHTEL CORPORATION

SPIRAX SARCO, INC.

SPX CORPORATION

individually and as successor-in-interest to
 KINNEY PUMPS

STAFFORD INSULATION COMPANY

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

PLAINTIFFS' ORIGINAL COMPLAINT

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

GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE PARTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BACKGROUND FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FOR A SECOND CAUSE OF ACTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FOR A FIFTH CAUSE OF ACTION
(Negligence Per Se)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FOR AN EIGHTH CAUSE OF ACTION
(Product Liability: Breach of Implied Warranties - S.C. Code Ann. § 36-2-314)

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

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

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

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

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

FOR A NINTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

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

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

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

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

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

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

FOR A TENTH CAUSE OF ACTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FOR AN ELEVENTH CAUSE OF ACTION
(Loss of Consortium)

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

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

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

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

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

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

PRAYER FOR RELIEF

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

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

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

A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES.

Respectfully submitted,

/s/ Theile B. McVey

Theile B. McVey (SC Bar No. 16682)

Jamie D. Rutkoski (SC Bar No. 103270)

KASSEL MCVEY ATTORNEYS AT LAW

1330 Laurel Street

Post Office Box 1476

Columbia, South Carolina 29202-1476

T: 803-256-4242

F: 803-256-1952

tmcvey@kassellaw.com

jrutkoski@kassellaw.com

Other email: emoultrie@kassellaw.com

and

Charles W. Branham, III (*To Be Admitted PHV*)

DEAN OMAR BRANHAM SHIRLEY, LLP

302 N. Market Street, Suite 300

Dallas, Texas 75202

T: 214-722-5990

F: 214-722-5991

tbranham@dobslegal.com

ATTORNEYS FOR PLAINTIFFS

April 5, 2023
Columbia, South Carolina

Piedmont Medical Center
222 S. Herlong Avenue
Rock Hill, SC 29732-1158

Patient:	TIBBS, JOHN A	Attending Provider:	MILLIS APRN,CHRISTIAN M
MRN #:	128733	Admission Date:	12/13/2022
Account #:	117777318	Discharge Date:	12/13/2022
DOB/Age/Sex:	/ 82 years / Male	Lab Medical Director(s):	Robert E. Thomas Jr., MD

Pathology

Accession:	373-NG-22-001139		
Collected Date/Time:	12/13/2022 11:24 EST		
Received Date/Time:	12/13/2022 12:13 EST	Pathologist	THOMAS JR MD,ROBERT

CYTOLOGY REPORT – 12/15/2022 13:36 EST – Auth (Verified)

DIAGNOSIS:

RIGHT LUNG MASS, CORE BIOPSY

--NON-SMALL CELL CARCINOMA, FAVOR SQUAMOUS CELL CARCINOMA (SEE COMMENT)

--IMMUNOHISTOCHEMICAL PROFILE:

--CK5/6 POSITIVE

--P63 POSITIVE

--TTF-1 PREDOMINANTLY NEGATIVE (DECORATES FEW ATYPICAL CELLS)

--NAPSIN A PREDOMINANTLY NEGATIVE (DECORATES FEW ATYPICAL CELLS)

COMMENT: The lesion is a non-small cell carcinoma which is favored to represent a squamous cell carcinoma based on the immunohistochemical staining pattern. There is minimal tissue identified for immunostaining and if additional molecular studies are needed, additional tissue sampling should be performed. Suggest clinical correlation. Case reviewed by Dr. Stone.

COMMENT Appropriate controls have been performed.

ROBERT E THOMAS

(Electronic signature)

Signed on: 12/15/2022 13:36 EST

RET/SB

SPECIMEN SOURCE:

Needle Core Biopsy Right Lung

CLINICAL INFORMATION:

Diagnosis/Clinical Information: Right Lung Mass, History of Low Grade Non Hodgkin's Lymphoma

Procedure/Source: CT Guided Needle Core Biopsy Right Lung



March 29, 2023

Brad Smith
Dean Omar Branham Shirley
302 N Market St Ste 300
Dallas, TX 75202

RE: Mr. John Tibbs

DOB:

SSN:

Mr. Smith:

I have received the following records and materials pertaining to Mr. Tibbs:

1. Medical Records of Carolinas Pulmonary Physicians
2. Medical Records of Carolinas HealthCare System
3. Medical Records of Carolina Blood and Cancer Associates
4. Medical Records of Rock Hill Radiation Therapy Center
5. Medical Records of Piedmont Medical Center
6. Medical Records of Charlotte Radiology
7. Work history
8. B Reading by Richard Bernstein, M.D. dated May 11, 2004
9. Medical Records of Dr. David Shanks
10. Radiology from Charlotte Radiology
 - a. Chest CT dated October 28, 2002
11. Radiology from Carolinas HealthCare System
 - a. Chest CT dated November 7, 2014

QUALIFICATIONS: I am a physician licensed to practice in the States of Texas, Arkansas, New Mexico, Mississippi, and Oklahoma. I have been Board Certified in Internal Medicine by the American Board of Internal Medicine since 1989 and Board Certified in the subspecialty of Pulmonary Diseases since 1992. I am a diplomate of

P:713-932-8664 F:713-464-2976 www.rmcmmed.com
Office: 1220 Blalock Rd, Ste 250 Houston, Tx 77055
Mailing/Billing: 9337B Katy Frwy, Ste 267 Houston, Tx 77024

the National Board of Physicians and Surgeons. I am a Fellow of the American College of Chest Physicians and a member of the American College of Occupational and Environmental Medicine and the American Thoracic Society. I am a Fellow of the American College of Physicians. I maintain a medical practice in pulmonary disease, occupational lung disease, and internal medicine. I have been actively practicing medicine for more than 30 years in the fields of Internal Medicine and Pulmonary Diseases. My medical licensure is current. Currently, I practice medicine at Respiratory Medicine Consultants in Houston, Texas. I have hospital privileges at several Houston area hospitals. As part of my practice, I see patients with occupational pulmonary diseases. I have diagnosed and managed patients with a variety of occupational pulmonary diseases, including asbestos-related diseases. I have extensive knowledge and clinical experience in the area of occupational lung diseases. I am a certified "B"-reader from the Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health (NIOSH), and the Appalachian Laboratory for Occupational Safety and Health (ALOSH). I have been a NIOSH-certified B-reader since 2003. I have published in peer-reviewed medical journals, including on mesothelioma. I have testified on behalf of plaintiffs and defendants in litigation regarding occupational lung disease, including asbestos-related cancer. I have been accepted in both State and Federal courts as an expert in internal medicine, pulmonary medicine and occupational lung disease.

ASBESTOS EXPOSURE HISTORY: According to these records and materials, Mr. Tibbs had occupational asbestos exposures beginning in 1958 while working as an electrician and mechanic for Duke Power Company. He worked for this company until 1977 and had exposures to visible asbestos dust without respiratory protective equipment. His physician also reported occupational asbestos exposures while working as an electrician for Spring Industries from 1995 through 2005.

SMOKING HISTORY: Mr. Tibbs smoked about one pack per day for 30-40 years, quitting in 1994 or 1995.

CLINICAL HISTORY: According to my review of these records and materials, Mr. Tibbs underwent LDCT in May 2022, revealing a new, spiculated 1 cm nodule in the right upper lobe. His follow-up CT in September 2022 revealed interval growth, then measuring 1.5 cm. His PET scan performed November 21, 2022 revealed abnormal uptake within this nodule, then measuring 1.8 cm. On December 13, 2022, he

underwent CT-guided biopsy of the right upper lobe nodule, revealing non-small cell carcinoma. He was diagnosed with stage IA2 non-small cell carcinoma and recommended for radiation therapy.

In December 2002, Mr. Tibbs was evaluated by Dr. Shanks. He was felt to have had “significant” occupational exposures to asbestos and his CT from October 28, 2002 revealed interstitial fibrosis. He was felt to probably have asbestosis.

In 2004, Dr. Bernstein performed a B reading of Mr. Tibbs’ October 28, 2002 chest x-ray, finding small, irregular parenchymal opacities of shape and size T/S and profusion 1/0 in the middle and lower zones, along with bilateral non-calcified chest wall pleural thickening.

Dr. Shanks saw Mr. Tibbs for follow-up in December 2006. His chest CT revealed subpleural fibrosis and pleural thickening, according to the radiologist. His pulmonary function testing revealed a reduced diffusion capacity (68% of predicted) and resting hypoxia (63 mmHg). He was diagnosed with asbestosis.

His chest CT from June 15, 2007 revealed stable bilateral lower zone interstitial fibrosis, according to the radiologist.

Mr. Tibbs had a follow-up pulmonary evaluation by Dr. William Alleyne at Carolina Pulmonary Physicians on March 4, 2010 for his asbestosis. His 2009 chest CT revealed bilateral pleural thickening and interstitial fibrosis.

Mr. Tibbs had a follow-up chest CT on November 7, 2014, again revealing bilateral interstitial fibrosis and pleural plaquing, according to the radiologist.

In July 2021, Mr. Tibbs was placed on home oxygen because of chronic hypoxic respiratory failure.

Mr. Tibbs had pulmonary function testing in September 2021, revealing a restrictive ventilatory defect. His PFTs in 2022 showed worsening diffusion capacity impairment (then down to 46% of predicted).

In November 2022, while being evaluated for his lung nodule, he had an ultrasound-guided biopsy from a right axillary lymph node, revealing low-grade malignant lymphoma. His oncologist did not recommend that any treatment was necessary. His

Mr. John Tibbs

Page 4 of 4

past medical history also included COPD, prostate cancer, and hypothyroidism.

RADIOLOGY REVIEW: Based on my review of his radiology, there is evidence of asbestosis, asbestos-related pleural disease, and mild apical emphysema.

OPINIONS: Mr. Tibbs was diagnosed with primary non-small cell carcinoma of the lung in December 2022. He likely had significant asbestos exposures while working for Duke Power, beginning in 1958, and continuing for approximately 20 years. He likely had additional occupational asbestos exposures in his work as an electrician at Spring Industries. He was initially diagnosed with asbestosis in 2002 and his pulmonary physician repeatedly diagnosed him with asbestosis. The presence of asbestosis provides objective evidence of Mr. Tibbs' past substantial occupational asbestos exposures and causation of his lung cancer from asbestos. He was a former cigarette smoker, quitting 27 years before his lung cancer diagnosis. Based on the information provided, it is my opinion, to a reasonable degree of medical probability, that Mr. Tibbs' cumulative exposures to asbestos of all fiber types were a significant contributing factor to the development of his lung cancer. Although he had quit smoking 27 years before his cancer diagnosis, and thus the relative risk of lung cancer from cigarette smoking alone was significantly reduced, the carcinogenic effects of smoking likely acted in synergy with asbestos in this case.

I reserve the right to supplement or amend my opinions based upon any new or additional information, as discovery progresses.

Sincerely,

A handwritten signature in black ink that reads "S. Haber MD". The signature is stylized with a large, looping initial "S" and a cursive "Haber" followed by "MD".

Steven E. Haber, M.D., F.A.C.P., F.C.C.P.
NIOSH Certified "B" Reader

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

JOHN A. TIBBS and MARGARET B. TIBBS,

Plaintiffs,

v.

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

3M COMPANY *et al.*,

Defendants.

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

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

Third-Party Plaintiff,

**THIRD-PARTY PLAINTIFF'S
OMNIBUS OPPOSITION TO MOTIONS
TO DISSOLVE BY RESPONDING
ALTRAD THIRD-PARTY DEFENDANTS
AND CHARTER THIRD-PARTY
DEFENDANTS**

v.

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

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

Third-Party Defendants.

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
INTRODUCTION	1
FACTUAL AND PROCEDURAL BACKGROUND.....	2
I. In 2021, the Park Lawsuit Was Filed, Amended, and Served on Cape in England	2
II. In 2022, the Park Lawsuit Was Resolved with Certain Defendants—But Not Cape	4
III. In 2023, the Court Appointed a Receiver Because of Cape’s Pattern of Avoiding Creditors.....	5
IV. The Receiver Properly Asserted a Third-Party Lawsuit	6
ARGUMENT	9
I. Cape Was Properly Served in the Park Lawsuit and Failed to Respond	9
A. The proof of service confirms that the relevant Cape entity was properly served.....	9
B. Both the complaint and summons were served on Cape	11
C. The amendment of the complaint does not render service defective.....	13
II. The Court Appointed the Receiver for Cape with Proper Process and Authority	15
A. Proper notice of the Appointment Motion was provided to Cape	15
B. The Court followed all necessary steps to appoint a receiver for Cape	16
C. The Court appointed a receiver for the proper Cape entity	19
D. Personal jurisdiction exists for a Cape receivership	20
E. There is a justiciable controversy	21
F. The omission of proof of service from the Appointment Motion has been corrected.....	22

III.	The Appointment Order and The Law Allow This Third-Party Action	22
A.	The Appointment Order authorizes this third-party action.....	23
B.	The third-party action does not violate principles of international comity	24
C.	The third-party action does not violate the U.S. Constitution	26
D.	Accusations of “bad faith” and “outrageous conduct” are baseless	27
CONCLUSION.....		28

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Carolina Trucks & Equip., Inc. v. Volvo Trucks of N. Am., Inc.</i> , 492 F.3d 484 (4th Cir. 2007)	26
<i>Crane v. Battelle</i> , 127 F.R.D. 174 (S.D. Cal. 1989)	14
<i>Dennis v. Escarcega</i> , 2008 WL 11409449 (W.D. Tenn. Oct. 7, 2008)	15
<i>Doe v. Unocal Corp.</i> , 27 F. Supp. 2d 1174 (C.D. Cal. 1998)	14
<i>Fawzy v. Wauquiez Boats SNC</i> , 873 F.3d 451 (4th Cir. 2017)	13
<i>First Carolinas Joint Stock Land Bank of Columbia v. Knotts</i> , 191 S.C. 384, 1 S.E.2d 797 (1939)	23
<i>Griffin v. Capital Cash</i> , 310 S.C. 288, 423 S.E.2d 143 (Ct. App. 1992).....	19–20
<i>Int’l Controls Corp. v. Vesco</i> , 556 F.2d 665 (2d Cir. 1977).....	14
<i>Jackson v. Beech</i> , 636 F.2d 831 (D.C. Cir. 1980).....	15
<i>McCall v. IKON</i> , 363 S.C. 646, 611 S.E.2d 315 (Ct. App. 2005).....	19
<i>McClurg v. Deaton</i> , 380 S.C. 563, 671 S.E.2d 87 (Ct. App. 2008).....	14
<i>Miller v. Hughes</i> , 33 S.C. 530, 12 S.E. 419 (S.C. 1890)	8
<i>Mull v. Ridgeland Realty, LLC</i> , 387 S.C. 479, 693 S.E.2d 27 (Ct. App. 2010).....	14
<i>Opus Grp., LLC v. Enomatic Srl</i> , 2012 WL 13134613 (S.D. Fla. Oct. 24, 2012).....	14

<i>Pee Dee Elec. Co-op., Inc. v. Carolina Power & Light Co.,</i> 279 S.C. 64, 301 S.E.2d 761 (1983)	21
<i>Pelzer v. Hughes,</i> 27 S.C. 408, 3 S.E. 781 (1887)	23
<i>Penn Mut. Life Ins. Co. v. Cudd,</i> 172 S.C. 88, 172 S.E. 787 (1934)	18
<i>Porter v. Sabin,</i> 149 U.S. 473 (1893)	24
<i>Schein v. Lamar,</i> 284 S.C. 252, 325 S.E.2d 573 (Ct. App. 1985)	13
<i>Thompson v. Victoria Fire & Cas. Co.,</i> 32 F. Supp. 2d 847 (D.S.C. 1999)	14
<i>Virginia-Carolina Chem. Co. v. Hunter,</i> 84 S.C. 214, 66 S.E. 177 (1909)	18

Statutes and Rules

28 U.S.C.	
§ 754	26
§ 3103	26

S.C. Code	
§ 15-65-10	5, 17–18, 21
§ 15-65-20	16
§ 15-65-30	16
§ 15-65-60	19
§ 33-14-320	17, 20, 23
§ 36-2-803	20

S.C. Rules of Civil Procedure

Rule 1	16
Rule 4	11–12
Rule 4.1	16, 22
Rule 5	13
Rule 12	8
Rule 66	24

Other Authorities

Appointment Order, <i>Park et al. v. Armstrong Int’l, Inc. et al.</i> , No. 2021-CP-4002727 (Mar. 17, 2023).....	2, 5–6, 17–20, 22–24, 26–27
Black’s Law Dictionary (11th ed. 2019).....	17

Third-Party Plaintiff Peter D. Protopapas, as duly appointed receiver for Cape PLC (the “Receiver” or “Receivership”), by and through undersigned counsel, hereby submits this omnibus response in opposition to the requests to dissolve the Receivership contained in various motions filed by Mohed Altrad, Altrad Investment Authority S.A.S., Hawk BidCo US Inc., Arranco US, LLC, and Sparrows Offshore, LLC (collectively, the “Responding Altrad Third-Party Defendants,” inclusive of what have been identified in the motions as “the Sparrows Defendants”), as well as by Charter Consolidated Ltd. (“Charter”), Central Mining & Investment Corporation Ltd. (“Central Mining”), and ESAB Corporation (collectively, the “Charter Third-Party Defendants”). Because the Receiver has been properly appointed and has stated viable claims for relief, and because this case is properly pending before this Court, these motions should be denied.

INTRODUCTION

This case involves an ongoing scheme perpetuated by or inuring to the benefit of Third-Party Defendants that is many decades old, and that continues to deprive South Carolina citizens of critical assets and financial resources to redress the scourge of asbestos-related disease caused by Third-Party Defendants. In addition to filing serial motions to dismiss and to stay discovery, certain Third-Party Defendants ask the Court to unwind the receivership and preclude this third-party action from proceeding.

Specifically, appearing to advocate on behalf of Cape, the Responding Altrad Third-Party Defendants have filed multiple motions to dissolve the Receivership, with (i) certain U.S. subsidiaries of the Sparrows Group (n/k/a “Altrad Sparrows”) filing motions on August 21 and September 5, with the latter motion also requesting a protective order from discovery, and (ii) Mohed Altrad and the Altrad Investment Authority S.A.S. filing a “Motion to Dissolve the Cape PLC ‘Receivership’” (“Altrad Mot.”) on September 1, and also requesting dissolution of the

receivership in a protective-order motion filed on September 20. In addition, on October 6, each of the Charter Third-Party Defendants filed a virtually identical piggyback motion to dissolve and for a protective order (collectively, “Charter Mot.”), which “joins in, incorporates, and adopts . . . all motions for protective order and motions to dissolve the Cape PLC receivership” and purports to identify (in less than three pages) seven “[g]rounds for dissolution,” by restating arguments from the Altrad Motion. Those motions have been filed on several grounds including that (i) “Cape PLC” was not properly served, (ii) the process for appointing a Cape receivership was defective, and (iii) the third-party action violates the Appointment Order itself and other applicable law.

As explained below, those arguments lack merit, and the motions should be denied.¹

FACTUAL AND PROCEDURAL BACKGROUND

I. In 2021, the Park Lawsuit Was Filed, Amended, and Served on Cape in England.

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

Id. at ¶ 4.

¹ For the Court’s convenience, the Receiver submits a single omnibus brief in response to all of these dissolution requests in an effort to streamline the number of filings before the Court. Because the September 1 motion repeats arguments from the August 21 motion, while also addressing the filing of proof of service in the Park Lawsuit on August 28 (unintentionally omitted from the motion to appoint a receiver), citations in this omnibus opposition refer only to the September 1 motion (“Altrad Mot.”), except as specifically stated otherwise.

On June 9, 2021, less than five months from her diagnosis, and only five days after filing her lawsuit, Ms. Park passed away. Her son Keith then amended the complaint, individually and as personal representative to Ms. Park’s estate (the “Park Plaintiffs”), to assert a wrongful-death action on November 17, 2021. *See* First Amended Compl., *Park et al. v. Armstrong Int’l, Inc. et al.*, No. 2021-CP-4002727 (Nov. 17, 2021). In so doing, the amended complaint added Cape Intermediate Holdings Limited (f/k/a Cape Intermediate Holdings PLC) as a defendant, apart from Cape PLC (which had already been made a defendant in the original complaint), with both defendants (together, “Cape”) identified as successors in interest to Cape Asbestos Company Ltd. *Id.* at 9; *see also id.* at ¶¶ 26–27 (describing Cape’s business).

In December 2021, the Park Plaintiffs served Cape. Specifically, as reflected in an affidavit signed March 8, 2022, an English process server mailed² a copy of the complaint and summons to Cape PLC and Cape Intermediate Holdings Ltd.—identifying both “individually and as successors to Cape Asbestos Company Limited.” Ex. A to Notice of Filing of Ommitted [sic.] Exhibit, *Park et al. v. Armstrong Int’l, Inc. et al.*, No. 2021-CP-4002727 (Aug. 28, 2023) (“Cape POS Exhibit”), at 1–6, 12–13. As the affidavit explains, “Cape PLC” was the name of the company between August 1, 1989 and June 27, 2011, while “Cape Intermediate Holdings Ltd.” is the company’s current name. *Id.* at 2. The English process server (the affiant) swore that on December 14, 2021, he served “copies of the First Amended Summons in this action on Cape PLC and Cape Intermediate Holdings Limited” at their registered address, with cover letters explaining that the claims were brought against them as successors in interest to Cape Asbestos Company Limited. *Id.* at 2, 5–6. Pursuant to procedural rules in England, the “proceedings [were] deemed to have

² The affidavit indicates that the service copies were contained in an oversize envelope, with a large-letter stamp.

been served” two days after mailing, *i.e.*, on December 16, 2021. *Id.* at 3. The process server also indicated that he emailed materials to an official address designated for the receipt of asbestos-related claims against Cape (elclaimsaltraduk@altrad.com). *See id.* at 5–6.



One week later, on December 23, 2021, Plaintiffs filed a Second Amended Complaint, adding allegations and defendants **unrelated to Cape**. *See* Second Amended Compl., *Park et al. v. Armstrong Int’l, Inc. et al.*, No. 2021-CP-4002727 (Dec. 23, 2021). Plaintiffs did not serve that specific pleading on Cape, ostensibly because Cape had already been served with an operative summons and complaint identifying the facts relevant to Cape and the claims asserted against Cape, and no such facts or claims were added in the Second Amended Complaint.

II. In 2022, the Park Lawsuit Was Resolved with Certain Defendants—But Not Cape.

On June 3, 2022, as part of an update to the Court on various proceedings, counsel for the Park Plaintiffs sent a short email with various updates, including that “the Park and Garren cases have both fully resolved.” Altrad Mot. Ex. 8. Specifically, it appears the Park Lawsuit was “fully resolved” regarding defendants who had appeared in the litigation and were scheduled for trial. Moreover, for months after, through February 2023, the docket reflects that Plaintiffs filed

stipulations of dismissal for those appearing defendants to effectuate their resolutions. **But Plaintiffs never dismissed Cape, and the lawsuit remains active.**

III. In 2023, the Court Appointed a Receiver Because of Cape’s Pattern of Avoiding Creditors.

On March 6, 2023, Plaintiffs filed a motion for “this Court to appoint a receiver over Cape PLC and its subsidiaries, affiliates, successors, and assigns.” Motion to Appoint Receiver, *Park et al. v. Armstrong Int’l, Inc. et al.*, No. 2021-CP-4002727 (Mar. 6, 2023) (“Appointment Mot.”), at 1. The motion was made pursuant to S.C. Code §§ 15-65-10(4) and (5), on the basis that a named defendant, Cape PLC, “is the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)” and, with “its subsidiaries and global affiliates[,] . . . were and are private companies organized and existing under the laws of the United Kingdom, with its principal place of business in England.” *Id.* at 1. Consistent with Cape’s failure to respond to the Park Lawsuit, the Appointment Motion described Cape’s litigation-avoidance strategy—starting nearly 50 years earlier in the late 1970s and continuing—by which Cape “decided to simply accept default judgments in asbestos lawsuits [that] could not be enforced.” *Id.* at 2. Plaintiffs provided notice of the Appointment Motion to Cape by “plac[ing] into hands of DHL, an international carrier, a copy of this motion and its exhibits, for delivery to the same address at which service was perfected.” *Id.* at 8 n.13.

On March 17, 2023, under S.C. Code §§ 15-65-10(4) and (5), the Court granted a request for an expedited ruling on the Appointment Motion and appointed a receiver for Cape PLC, as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.). *See* Order, *Park et al. v. Armstrong Int’l, Inc. et al.*, No. 2021-CP-4002727 (Mar. 17, 2023) (“Appointment Order”), at 1. Pursuant to that Appointment Order, and “pursuant to the South Carolina Law,” the Receiver has “power and authority fully administer all assets of Cape, accept service on behalf of Cape,

engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape”—in proper satisfaction of claims against Cape—“whatever they may be.” *Id.*

The Appointment Order also authorized “rights, 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, including potential insurance coverage related to Cape. *Id.* at 2.

IV. The Receiver Properly Asserted a Third-Party Lawsuit.

Among other efforts to marshal assets, the Receiver investigated Cape’s historical and current ownership and control. From that, the Receiver identified three groups of entities (and one individual) that were responsible for and/or benefited from Cape’s litigation-avoidance strategy. Thus, on June 30, 2023, the Receiver filed a Third-Party Complaint in this proceeding, *John and Margaret Tibbs v. 3M Company et al.*, No. 2023-CP-4001759 (“Tibbs Lawsuit”), in which Cape PLC (already in receivership) had been named a defendant in April 2023. That pleading asserted third-party equitable claims for unjust enrichment, constructive trust, alter ego and veil-piercing liability, and accounting.

Among the Third-Party Defendants are certain current owners or affiliates of Cape (collectively, “Altrad Third-Party Defendants”),³ and among that group, two subgroups have emerged: (i) five Responding Altrad Third Party Defendants, which have filed the motions to dissolve at issue, and (ii) seven “Non-Responding Altrad Third-Party Defendants,” which failed to respond to the Third-Party Complaint, despite being served pursuant to Article 10 of the Hague

³ The Receiver originally named The Law Debenture Corporation PLC (“Law Debenture”) as an Altrad Third-Party Defendant, based on public information suggesting that it was a “Person with Significant Control” of Cape as of 2016. *See* Third-Party Compl. ¶ 113. After receiving additional information from Law Debenture’s counsel regarding the nature of its “control,” which was based on representing the interests of certain persons in the United Kingdom also injured by Cape asbestos, the Receiver dismissed Law Debenture on August 21, 2023, without prejudice.

Convention, including Altrad UK Ltd.; Cape Industrial Services Ltd., n/k/a Altrad Services Ltd. (since June 1, 2021); Cape Holdco Ltd.; Cape Industrial Services Group Ltd.; Cape UK Holdings Newco Ltd.; Sparrows Offshore Group Ltd.; and The Sparrows Group LLC. Due to those failures to appear, the Receiver filed default motions against those seven entities, with supporting proof of service, from August 18 through 29, 2023.

ALTRAD AND CAPE-AFFILIATED ENTITIES ("ALTRAD THIRD-PARTY DEFENDANTS" OR "ALTRAD")	
<u>Non-Responding (Defaulting) Altrad:</u> • Altrad UK Ltd. • Altrad Servs. Ltd. (f/k/a Cape Indus. Servs. Ltd.) • Cape Holdco Ltd. • Cape UK Holdings NewCo Ltd. • Cape Indus. Servs. Grp. Ltd. • Sparrows Offshore Grp. Ltd. • The Sparrows Grp., LLC	<u>Responding (Non-Defaulting) Altrad:</u> • Mr. Mohed Altrad • Altrad Inv. Auth. S.A.S. • Hawk Bidco US Inc. • Arranco US, LLC • Sparrows Offshore, LLC

Of the seven Non-Responding Altrad Third-Party Defendants, five of them (*i.e.*, all except two defaulting “Sparrows” entities⁴) share the same registered office address as Cape PLC, n/k/a Cape Intermediate Holdings Ltd., in Warrington, England at 6-7 Lyncastle Way Barleycastle Lane,

⁴ Without explanation, Responding Altrad Third-Party Defendants have asserted in filings with this Court that none of the Responding Altrad Third-Party Defendants has “affiliation or association” with the Sparrows Offshore Group, Ltd. (based in Aberdeen, Scotland) or The Sparrows Group LLC (a Delaware LLC created in March 2023). That contention conflicts with public materials regarding their affiliations, in which Altrad has touted its recent acquisition of the Sparrows Group, which on information and belief includes these two entities. *See, e.g.*, Altrad Press Release, *Altrad Group Agrees to Acquire Sparrows Group* (Mar. 2, 2022), <https://www.altrad.com/en/newsreader/altrad-agrees-to-acquire-sparrows-group.html>. Also notably, (i) within **two weeks** of being served the Third-Party Complaint on July 14, 2023, Sparrows Offshore Group Ltd. passed a resolution to liquidate on July 27, 2023 (while other Sparrows entities continue to operate at the same registered address, including Sparrows Offshore International Group Ltd.), and (ii) after these motions to dissolve were filed, the “Sparrows Group” has been rebranded “Altrad Sparrows.”

Appleton Thorn Trading Estate. *See* Ex. 1, AD01 Change of Registered Office Address for Cape Intermediate Holdings Ltd. (June 13, 2023) (showing change of address, from where the Park Lawsuit was served, around June 13). Thus, Cape has been served and put on notice *many times* now about the nature of the underlying asbestos suit filed against it (including by the Tibbs Plaintiffs), along with the South Carolina receivership over it.⁵

Likewise, the Receiver named three entities associated with historical ownership and control of Cape, including when the liability-avoidance scheme was implemented in the 1970s, identified as the “Charter Third-Party Defendants,” including Charter, Central Mining, and ESAB Corporation, which were properly served with a copy of the Third-Party Complaint. *See, e.g.*, Third-Party Compl. ¶ 124 (“On information and belief, ESAB Corporation is currently the parent company of, as well as a successor in interest to, Charter Consolidated Ltd., along with Charter’s subsidiary Central Mining & Investment Corporation Ltd. . . .”); *see also id.* ¶¶ 45–69, 77–105 (detailing the relationship between Charter, Central Mining, and Cape, among other Third-Party Defendants associated with Cape’s historical ownership and control).

Appearing to advocate on behalf of Cape, the Responding Altrad Third-Party Defendants and the Charter Third-Party Defendants have filed multiple motions to dissolve the Receivership. As explained below, those motions lack merit and should be denied.

⁵ Counsel for Mr. Altrad and Altrad Investment Authority S.A.S. stated via email on August 18 and 19, 2023, as well as in other communications, that they also represent one of the defaulting Altrad Third-Party Defendants with the same registered address as Cape, *i.e.*, Altrad UK Ltd. This fact, which further supports the Receiver’s claims against the Altrad Third-Party Defendants, is detailed further in a separately filed omnibus opposition to motions to dismiss under Rules 12(b)(1) and 12(b)(6) filed by certain Third-Party Defendants.

ARGUMENT

I. Cape Was Properly Served in the Park Lawsuit and Failed to Respond.

Cape was properly served in the Park Lawsuit, as the First Amended Complaint pleaded claims against an English entity existing since 1893, Cape PLC, n/k/a Cape Intermediate Holdings Ltd., for the wrongful death allegedly caused by the company’s historical asbestos business. *See* Cape POS Exhibit. Instead of responding, Cape chose to continue its decades-long practice of ignoring asbestos lawsuits filed against it in the United States—simply accepting defaults ostensibly because it believes defaults entered by this Court cannot be enforced. *See* Third-Party Compl. ¶¶ 89–105. Indeed, Cape’s own disclosures make clear that it **never** intends to respond to U.S. litigation in the future, because that would purportedly “have a materially adverse effect on the financial status of the Group and almost certainly result in insolvency proceedings.” Ex. 2, *Proposals for a Scheme of Arrangement Between Cape PLC et al.* (Mar. 15, 2006), at 65.

A. The proof of service confirms that the relevant Cape entity was properly served.

Rather than acknowledge the proper service of Cape, and its longstanding, publicly disclosed practice of refusing to respond to U.S. litigation, Altrad now suggests that the incorrect Cape entity has been served. Specifically, Altrad notes that a recently formed entity, Cape PLC, as organized under the laws of the Bailiwick of Jersey in 2011, was not served, and that is the only entity currently existing and going by the name “Cape PLC.” *See* Altrad Mot. at 2–3, 21 (points #1 and #2). But as Cape’s own materials make clear, that Jersey entity was formed recently to act as a “holding company of the Cape Group” for tax purposes, with the new entity being a “Singapore and Jersey tax resident.” Ex. 3, *Cape PLC Recommended Proposals to Establish a New Jersey-Incorporated Holding Company of the Cape Group* (May 9, 2011), at 9, 11, 16. Against a backdrop of decades of ignoring all forms of American pleadings as part of a publicly disclosed

strategy, the notion that a different, recently formed Cape entity in the Bailiwick of Jersey somehow would have treated these service documents differently strains credulity.

To be clear, in both the underlying Park and Tibbs Lawsuits, and in this third-party action, there has been **no** reference to the Jersey entity until Altrad raised it as a defense. And from a basic assessment of relevant filings and pending discovery, it is unambiguous that the conduct of the 130-year-old Cape entity in England (and not the recently formed holding company in the Bailiwick of Jersey) is at issue:

- **Park Lawsuit’s Asbestos Allegations.** While still alive, Ms. Park identified Cape PLC in the caption as a defendant, individually and as successor in interest to Cape Asbestos Company Ltd. *See* Original Compl., at 1, 7. After dying of mesothelioma, amended versions of the complaint were filed to include a wrongful-death claim against Cape Intermediate Holdings Limited (f/k/a Cape Intermediate Holdings PLC) and Cape PLC, with both defendants sued as successors in interest to Cape Asbestos Company Ltd. and alleged to be organized under English law. *See, e.g.,* First Amended Compl., at 9. As the First Amended Complaint made clear, the liability alleged against both Cape PLC and Cape Intermediate Holdings Limited was based on Cape’s historical asbestos business, in existence long before the company’s adoption of either name in 1989 and 2013, respectively. *See id.* ¶¶ 26–27.⁶
- **Appointment Motion.** The motion to appoint a receiver also referenced only Cape PLC as “the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)”

⁶ As in the Park Lawsuit, the complaint filed by Plaintiffs John A. Tibbs and Margaret B. Tibbs names Cape PLC as a defendant. *See* Compl., *Tibbs et al. v. 3M Company et al.*, No. 2023-CP-4001759 (Apr. 5, 2023), at 2, 11, 23 (identifying U.K.-based “**CAPE PLC** individually and as successor-in-interest to **CAPE INDUSTRIES LTD. f/k/a CAPE ASBESTOS COMPANY LTD.** and its subsidiaries and global affiliates”).

that is “organized and existing under the laws of the United Kingdom, with its principal place of business in England.” Appointment Mot. at 1.

- **Third-Party Complaint.** The Third-Party Complaint against Altrad (including its various Cape-affiliated subsidiaries) likewise makes clear that “Cape” refers to the entity formed in 1893 in England, and even describes the various nominal changes to Cape’s name over the past half century (*i.e.*, after it began to be sued in the United States for asbestos-related injuries). *See* Third-Party Compl. ¶ 113 (detailing name changes to Cape Asbestos Company Ltd., including operating as Cape PLC from 1989 to 2011 and “re-registering as a private company to become Cape Intermediate Holdings Ltd. in 2013”).
- **Discovery Requests.** Finally, the Receiver served discovery on certain Responding Altrad Third-Party Defendants as early as July 18, 2023—more than one month before the first motion to dissolve was filed—which left no doubt that “Cape PLC” refers to the longstanding English entity, not the recently formed Bailiwick of Jersey entity:

2. “Cape PLC” means the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) and its subsidiaries and affiliated Entities, with any other predecessor or successor in interest, including Cape Industries PLC, Cape Intermediate Holdings PLC, and Cape Intermediate Holdings Ltd.

B. Both the complaint and summons were served on Cape.

Altrad also argues that service was defective because only a summons, and not a copy of the complaint itself, was served—which it argues is contrary to Rule 4(d)’s requirement that the “summons and complaint must be served together.” *See* Altrad Mot. at 3, 22 (point #5). That contention, however, is erroneously based on what is quite obviously a mere shorthand description

of the document that was served as the “First Amended Summons.” The suggestion that perhaps *only* the summons was served is fanciful.

In the Park Lawsuit, the “First Amended Summons” and “First Amended Complaint” refer to two parts of the same document that was filed on November 17, 2021. The summons consists of the filing’s first 4 pages, and the complaint consists of the filing’s remaining 66 pages.

Pursuant to Rule 4(d)’s obligations, counsel for the Park Plaintiffs would have provided the entire filing—rather than only the first four pages—and directed the process server to mail the entire document. And ostensibly, the process server followed that directive—mailing the entire 70-page filing (not just 4 pages), doing so in an oversize envelope with a large-letter stamp, as photographs in the Cape proof of service show.



Cape POS Exhibit, at 12–13. Accordingly, this argument is equally baseless.⁷

⁷ The process server’s cover letter indicates that a copy of the complaint and summons were also emailed to elclaimsaltraduk@altrad.com. See Cape POS Exhibit, at 5–6. If the summons was sent without the complaint, then Altrad should have that email to prove what was received.

C. The amendment of the complaint does not render service defective.

Altrad argues that even if the proper entity and address were served with an operative complaint, service was still defective—and thus the receivership appointment is invalid—because one week later (on December 23, 2021), Plaintiffs filed a Second Amended Complaint. Specifically, Altrad appears to contend that any entry of default (which Altrad contends is necessary for this Receivership) for Cape’s failure to respond to the First Amended Complaint would not be possible, because that complaint was superseded before a default could technically occur. Thus, according to Altrad, that amendment of the complaint effectively voided the notice provided to Cape. *See* Altrad Mot. at 6, 22 (point #12). But that technical, formalistic argument (i) is legally incorrect, and (ii) does not negate that Cape was properly served notice of this proceeding.⁸

First, the argument ignores that because Cape became a “part[y] in default for failure to appear,” and because no “new or additional claims for relief [were asserted] against” Cape in the Second Amended Complaint: the rules **did not require** Cape to be served again. Rule 5(a), SCRCP.

Second, the argument incorrectly characterizes the filing of the Second Amended Complaint (which asserted no new claims against Cape) as automatically negating the effect of service on Cape of the First Amended Complaint—necessitating a second round of service. In

⁸ The authorities cited by Altrad as supporting its argument that service of the First Amended Complaint was negated by the filing of a subsequent complaint—in reality—offer no such support. *See, e.g., Schein v. Lamar*, 284 S.C. 252, 255, 325 S.E.2d 573, 574 (Ct. App. 1985) (finding “questions as to the sufficiency of the First Amended Complaint are now moot,” given the complaint had been superseded—having no bearing on issues around proper service); *Fawzy v. Wauquiez Boats SNC*, 873 F.3d 451, 455 (4th Cir. 2017) (appeal from Maryland federal court, finding lack of jurisdiction to consider appeal when dismissal order concerned only a superseded complaint and did not address an amended complaint filed the same day).

South Carolina, “courts have long held that in order to establish that service has been properly effected, the plaintiff need only show compliance with the civil rules on service of process.” *McClurg v. Deaton*, 380 S.C. 563, 579, 671 S.E.2d 87, 96 (Ct. App. 2008). In contrast, negating service based on an amendment (especially one in which no new claims are asserted against Cape) would not serve the “principal object of service of process,” *i.e.*, “to give **notice** to the defendant corporation of the proceedings against it” and to allow the Court to exercise jurisdiction. *Mull v. Ridgeland Realty, LLC*, 387 S.C. 479, 485, 693 S.E.2d 27, 30 (Ct. App. 2010) (emphasis added) (finding service complied with the law, despite allegations of a technical defect). When, as here, rules on service of process “are followed, there is a presumption of proper service.” *McClurg*, 380 S.C. at 579, 671 S.E.2d at 96. Moreover, as numerous authorities recognize amending a complaint **after** service does not render original service defective. *See, e.g., Doe v. Unocal Corp.*, 27 F. Supp. 2d 1174, 1180 (C.D. Cal. 1998) (denying a motion to dismiss for “insufficiency of service of process,” when an operative complaint rather than an amended complaint was served, because “[a]n original complaint is only superseded . . . when the amended complaint is properly served, not when it is filed” (citing *Int’l Controls Corp. v. Vesco*, 556 F.2d 665, 669 (2d Cir. 1977))).⁹

Third, the Receiver acknowledges that the Appointment Motion contained errors regarding the date of service, as it (i) conflated the date of the supporting affidavit (March 8, 2022) with the

⁹ *See also Thompson v. Victoria Fire & Cas. Co.*, 32 F. Supp. 2d 847, 848 (D.S.C. 1999) (assessing the originally served complaint for purpose of removal, rather than an amended complaint that was not served); *Opus Grp., LLC v. Enomatic Srl*, 2012 WL 13134613, at *3 (S.D. Fla. Oct. 24, 2012) (denying motion to dismiss based on service of a first amended complaint, after the second amended complaint was filed, given lack of prejudice to the defendant “considering the timing and the [insignificant] differences between the two complaints”); *Crane v. Battelle*, 127 F.R.D. 174, 177–78 (S.D. Cal. 1989) (denying motion to quash service in light of defendant not being able to “seriously contend that there was prejudice to some substantial right of defendant,” when the complaint caption reflected an erroneous name, because the mistake was innocent and there was substantial compliance with procedural rules of service).

effective date of service (December 16, 2021), and (ii) referenced the Second Amended Complaint rather than the First Amended Complaint as what was served. *See* Altrad Mot. at 4–5 (points #7, 9). These technical defects, however, do not negate the operative facts at issue in connection with this motion: namely, that **the proper Cape entity was served** with notice of the Park Lawsuit, and **Cape chose not to respond**, consistent with its longstanding, publicly disclosed avoidance strategy. Indeed, **Cape still has not responded**.

Ultimately, the law does not require this Court to exalt technical form over substance, as Altrad suggests.¹⁰ Accordingly, none of Altrad’s arguments regarding allegedly defective service on its subsidiary, Cape, is valid, and none supports dissolution of the Receivership.¹¹

II. The Court Appointed the Receiver for Cape with Proper Process and Authority.

A. Proper notice of the Appointment Motion was provided to Cape.

Using international carrier DHL, the Park Plaintiffs effected delivery of the Appointment Motion at the same registered address in England where service of the First Amended Complaint was previously perfected. *See* Appointment Mot. at 8. There is no basis for Altrad’s argument that Plaintiffs were required to do anything else—including serving the motion pursuant to the Hague Convention. *See* Altrad Mot. at 3, 5, 12, 19–20 (points #4, #10, #31).

¹⁰ *See, e.g., Jackson v. Beech*, 636 F.2d 831, 835 (D.C. Cir. 1980) (“modern procedural reforms were aimed at eliminating technicalities that preclude the substantive resolution of dispute”); *Dennis v. Escarcega*, 2008 WL 11409449, at *3 (W.D. Tenn. Oct. 7, 2008) (rejecting arguments based on alleged “technical deficiencies” in denoting a pleading as a complaint, given it contained “sufficient information to place the Defendant on notice of the claims being brought against him”).

¹¹ This argument also relies on the legal premise that a technical default and default judgment are required to appoint a receiver (and that the purportedly necessary default was avoided by the filing of the Second Amended Complaint). But that argument is also wrong, as discussed *infra* Argument § II.B.

While Rule 4.1, SCRCPP, requires service of the summons and complaint through certain processes for “service of process in foreign countries,” appointment of a receiver is **not** subject to those particularized guidelines. Instead, the law only requires “**notice** of the application,” S.C. Code §§ 15-65-20, 15-65-30 (emphasis added), which undisputedly was provided here. In turn, Altrad fails to explain how a DHL mailing would not provide sufficient notice—but serving pleadings (for a second time) pursuant to the Hague Convention would. Indeed, given Cape’s consistent pattern of not responding to asbestos litigation in the United States—including in this third-party action—such service would have been futile. *See, e.g.*, Rule 1, SCRCPP (providing that South Carolina procedural rules “shall be construed to secure the just, speedy, and inexpensive determination of every action”).¹²

Accordingly, the Court should validate as adequate the notice provided to Cape regarding the Appointment Motion.

B. The Court followed all necessary steps to appoint a receiver for Cape.

Altrad also asserts that, even if Cape was properly served and notified of the Appointment Motion, the Court failed because it:

did not perform any of the steps legally necessary to appoint a receiver over Cape PLC for purposes of the Park Lawsuit, including by [i] confirming lawful service of process in the Park Lawsuit, [ii] entering default against Cape PLC, [iii] granting a default judgment against Cape PLC, and [iv] entering judgment against Cape PLC purporting to reflect a liquidated sum of damages due to the Park plaintiffs based on a sufficient factual showing.

¹² There is also no merit to the Charter Third-Party Defendants’ argument for dissolution because they were “not provided with notice of the [Appointment] Motion prior to the entry of the [Appointment] Order.” (Charter Mot. at 3–4.) Sections 15-65-20 and 15-65-30 did not require that they receive such notice. And once they became implicated by this Receivership, because claims have been asserted against them in the Third-Party Complaint, each of the Charter Third-Party Defendants was promptly served and has been given an opportunity to respond.

Altrad Mot. at 6 (point #11). This argument misconstrues what is required for appointment of a receivership under South Carolina law, especially in the context of a company like Cape, for which a receiver was appointed under two parts of S.C. Code § 15-65-10 that have **no** such prerequisites.

First, under subsection (4) of S.C. Code § 15-65-10, this Court has authority to appoint a receiver “either in or out of court . . . [w]hen a corporation has been dissolved, is insolvent or in imminent danger of insolvency or **has forfeited its corporate rights**, and, in like cases, of the property within this State of foreign corporations.” (Emphasis added.) In turn, the Appointment Order was properly made under this subsection because Cape had forfeited its corporate rights based on “its complex scheme and 1978 liquidation of its American subsidiary, NAAC, by which it intentionally fled the United States to avoid its liabilities and obligations to its creditors”—amounting to a “crime, breach of obligation, or neglect of duty” that caused forfeiture of its corporate rights. *See* Appointment Mot. at 6 (quoting Black’s Law Dictionary (11th ed. 2019) to define *forfeiture*).¹³

Second, under subsection (5) of S.C. Code § 15-65-10, this Court has authority to appoint a receiver “either in or out of court . . . [i]n such other cases as are provided by law or **may be in accordance with the existing practice**, except as otherwise provided in this Code.” (Emphasis added.) In turn, the Appointment Order was properly made under this subsection based on Cape’s long-running, intentional scheme to defraud its tort creditors by refusing to appear in the United States, including in South Carolina. *See* Appointment Mot. at 7–8. This subsection, reflecting an “old practice” of equity and “important principle of law” to correct injustice, was particularly

¹³ Although the Appointment Order described Cape as dissolved, even though Cape in England is still a going concern, that does not impact the legality of the Receivership. *See* Altrad Mot. at 7, 10, 18–19 (points #13, #24). The Court can simply amend the Appointment Order to clarify that statement, if the Court finds that appropriate. *See* S.C. Code § 33-14-320(c).

applicable to Cape, given its efforts “to defeat [its] creditors by an act or course of conduct which indicates moral fraud—a conscious intent to defeat, delay, or hinder his creditors in the collection of their debts.” *Virginia-Carolina Chem. Co. v. Hunter*, 84 S.C. 214, 66 S.E. 177, 179 (1909) (citing *Miller v. Hughes*, 33 S.C. 530, 12 S.E. 419 (1890)). Because Cape set its numerous tort creditors, including the Park Plaintiffs, “at arm’s length by refusing . . . to take any interest in the satisfaction of their claims,” there was a “prima facie case . . . warranting the appointment of a receiver.” *Id.* at 180.

Likewise, although Altrad asserts certain procedural defects (such as with respect to there being no entry of a default against Cape PLC or a judgment reflecting a liquidated sum due to the Park Plaintiffs), those processes are irrelevant to the grounds on which the Receiver for Cape was appointed. *Compare* Altrad Mot. at 6 (point #11) *with* S.C. Code §§ 15-65-10(2), (3) (providing for appointment of receiver in certain situations “[a]fter judgment”).

Finally, given that Cape’s default in the Park Lawsuit was part of a longstanding practice by the company (and not a “single purported default,” as Altrad argues), the Appointment Order easily meets the strictures of South Carolina law and provides a compelling need for a receivership. *See* Altrad Mot. at 8 (point #16) (describing the Appointment Order of an Altrad subsidiary/affiliate as “harsh and drastic”); *see also Penn Mut. Life Ins. Co. v. Cudd*, 172 S.C. 88, 172 S.E. 787 (1934) (distinguishable precedent cited by Altrad, based on the improper appointment of an individual to be *his own* receiver). Indeed, any contention that Cape lacks assets in South Carolina (apart from its insurance and legal claims) is part of Cape’s scheme to defeat tort

creditors—*demonstrating* the necessity of this Receivership and for allowing this third-party action to continue. *See* Third-Party Compl. ¶¶ 41, 43, 65, 79–80, 89–105.¹⁴

C. The Court appointed a receiver for the proper Cape entity.

Despite Altrad’s arguments to the contrary, this Court has appointed a receivership over the correct Cape entity: Cape PLC, n/k/a Cape Intermediate Holdings Ltd., f/k/a Cape Asbestos Company Ltd. at its founding in 1893. (*See supra* Argument § I.A.) It does not matter that the entity—which has continued its liability-avoidance scheme for decades—changed its name from “Cape PLC” in 2011. Indeed, Altrad cannot reasonably argue that Cape lacked proper notice of the proceeding, or was confused by the company at issue, given the allegations in the motion itself.

The South Carolina rules of procedure, including for service of process, “do not turn on parsing strict technicalities or debating murky legal abstractions.” *McCall v. IKON*, 363 S.C. 646, 651, 611 S.E.2d 315, 317 (Ct. App. 2005). When a party is identified “in such terms that every intelligent person understands who is meant, as is the case here, [process] has fulfilled its purpose; and courts should not put themselves in the position of failing to recognize what is apparent to everyone else.” *Griffin v. Capital Cash*, 310 S.C. 288, 292, 423 S.E.2d 143, 146 (Ct. App. 1992) (citation omitted).

At best, as to the appointment of a receiver for “Cape PLC” rather than “Cape Intermediate Holdings Ltd.,” Altrad has raised a “misnomer of a corporation,” which is “immaterial” because

¹⁴ Relatedly, there is no merit to the Charter Third-Party Defendants’ challenge to the Appointment Order as not “includ[ing] ‘a clause fixing the value of the property’ sought to be placed in the hands of a receiver,” as purportedly required by S.C. Code § 15-65-60. (Charter Mot. at 4.) No such requirement, which is related to posting bonds by a party claiming rights to property, applied to the Cape Appointment Order, including because any bond requirement would necessarily not apply here and would be futile, when the liabilities at issue and amount of assets that may be available, including through uneroded insurance, could not be valued. Moreover, Cape has made no effort to post a bond for the return of property.

“it appears [Cape] could not have been, or was not, misled” or otherwise prejudiced. *Id.* Accordingly, this technicality provides no basis to dissolve the Receivership.¹⁵

D. Personal jurisdiction exists for a Cape receivership.

Altrad also challenges the Appointment Order as unlawful because the Court did not make an explicit finding that it has personal jurisdiction over Cape PLC. No such finding was needed. Indeed, personal jurisdiction is self-evident, given Cape’s large-scale export of asbestos to the United States over decades, knowing it would injure tens of thousands of people, including in South Carolina. *See, e.g.,* Third-Party Compl. ¶ 75 (noting nationwide distribution of certain asbestos, over which Cape had a monopoly, and prior personal jurisdiction ruling in South Carolina with respect to a Cape entity).

The applicable long-arm statute is easily met by the conduct alleged in the Appointment Motion. Specifically, this Court has jurisdiction over Cape as “a person who act[ed] directly or by an agent as to a cause of action arising from” Cape’s (1) “causing tortious injury or death in this State by an act or omission outside this State,” and by “regularly . . . engag[ing] in [a] persistent course of conduct, or deriv[ing] substantial revenue from goods used or consumed or services rendered in this State,” and/or (2) “production, manufacture, or distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed.” S.C. Code §§ 36-2-803(4), (8).¹⁶

Accordingly, personal jurisdiction clearly exists for purposes of this Receivership.

¹⁵ The Receiver would have no objection to the Court’s amendment of the Appointment Order to identify Cape Intermediate Holdings Ltd., if the Court finds that appropriate. *See, e.g., Griffin*, 310 S.C. at 292, 423 S.E.2d at 146 (“If it later appears that the true name of the corporation is different . . . , the misnomer is properly a subject of amendment.”); S.C. Code § 33-14-320(c) (permitting amendment of appointment order).

¹⁶ Concurrently with this motion, the Receiver is separately filing two omnibus oppositions to the motions to dismiss filed by each of the Third-Party Defendants.

E. There is a justiciable controversy.

The Park Lawsuit (leading to the Cape Receivership) and this third-party action (asserting equitable claims) both present justiciable controversies for the Court’s resolution, as each reveals a “real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute.” *Pee Dee Elec. Co-op., Inc. v. Carolina Power & Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983). Altrad’s arguments to the contrary are factually and legally incorrect.

First, Altrad quotes a single email (presenting the email in isolation) by Plaintiffs’ counsel to argue that the lawsuit had been “completely resolved” months before the Appointment Motion was filed, and no judgment was entered against Cape, so there was no basis to appoint a receiver. *See* Altrad Mot. at 8 (point #17). This overly simplistic recitation of the record does not acknowledge that the Park Lawsuit was resolved only as to **responding defendants**, and not as to Cape, which did not respond; trial had been scheduled but no longer was needed as all responding defendants had agreed to settle the claims against them. Indeed, after updating the Court of the tentative resolution of the claims against responding defendants, it took several more months—through February 2023—to file numerous stipulations of dismissal. During that period, Cape still filed no appearance, and Plaintiffs made no indication that they would dismiss their claims against Cape. Once those stipulations were filed, Plaintiffs filed the Appointment Motion in March 2023, pursuant to subsections (4) and (5) of S.C. Code § 15-65-10, which do not require entry of default or a default judgment (as Altrad incorrectly suggests).

Second, Altrad makes a conclusory (and confused) assertion that the Receiver appointed in the Park Lawsuit does not and cannot purport to seek relief on behalf of the Park Plaintiffs. Altrad fails to support this contention factually or legally. And to the extent Altrad means to argue that

the Receiver may not seek third-party relief in the Tibbs Lawsuit, and instead is limited to seeking relief for the Park Lawsuit (*i.e.*, in the action in which the Appointment Motion was filed), that contention would have no basis in the Appointment Order or law. Indeed, as the Appointment Order makes clear, and consistent with other receiverships ordered by this Court, the Receiver acts to marshal assets on behalf of all such creditors against Cape.

Finally, Altrad argues that counsel for the Park Plaintiffs filed the Appointment Motion to advance the positions of plaintiffs in unrelated asbestos cases rather than advance interests of clients in the Park Lawsuit. But that argument is illogical. The Park and Tibbs Lawsuits are similar because those plaintiffs—like tens of thousands of Americans, including citizens of South Carolina—have been harmed by Cape’s decades-long asbestos business and liability-avoidance scheme. In addition, the Receiver’s ability to successfully marshal assets will directly inure to the benefit of the Park Plaintiffs, which allege uncompensated harm from Cape’s conduct.

F. The omission of proof of service from the Appointment Motion has been corrected.

Altrad argues for dissolution because of a clerical error whereby proof of service was inadvertently not included as an exhibit to the Appointment Motion (even though counsel for the Park Plaintiffs as officers of this Court represented that service had been made and that they intended to include that documentation). That omission, however, was corrected with a notice of filing of the omitted exhibit on August 28, 2023, and does not negate that Cape was properly served. The unintentional “[f]ailure to make proof of service does not affect the validity of the service.” Rule 4.1(c)(2), SCRCP (emphases added).

III. The Appointment Order and the Law Allow This Third-Party Action.

Altrad next challenges the assertion of claims against Altrad in the Third-Party Complaint as violating the Appointment Order or the law generally. These arguments lack merit.

A. The Appointment Order authorizes this third-party action.

Altrad misreads the Appointment Order in asserting that pursuant to its “plain language,” as well as South Carolina law, the Receivership’s authority is limited to seeking derivative relief and liability connected to the Park Lawsuit—and **not** the Tibbs Lawsuit—and that the Receivership improperly goes beyond the territorial jurisdiction of South Carolina.

As required by S.C. Code § 33-14-320(c), the Appointment Order explicitly “describe[s] the powers and duties of the receiver or custodian in its appointing order,” such as “su[ing] and defend[ing] in his own name as receiver of the corporation in all courts of this State.” In turn, the Receiver was broadly granted “pursuant to the South Carolina Law with the power and authority fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape whatever they may be.” Appointment Order, at 1. Elaborating on those rights further, the Appointment Order states that the Receiver’s rights are “inclusive of, but not limited to, the right and obligation to administer . . . any claims related to the actions or failure to act of Cape’s insurance carriers,” to “obtain from any . . . third party, any financial records belonging to or pertaining to” Cape, and to “hire any person or company necessary to accomplish any right or power under this Order.” *Id.* at 1–2. Pursuant to those powers, the Receiver filed the Third-Party Complaint against Altrad to exercise his duly appointed authority and achieve the objectives of the Appointment Order.

Apart from the Appointment Order, the law authorizes the Receiver to bring the Third-Party Complaint against Altrad. Indeed, “[t]he right to have a receiver appointed is an ancient one,” *Pelzer v. Hughes*, 27 S.C. 408, 3 S.E. 781, 785 (1887), with courts sitting in equity appointing receivers to ensure a fair result, *First Carolinas Joint Stock Land Bank of Columbia v. Knotts*, 191 S.C. 384, 1 S.E.2d 797 (1939). The central function of a receivership is to marshal assets for the

purposes of satisfying creditors, including tort claimants. Indeed, the Supreme Court of the United States recognizes that a “state court, upon . . . hearing or information, . . . may permit its receiver to sue . . . upon any controverted claim,” including the ability to assert “all . . . rights of action.” *Porter v. Sabin*, 149 U.S. 473, 480 (1893). Here, the Receiver has pleaded viable claims to hold Third-Party Defendants accountable for Cape and its liability-avoidance scheme.

In addition, Rule 66, SCRCF, concerns the “Powers of Receiver” and provides that “[i]n addition to the powers conferred by law, every receiver of the property and effects of a debtor shall, unless restricted by order of the court, have general power and authority to sue for and collect the debts, demands and rents belonging to the debtor, and . . . may also sue . . . in the name of the debtor where it is necessary or proper for him to do so.” There is no jurisdictional limit on that authority.

Accordingly, South Carolina law and the Appointment Order authorize the Receiver to bring this third-party action, and there is no basis for its dismissal.

B. The third-party action does not violate principles of international comity.

Altrad also argues that the Appointment Order is unlawful as violating principles of international comity, purportedly because it interferes with what it describes as the “exclusive jurisdiction” of the United Kingdom and the Bailiwick of Jersey to manage Cape and claims against Cape. Specifically, Altrad appears to suggest that the United Kingdom has exclusive jurisdiction to address asbestos-related claims against Cape, and that the Bailiwick of Jersey has the exclusive right to exercise oversight of the internal affairs of the Cape entity organized in the

Bailiwick of Jersey. *See* Altrad Mot. at 13 (points #34, #35). This argument is unsupported by facts or law.

As to the purported deference owed to the United Kingdom, Cape vaguely references a “Scheme of Arrangement summarized in Note 32 of Cape PLC’s Annual Report 2022,” which purportedly involved “pre-existing exclusive jurisdiction of the [United Kingdom] courts, which previously exercised jurisdiction over [Cape’s] assets” in 2006. Altrad Mot. at 13 (points #34, #35). Altrad, however, does not elaborate on that purported “exclusive jurisdiction,” or even provide a copy of or link to the report, or a copy or link to the referenced scheme of the arrangement, which—in fact—would refute Altrad’s claim of exclusive jurisdiction. *See, e.g.*, Ex. 2, Proposals for a Scheme of Arrangement Between Cape PLC *et al.* (Mar. 15, 2006), at 65 (“The Scheme *only applies* to UK asbestos-related claims as described in this document. . . . It is possible that the Group may in the future receive such ‘non-UK claims’ and such claims would not be Scheme Claims.” (emphasis added)).

In sum, Altrad provides **no** legal or factual basis to find that a United Kingdom court can completely override this Court because the former somehow has exclusive jurisdiction over Cape’s “massive unpaid responsibility for the death and illness caused by its asbestos products in South Carolina and elsewhere in the United States”—for which “Cape has done nothing.” *See* Third-Party Compl. ¶ 114 (emphasis omitted) (referencing 2006 scheme of arrangement with former employees “compensat[ing] for illness and death resulting overseas”).

In turn, as to the purported deference owed to the Bailiwick of Jersey, the argument fails on its face. No filing has ever referenced the Jersey-formed Cape holding company, until Altrad first raised that red herring as an argument to dissolve the Receivership. In fact, even if claims had been made against that entity, Altrad provides no legal or factual foundation for its argument that

the Receivership “interfere[s] with the pre-existing exclusive jurisdiction of the Jersey courts to exercise oversight and management over the internal affairs of a Jersey company.” Altrad Mot. at 13. The creation of a holding company in the Bailiwick of Jersey in 2011 did not (and could not) somehow absolve Cape of liability to people injured by Cape asbestos in the United States over many decades, including in South Carolina; nor did it deprive this Court of authority to create a receivership for the purpose of addressing that unanswered liability in the United States.

C. The third-party action does not violate the U.S. Constitution.

Altrad also vaguely asserts that this Receivership violates the U.S. Constitution, including that the Appointment Order “violates *inter alia* the Dormant Commerce Clause, the Foreign Commerce Clause, the Taking Clause, the Due Process Clause, the Excessive Fines Clause, the Equal Protection Clause, and the Supremacy Clause of the U.S. Constitution.” Altrad Mot. at 14, 24–26. Primarily, however, the constitutional challenge is based on the Receivership purportedly having an unlawful “extraterritorial effect.” *Id.* Altrad makes that argument based on misstatements of the facts and the law (including erroneously asserting that Cape had “nothing to do with South Carolina”), which ignores the widespread harm caused by Cape’s products in South Carolina (and elsewhere in the United States) and the power of the Receivership to marshal assets such as by asserting valuable claims for the benefit of creditors. (*See supra* Argument § III.A.)¹⁷

These constitutional arguments have no merit.

¹⁷ The authorities cited by Altrad do not support its argument that the Receivership has an unconstitutional extraterritorial effect or “attempt[s] to displace federal receivership law with a South Carolina statute.” *See, e.g.*, 28 U.S.C. §§ 754, 3103 (federal receivership statutes applicable to receiverships appointed in *federal* court); *Carolina Trucks & Equip., Inc. v. Volvo Trucks of N. Am., Inc.*, 492 F.3d 484, 490 (4th Cir. 2007) (rejecting interpretation of South Carolina statute to prohibit sales of automobiles to South Carolinians outside of the state).

D. Accusations of “bad faith” and “outrageous conduct” are baseless.

Altrad argues that the Receivership is (i) seeking to have “manufactured liabilities” passed on to third parties, (ii) acting beyond its authority, with incurable conflicts of interest, and (iii) violating the Appointment Order by not taking “any and all steps necessary to protect the interests of Cape.” Altrad Mot. at 9, 13–14. According to Altrad, on these bases, the Receiver’s filing of the Third-Party Complaint constitutes “bad faith” and “outrageous conduct,” and thus the Receivership should be dissolved. *Id.* at 26–28.

Altrad’s argument tries to turn reality on its head: If Cape had responded to the Park Lawsuit, then it could have offered its own defense and contested liability for the disease and death of Ms. Park. But it did not. Nor did it respond in that action after receiving notice of the motion to appoint a receiver over it. Nor has Cape responded after the Receiver filed the Third-Party Complaint against Cape’s current and historical owners and affiliated entities. Indeed, **five** of the Non-Responding Altrad Third-Party Defendants share—and were served at—**the same registered address of Cape PLC**, n/k/a Cape Intermediate Holdings Ltd. But still: **no response from Cape.**

As has been thoroughly pleaded, the Altrad Third-Party Defendants are alter egos of Cape itself and liable for directing, allowing, facilitating, or benefiting from Cape’s longstanding liability-avoidance scheme. *See* Third-Party Compl. ¶¶ 113–19, 125–41. It is that scheme, with Cape’s decades-long profitmaking, while knowing and hiding the health risks of asbestos, which is **truly** “outrageous.” *See, e.g., id.* ¶¶ 51–105 (describing Cape’s knowledge of asbestos-related disease endemic among its employees, substantial profitmaking, and efforts to influence public, governmental, and industry opinions about the safety of asbestos); *see also id.* ¶¶ 81–82 (describing Cape’s widespread abuse of South African child laborers during Apartheid). Rather

than pursue “manufactured liabilities,” the Receiver seeks basic accountability for Cape’s conduct—a reckoning that is long overdue.

CONCLUSION

For the foregoing reasons, the Court should deny the Responding Altrad Third-Party Defendants’ and the Charter Third-Party Defendants’ motions to dissolve.

Dated: October 18, 2023
Columbia, South Carolina

GALLIVAN, WHITE & BOYD, P.A.

By: /s/ John T. Lay, Jr.
John T. Lay, Jr., SC Bar No. 64526
Gray T. Culbreath, SC Bar No. 11907
Lindsay A. Joyner, SC Bar No. 77437
Laura W. Jordan, SC Bar No. 100374
Eleanor L. Jones, SC Bar No. 104678
1201 Main Street, Suite 1200
PO Box 7368 (29202)
Columbia, SC 29201
jl原因@gwblawfirm.com
gculbreath@gwblawfirm.com
lj原因@gwblawfirm.com
ljordan@gwblawfirm.com
ejones@gwblawfirm.com
(803) 779-1833

Jonathan M. Robinson
Shanon N. Peake
SMITH | ROBINSON, LLC
2530 Devine Street, Third Floor
Columbia, SC 29205
jon@smithrobinsonlaw.com
shanonp@smithrobinsonlaw.com
(803) 254-5445

G. Murrell Smith, Jr.
SMITH | ROBINSON, LLC
PO Box 580
Sumter, SC 29151-0580
murrell@smithrobinsonlaw.com
(803) 778-2471

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

Brady Edwards (*pro hac vice forthcoming*)

Robert W. Jacques
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue NW
Washington, DC 20004
brady.edwards@morganlewis.com
robert.jacques@morganlewis.com
(202) 739-3000

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

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

JOHN A. TIBBS and MARGARET B. TIBBS,

Plaintiffs,

v.

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

3M COMPANY *et al.*,

Defendants.

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

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

Third-Party Plaintiff,

**ORDER DENYING CERTAIN THIRD-
PARTY DEFENDANTS' MOTIONS TO
DISSOLVE RECEIVERSHIP AND
THIRD-PARTY DEFENDANTS'
MOTIONS TO DISMISS FOR LACK OF
PERSONAL JURISDICTION**

v.

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

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

Third-Party Defendants.

This matter came before the Court on the (i) Motions to Dissolve the Receivership contained in various motions filed by Mohed Altrad, Altrad Investment Authority S.A.S. (“AIA”), Hawk BidCo US Inc., Arranco US, LLC, and Sparrows Offshore, LLC, Charter Consolidated Ltd. (“Charter”), Central Mining & Investment Corporation Ltd. (“Central Mining”), and ESAB Corporation (“ESAB”) (together, the “Dissolution Motions”)¹; and (ii) the Motions to Dismiss the Third-Party Complaint for lack of personal jurisdiction filed by Anglo American PLC, De Beers PLC, individually and as successor in interest to De Beers S.A., De Beers Centenary AG, De Beers Consolidated Mines Ltd. (n/k/a De Beers Consolidated Mines Proprietary Ltd.), De Beers UK Ltd., De Beers Jewellers Ltd., De Beers Jewellers US, Inc., Anglo American US Holdings Inc., Element Six US Corp., Element Six Technologies US Corp., Element Six Technologies (OR) Corp., First Mode Holdings, Inc., Platinum Guild International (U.S.A.) Jewelry Inc., Lightbox Jewelry Inc., Forevermark US Inc., Anglo American Crop Nutrients (U.S.A.), LLC, Charter, ESAB, Central

¹ At the October 25, 2023 hearing in this matter, certain of the Third-Party Defendants (and specifically, the ten U.S. subsidiaries among the Oppenheimer Third-Party Defendants) advised of their intention to join the Dissolution Motions. On October 26, 2023, those entities each filed a Motion to Join the Dissolution Motions; because each of those ten entities has since been dismissed without prejudice, those Motions to Join the Dissolution Motions are moot.

Mining, Mohed Altrad, AIA, Hawk BidCo US Inc., Arranco US, LLC, and Sparrows Offshore, LLC (together, the “Personal Jurisdiction Motions”). Having considered the Dissolution Motions and the Personal Jurisdiction Motions and related memoranda and supporting affidavits, along with the Third-Party Plaintiff’s Omnibus Oppositions to those motions, the Affidavit of James T.H. Buxton, Esq. (“Buxton Affidavit”), the Affidavit of Eric L. Talley, Ph.D., J.D. (“Talley Affidavit”), and the supporting materials submitted to the Court, the Court denies the Dissolution Motions and denies the Personal Jurisdiction Motions for the reasons set forth below.

FACTUAL AND PROCEDURAL BACKGROUND OF ORDERS

I. Cape Failed to Respond to Asbestos Claims Asserted by South Carolina Residents.

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

On June 9, 2021, less than five months from her diagnosis, and only five days after filing her lawsuit, Ms. Park passed away. On November 17, 2021, Ms. Park’s son, Keith, amended the complaint, appearing individually and as personal representative to Ms. Park’s estate (the “*Park* Plaintiffs”), to assert a wrongful death action. *See* First Amended Compl., *Park et al. v. Armstrong Int’l, Inc., et al.*, No. 2021-CP-4002727 (Nov. 17, 2021). The amended complaint added Cape Intermediate Holdings Limited (f/k/a Cape Intermediate Holdings PLC) (together with all predecessors in interest, “Cape”) as a defendant. Cape Intermediate Holdings Limited and Cape

PLC were identified as successors in interest to Cape Asbestos Company Ltd. *Id.* at 9; *see also id.* at ¶¶ 26–27. In December 2021, the *Park* Plaintiffs served the named Cape entities, which (as has been their practice for decades) never answered, moved, or otherwise responded.

II. The Court Appointed a Receiver to Identify, Preserve, and Marshal Cape’s Assets.

On March 6, 2023, the *Park* Plaintiffs filed a motion for “this Court to appoint a receiver over Cape PLC and its subsidiaries, affiliates, successors, and assigns.” Motion to Appoint Receiver, *Park et al. v. Armstrong Int’l, Inc. et al.*, No. 2021-CP-4002727 (Mar. 6, 2023) (“Appointment Motion”), at 1. The Appointment Motion was made under S.C. Code §§ 15-65-10(4) and (5),² on the basis that a named defendant, Cape PLC, “is the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)” and, with “its subsidiaries and global affiliates[,] . . . were and are private companies organized and existing under the laws of the United Kingdom, with its principal place of business in England.” *Id.* at 1. The Appointment Motion described Cape PLC’s longstanding litigation-avoidance strategy—starting nearly a half century earlier, in the late 1970s—by which Cape (with its subsidiaries, affiliates, successors, and assigns) “decided to simply accept default judgments in asbestos lawsuits [that] could not be enforced.” *Id.* at 2.

On March 17, 2023, this Court granted the request pursuant to S.C. Code § 15-65-10(5), as well as § 15-65-10(4) in the alternative, and appointed a receiver for Cape PLC, as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.). Order, *Park et al. v. Armstrong Int’l, Inc. et al.*, No. 2021-CP-4002727 (Mar. 17, 2023) (“Appointment Order”), at 1.

² Section 10-65-10(4) and (5) authorize the appointment of a receiver where (i) a corporation has been dissolved, is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights; and (ii) “[i]n such other cases as are provided by law or may be in accordance with the existing practice,” respectively.

Pursuant to the Appointment Order and South Carolina law, the Receiver has “power and authority [to] fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape”—in proper satisfaction of claims against Cape —“whatever they may be.” *Id.* The Appointment Order further vested the Receiver with “rights, 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.

III. The Receiver Asserts Equitable Claims Against the Third-Party Defendants.

On June 30, 2023, the Receiver filed the Third-Party Complaint, asserting claims against the Third-Party Defendants for (i) unjust enrichment (first cause of action), (ii) constructive trust (second cause of action), (iii) alter ego and veil-piercing liability (third cause of action), and (iv) accounting (fourth cause of action).³ Each of the Third-Party Defendants named in the Third-Party Complaint are alleged to have facilitated, caused, or directed Cape’s U.S.-based asbestos sales and liability-avoidance scheme, or otherwise acted as successors in interest to or beneficiaries of entities involved in that scheme, and are therefore responsible for the bodily injury underlying the claims against Cape, including specifically those claims asserted by South Carolinians.⁴

³ Seven of the Third-Party Defendants named in the Third-Party Complaint have not acknowledged service or otherwise participated in this action. The Receiver has filed motions for entry of default as to those entities that have not responded, and the Court has requested from the Receiver an order granting the same.

⁴ On November 17, 2023, the Receiver dismissed, without prejudice, 11 entities identified as Oppenheimer Third-Party Defendants, including Anglo American Crop Nutrients (U.S.A.), LLC; Anglo American US Holdings Inc.; De Beers Jewellers Ltd.; De Beers Jewellers US, Inc.; Element Six Technologies (OR) Corp.; Element Six Technologies US Corp.; Element Six US Corp.; First Mode Holdings, Inc.; Forevermark US Inc.; Lightbox Jewelry Inc.; and Platinum Guild International (U.S.A.) Jewelry Inc.

IV. Summary of the Third-Party Complaint's Allegations.

The 65-page Third-Party Complaint alleges a remarkable system of avoiding responsibility for the harm caused by Cape's asbestos over a period of decades. In doing so, it categorizes the Third-Party Defendants into three groups: the Altrad Third-Party Defendants (Third-Party Compl. ¶ 119); the Oppenheimer Third-Party Defendants (*id.* ¶ 122); and the Charter Third-Party Defendants (*id.* ¶ 124). The Third-Party Complaint (along with other publicly available information and the affidavits filed in support of the Omnibus Oppositions to the Personal Jurisdiction Motions and the Dissolution Motions) comprehensively describe the alleged interconnected history of Cape and certain of these entities, their alleged dominion over the South African commodity mining industry, and their alleged role in controlling, continuing, and/or benefiting from Cape's strategic exploitation of the U.S. asbestos market as well as its accompanying alleged scheme to insulate itself, and its foreign affiliates and agents, from the resulting litigation exposure, with the allegations summarized below—which pursuant to the applicable standard are assumed to be true for the purpose of deciding the Personal Jurisdiction Motions.

A. Cape

Cape PLC (as it was known from 1989 to 2011, and as is now known as Cape Intermediate Holdings Ltd.) is the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) and its subsidiaries and global affiliates. At all relevant times, Cape was deeply involved in all aspects of the global asbestos industry, “mining hundreds of thousands of tons of raw asbestos in Apartheid-era South Africa and then selling asbestos fiber to scores of manufacturers of asbestos-containing products in the United States,” including into South Carolina. Third-Party Compl. ¶ 40; *see also id.* ¶ 71 (Cape marketed its asbestos directly to U.S.-based customers dating back to the 1930s).

In 1953, Cape established North American Asbestos Corporation (“NAAC”) “to operate as [its] wholly controlled instrumentality for the ‘purpose of expediting and facilitating the movement’ of asbestos from South African mines into the United States (including in South Carolina).” *Id.* ¶¶ 70, 72. The two decades following Cape’s formation of NAAC were Cape’s “most bountiful years.” *Id.* ¶ 70. Cape effectively enjoyed an asbestos monopoly, controlling 90% of the global supply of amosite asbestos and dominating the distribution of other types of asbestos. *Id.* ¶ 69.

The Third-Party Complaint alleges that, at the direction of the amalgamated global Cape/Oppenheimer network, Cape and NAAC implemented a “conscious pattern of product distribution [of asbestos] nationally,” resulting in NAAC selling massive amounts of asbestos to customers in the United States, which used or distributed those asbestos products in South Carolina. *Id.* ¶¶ 73–75. (“NAAC’s own records show that Cape sold asbestos to companies in South Carolina[.]”). As a result, by 1970, NAAC was the “largest U.S. importer of Amphibole Fibers,” which it then redistributed throughout the United States. *Id.* ¶¶ 72–73, 75, 77. NAAC’s operations and decision-making were “wholly dominated by Cape and its owners, including Charter and other affiliated mining/investment interests in South Africa,” with NAAC not permitted to borrow money without Cape’s approval and routinely forced to pay dividends to Cape, thereby depleting the assets that could be reached by NAAC’s creditors in the United States. *Id.* ¶¶ 77–79. In other words, Cape and NAAC were alleged to be mere extensions of the Oppenheimer South African mining empire. *Id.* ¶¶ 78–79.

At Cape’s direction and consistent with its company-wide policy, NAAC purchased “wholly inadequate” insurance coverage to address its massive future products liability exposure. *Id.* ¶ 80. In addition to allegedly maintaining egregious and inhumane labor practices for its

indigenous workers in its South African mines, Cape—as supported by other members of the broader Oppenheimer business empire—also is alleged to have actively suppressed information about the known risks of asbestos in the United States and used misinformation to influence public opinions about asbestos. *See id.* ¶¶ 81–88.

By the early 1970s, asbestos-related products liability lawsuits were being initiated, prompting Cape and its affiliated entities to devise and implement a litigation-avoidance scheme that involved, among other things, (i) taking steps to make it appear—falsely—that Cape was reducing oversight of NAAC, (ii) disclaiming any “moral responsibility” to respond to products liability lawsuits in the United States, (iii) strategically declining to reserve funds in the United States to address those liabilities, and (iv) refusing to accept process or appear in any U.S. judicial proceedings (including in the Park lawsuit pending here). *Id.* ¶¶ 89–102. These allegations are substantiated by Cape’s own records, including for example its communications with its former counsel, which reveal a focus on avoiding exposure to U.S. litigation or assets that could be garnished in the United States in light of the strategy of accepting default judgments:

If Cape in the future should set up or acquire any U.S. Company or business, then such Company or business would be deemed to be an asset of Cape, even though acquired after entry of any default judgments. Such new Company or business would be considered an asset of Cape in the U.S. and subject to garnishment to satisfy the default judgments.

Ex. 70 to Omnibus Opp. to Personal Jurisdiction Motions (Dec. 23, 1975 Correspondence from S. Milwid (Lord, Bissell & Brook) to A. J. Penna, Esq. (Cape Industries Ltd.)), at CAPE000142.⁵

⁵ Except where specifically stated otherwise, all citations to exhibit numbers herein are in reference to exhibits that were submitted with the Receiver’s Omnibus Opposition to Motions to Dismiss for Lack of Personal Jurisdiction on October 18, 2023.

Effective January 31, 1978, Cape liquidated NAAC, siphoning any remaining assets out of the United States to Cape Industries Overseas Ltd., an entity wholly owned by Cape Industries Ltd., in an effort to reduce the assets available to creditors. Third-Party Compl. ¶¶ 94–96. This strategy was allegedly taken directly from the Oppenheimer playbook, *i.e.*, distributing commodities mined in South Africa in the United States at great profits, draining those domestic profits for the benefit of foreign affiliates, and liquidating (at least formally) any U.S. presence when liability was imminent. *Id.* ¶ 97. Despite the dissolution of NAAC, the Third-Party Complaint alleges that Cape “contemplated ways to continue the flow of asbestos to U.S. customers and asbestos profits out of the United States.” *Id.* ¶ 98. For example, through NAAC’s final President, Cape allegedly facilitated the formation of Continental Products Corporation to act as a commission agent for the future sales of South African asbestos in the United States. *Id.* ¶¶ 94–96, 99. The stated purpose for doing so was to “eliminate or reduce as much as possible the exposure in the United States of [South African mining companies] to [product liability] lawsuits.” *Id.* ¶ 101.

Although Cape entered into certain agreements to address a fraction of the bodily harm caused by its asbestos around the world, including through a 2006 Scheme of Agreement with former employees in the United Kingdom, Cape has allegedly “done *nothing* about its massive unpaid responsibility for the death and illness caused by its asbestos products in South Carolina and elsewhere in the United States.” *Id.* ¶ 114.

B. The Altrad Third-Party Defendants.

Since 2017, Cape has been part of the Altrad Group, of which various entities, along with Mohed Altrad,⁶ its French–Syrian founder and President (who is alleged to have been recently

⁶ As of 2017, Mohed Altrad “h[e]ld 77.78% of the [company’s] shares.” Ex. 88 (Altrad 2017 Annual Report), at 20. As of August 31, 2022, Mr. Altrad held 77.45% of the company’s shares.

convicted on bribery charges, and is currently serving a suspended sentence in France), have been named as Third-Party Defendants. Third-Party Compl. ¶¶ 113, 116–119 & nn. 39–40. Specifically, the “Altrad Third-Party Defendants” include:

- Cape subsidiaries or affiliates based in the United Kingdom: Cape Holdco Ltd., Cape UK Holdings NewCo Ltd., Cape Industrial Services Group, Ltd., and Altrad Services Ltd. (f/k/a Cape Industrial Services Ltd.);⁷
- Cape owners based in the United Kingdom and France: The foreign Altrad Group entities that now own and control Cape, *i.e.*, AIA and Altrad UK Ltd., with their majority shareholder and founder, Mohed Altrad (*id.* ¶ 116); and
- Cape U.S. affiliates: Certain Altrad Group U.S. subsidiaries, including Hawk Bidco US Inc., Arranco US, LLC, Sparrows Offshore, LLC, and the Sparrows Group, LLC, as were part of Sparrows Offshore Group, Ltd. d/b/a the “Sparrows Group” (n/k/a “Altrad Sparrows”) based in Aberdeen, Scotland.⁸ *Id.* ¶¶ 117, 119

Ex. 89 (Altrad 2022 Annual Report), at 71. Just one month later, Mr. Altrad held 97.6% of the company’s shares. *Id.*

⁷ The Receiver originally named The Law Debenture Corporation PLC (“Law Debenture”) as an Altrad Third-Party Defendant, based on public information suggesting that it was a “Person with Significant Control” of Cape as of 2016. Third-Party Compl. ¶ 113. After receiving additional information from Law Debenture’s counsel regarding the nature of its “control,” which was based on representing the interests of certain persons in the United Kingdom also injured by Cape asbestos, the Receiver dismissed Law Debenture on August 21, 2023, without prejudice.

⁸ On July 11, 2022, Altrad completed the acquisition of “the Sparrows Group.” Press Release, *Altrad Completes Acquisition of Engineering and Maintenance Specialist Sparrows Group* (July 11, 2022), <https://www.altrad.com/en/newsreader/altrad-completes-acquisition-of-engineering-and-maintenance-specialist-sparrows-group.html>. Within two weeks of being served with the Third-Party Complaint on July 14, 2023, Sparrows Offshore Group Ltd. passed a resolution to liquidate on July 27, 2023 (while other Sparrows entities continue to operate at the same registered address, including Sparrows Offshore International Group Ltd.). As of October 2, 2023, Altrad announced the rebranding of the “Sparrows Group” to “Altrad Sparrows.” Aberdeen Business

The Third-Party Complaint alleges that each of these entities are either successors in interest to Cape and its subsidiary and affiliated entities, or beneficiaries from—and continuing participants in—Cape’s liability avoidance scheme. *Id.* ¶ 119. Notably, seven of the 12 Altrad Third-Party Defendants have failed to respond to the Third-Party Complaint, including Altrad UK Ltd.; Cape Industrial Services Ltd., n/k/a Altrad Services Ltd. (since June 1, 2021); Cape Holdco Ltd.; Cape Industrial Services Group Ltd.; Cape UK Holdings Newco Ltd.; Sparrows Offshore Group Ltd.; and The Sparrows Group LLC.⁹

The Altrad Group’s publicly available annual report for fiscal year 2017 touted the acquisition of Cape as an “exceptional opportunity” to acquire “one of the world’s leading providers of services to industry.”¹⁰ Ex. 88 (Altrad 2017 Annual Report), at 40. In its annual report for the year ended August 31, 2022, Altrad Services Ltd.—which is named as a Third-Party

News, *Altrad Spreads Its Wings as Altrad Sparrows* (Oct. 2, 2023), <https://aberdeenbusinessnews.co.uk/sparrows-spreads-its-wings-as-altrad-sparrows/>.

⁹ Due to those failures to appear, the Receiver filed default motions against those seven entities, with supporting proof of service, from August 18 through 29, 2023, and the Court intends to enter default as to those entities by separate order. The five responding Altrad Third-Party Defendants—Mr. Altrad, Altrad Investment Authority S.A.S., Hawk Bidco US Inc., Arranco US, LLC, and Sparrows Offshore, LLC—filed motions to dismiss the Third-Party Complaint and motions to dissolve the Receivership.

¹⁰ At this stage in the proceeding, the Court can properly take notice of certain facts that are “not subject to reasonable dispute,” including certain public statements or reports consistent with the alleged corporate history and relationships of the Third-Party Defendants presented to the Court by the Receiver in connection the Omnibus Oppositions to the Personal Jurisdiction Motions and the Dissolution Motions. *See* Rule 201(b), SCRE (explaining that courts can take judicial notice of facts that are “not subject to reasonable dispute”); *id.* 201(f) (“Judicial notice may be taken at any stage of the proceeding”). Consideration of these published facts, as have been submitted to the Court, is also consistent with the Court’s obligation to “[v]iew[] the complaint’s allegations, and the inferences from them, in the light most favorable to” the non-movant, and to construe pleadings liberally “so that substantial justice is done between the parties.” *HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 632–33, 699 S.E.2d 699, 703–04 (Ct. App. 2010).

Defendant but has not responded to the Third-Party Complaint—acknowledged Cape’s responsibility for harm from asbestos exposure, reporting that the Altrad Group had set aside £118 million to address certain *non-U.S.* historical claims relating to asbestos exposure. Ex. 90 (Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022), at 50 n.23 (“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.”); *see also* Joshua Stein, *Altrad Makes £118m Provision for Asbestos Claims*, Construction News (Apr. 14, 2023).¹¹

C. The Oppenheimer Third-Party Defendants.

The five Oppenheimer Third-Party Defendants that remain in this action include Anglo American PLC, De Beers PLC (individually and as successor in interest to De Beers S.A.), De Beers Centenary AG, De Beers Consolidated Mines Ltd. (n/k/a De Beers Consolidated Mines Proprietary Ltd.), and De Beers UK Ltd.¹² Anglo American PLC is alleged to be the ultimate parent company for each of the Oppenheimer Third-Party Defendants, as well as successor in interest to Anglo American Corporation of South Africa Ltd. Third-Party Compl. ¶ 121.

¹¹ Available at <https://www.constructionnews.co.uk/health-and-safety/altrad-makes-118m-provision-for-asbestos-claims-14-04-2023/#:~:text=Altrad%20has%20set%20aside%20%C2%A3,historic%20alleged%20exposure%20to%20asbestos.>

¹² Those entities currently have presence, operations, and business in the United States, including in South Carolina, through Oppenheimer Third-Party Defendants Anglo American Crop Nutrients (U.S.A.), LLC, Anglo American US Holdings Inc., De Beers Jewellers US, Inc., Element Six US Corp., Element Six Technologies US Corp., Element Six Technologies (OR) Corp., First Mode Holdings, Inc., Forevermark US Inc., Lightbox Jewelry Inc., and Platinum Guild International (U.S.A.) Jewelry Inc. Those U.S. based entities were dismissed from the case, without prejudice, on November 17, 2023.

Certain Oppenheimer Third-Party Defendants, including as successors in interest, were allegedly instrumental in the initial formation of Cape in 1893 and its significant international expansion in the 1940s through 1970s, and have since reaped the financial benefits of its dominance of the asbestos trade. As alleged, an asbestos-mining syndicate was established in 1891 to act in coordination with powerful commodity mining interests in South Africa, with Francis Oats—a director and the eventual chairman of De Beers Consolidated Mines Ltd.—forming the Cape Mineral Syndicate “to exploit asbestos reserves” in South Africa. *Id.* ¶ 45. By late 1893, the Cape Asbestos Company Ltd. was organized in the United Kingdom to (i) take over the Cape Mineral Syndicate’s mining operations, and (ii) manufacture asbestos products in England. From the outset, Cape was a De Beers-affiliated project, with its leadership drawn from the DeBeers ranks. *Id.* As alleged in the Third-Party Complaint, Cape was managed, funded, and controlled by members of the key leadership of De Beers. *Id.* at ¶ 47. In fact, Ludwig Breitmeyer, Cape’s first long term Chairman (from 1894 until 1930), managed Cape while serving, with associates, as part of the Corner House Group that “domina[ted] mining in South Africa into the 1920s,” when Sir Ernest Oppenheimer displaced him and effected the takeover of De Beers and various other mining interests (which eventually included Cape). *Id.* ¶¶ 48–49.

Around 1925, Sir Ernest Oppenheimer allegedly took control of the De Beers mining empire and became its chairman by 1930. *Id.* ¶ 49. That control was aided by the fact that Oppenheimer also controlled the Anglo American Corporation of South Africa Ltd., which he formed to “bring about an ‘amalgamation between’ various mines and other business interests.” *Id.* By the middle of the twentieth century, Oppenheimer allegedly had aligned these interests such that Cape was the asbestos-mining leg of an amalgamated mining empire based out of South Africa that included the De Beers diamond monopoly and the mining powerhouse of Anglo associated

with the Oppenheimer business dynasty. *Id.* ¶ 51. These affiliations were alleged to be essential to Cape’s success, including because Anglo dominated the mining industry and was the core of South Africa’s economy. *Id.* ¶¶ 52–53, 62 (detailing Oppenheimer family’s *modus operandi* to “structure[] and coordinate[] ‘a web of secret companies’ to avoid financial liabilities” and decline to acknowledge the overlapping and connecting control within that web).

D. The Charter Third-Party Defendants.

The Charter Third-Party Defendants include Charter, its subsidiary, Central Mining, and ESAB, the parent company, as well as allegedly successor in interest to, Charter and Central Mining (beginning in or around 2022). *See* Third-Party Compl. ¶ 124. Like Cape, Central Mining and Charter were critical parts of the international growth of the Oppenheimer family’s business interests. Central Mining, as an Anglo-controlled entity, was the majority shareholder in Cape and controlled its board and directed its operations. *Id.* ¶¶ 50–52. When the Oppenheimer family created Charter in 1965 by merging Central Mining with two other mining companies, the combined entity served as Anglo’s “international investment arm.” *Id.* ¶ 54. While Charter had direct and indirect interests in Cape from its founding, by 1969 Charter had acquired majority ownership of Cape. *Id.* ¶ 55. Cape was Charter’s primary operating company and principal industrial subsidiary, and, by extension, Cape and its subsidiaries were part of the Anglo American Group of companies that dominated the South African mining economy. *Id.* ¶¶ 55–56, 61–62.

The Third-Party Complaint further alleges the purported corporate separation between Charter and Anglo was superficial, with the entities sharing office space, personnel, and board members and with the Oppenheimers consistently dominating Charter’s board and ownership. *Id.* ¶¶ 57, 59. As alleged, Charter operated such that “every move was made in the interest of De Beers and Anglo,” and in particular to “further[] the amalgamated Oppenheimer empire’s effort to extend its grasp to North America.” *Id.* ¶ 58 (brackets and internal quotation marks omitted). Or

as alleged, Charter was designed to serve as a corporate cushion for Anglo that could quickly purge cash to other Oppenheimer-affiliated entities and add a level of separation between Anglo and Cape in an attempt to insulate Anglo from the liability associated with a profitable asbestos business. *Id.* ¶ 65. The Oppenheimer family’s control of Central Mining, Charter, Cape, and its other enterprises was allegedly central to the management of its businesses and the domination of the South African mining economy. *Id.* ¶¶ 67–68.

By 1993, the Oppenheimer dynasty allegedly chose to demote the role of Charter in its portfolio of businesses, with Charter re-registering as a public company (renamed Charter PLC). *Id.* ¶ 123. Three years later, Charter sold its interest in Cape for approximately £48 million. *Id.* In 2008, Charter PLC became Charter International PLC, and was acquired by Colfax Corporation (“Colfax”) in 2012 at a valuation of \$2.4 billion. *Id.* (disclosing Charter’s exposure to asbestos-related lawsuits in the United States but assessing that exposure as not “material” and making no reserves). In 2022, Colfax spun off ESAB, allegedly continuing as the parent company of Charter and Central Mining and their successor in interest. *Id.* ¶ 124.

ORDER DENYING CERTAIN THIRD-PARTY DEFENDANTS’ MOTIONS TO DISSOLVE THE RECEIVERSHIP

For the reasons set forth below, and as also stated on the record on October 25, 2023, and in consideration of the filings in this matter and oral arguments by all parties, the Court denies Third-Party Defendants’ Dissolution Motions.

I. Cape Was Properly Served in *Park*.

Third-Party Defendants argue the Receivership should be dissolved because Cape was not properly served with the *Park* summons and complaint. Based upon the showings by the Receiver, this contention is incorrect. The Court finds Cape was properly served in the *Park* case with the First Amended Summons and First Amended Complaint, which pleaded claims against an entity

existing in the United Kingdom since 1893, Cape PLC, n/k/a Cape Intermediate Holdings Ltd., for the wrongful death allegedly caused by the company's historical asbestos business.

The Court is disturbed by evidence in the record indicating a decades-long practice by Cape of ignoring asbestos lawsuits filed against it in the United States—simply accepting defaults ostensibly because it believes defaults entered by this Court cannot be enforced. Cape's own disclosures are before the Court, and they reveal Cape never intends to respond to litigation pending in the United States in the future, because that would purportedly "have a materially adverse effect on the financial status of the Group and almost certainly result in insolvency proceedings." It is against that backdrop that the Court examines Third-Party Defendants' arguments regarding service and ultimately rejects them as unfounded.

A. The Proper Entity Was Served.

As confirmed by the Proof of Service presented by the Receiver as well as the other service-related paperwork submitted for the Court's consideration—including the e-mail offered by the *Park* Plaintiffs at the October 25, 2023 hearing and admitted as a Court exhibit—the *Park* Plaintiffs properly served Cape PLC in the United Kingdom, *i.e.*, the Cape entity for which the Receiver has been appointed, with the First Amended Complaint.

Third-Party Defendants argue there are two entities with the name "Cape PLC." The first one is the original Cape PLC, which has existed for approximately 130 years in the United Kingdom in various iterations. This 130-year-old entity is alleged to have sold most of the blue (crocidolite) and brown (amosite) asbestos in the United States and in South Carolina, including by and through its American subsidiary, NAAC. As the liability associated with asbestos became known to this entity, it allegedly fled the jurisdiction and began implementing a sophisticated liability-avoidance scheme.

The second Cape PLC, on the other hand, is a new entity allegedly created in the Bailiwick of Jersey in April 2011 and identified for the first time in this litigation—not by the Receiver or by the *Park* Plaintiffs, but by Third-Party Defendants in their responsive pleadings to the Receiver’s Third-Party Complaint. Cape’s own materials indicate this new Bailiwick of Jersey entity was formed recently to act as a “holding company of the Cape Group” for tax purposes, with the new entity being a “Singapore and Jersey tax resident.”

Despite this clear distinction between two entities that may have borne the same name but nevertheless exist in different jurisdictions with different backgrounds, Third-Party Defendants point to this new Bailiwick of Jersey entity as the reason why they claim service by the *Park* Plaintiffs was ineffective. According to Third-Party Defendants, the *Park* Plaintiffs actually meant to sue, and therefore should have served, this new Cape PLC entity and not the Cape PLC entity with the 130-year pedigree of selling or otherwise profiting from asbestos (including through “asbestos removal” services). The Court finds no merit in this argument. Other than the common name, there is no evidence the *Park* Plaintiffs meant to sue the new Bailiwick of Jersey entity as a defendant in their asbestos exposure lawsuit. The new entity was not organized in the United Kingdom; the new entity has existed for less than 20 years; and there is no indication in the record the new entity was the same entity that historically sold asbestos in the United States (nor could there be given its relative infancy). Indeed, the Altrad Third-Party Defendants’ own briefing takes the position that no one can “legitimately claim that [the Jersey entity] has any liability . . . for an obvious reason: the Tibbs family alleges that their exposure to asbestos ended in the ‘early 1980s,’ but Cape PLC did not even exist until 2011.” Counsel for AIA, Mr. Altrad, and Altrad UK Ltd. likewise acknowledged at the October 25 hearing that the Jersey entity “[o]bviously . . . has nothing to do with” the UK entity’s historic asbestos sales. Hearing Tr. 66:20-67:1 (Oct. 25, 2023).

It therefore strains credulity for Third-Party Defendants to premise their ineffective service argument on a foundational assumption the *Park* Plaintiffs meant to sue a different entity, and one that had “nothing to do with” the underlying claims.

Having disposed of Third-Party Defendants’ red herring argument related to the new Cape PLC entity, the salient question is whether the *Park* Plaintiffs effectively served the 130-year old Cape PLC entity organized under the laws of the United Kingdom. The record reveals service was effectuated in December 2021. Specifically, as reflected in an affidavit signed March 8, 2022, by an English process server, he mailed¹³ a copy of the complaint and summons addressed to Cape PLC and Cape Intermediate Holdings Ltd.—identifying both “individually and as successors to Cape Asbestos Company Limited.” *See* Ex. A to Notice of Filing of *Ommitted* [sic.] Exhibit, *Park et al. v. Armstrong Int’l, Inc. et al.*, No. 2021-CP-4002727 (Aug. 28, 2023) (“Cape POS Exhibit”), at 1–6, 12–13. The affidavit explains why two named entities were served: “Cape PLC” was the name of the company between August 1, 1989 and June 27, 2011, while “Cape Intermediate Holdings Ltd.” was the company’s current name at the time of service. *Id.* at 2. More specifically, the English process server swore that on December 14, 2021, he served “copies of the First Amended Summons in this action on Cape PLC and Cape Intermediate Holdings Limited” at their registered address, with cover letters explaining that the claims were brought against them as successors in interest to Cape Asbestos Company Limited. *Id.* at 2, 5–6. Pursuant to procedural rules in England, the “proceedings [were] deemed to have been served” two days after mailing, *i.e.*, on December 16, 2021. *Id.* at 3. The process server also indicated that he emailed materials to an official address affiliated with Altrad and designated for the receipt of asbestos-related claims

¹³ The affidavit indicates that the service copies were contained in an oversize envelope, with a large-letter stamp, indicating sizeable contents, rather than just a couple sheets of paper.

against Cape (elclaimsaltraduk@altrad.com). This evidence reveals the *Park* Plaintiffs intended to serve the older Cape PLC entity using (perhaps out of an abundance of caution) both formerly-known-as and currently-known-as nomenclature.

To the extent it was error for the service paperwork to include the “formerly known as” name of the entity, the Court finds that misnomer does not render service of process ineffective. South Carolina law is clear that a misnomer does not render service ineffective. *See Griffin v. Capital Cash*, 310 S.C. 288, 292, 423 S.E.2d 143, 146 (Ct. App. 1992) (“A suit at law is not a children’s game, but a serious effort on the part of adult human beings to administer justice; and the purpose of process is to bring parties into court. If it names them in such terms that every intelligent person understands who is meant, as is the case here, it has fulfilled its purpose; and courts should not put themselves in the position of failing to recognize what is apparent to everyone else. As a general rule the misnomer of a corporation in a notice, summons, or other step in a judicial proceeding is immaterial if it appears the corporation could not have been, or was not, misled.” (internal citations omitted)).

The Court finds no evidence in the record or presented by Third-Party Defendants to suggest the *Park* lawsuit was brought or intended to be brought against the newly created Bailiwick of Jersey entity as opposed to against the 130-year-old entity responsible for bringing asbestos to the United States, such that the former and not the latter should have been served. The record unambiguously points to the conduct of the 130-year-old Cape PLC entity, not the newly formed Bailiwick of Jersey entity, which is at issue in these cases, and service on that entity was effectuated in December 2021. To the extent the “Cape PLC” name should not have been included in the service of process paperwork because it was a “formerly known as” name rather than a current name, that misnomer does not render service ineffective.

B. Both the Summons and Complaint Were Served on Cape.

Third-Party Defendants next argue service of process by the *Park* Plaintiffs was defective because only the summons was served without the accompanying complaint. This argument appears to be based solely on the process server's use of the term "summons" in reference to the documents he served. Regardless of what the process server titled the service paperwork, the other record evidence reveals *both* the summons and the complaint documents were served on Cape: An email from counsel for the *Park* Plaintiffs to the process server (made a Court exhibit at the hearing) indicates counsel provided the process server with a single PDF document containing *both* the summons and the complaint, and in the *Park* lawsuit, the "First Amended Summons" and "First Amended Complaint" refer to two parts of the same document filed on November 17, 2021 (the summons is found in the first 4 pages while the complaint comprises the remaining 66 pages). Although individuals involved in the service may have referred to the combined document as "the summons," it is clear from the contents that a combined document containing both the summons and the complaint was served on Cape. Moreover, as previously noted, the record indicates the process server emailed the same materials to an Altrad-affiliated official address designated for the receipt of asbestos-related claims against Cape (elclaimsaltraduk@altrad.com); no Altrad entity has provided a response or other indication that only the summons had been sent to that email address. For all of these reasons, the Court finds evidence in the record to indicate both the summons and the complaint were served on Cape.

C. The Amendment of the Complaint Does Not Render Service Ineffective.

Third-Party Defendants argue that even if the proper Cape entity was served with both the summons and complaint—which both commenced the action pursuant to Rule 3, SCRCP, and S.C. Code § 15-3-20(B) and effectuated service of process pursuant to Rules 4 and 4.1, SCRCP—that

service of process somehow was later voided by the filing one week later of a Second Amended Complaint, which was never served on Cape by the *Park* Plaintiffs.

The Court finds this argument flawed for several reasons. First, filing an amended complaint without serving it does not abrogate effective service of process of a prior complaint. The *Park* lawsuit was commenced as to Cape once service of the prior complaint occurred, giving this Court the foundation to exercise jurisdiction over those served defendants to include Cape. As S.C. Code § 15-3-20(B) provides, “A civil action is commenced when the summons and complaint are filed with the clerk of court if actual service is accomplished within one hundred twenty days after filing.” That occurred in this case, and it cannot be undone or abrogated by the filing of a later amended complaint.

Nor does the filing of an amended complaint under Rule 15 automatically supersede a prior complaint—abrogation only occurs *after service* of the amended complaint. See e.g., *Doe v. Unocal Corp.*, 27 F. Supp. 2d 1174, 1180 (C.D. Cal 1998) (denying motion to dismiss for “insufficiency of service of process,” when an operative complaint rather than an amended complaint was served, because “[a]n original complaint is only superseded . . . when the amended complaint is properly served, not when it is filed.”); *Thompson v. Victoria Fire & Cas. Co.*, 32 F. Supp. 2d 847, 848 (D.S.C. 1999) (assessing the originally served complaint for purposes of removal, rather than an amended complaint that was not served). Indeed, as Rule 5(a), SCRCP, makes clear, the *Park* Plaintiffs were not required to serve Cape again with the Second Amended Complaint. There were no new or additional claims for relief asserted against Cape in the Second Amended Complaint. South Carolina “courts have long held that in order to establish that service has been properly perfected, the plaintiff need only show compliance with the civil rules on service of process,” and when rules of service of process “are followed, there is a presumption of proper

service.” *See McClurg v. Deaton*, 380 S.C. 563, 579, 671 S.E.2d 87, 96 (Ct. App. 2008). Here, they were followed, and service of process occurred.

Voiding prior effective service on a named defendant because the complaint was amended one week later (but asserts no new claims against that defendant) would not serve the “principal object of service of process,” *i.e.*, “to give notice to the defendant corporation of the proceedings against it” and to allow the Court to exercise jurisdiction. *Mull v. Ridgeland Realty, LLC*, 387 S.C. 479, 485, 693 S.E.2d 27, 30 (Ct. App. 2010) (emphasis added) (finding service complied with the law, despite allegations of a technical defect). When, as here, rules on service of process “are followed, there is a presumption of proper service.” *McClurg*, 380 S.C. at 579, 671 S.E.2d at 96.

Accordingly, the Court finds the evidence of records shows the proper Cape entity was served with process of both the summons and complaint in the *Park* lawsuit, forming the foundation for this Court to exercise jurisdiction over Cape and institute the Receivership that certain Third-Party Defendants now seek to dissolve.

II. The Receiver Was Properly Appointed.

A. Proper Notice of the Appointment Motion was Provided to Cape.

Third-Party Defendants argue the *Park* Plaintiffs were required to serve the Motion for Appointment. That too is incorrect. The law does not require formal service of process when the Court is considering appointing a receiver over a defendant that has been served but not appeared; only **notice** of the application for a receivership is required. *See* S.C. Code Ann. §§ 15-65-20, -30; Rule 4.1, SCRCP.

The record evidence indicates notice was given: The *Park* Plaintiffs provided notice of the appointment by DHL mailing to the same address at which Cape was served, with the Motion for Appointment identifying Cape PLC as “the successor in interest to Cape Industries Ltd. (f/k/a Cape

Asbestos Company Ltd.)” that is “organized and existing under the laws of the United Kingdom, with its principal place of business in England.”¹⁴ The Court further rejects any argument the Receivership is void because the paperwork included a “formerly known as” name for the Cape entity; the Court finds—as it did before—that any such misnomer does not void the notice under *Griffin*.¹⁵ South Carolina rules “do not turn on parsing strict technicalities or debating murky legal abstractions,” *McCall v. IKON*, 363 S.C. 646, 651, 611 S.E.2d 315, 317 (Ct. App. 2005), and when—as here—a party is identified “in such terms that every intelligent person understands who is meant, as is the case here, [process] has fulfilled its purpose; and courts should not put themselves in the position of failing to recognize what is apparent to everyone else.” *Griffin*, 310 S.C. at 292, 423 S.E.2d at 146 (citation omitted). The law does not require this Court to exalt technical form over substance, and the substance of proper notice of the receivership motion was provided to Cape.

B. This Court Had Authority to Appoint the Receiver.

Third-Party Defendants attack the Court by claiming it failed to take what they erroneously claim are “necessary steps” prior to instituting the Receivership, including holding Cape in default

¹⁴ Although the motion for appointment of the receiver as originally filed omitted proof of service as an attachment to the filing due to a clerical error, that omission was corrected on August 28, 2023. This Court has no reason to disbelieve representations by counsel for the *Park* Plaintiffs—as officers of this Court—that service had been made and that they intended to include that documentation, and regardless, such omission does not negate that Cape was properly served. *See* Rule 4.1(c)(2), SCRCP (noting the unintentional “[f]ailure to make proof of service does not affect the validity of the service.”).

¹⁵ Although the Third-Party Defendants also point to technical errors in the motion for appointment of the receiver (conflating the March 8, 2022 supporting affidavit date with the December 16, 2021 effective date of service and referencing the Second Amended Complaint rather than the First Amended Complaint), all of which the Receiver acknowledged, those technicalities do not abrogate service of process, invalidate the Receivership, or otherwise require dissolution.

and entering a judgment reflecting a liquidated sum due to the *Park* Plaintiffs. This argument reads requirements into the statute that do not exist, completely misconstruing what is required for appointment of a receiver under South Carolina law—especially in the context of a company like Cape, for which a receiver was appointed under subsection (5) of S.C. Code § 15-65-10.

Subsection (5) does not require entry of default or much less entry of a judgment; instead, it authorizes the Court to appoint a receiver “either in or out of court . . . [i]n such other cases as are provided by law or may be in accordance with the existing practice, except as otherwise provided in this Code.” In turn, appointment of a Receiver over Cape was proper under subsection (5) based on evidence of Cape’s long-running, intentional scheme to evade its tort creditors by refusing to appear in the United States, including in South Carolina. Subsection (5) reflects an “old practice” of equity and “important principle of law” to correct injustice which is particularly applicable to Cape given its efforts “to defeat [its] creditors by an act or course of conduct which indicates moral fraud—a conscious intent to defeat, delay, or hinder his creditors in the collection of their debts.” *Virginia-Carolina Chem. Co. v. Hunter*, 84 S.C. 214, 66 S.E. 177, 179 (1909) (citing *Miller v. Hughes*, 33 S.C. 530, 12 S.E. 419 (1890)). Because Cape set its numerous tort creditors, including the *Park* Plaintiffs, “at arm’s length by refusing . . . to take any interest in the satisfaction of their claims,” there was a “prima facie case . . . warranting the appointment of a receiver.” *Id.* at 180. Accordingly, these so-called procedural prerequisites to which Third-Party Defendants point and then claim were violated are simply more red herrings; those processes are *irrelevant* to the grounds on which the Receiver for Cape was appointed.

South Carolina jurisprudence, particularly in recent years, provides widespread evidence of an “existing practice” of appointing a receiver—even in the absence of a judgment—where the Court is concerned that the party at issue may move assets and avoid litigation. This Court has

appointed numerous receivers for this reason in the context of the asbestos docket, and one need look no further than other dockets in this State, such as the appointment of co-receivers for defendant Richard Alexander Murdaugh, for additional evidence of an “existing practice” in this State. Here, given Cape’s stated litigation-avoidance strategy, which the Court has no reason to believe Cape would abandon in order to respond to the *Park* lawsuit, there were ample legal, equitable, and/or public policy concerns to warrant the appointment of a receiver over Cape.

Accordingly, the Court finds no valid grounds to dissolve the Cape Receivership, which was proper when imposed, and, as such, Third-Party Defendants’ Motions to Dissolve are denied.¹⁶

¹⁶ Although the Order appointing the Receiver incorrectly described Cape as “dissolved,” even though Cape is still a going concern in the United Kingdom, that does not impact the legality of the Receivership, as dissolution of the entity placed in receivership is not required under subsection (5). Additionally, the Court notes certain arguments by Third-Party Defendants that the Receiver for Cape exceeded his authority by taking certain actions, including filing the Third-Party Complaint against them; those are not arguments to dissolve the Receivership, however, and therefore will be taken up by the Court, if necessary, to consider arguments under Rule 12, SCRCP.

**ORDER DENYING THIRD-PARTY DEFENDANTS’
MOTIONS TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

For the reasons set forth below, and in consideration of the filings in this matter and oral arguments by all parties, the Court denies the Third-Party Defendants’ Personal Jurisdiction Motions.

I. Standard for Ruling on Motions to Dismiss for Lack of Personal Jurisdiction.

In evaluating a motion to dismiss for lack of personal jurisdiction pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure, the plaintiff has the burden of making a *prima facie* showing that jurisdiction is properly asserted. *Brown v. Inv. Mgmt. & Res., Inc.*, 323 S.C. 395, 475 S.E.2d 754, 756 (1996); *see also Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005) (“At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by a *prima facie* showing of jurisdiction either in the complaint or in affidavits.”). To require more of the plaintiff than a *prima facie* showing of personal jurisdiction at the pretrial stage “would require a much greater degree of specificity in the pleadings than is currently mandated by the South Carolina Rules of Civil Procedure.” *Brown*, 323 S.C. at 399, 475 S.E.2d at 756; *Duncan v. Orthosc, LLC*, 2023 WL 2731496, at *1–2 (S.C. Ct. Com. Pl. Mar. 31, 2023). Affidavits may be submitted to show jurisdiction, but it is often sufficient for the Court to rely on a complaint’s allegations to exercise of jurisdiction. *Brown*, 475 S.E.2d at 756.

When assessing whether a plaintiff has made a *prima facie* showing of jurisdiction, this Court must take as true the allegations of the non-moving party and resolve all factual disputes in its favor. *HHHunt Corp.*, 699 S.E.2d at 704 (factual disputes should be resolved in favor of the non-moving party even if the “court doubts the plaintiff will prevail in the future”). If there are any factual disputes based on what is submitted in affidavits, those too are resolved in favor of the non-movant plaintiff. *Id.* South Carolina courts recognize that, in complex cases, it may be

desirable to delay a decision on personal jurisdiction to allow the parties to conduct discovery, “which might lead to a more accurate judgment than one made solely on the basis of affidavits.” *Brown*, 323 S.C. at 400 (quoting 5A Charles A Wright & Arthur R. Miller, Federal Practice & Procedure § 1351 (Supp. 1995)); cf. *Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982) (where the jurisdictional facts are intertwined with the facts central to the merits of the dispute, deferring resolution of that factual dispute to a proceeding on the merits “is the better view”).

In determining whether personal jurisdiction exists over a non-resident defendant, the court must perform a two-step analysis. First, the court determines whether the South Carolina long-arm statute provides a basis for asserting jurisdiction over the defendant. See *Young v. FDIC*, 103 F.3d 1180, 1191 (4th Cir. 1997). Second, the court determines whether the exercise of personal jurisdiction violates the Due Process Clause of the Fourteenth Amendment. *Anita’s N.M. Style Mexican Food, Inc. v. Anita’s Mexican Foods Corp.*, 201 F.3d 314, 317 (4th Cir. 2000). The South Carolina long-arm statute has been construed to be coextensive with the limits of the Due Process Clause of the U.S. Constitution. *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 130 (1992). As a result, the dual jurisdictional requirements collapse into a single inquiry as to whether the defendant has “certain minimum contacts” with the forum, such that “maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal citations omitted).

Personal jurisdiction is exercised as either general jurisdiction or specific jurisdiction. *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007).¹⁷ A court may exercise specific jurisdiction over a defendant, including a non-resident

¹⁷ General jurisdiction exists where a defendant has “continuous and systematic” contacts with the forum state, the defendant “may be sued in [the forum] state for any reason, regardless of where the relevant conduct occurred.” *CFA Inst. v. Inst. of Chartered Fin. Analysts of India*, 551 F.3d

defendant, if the litigation results from alleged injuries arising out of or relating to that defendant's contacts with South Carolina. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984). When determining whether specific jurisdiction exists, a court considers:

- (1) the extent to which the defendant has purposefully availed himself of the privilege of conducting activities in the state;
- (2) whether the plaintiff's claims arise out of those activities directed at the state; and
- (3) whether the exercise of personal jurisdiction would be constitutionally reasonable.

Charleston Equities, Inc. v. Winslett, 2017 WL 10504748, at *2 (D.S.C. Aug. 8, 2017) (brackets omitted) (quoting *Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs., Inc.*, 334 F.3d 390, 397 (4th Cir. 2003)).

II. Other Equitable Grounds for Exercising Personal Jurisdiction.

A. The Alter Ego Theory of Personal Jurisdiction.

South Carolina's long arm statute vests a court with jurisdiction over "a person who acts directly *or by an agent* as to a cause of action arising from" that person's (i) "causing tortious injury or death in this State by an act or omission outside this State," and by "regularly . . . engag[ing] in [a] persistent course of conduct, or deriv[ing] substantial revenue from goods used

285, 292 n.15 (4th Cir. 2009) (citations omitted). When the defendant is a corporation, "general jurisdiction requires affiliations 'so continuous and systematic as to render [the foreign corporation] essentially at home in the forum State,' *i.e.*, comparable to a domestic enterprise in that State." *Daimler AG v. Bauman*, 571 U.S. 117, 133 n.11 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). "General jurisdiction attaches even when the nonresident defendant's contacts with the forum state are not directly related to the cause of action, if the defendant's contacts are both continuous and systematic." *Leggett v. Smith*, 386 S.C. 63, 73, 686 S.E.2d 699, 704 (Ct. App. 2009). Because the Receiver's response to the Personal Jurisdiction Motions focused on establishing specific jurisdiction, the Court likewise focuses its discussion on specific jurisdiction.

or consumed or services rendered in this State,” and/or (ii) “production, manufacture, or distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed.” S.C. Code §§ 36-2-803(4), (8) (emphasis added).

A court can exercise personal jurisdiction over a foreign corporation if the non-resident corporation has a subsidiary or affiliate that is subject to the court’s personal jurisdiction and if the subsidiary or affiliate functions as its agent or mere department in a manner that justifies treating it as an alter ego and/or piercing the corporate veil. *Wright v. Waste Pro USA, Inc.*, 2019 WL 3344040, at *5 (D.S.C. July 25, 2019).¹⁸ Indeed, personal jurisdiction “can properly be asserted over a corporation not physically present in the forum state if another with sufficient minimum contacts is acting as its alter ego.”¹⁹ *Hagan v. Armstrong Int’l*, 2020 S.C. C.P. LEXIS 649, at *5–6 (Richland Cnty. Ct. Com. Pl. June 29, 2020) (quoting *Trans Pac. Ins. Co. v. Trans-Pac. Ins. Co.*, 1991 WL 152300, at *2 (E.D. Pa. July 31, 1991)); accord *In re North Dakota Personal Injury Asbestos Litig.*, 737 F. Supp. 1087, 1094–95 (D.N.D. 1990) (citing *Lakota Girl Scout Council, Inc.*

¹⁸ Traditionally, South Carolina courts have recognized at least two tests that will subject a corporation to the court’s personal jurisdiction through its affiliate—alter ego and piercing the corporate veil. *Wright*, 2019 WL 3344040, at *5; *Builder Mart of Am., Inc. v. First Union Corp.*, 349 S.C. 500, 511, 563 S.E.2d 352, 358 (Ct. App. 2002), *overruled on other grounds by Farmer v. Monsanto Corp.*, 353 S.C. 553, 579 S.E.2d 325 (2003); *Afa Polytek (N. Am.) Inc. v. Clorox Co.*, 2014 WL 12608562, at *6 (D.S.C. Jan. 17, 2014). These theories have overlapping considerations. *Wright*, 2019 WL 3344040, at *8 (describing overlapping corporate veil and alter ego analyses); see generally *Sturkie v. Sifly*, 280 S.C. 453, 458, 313 S.E.2d 316 (Ct. App. 1984).

¹⁹ Fundamentally, the jurisdictional inquiry concerns whether a particular party is properly before the Court. See, e.g., *Daimler*, 571 U.S. 117 at 125 (observing that personal jurisdiction involves court’s authority over a particular defendant); *Sky Cable, LLC v. DIRECTV, Inc.*, 886 F.3d 375, 391–92 (4th Cir. 2018); *Cent. States, Se. & Sw. Areas Pension Fund v. Cent. Transp., Inc.*, 841 F.2d 92, 95–96 (4th Cir. 1988) (noting that jurisdiction involves question of “proper parties”). When a company is the alter ego of its sole member, for example, the alter ego and the member are effectively the same entity. Accordingly, the jurisdictional contacts of the individual and alter ego entity are one in the same. *Sky Cable, LLC*, 886 F.3d at 392.

v. Havey Fund-Raising Mgmt., Inc., 519 F.2d 634 (8th Cir. 1975)); *see also Lucas v. Gulf & Western Indus., Inc.*, 666 F.2d 800, 806 (3d Cir. 1981); *Certified Bldg. Prods., Inc. v. Nat'l Labor Relations Bd.*, 528 F.2d 968 (9th Cir. 1976)); *see also Wm. Passalacqua Builders, Inc. v. Resnick Developers S., Inc.*, 933 F.2d 131, 142–43 (2d Cir. 1991) (when parties are alter egos of one another, a “jurisdictional objection evaporates” because “the alter egos are treated as one entity”) (cited by *Wright*, 2019 WL 3344040, at *5); *Mendez v. Pure Foods Mgmt. Grp., Inc.*, 2016 WL 183473, at *1–7 (D. Conn. Jan. 14, 2016) (“Under the agency test, the court may attribute the subsidiary’s actions to the parent if the parent exerts considerable control over the activities of the subsidiary.”); *see also Gourdine v. Karl Storz Endoscopy-Am., Inc.*, 223 F. Supp. 3d 475, 487 (D.S.C. 2016) (finding specific jurisdiction over foreign entity under agency and alter ego theory). Indeed, “[t]he entire point of the alter-ego doctrine is that a defunct, dissolved or undercapitalized entity is responsible for causing injury,” but because that entity is dominated or controlled by others, those others are also liable. *Hagan*, 2020 S.C. C.P. LEXIS 649, at *14.

When deciding whether to impute an entity’s contacts to an affiliated company, courts “examine all relevant factors that relate to the intimacy of the relationship” between the affiliated entities and may consider factors such as overlapping officers and directors, the parent’s capacity to influence major business decisions, whether separate books or records are maintained, whether an integrated sales system exists between the entities, whether the entities present a common marketing image, and whether the entities have formal separate structures but maintain unified operations. *In re Polyester Staple Antitrust Litig.*, 2008 WL 906331, at *13–14, *16 (W.D.N.C. Apr. 1, 2008) (finding exercise of personal jurisdiction over parent company proper where “the management personnel within [the subsidiaries] regularly sought approval from [the parent company] on matters beyond strategy and general business policy”). “The existence or absence of

any single factor is not determinative, as the analysis is driven by the facts of the particular case.” *Id.* at *14; *see also Gourdine*, 223 F. Supp. 3d at 487 (imputing contacts of entity over which court had specific jurisdiction to foreign affiliate under agency theory).²⁰ Moreover, jurisdictional contacts can also be imputed to an individual alter ego. *See Patin v. Thoroughbred Power Boats Inc.*, 294 F.3d 640, 653 (5th Cir. 2002) (jurisdictional contacts may be imputed to an individual alter ego consistent with due process).

Finally, the Court addresses an apparent misunderstanding of alter ego law imbedded in the Third-Party Defendants’ arguments: They erroneously assert the alter ego theory is limited to parent–subsidiary relationships. To the contrary, South Carolina law is clear that the alter ego theory of personal jurisdiction does not require a finding of a parent–subsidiary relationship. As this Court recognized previously in the context of the Covil Receivership:

There is . . . no requirement that the Insurers be an officer, director or shareholder of Covil for alter ego to apply. Plaintiffs make no such allegation, ***nor does alter ego theory require a finding of a parent-subsidiary relationship.*** South Carolina jurisprudence requires only that the appropriate level of dominion and control was exercised, and that injustice occurred as a result.

²⁰ Similarly, the Fourth Circuit has addressed Maryland’s “so-called ‘agency’ test,” stating that it “allows a court to attribute the actions of a subsidiary corporation to the foreign parent corporation only if the parent exerts considerable control over the activities of the subsidiary.” *Mylan Labs., Inc. v. Akzo, N.V.*, 2 F.3d 56, 61–62 (4th Cir. 1993) (“Central to the exertion of such control, and thus to whether the corporate veil may be pierced, is whether significant decisions of the subsidiary must be approved by the parent. Other relevant factors include whether the parent and the subsidiary maintain separate books and records, employ separate accounting procedures, and hold separate directors’ meetings. Another consideration in deciding whether to pierce the corporate veil is the level of interdependence between parent and subsidiary; if the Maryland courts are to refrain from exercising jurisdiction over the parent, the subsidiary [must] have some independent reason for its existence, other than being under the complete domination and control of another legal entity simply for the purpose of doing its act and bidding. Finally, the court must find that Akzo knew, or should have known, that its conduct would have some impact in Maryland.” (citations and internal quotation marks omitted)).

Hagan, 2020 S.C. C.P. LEXIS 649, at *15 (emphasis added).

B. Amalgamation of Interests (Single Business Enterprise) Theory.

South Carolina courts recognize another method—distinct from traditional alter ego and veil piercing doctrines—to hold separate entities responsible for harm caused by another business, *i.e.*, the “amalgamation of interests” theory or the “single business enterprise” theory.²¹ This theory provides another framework by which this Court can exercise personal jurisdiction over the Third-Party Defendants, because where affiliated entities function as a single enterprise, South Carolina law may require the enterprise as a whole to answer for the debts and liabilities of its members. *See Las Palmas Assocs. v. Las Palmas Ctr. Assocs.*, 235 Cal. App. 3d 1220, 1249–50, 1 Cal. Rptr. 2d 301, 318 (1991) (“[U]nder the single-enterprise rule, liability can be found between sister companies. The theory has been described as follows: ‘In effect what happens is that the court, for sufficient reason, has determined that though there are two or more personalities, there is but one enterprise; and that this enterprise has been so handled that it should respond, as a whole, for the debts of certain component elements of it.’” (quotations and citation omitted)) (cited by *Pertuis v. Front Roe Rests., Inc.*, 423 S.C. 640, 817 S.E.2d 273, 279 n.5 (2018)).

This concept was first recognized in South Carolina by the court of appeals in *Kincaid v. Landing Development Corp.*, 289 S.C. 89, 344 S.E.2d 869 (Ct. App. 1986) and initially described as the “amalgamation of interests” theory. The Court of Appeals in *Kincaid* affirmed the trial court’s finding that three related corporations (a development corporation, a management

²¹ Although other jurisdictions do not use the term “amalgamation,” other states have recognized that, in some instances outside of the traditional veil piercing context, certain enterprises choose to conduct their business in such a way that the law should no longer regard the various corporations as distinct entities. *Pertuis*, 817 S.E.2d at 279 & n.5 (citing cases). The *Pertuis* court observed that at least 14 states recognize some sort of single business enterprise theory.

corporation, and a construction corporation) sued for negligent construction and breach of warranty were properly regarded as a single entity, because the evidence showed “an amalgamation of corporate interests, entities, and activities so as to blur the legal distinction between the corporations and their activities.” *Kincaid*, 344 S.E.2d at 874. Thereafter, the South Carolina Supreme Court recognized the theory in *Kennedy v. Columbia Lumber & Manufacturing Co., Inc.*, finding a lender could be liable if “it is so amalgamated with the developer or builder so as to blur its legal distinction.” 299 S.C. 335, 384 S.E.2d 730, 734 (1989) (concluding amalgamation was not appropriate at liability stage and affirming trial court). The theory also was considered in a series of cases involving construction defects. *Magnolia N. Prop. Owners’ Association v. Heritage Communities, Inc.*, 397 S.C. 348, 725 S.E.2d 112 (Ct. App. 2012); *Pope v. Heritage Communities, Inc.*, 395 S.C. 404, 717 S.E.2d 765 (Ct. App. 2011).

In 2018, the South Carolina Supreme Court formally recognized and named the theory the “single business enterprise theory,” describing it as follows:

[W]here multiple corporations have unified their business operations and resources to achieve a common business purpose and where adherence to the fiction of separate corporate entities would defeat justice, courts have refused to recognize the corporations’ separateness, instead regarding them as a single enterprise-in-fact, to the extent the specific facts of a particular situation warrant.

Pertuis, 817 S.E.2d at 279; *see also id.* at 281 (“We formally recognize today this single business enterprise theory[.]”). In doing so, the Court in *Pertuis* made clear that, to combine different corporate entities into a single business enterprise, there must also be a showing of “bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities’ legal distinctions.” *Id.* at 281. In other words, “when corporations are not operated as separate entities but rather integrate their resources to achieve a common business purpose, each constituent corporation may be held liable for debts incurred in pursuit of that business purposes.” *Id.* at 279

n.5 (“Factors to be considered in determining whether the constituent corporations have not been maintained as separate entities include but are not limited to the following: common employees; common offices; centralized accounting; payment of wages by one corporation to another corporation’s employees; common business name; services rendered by the employees of one corporation on behalf of another corporation; undocumented transfers of funds between corporations; and unclear allocation of profits and losses between corporations.”).

More recently, the South Carolina Supreme Court concluded amalgamation was appropriate in a dispute between homeowners and housing developers. *Walbeck v. I’on Co., LLC*, 439 S.C. 568, 889 S.E.2d 537 (2023). In *Walbeck*, the trial court amalgamated several developers’ interests in connection with claims asserted by two homeowners relating to the failure to convey certain real property community amenities to a homeowners’ association (“HOA”). The Court of Appeals initially affirmed the trial court’s finding amalgamation was warranted but subsequently reversed that finding in a substituted decision, concluding there was no evidence of “bad faith, abuse, fraud, wrongdoing, or injustice **resulting from** the blurring of the entities’ legal distinctions.” *Walbeck*, 889 S.E.2d at 550 (emphasis in original). The South Carolina Supreme Court reversed, holding the Court of Appeals correctly analyzed the issue initially but erred in its second opinion:

While it is true that courts should be hesitant to invade the corporate form, here there is more than enough evidence that the creation of various entities furthered Developers’ abilities to refrain from doing that which they repeatedly told the HOA and the residents they would do—turn over the disputed amenities to the HOA. As this Court stated in *Pertuis*, “the corporate structure should not shield—fraud, **evasion of existing obligations**, circumvention of statutes, monopolization, criminal conduct, and the like.”

Id. at 550 (quoting reference omitted) (emphasis in original).

Certain of the Third-Party Defendants argue the single business enterprise theory cannot be used to support personal jurisdiction. They are incorrect. Like the alter ego theory, the single business enterprise theory is an equitable doctrine, and one that courts in South Carolina have recognized “could be used to obtain personal jurisdiction over” foreign parent and “sister” entities. *E.g., Duong v. N.A. Transp. Servs. LLC*, 2019 WL 13109647, at *13 (D.S.C. Sept. 25, 2019). Other states that have adopted the single business enterprise, or an analogous theory, have found the same. *See, e.g., Dorfman v. Marriot Int’l Hotels, Inc.*, 2002 WL 14363, at *11 (S.D.N.Y. 2002) (finding exercise of personal jurisdiction where foreign parent exercised sufficient control over operations of subsidiary or, in the alternative, there was an agency relationship such that “the companies are engaged in a single business enterprise that relies on the joint efforts of various Otis affiliates, which are coordinated and controlled by Otis Elevator”); *Ruiz v. Economics Lab., Inc.*, 190 F. Supp. 701, 703–04 (D.P.R. 1968) (denying motion to dismiss on jurisdictional grounds where foreign entities were part of single business enterprise).

III. Grounds for Exercising Personal Jurisdiction Over Cape.

As a threshold matter, the Court addresses the Third-Party Defendants’ contention the allegations contained in the Third-Party Complaint fail to establish personal jurisdiction over Cape. The Court finds their characterization to be incorrect, as the Third-Party Complaint alleges in meticulous detail Cape’s contacts and conduct—including its efforts to market massive quantities of asbestos throughout to the lucrative U.S. market over a period of decades, despite its knowledge that those efforts would injure and kill thousands of people, including in South Carolina—and easily satisfies the requirements of South Carolina’s long-arm statute. *See, e.g.,* Third-Party Compl. ¶¶ 72–76 (noting nationwide distribution of certain asbestos, over which Cape had a monopoly, and prior rejection of an objection to the exercise of personal jurisdiction in South

Carolina with respect to a Cape entity and alleging that “Cape deliberately and purposefully availed itself of the entirety of the United States market for asbestos fiber, including the South Carolina market.”).

Specifically, this Court finds it has jurisdiction over Cape as “a person who act[ed] directly or by an agent as to a cause of action arising from” Cape’s and NAAC’s (i) “causing tortious injury or death in this State by an act or omission outside this State,” and by “regularly . . . engag[ing] in [a] persistent course of conduct, or deriv[ing] substantial revenue from goods used or consumed or services rendered in this State,” and/or (ii) “production, manufacture, or distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed.” S.C. Code §§ 36-2-803(4), (8).

In addition, and as the South Carolina Court of Common Pleas for the County of Barnwell ruled more than 40 years ago, the exercise of personal jurisdiction in South Carolina over Cape’s American subsidiary, NAAC, is proper. *See* Ex. 38 (*In re Asbestosis Cases*, Apr. 7, 1980 Order) at 3 (“I find that a conscious pattern of product distribution nationally which results in the product being incorporated in another product which was used in this state such as occurred here is a sufficient constitutional basis upon which to attach in personam jurisdiction.”). Accordingly, independent of Cape’s own connection with this State (including facilitating the sale and distribution of Cape asbestos from South African mines to locations in South Carolina), the allegations regarding Cape’s effective domination of NAAC, including pursuant to alter ego, veil-piercing, and/or business-enterprise doctrines, as well as the allegation that NAAC acted as Cape’s agent, separately provide a proper basis to exercise personal jurisdiction over Cape.

IV. Grounds for Exercising of Jurisdiction Over the Remaining Third-Party Defendants.

The Court separately addresses below each of the Third-Party Defendants remaining in this litigation who have responded by moving to dismiss the Third-Party Complaint and finds the Receiver has made the requisite *prima facie* jurisdictional showing for personal jurisdiction under an alter ego theory, guiding light, and/or single business enterprise theory, and/or have purposefully availed themselves to the jurisdiction of this Court, including through longstanding business activities directed at the United States, including South Carolina, with respect to the mining, marketing, and/or distribution of asbestos and other minerals, which gives rise to the claims against them.

As a threshold matter, this Court (and many others) recognize the alter ego test for personal jurisdiction *is less stringent* than the alter ego test for liability. *Hagan*, 2020 S.C. C.P. LEXIS 649, at *7; *Stuart v. Spademan*, 772 F.2d 1185, 1198 n.12 (5th Cir. 1985) (citing *Marine Midland Bank, N.A. v. Miller*, 664 F.2d 899, 904 (2d Cir. 1981)); *see also Gourdine*, 223 F. Supp. 3d at 483 (“If the jurisdictional facts are so intertwined with the facts upon which the ultimate issues on the merits must be resolved, then the entire factual dispute is appropriately resolved only by a proceeding on the merits. In such case, a district court may assume jurisdiction, reserve the question of jurisdiction, and determine relevant jurisdictional facts on a motion going to the merits or at trial.” (citations and internal quotation marks omitted)); *Bakker v. 3CLogic, Inc.*, 2015 WL 13760013, at *3 (D.S.C. Sept. 23, 2015) (“Given the fact intensive nature of this analysis, and that the court at this stage in the litigation must construe all relevant allegations in the light most favorable to [the party alleging alter ego], the court finds [that party] has offered sufficient evidence of personal jurisdiction to allow full discovery to proceed. Full discovery will n[ot] offend traditional notions of fair play and substantial justice”); *see also Talley Affidavit* ¶ 45

(detailing relative frequency of veil piercing and observing that “courts are ‘more lenient’ when it comes to piercing for purposes of obtaining jurisdiction”).

A. The Altrad Third-Party Defendants.

The Third-Party Complaint, along with the submitted affidavits and publicly available materials presented to the Court, adequately alleges facts sufficient to support the exercise of personal jurisdiction over each of the Responding Altrad Third-Party Defendants—the current owners of Cape—under an alter ego, guiding light, and/or single business enterprise theory. *See* Third-Party Compl. ¶¶ 113–19, 125–41. The Altrad Third-Party Defendants are alleged to be responsible, with Cape, for an ongoing scheme to evade responsibility for harm caused to South Carolinians by Cape’s asbestos, while also financially benefiting from that scheme as effective alter egos of Cape. As detailed below, the Court finds that consistent with fair play and substantial justice, it can exercise jurisdiction over each of these Responding Altrad Third-Party Defendants, based on the record before the Court at this early stage.

i. Altrad Investment Authority S.A.S. (AIA)

a. Alter Ego Theory.

The Third-Party Complaint makes a *prima facie* showing that Cape is AIA’s alter ego. South Carolina courts determining whether to exercise jurisdiction based on the alter-ego theory often consider the following factors: (i) common ownership, (ii) financial independence, (iii) the degree of selection of executive personnel and failure to observe corporate formalities; and (iv) the degree of control over marketing and operational policies. *Builder Mart*, 563 S.E.2d at 358. Ultimately, the key touchstone for the alter ego theory under South Carolina law is “that the appropriate level of dominion and control was exercised, and that injustice occurred as a result.” *Hagan*, 2020 S.C. C.P. LEXIS 649, at *15 (emphasis added). Put differently, to exercise personal

jurisdiction under this theory, the plaintiff “must show that the subsidiary functions as the agent or mere department of the parent”—that is, that the subsidiary does all the business that the parent corporation could do if were on its own. *Builder Mart*, 563 S.E.2d at 358. The Third-Party Complaint, along with the affidavits in the record and the additional publicly available facts set forth in the briefing or submitted to the Court, easily satisfies this standard with respect to AIA.

First, with respect to common ownership, AIA, the head of the Altrad Group and the ultimate parent of all of the corporate Altrad Third-Party Defendants, allegedly owns, controls, and effectively *is* Cape. In 2017, AIA acquired Cape for approximately £332.2 million through its wholly owned subsidiary Altrad UK Ltd., which (i) was incorporated in June 2017 for the specific purpose of acquiring Cape, (ii) acts as a “wholly owned subsidiary of AIA [that has been] financed by AIA through a current account,” and (iii) also “proceeded to refinance Cape’s debt” as part of the acquisition. Third-Party Compl. ¶ 116; Ex. 88 (Altrad 2017 Annual Report), at 42, 44; Reuters, Altrad Investment to Buy UK Oil Services Firm Cape for 332.2 Mln Pounds (July 7, 2017);²² see *Patin v. Thoroughbred Power Boats Inc.*, 294 F.3d 640, 653 (5th Cir. 2002) (acknowledging that jurisdictional contacts of a predecessor corporation may be imputed to a successor corporation consistent with due process). Indeed, Altrad’s 2017 Annual Report announced it “holds 100% of Cape,” *i.e.*, the entity that engaged in decades of asbestos sales in the United States and South Carolina directly and through its wholly owned subsidiary, NAAC, and touted the acquisition as an “exceptional opportunity” to acquire “one of the world’s leading providers of services to industry.” Ex. 88 (Altrad 2017 Annual Report), at 40. AIA continues to own and control Cape to today. Third-Party Compl. ¶ 116.

²² Available at <https://www.reuters.com/article/cape-ma-altrad-investment/altrad-investment-to-buy-uk-oil-services-firm-cape-for-332-2-mln-pounds-idUSL4N1JY2KG>.

Second, in the six years since AIA’s acquisition of Cape, Cape has depended on AIA financially.²³ In its annual report for the year ended August 31, 2022, Altrad Services Ltd. stated “[t]he Board of [AIA] (the ultimate parent company) manages risk at a Group level.” Ex. 90 (Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022), at 3. The 2022 annual report acknowledged that “[m]any of [AIA’s] operating environments have associated health and safety risks” and specifically highlighted the Altrad Group’s responsibility for such risks in connection with Cape: “The Company [Altrad Services Ltd.] is maintaining a provision in respect of lodged and future industrial disease claims for which the Board of Directors of Cape plc believes the Group to be liable, arising on alleged exposure to previously manufactured asbestos products.” *Id.* at 4. As a result, the Altrad Group set aside a £118.1 million provision of funds to address certain non-U.S. historical claims relating to asbestos exposure “for which the Board believes *the Group may become liable*” (the “Provision of Funds”). Ex. 90 (Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022), at 50 n.23 (emphasis added); *see also* Joshua Stein, *Altrad Makes £118m Provision for Asbestos Claims*, Construction News (Apr. 14, 2023).²⁴

AIA is the ultimate parent company of Altrad Services Limited, the entity that made the Provision of Funds, and has provided a letter of support of Altrad Services Limited as a going

²³ AIA directly benefitted from Cape’s historic asbestos monopoly (*i.e.*, large profits becoming long-term assets) and its litigation-avoidance strategy (*i.e.*, avoiding asbestos liabilities associated with the business it acquired). It also has continued that strategy, directing Cape to refuse to participate in litigation in the United States relating to its historic asbestos sales (including in the *Park* lawsuit).

²⁴ Available at <https://www.constructionnews.co.uk/health-and-safety/altrad-makes-118m-provision-for-asbestos-claims-14-04-2023/#:~:text=Altrad%20has%20set%20aside%20%C2%A3,historic%20alleged%20exposure%20to%20asbestos.>

concern in connection with that entity’s latest financial statements. Ex. 90 (Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022), at 24, 50 n.23. This Provision of Funds—which reportedly “captured all expected material industrial disease scheme liabilities for which the Board believes the Group may become liable”—does not contemplate compensation for asbestos exposure claims asserted by South Carolinians or other American asbestos claimants. *Id.*

Third, publicly available information demonstrates that Altrad exercises control over the organization and executive team of Cape. In a press release dated September 10, 2018, Altrad announced it “combined Cape PLC, NSG and Hertel to create [the] UK’s largest industrial services provider to the petrochemical, energy, and infrastructure industries.” Altrad Website, *Altrad Combines Cape plc, NSG and Hertel to create UK’s Largest Industrial Service Provider* (Sept. 10, 2018), available at <https://www.altrad.com/en/newsreader/altrad-combines-cape-plc-nsg-and-hertel-to-create-uks-largest-industrial-service-provider.html>. After the acquisition, certain Cape entities were rebranded with the Altrad name. See Third-Party Compl. ¶ 116 (referencing Altrad Services Ltd., f/k/a Cape Industrial Services Ltd.). Further, the Altrad Group has a pattern of replacing the management of the companies it acquires, as it did in when it replaced, *en masse*, the leadership team of the Sparrows Group it acquired in July 2022. *Sparrows Leadership Team to Go* (Apr. 24, 2023), available at <https://vertikal.net/en/news/story/41603/sparrows-leadership-team-to-go>.

Fourth, the allegations in the Third-Party Complaint and the record before the Court at this stage of the litigation demonstrate AIA controls Cape’s operational policies. AIA “manages risk at a Group level,” including with respect to asbestos-related claims. Ex. 90 (Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022), at 3. As

part of its risk management for the Altrad Group, AIA has continued Cape's policy of litigation avoidance, with Cape refusing to participate in litigation in the United States relating to its historic asbestos sales (including in the *Park* lawsuit), and instead accepting default judgments on the gamble they will never be enforceable. The continuation of this scheme is evidenced not only by Cape's lack of appearance in the *Park* lawsuit, even after the appointment of a Receiver, but also by the non-appearance of seven of the 12 Altrad Third-Party Defendants in this action.

While AIA has responded to the Third-Party Complaint, certain of its instrumentalities have refused to do so. For example, Altrad UK Ltd., the entity through which AIA purchased Cape and which is represented by the same counsel as AIA, has not appeared.²⁵ Similarly, Altrad Services Ltd. (f/k/a Cape Industrial Services Ltd.), the entity that set aside the Provision of Funds totaling £118 million for purposes of addressing Cape's liability for certain non-U.S. historical claims relating to asbestos exposure (reported as capturing "all expected material industrial disease scheme liabilities for which the Board believes *the Group* may become liable"), likewise failed to appear. Both of these entities are wholly owned subsidiaries of AIA and entities for which AIA is responsible for risk management (including with respect to asbestos claims). Ex. 90 (Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022), at 24, 50 n.23. In other words, AIA has benefitted from and now directs Cape's efforts to avoid answering to victims in the United States, including in South Carolina. *Hagan*, 2020 S.C. C.P. LEXIS 649, at *14 (Richland Cnty. Ct. Com. Pl. June 29, 2020) (finding the "entire point of the alter-ego doctrine is that a defunct, dissolved or undercapitalized entity is responsible for causing injury" but because that entity is dominated or controlled by others, those others are also liable).

²⁵ See Ex. 87 (Joyner, Lay, and Carroll Email Exchange, dated August 18–20, 2023).

b. Single Business Enterprise.

The Third-Party Complaint also makes a *prima facie* showing of personal jurisdiction over AIA pursuant to the single business enterprise theory, which requires “a showing of more than the various entities’ operations are intertwined” as well as “evidence of bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities’ legal distinctions.” *Pertuis*, 817 S.E.2d at 280–81.

As detailed above, AIA has owned and controlled Cape since 2017. It has allegedly benefitted from Cape’s historic asbestos monopoly (*i.e.*, large profits becoming long-term assets) yet avoided the liabilities associated with that monopoly through Cape’s litigation-avoidance strategy (*i.e.*, avoiding asbestos liabilities). It continues that strategy to this day, directing Cape to refuse to participate in litigation in the United States relating to its historic asbestos sales (including in the *Park* lawsuit). The Third-Party Complaint alleges in great detail a scheme of bad faith, abuse, fraud, wrongdoing, and injustice resulting from the intentional blurring of the entities’ legal distinctions, namely, the scheme pursuant to which Cape—through its agents, like NAAC—distributed asbestos into the United States (including into South Carolina), concealed the harms of asbestos, siphoned the funds from those sales to co-conspirators located outside of the United States, and avoided liability in the United States for the known harm that Cape’s asbestos would—and did—cause, and continues to cause, in the United States broadly, and in South Carolina specifically.

Based on these allegations and the record, AIA is subject to this Court’s personal jurisdiction as an alter ego to Cape or, in the alternative, as part of an amalgamated, single business enterprise that collectively endeavored to sell massive amounts of Cape’s deadly asbestos in the

United States, including in South Carolina, and to avoid answering to U.S. creditors and other injured parties for their asbestos-related injuries and harm.

ii. Mohed Altrad.

The Court also finds the Receiver made the required *prima facie* showing that Mohed Altrad is the alter ego to Cape, and/or the “guiding spirit” of AIA and the Altrad Group.²⁶ The Third-Party Complaint alleges that, since its acquisition of Cape in 2017, the Altrad Third-Party Defendants—under the control of their founder and namesake—have directed, allowed, facilitated, or benefitted from Cape’s longstanding scheme to avoid liability stemming from its decades of sales of asbestos in the United States, including in South Carolina, despite its known health hazards. *See* Third-Party Compl. ¶¶113–19, 125–41. As alleged, and reflected in even the limited record before the Court at this stage of the litigation, under Mr. Altrad’s leadership, the Altrad Third-Party Defendants have continued Cape’s wrongful litigation-avoidance strategy while continuing to profit from Cape’s ongoing business. The Third-Party Complaint, coupled with the record developed to date including through affidavits, exhibits to the parties’ briefing related to the motions to dismiss, and publicly available records of which this Court can take judicial notice, collectively make the required *prima facie* showing that, as the founder and President of the Altrad Group, and as the majority shareholder, Mr. Altrad controls such decisions. *Id.* ¶ 118; Ex. 88 (Altrad 2017 Annual Report), at 20; Ex. 89 (Altrad 2022 Annual Report), at 71.

²⁶ The South Carolina Supreme Court has stated that “the single business enterprise theory is not to be used to amalgamate an individual with a company” and that it “exists as an equitable remedy for plaintiffs whenever they have been wronged *by business entities* with blurred identities.” *Stoneledge and Lake Keowee Owners’ Ass’n, Inc. v. IMK Dev., Co., LLC*, 435 S.C. 109, 866 S.E.2d 542, 551-52 (2021) (emphasis in original). As a result, this Court’s exercise of personal jurisdiction over Mr. Altrad is premised on the alter ego theory.

Each of the *Builder Mart* factors counsel in favor of this Court’s exercise of jurisdiction over Mr. Altrad. **First**, Mr. Altrad owns nearly all of the Altrad Group, including Cape. As of 2017, the year AIA acquired Cape, Mr. Altrad “h[e]ld 77.78% of the [company’s] shares.” Ex. 88 (Altrad 2017 Annual Report), at 20. As of August 31, 2022, Mr. Altrad held 77.45% of the company’s shares. Ex. 89 (Altrad 2022 Annual Report), at 71. By September 30, 2022, **Mr. Altrad held 97.60% of the company’s shares.**²⁷ *Id.* (depicting new shareholder structure as of September 30, 2022, as 97.60% owned by Mohed Altrad and 2.40% owned by “Others”).

Second, as the overwhelmingly dominant owner of all of the Altrad Group, all of its entities—including AIA and Cape—are financially dependent on Mr. Altrad.

Third, Mr. Altrad controls AIA, which as detailed above, directed the reorganization and combination of Cape following its acquisition and has a practice of replacing the management of the companies it acquires.

Fourth, Mr. Altrad exercises control over the Altrad Group’s, and by extension Cape’s, operational policies. *Builder Mart*, 563 S.E.2d at 358. Just as AIA controls Cape’s operational policies, including relating to risk management relating to asbestos claims, as detailed above, Mr. Altrad—as its founder, President, dominant majority shareholder, avowed leader, and namesake—controls AIA. Third-Party Compl. ¶¶ 116, 118, 119; *see also* Affidavit of M. Altrad ¶ 32. *See* Ex. 90 (Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022), at 3. As the Altrad Group’s website states, Mr. Altrad “still le[ads]” the

²⁷ Months later, in December 2022, a French court found Mr. Altrad guilty of bribery, influence peddling, and misuse of corporate assets. Third-Party Compl. ¶ 118; *see also* Chase Peterson-Withorn, *Who is Mohed Altrad, the Billionaire Scaffolding King Found Guilty of Rugby Bribery?* (Dec. 13, 2022), available at <https://www.forbes.com/sites/chasewithorn/2022/12/13/who-is-mohed-altrad-the-billionaire-scaffolding-king-found-guilty-of-rugby-bribery/?sh=44120ed43846>.

Altrad Group of companies. Altrad Website, *Our History*, <https://www.altrad.com/en/our-history.html> (“Today, the group is still led by its founder, Mohed Altrad.”). The “Governance” section of the Altrad Group’s website states that “General Management defines the strategy for the Altrad Group. It is headed by Mohed Altrad, founder and President of the group, and by Jan Vanderstraeten and Ran Oren, joint-Chief Executive Officers.” Altrad Website, *Governance*, <https://www.altrad.com/en/governance.html#:~:text=It%20is%20headed%20by%20Mohed,humanist%20conception%20of%20the%20company.>

Moreover, it is well established that when a court has engaged in traditional veil piercing, it may exercise personal jurisdiction vicariously over an individual like Mr. Altrad if the court has jurisdiction over the individual’s alter ego company. *Hagan*, 2020 S.C. C.P. LEXIS 649, at *6; *see also Newport News Holdings Corp. v. Virtual City Vision, Inc.*, 650 F.3d 423, 433 (4th Cir. 2011) (observing that courts have “consistently acknowledged that it is compatible with due process to exercise personal jurisdiction over an individual . . . who is an alter ego” (citation omitted)); *cf. Ranza v. Nike, Inc.*, 793 F.3d 1059, 1072–73 (9th Cir. 2015) (noting that alter ego test “may be used to extend personal jurisdiction”); *see also Patin*, 294 F.3d at 653 (jurisdictional contacts may be imputed to an individual alter ego consistent with due process).

There is another basis for this Court to exercise personal jurisdiction over Mr. Altrad. As the U.S. District Court for the District of South Carolina explained in *Charleston Equities*, 2017 WL 10504748, at *4, there is an additional conceptual framework to analyze the imputation of jurisdictional contacts to an individual who serves as the “guiding light” or “guiding spirit” for its alter ego corporate entity. At this preliminary stage, the Receiver has made a *prima facie* showing that Mr. Altrad satisfies this framework. Under this “guiding spirit” theory, a court may hold an individual subject to personal jurisdiction even though he committed the wrongful act outside of

South Carolina, as long as there is “some showing of direct, personal involvement by the corporate officer in some decision or action which is causally related to the plaintiff’s injury.” *Charleston Equities*, 2017 WL 10504748, at *4. As the majority shareholder, founder, President, Board member, and person who “still le[ads]” the Altrad Group and AIA, Mr. Altrad is the “guiding spirit.” Based on his various roles and the extent of his ownership, Mr. Altrad necessarily controls the Altrad Group, and with it, Cape. Third-Party Compl. ¶ 118; *Charleston Equities*, 2017 WL 10504748, at *4 (owners and directors of Charleston Equities were “necessarily . . . the ‘guiding spirit’ for any action undertaken” by it).

As such, at this preliminary stage, the Court finds the Receiver has made the required *prima facie* showing to support the exercise of personal jurisdiction over Mr. Altrad, the President, the founder, the face, and the majority owner of the Altrad Group, as an alter ego to Cape and/or as its guiding light and spirit. *Charleston Equities*, 2017 WL 10504748, at *4; *see also Springs Indus., Inc. v. Gasson*, 923 F. Supp. 823, at 827–28 (D.S.C. 1996) (finding minimum contact established because “[a]t this stage of the proceedings, [the plaintiff] has alleged sufficient facts to show that [officer] was involved in the decision making which is causally related to its injury and that he was, at least in part, the guiding spirit behind the wrongful conduct”).

iii. U.S. Subsidiaries of the Altrad Group — Sparrows Offshore, LLC, Hawk Bidco, US, LLC, and Arranco US, LLC.

a. Alter Ego.

The Third-Party Complaint also makes a *prima facie* showing of personal jurisdiction over Sparrows Offshore, LLC, Hawk BidCo US, LLC, and Arranco US, LLC pursuant to the alter ego theory.²⁸ As alleged in the Third-Party Complaint and reflected in other documents before the

²⁸ Sparrows Offshore, LLC, Hawk BidCo US, LLC, and Arranco US, LLC collectively challenged this Court’s personal jurisdiction over them in a single brief. In support of that brief, each of these

Court, on July 11, 2022, AIA completed the acquisition of “the Sparrows Group,” including Sparrows Offshore, LLC, Hawk BidCo US, LLC, and Arranco US, LLC.²⁹ Third-Party Compl. ¶ 117 & n.38; Press Release, *Altrad Completes Acquisition of Engineering and Maintenance Specialist Sparrows Group* (July 11, 2022), <https://www.altrad.com/en/newsreader/altrad-completes-acquisition-of-engineering-and-maintenance-specialist-sparrows-group.html>.

First, since July 2022, Cape and the “Sparrows Group” have shared common ownership as part of the Altrad Group, which in turn is owned almost entirely by Mr. Altrad. *See* Third-Party Compl. ¶ 117. **Second**, both are allegedly controlled and financially dependent on AIA, under the direction of Mr. Altrad. *Id.* ¶ 116–18. **Third**, consistent with its alleged control of Cape (*id.* ¶ 116), AIA appears to control the selection of executive personnel over the Sparrows entities. *See id.* ¶ 118. The record reflects that despite initially announcing that the “Sparrows Group” would “be run autonomously by its existing management,” by April 2023 (less than a year after the

three entities submitted an affidavit from the same person—Adam C. Wood—who held the title of “Director” in each entity. *See* Affidavit of Adam C. Wood ¶ 2 (“I am a Director of Hawk Bidco (US) Inc. (‘Hawk Bidco’).”); Affidavit of Adam C. Wood in Support ¶ 2 (“I am Director of ArranCo US, LLC (‘ArranCo’).”); Affidavit of Adam C. Wood ¶ 2 (“I am a Director and the Senior Vice President of Sparrows Offshore, LLC (‘Sparrows Offshore’).”). These entities admit that they share the same directors. *E.g.*, Affidavit of Adam C. Wood in Support ¶ 38 (Arranco shares “same directors” with Sparrows Offshore and Hawk BidCo).

²⁹ As alleged, the “Sparrows Group” acquired by the Altrad Group in July 2022 also included Sparrows Offshore Group, Ltd. (based in Aberdeen, Scotland) and the Sparrows Group LLC (a Delaware LLC created in March 2023). The Altrad Third-Party Defendants that have responded to the Third-Party Complaint have disclaimed any “affiliation or association” with those two non-responding entities. According to the Receiver, however, that disclaimer conflicts with public materials regarding their affiliations, in which Altrad has touted its recent acquisition of the Sparrows Group, which on information and belief includes these two entities. *See, e.g.*, Altrad Press Release, *Altrad Agrees to Acquire Sparrows Group* (Mar. 2, 2022), <https://www.altrad.com/en/newsreader/altrad-agrees-to-acquire-sparrows-group.html>. At this stage, factual disputes should be resolved in favor of the Receiver, as the non-moving party. *HHHunt Corp.*, 699 S.E.2d at 704.

acquisition), AIA terminated its leadership team (including its CEO, CFO, CTO, HSEQ, HR director, and executive director for the Middle East, India, Caspian, and Asia Pacific) *en masse* and installed its own management team that would report to AIA and Mr. Altrad. Sparrows Leadership Team to Go (Apr. 24, 2023), *available at* <https://vertikal.net/en/news/story/41603/sparrows-leadership-team-to-go> (reporting that announcement “came as a complete surprise to many of those that will be affected”). *Fourth*, and ultimately, AIA (as a corporate instrumentality of Mr. Altrad) is plausibly alleged to exercise control over both Cape and the Sparrows entities’ operations. *See* Third-Party Compl. ¶¶ 116–19. Despite announcing that Sparrows would “be run autonomously by its existing management as a separate entity within Altrad,” in October 2, 2023, Altrad announced the rebranding of the “Sparrows Group” to “Altrad Sparrows.” Aberdeen Business News, *Altrad Spreads Its Wings as Altrad Sparrows* (Oct. 2, 2023), <https://aberdeenbusinessnews.co.uk/sparrows-spreads-its-wings-as-altrad-sparrows/>; *see also* *Builder Mart*, 563 S.E.2d at 358.

b. Single Business Enterprise.

The Court further finds the Third-Party Complaint makes a *prima facie* showing of personal jurisdiction over Sparrows Offshore, LLC, Hawk BidCo US, LLC, and Arranco US, LLC pursuant to the single business enterprise theory. As alleged, and reflected in the documents before the Court at this preliminary stage, these entities have been absorbed into and intertwined with AIA—the current owner, controller, and successor-in-interest to Cape—and the broader Altrad Group, which continues to benefit from Cape’s sale of asbestos and evasion of its associated liabilities to tort victims within the United States, including South Carolina.

Moreover, like the broader Altrad Group’s continuation of Cape’s litigation avoidance strategy, Sparrows Offshore, LLC, Hawk BidCo US, LLC, and Arranco US, LLC have been part

of that scheme to insulate capital from American creditors, with Sparrows Offshore Group Ltd. passing a resolution to liquidate on July 27, 2023, ***within two weeks of being served with the Receiver's Third Party Complaint in this case***, while each of Sparrows Offshore, LLC, Hawk BidCo US, LLC, and Arranco US, LLC continue to operate apparently as part of the Altrad Group. *Pertuis*, 817 S.E.2d at 280–81. That decision to liquidate soon after service may (or may not) be part of a combined, coordinated effort to evade liabilities associated with Cape's historic business activities, which at this stage, the Court believes sufficient to exercise personal jurisdiction with respect to affiliated "Altrad Sparrows" entities that have appeared.

The Court expresses similar concern that certain affiliates of these Altrad Group members share a common registered address with Cape and have been served in this third-party action (including at least one entity also represented by counsel for Mr. Altrad and AIA) but nevertheless have not appeared in this action—a decision consistent with Cape's *modus operandi* of litigation avoidance. Accordingly, the Court believes these actions—following the filing of the Third-Party Complaint—further buttress allegations of and concerns regarding ongoing bad faith, abuse, fraud, wrongdoing, or injustice being perpetuated by and within the Altrad Group, including with respect to the management of these "Altrad Sparrows" entities.

Based on these allegations and the record, and at this preliminary stage, the Court finds Sparrows, Hawk BidCo, and Arranco are subject to this Court's personal jurisdiction as an alter ego to Cape or, in the alternative, as part of a single business enterprise that collectively endeavored to sell, or benefit from the sale of Cape's asbestos in the United States, including South Carolina, while avoiding answering to U.S. creditors for the resulting harm. *See, e.g.*, Ex. 70, at CAPE000142 (1975 correspondence acknowledging risk of exposure of future-acquired U.S. companies or businesses to U.S. courts to satisfy default judgments entered against Cape).

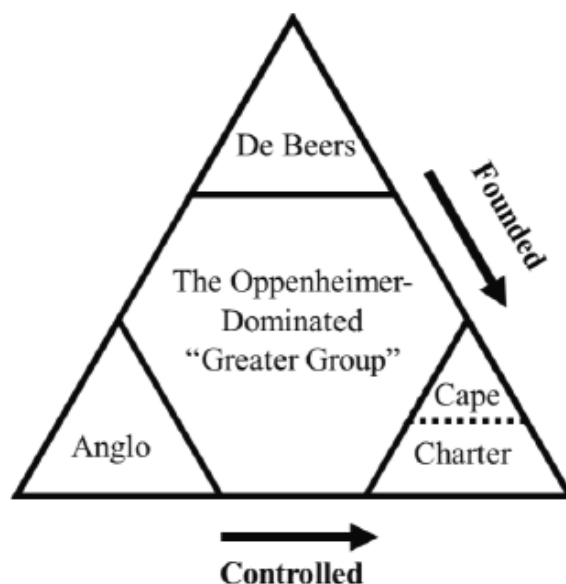
B. The Oppenheimer Third-Party Defendants.

The Court also finds that it has personal jurisdiction over the five Oppenheimer Third-Party Defendants that remain in this action.³⁰ These Third-Party Defendants include Anglo American PLC (in England), De Beers Consolidated Mines Ltd. (in South Africa), De Beers Centenary AG (in Switzerland), De Beers PLC (in the Bailiwick of Jersey), and De Beers UK Ltd. (in England).

As alleged in the Third-Party Complaint, and further buttressed by documents presented to the Court, these Third-Party Defendants bear responsibility, whether individually or as a matter of successor responsibility, for the claims presented against them. In particular, members of the “De Beers Group,” Anglo American Corporation of South Africa, Ltd., and other parts of the Oppenheimer “Greater Group” are alleged to have exerted significant control over Cape, which was alleged to have been part of the premier amalgamated mining and *marketing* empire of the twentieth century, as reflected in the figure below (from Paragraph 54 of the Third-Party Complaint).³¹

³⁰ As originally named, De Beers S.A. is now identified as a predecessor in interest to De Beers PLC, and the other 11 Oppenheimer Third-Party Defendants have been voluntarily dismissed by the Receiver, without prejudice.

³¹ Compare De Beers Group Website, *A Diamond Is Forever*, <https://www.debeersgroup.com/about-us/a-diamond-is-forever> (touting “A Diamond is Forever” as the “Slogan of the Century,” rolled out in 1947 to advertise diamonds—for which the Anglo/De Beers Group had an effective monopoly—to American consumers, including in South Carolina) *with* the entirety of Third-Party Complaint (alleging highly profitable scheme during the same decades to promote amosite and crocidolite asbestos—for which the Anglo/De Beers Group had an effective monopoly—to American consumers, including in South Carolina, and then direct and promote the attempted evasion of tort liability by Cape and its Anglo/De Beers affiliates).



As set forth below, the Court finds there are numerous allegations, especially at this initial stage of the proceeding, that support exercising jurisdiction over the remaining five Oppenheimer Third-Party Defendants, including as a matter of successor liability for Anglo American Corporation of South Africa Ltd. and/or De Beers Consolidated Mines Ltd. *See Brown v. American Ry. Express Co.*, 128 S.C. 428, 123 S.E. 97, 98–99 (1924) (identifying bases for successor liability, *e.g.*, (i) there was an agreement to assume such obligations; (ii) the circumstances surrounding the transaction amount to a consolidation or merger of the two corporations; (iii) the successor company was a mere continuation of the predecessor; or (iv) the transaction was entered into fraudulently to wrongfully defeat creditors’ claims). The Third-Party Complaint also alleges extensive facts indicating that Anglo American Corporation of South Africa Ltd. and/or De Beers Consolidated Mines Ltd.—including through Charter—exerted significant control and operational oversight over Cape, acting as its alter ego, including without limitation having (i) been involved in the formation of Cape (Third Party Compl. ¶¶ 42, 45, 47, 49); (ii) overlapping officers, directors, and share ownership among the organizations (including through Charter) (*id.* ¶¶ 45, 47, 49, 55–56, 59–61, 67), (iii) a capacity to influence or control major business decisions of Cape, including

relating to personnel (*id.* ¶¶ 50–52, 54, 58 & n.10, 59, 61, 67), (iv) a common marketing image, or mechanism for influence over business and governmental stakeholders (*id.* ¶¶ 53, 59–60, 62–63, 68–69); (v) a plan to create corporate complexity and artificial corporate separation and to make strategic divestitures to avoid answering to American creditors (*id.* ¶¶ 53 & n.7, 59, 62, 64–67, 105–109); and/or (vi) unity of operations, including a common physical addresses, despite formally separate structures (*id.* ¶¶ 54, 57). *See, e.g., In re Polyester Staple Antitrust Litig.*, 2008 WL 906331, at *13–14, *16 (supporting application of personal jurisdiction over parent entity that was required for consultation or approval of certain corporate decisions at issue); *see also Builder Mart*, 563 S.E.2d at 358. At this early stage in the proceeding, these allegations (including documents in support) are more than sufficient to impute the jurisdictional contacts of Cape and its American subsidiary, NAAC.

Further, these allegations—which are well supported with documentation, including statements in Third-Party Defendants’ annual reports and by their corporate officers in sworn testimony—suggest substantial relationship intimacy between the Cape Asbestos Company Ltd., De Beers Consolidated Mines Ltd., Anglo American Corporation of South Africa Ltd., and other members of the Oppenheimer business empire (including Charter) beginning in the 1890s and continuing as late as the 1990s, even after Cape purported to stop selling asbestos.

For the same reasons jurisdiction is proper under an alter ego theory, so too can the single business enterprise theory confer jurisdiction over Anglo American Corporation of South Africa Ltd. and De Beers Consolidated Mines Ltd. The Third-Party Complaint alleges facts showing these entities controlled Cape (through Charter and other members of the Oppenheimer mining empire) during the years in which Cape was shipping asbestos into the United States with the assistance of NAAC, demonstrating that the entities were acting with a “common business purpose.” Third-

Party Compl. ¶ 70; *Pertuis*, 817 S.E.2d at 279; *Duong*, 2019 WL 13109647, at *13 (recognizing use of single business enterprise doctrine to obtain personal jurisdiction over” foreign parent and “sister” entities). Indeed, the Third-Party Complaint specifically alleges unified or integrated business operations and resources to achieve a common business purpose, including use of common employees and unclear allocation of profits and losses between corporations, as Cape’s production and distribution chain is alleged to have been supported by Oppenheimer-affiliated businesses in South Africa and elsewhere, which also profited from continuation of the asbestos trade. *See* Third-Party Compl. ¶¶ 52–53, 57, 61–62, 67–69, 120 (alleging use of Central Mining engineers by Cape, whom were paid by Anglo American; how “Cape’s affiliations . . . were key to Cape’s success”; that Cape’s/Charter’s close association with other South African companies allowed it to “‘exercise . . . influence’ in Apartheid-era South Africa”; and that “Cape was owned, controlled, operated by, and dominated in furtherance of and in concert with Oppenheimer business interests in South Africa, the United Kingdom, and elsewhere—to those entities’ substantial financial benefit”).

As a result of these contacts, moreover, persons have allegedly been harmed, including in South Carolina, and there is a more than a suggestion of bad faith, abuse, fraud, wrongdoing, or injustice by the Oppenheimer Third-Party Defendants with respect to their perpetuation of this common business purpose and blurring of the distinction among the numerous members in the Anglo/De Beers Group of companies. *See, e.g.*, Talley Affidavit ¶ 41 (stating, as a matter of economic analysis, that “[a]ssuming the facts as alleged in the third-party complaint by the Receiver are true . . . , they resemble a textbook case of strategic and inefficient asset stripping—one that suggests the costs of [limited liability] exceed the benefits of [limited liability] in these circumstances,” and thus the “economic case for disregarding the veil of limited liability among

the defendants (or a sizeable number of them) appears strong”). In fact, as their own annual reports acknowledge, members of this “group system” are provided “a full range of administrative and technical services and [are] able, by virtue of [their] financial strength and standing, to [be] assure[d] . . . capital for expansion and development.” Ex. 20 (Anglo 1974 Annual Report), at 3. In turn, the Third-Party Complaint alleges in great detail that this group affiliation furthered Cape’s asbestos business and provided the roadmap for its liability-avoidance scheme.³² *See, e.g.*, Third-Party Compl. ¶¶ 102–03 (alleging that Cape asbestos mines were sold to another company also in the Oppenheims’ extensive investment portfolio). Accordingly, contacts from Cape and NAAC are also properly imputed to these Third-Party Defendants under an amalgamated, single business enterprise theory. For these reasons, and as also discussed further below, the Court finds that the exercise of personal jurisdiction over them would not offend traditional notions of fair play and substantial justice.

i. Anglo American PLC.

Anglo American PLC is alleged to be a corporation organized under the laws of England, United Kingdom, with its principal place of business in London, England, United Kingdom. Third-

³² Although affiants for the Oppenheimer Third-Party Defendants disclaim direct involvement in the sales of asbestos, the Third-Party Complaint alleges otherwise, including that Cape was part of a global amalgamated mining empire which—as part of a common business enterprise—extracted from South Africa and sold and marketed to customers in the United States, including South Carolina, numerous types of raw materials, including asbestos (as well as diamonds, copper, gold, coal, uranium, etc.). *Compare* Third-Party Compl. ¶¶ 51, 67–69 (alleging various interests in minerals and other resources, also mined from South Africa and sold predominantly to the United States) *with* Anglo American H1 2023 Results, at 66 (July 27, 2023) (identifying “USA” as still responsible for the majority of “Global Diamond Jewellery Demand,” with China a distant second with 10% of demand, according to De Beers-commissioned analytics and consumer studies), *available at* <https://www.angloamerican.com/~media/Files/A/Anglo-American-Group-v5/PLC/investors/reports/anglo-american-half-year-2023-results-presentation.pdf>. It is well-established that factual disputes should be resolved in favor of the Receiver, the non-moving party, at this stage. *See HHHunt Corp.*, 699 S.E.2d at 704.

Party Compl. ¶ 2. In addition, Anglo American PLC is expressly alleged to be a successor in interest to Anglo American Corporation of South Africa Ltd. As the Third-Party Complaint further alleges, in 1998, “Anglo American Corporation of South Africa Ltd. moved its headquarters to London and re-registered as Anglo American PLC, which involved complex changes to its corporate structure that included absorbing [other Oppenheimer entities] and moving assets out of South Africa (thereby mitigating the risk of post-Apartheid nationalization).” *Id.* ¶ 121 n.41.

Other materials provided to the Court since the filing of the Third-Party Complaint on June 30, 2023, also appear to support the Receiver’s assertions that Anglo American PLC (“AA PLC”) may bear responsibility as a successor in interest to Anglo American Corporation of South Africa Ltd. and/or De Beers Consolidated Mines Ltd., including in light of the structure and terms of the 1998 merger between Anglo American Corporation of South Africa Ltd. (“AAC”) and other Oppenheimer business interests.³³ For example, as part of that formal combination of businesses, it was reported in financial press that (i) the “Boards of De Beers Consolidated Mines Limited and De Beers Centenary AG (together ‘De Beers’) announce[d] that they [had] agreed in principle to support the formation of AA plc for AAC and Minorco [*i.e.*, the international investment arm that replaced Charter], and to accept AA plc shares in respect of De Beers’ shareholdings of 38.2

³³ See, e.g., Lynne Duke, *Mining Firm’s Move Splits South Africans*, The Washington Post (Oct. 18, 1998), <https://www.washingtonpost.com/archive/politics/1998/10/18/mining-firms-move-splits-south-africans/fd90b101-ebc7-4de2-a0e9-f17f0793e3dd/> (referencing “restructuring plan that will move the South African and global mining giant’s headquarters to London,” including as “a decision to merge with its offshore natural resources arm, Luxembourg-based Minorco SA,” but with its “major shareholders . . . remain[ing] South African[,] [p]rimary among them [being] the Johannesburg-based De Beers Consolidated Mines Ltd., the world’s largest diamond miner and marketer, as well as the Oppenheimer family which owns De Beers”); Darren Schuettler, *Anglo Merger with Minorco to Create Mining Giant*, J. of Commerce (Oct. 15, 1998), https://www.joc.com/article/anglo-merger-minorco-create-mining-giant_19981015.html (“Anglo said the deal, which will effectively end the company’s 81-year corporate presence in the country of its birth, was necessary to protect shareholder interests in post-apartheid South Africa.”).

percent in AAC and 22.5 percent in Minorco,” and (ii) “a number of listed and unlisted companies and joint ventures” would continue “in which De Beers and AAC have common direct interests,” because as:

part of the restructuring of AAC, the Boards of De Beers and AAC [had] agreed in principle that all De Beers’ holdings in these companies and joint ventures will be disposed of to AAC in return for an entitlement to AAC shares which will be converted into shares in AA plc on completion of the combination of AAC and Minorco.

Anglo American, Minorco to Merge in Stock Swap, Bloomberg (Oct. 15, 1998), <https://www.bloomberg.com/press-releases/1998-10-15/anglo-american-minorco-to-merge-in-stock-swap>.

In addition, in line with the Receiver’s allegation that the “Oppenheimer Third-Party Defendants have increased their business activities in the United States” (Third-Party Compl. ¶ 122), Anglo American PLC has lobbied and is actively lobbying the U.S. government, implicating the State of South Carolina as well. *See* U.S. Senate Lobbying Report (July 18, 2023), <https://lda.senate.gov/filings/public/filing/2ae34448-9d9b-4218-899a-3040666a499a/print/> (identifying interest “in engagements related to the investment in critical minerals exploration and extraction in Southern Africa”). That lobbying, moreover, is alleged to be part of a longstanding campaign by the Anglo/De Beers Group to establish a foothold of influence in the United States, including as potentially relevant to Cape, and as alleged in the Third-Party Complaint. *See id.* ¶ 70 (alleging that Cape was included as “part of the Oppenheimer empire’s global expansion” in the 1950s—1970s).

Based on these allegations and the record presently before the Court, the Court finds (i) the Receiver has made the required *prima facie* showing that Anglo American PLC, whether individually or as a successor in interest to De Beers Consolidated Mines Ltd. and/or Anglo

American Corporation of South Africa Ltd., was an alter ego of Cape or part of an amalgamated, single business enterprise, or benefitted from the use of Cape as its agent, with respect to the mining, production, manufacture, and distribution of asbestos fiber (among other valuable minerals, metals, and other materials handled by the Oppenheimer mining empire) from South Africa to the United States, including to South Carolina, and (ii) the exercise of personal jurisdiction over Anglo American PLC is proper at this time, including based on the longstanding activities and business of the Anglo/De Beers Group to mine, market, and distribute various minerals, including asbestos and diamonds,³⁴ to the United States of America, including South Carolina.

ii. De Beers Consolidated Mines Ltd.

De Beers Consolidated Mines Ltd. (n/k/a De Beers Consolidated Mines Proprietary Ltd.) is alleged to be a corporation organized under the laws of the Republic of South Africa, with its principal place of business in Kimberley, Northern Cape, South Africa. Third-Party Compl. ¶ 5. De Beers Consolidated Mines Ltd. is among certain Oppenheimer Third-Party Defendants—with or through predecessors in interest—alleged to have owned, controlled, operated, or dominated Cape in furtherance of or in concert with Oppenheimer business interests in South Africa, the United Kingdom, and elsewhere, thereby financially benefiting with respect to Cape’s asbestos business in the United States and its perpetuation of the liability-avoidance scheme. *See id.* ¶¶ 120–21. As summarized above, the Third-Party Complaint alleges—in substantial detail—a connection between “De Beers” and Cape beginning in the 1890s and continuing at least through the time that

³⁴ *See also* Gill Nelson *et al.*, *The Risk of Asbestos Exposure in South African Diamond Mine Workers*, *Annals of Occupational Hygiene*, Vol. 55 (July 2011) (“Asbestos is associated with the South African diamond mining industry, primarily due to the nature of kimberlite but also the location of the diamond mines in relation to asbestos deposits.”), *available at* <https://academic.oup.com/annweh/article/55/6/569/175512>.

Cape initiated its liability-avoidance scheme in the late 1970s. *See id.* ¶¶ 45, 112, 122 (defining “De Beers,” as referenced in the Third-Party Complaint, to include De Beer’s Consolidated Mines Ltd. “with its affiliates and successors in interest” in the “De Beers Group,” as controlled by Anglo American PLC, which act as “successors in interest and beneficiaries of Cape’s liability-avoidance scheme, co-responsible for Cape’s tortious conduct”).

Based on these allegations and the record before the Court at this preliminary stage, the Court finds (i) the Receiver has made the required *prima facie* showing that De Beers Consolidated Mines Ltd. (n/k/a De Beers Consolidated Mines Proprietary Ltd.) was an alter ego of Cape or part of an amalgamated, single business enterprise, or benefiting from the use of Cape as its agent, with respect to the mining, production, manufacture, and distribution of asbestos fiber (among other valuable minerals, metals, and other materials handled by the Oppenheimer mining empire) from South Africa to the United States of America, including to South Carolina, and (ii) the exercise of personal jurisdiction over De Beers Consolidated Mines Ltd. is proper at this time, including based on the longstanding activities and business of the Anglo/De Beers Group to mine, market, and distribute various minerals, including asbestos and diamonds, to the United States of America, including South Carolina.

iii. De Beers Centenary AG.

De Beers Centenary AG is alleged to be a corporation organized under the laws of Switzerland, with its principal place of business in Emmenbrücke, Switzerland. Third-Party Compl. ¶ 4. De Beers Centenary AG is among certain Oppenheimer Third-Party Defendants—with or through predecessors in interest—alleged to have owned, controlled, operated, or dominated Cape in furtherance of or in concert with Oppenheimer business interests in South Africa, the United Kingdom, and elsewhere, thereby financially benefiting from Cape’s asbestos

business in the United States and its perpetuation of the liability-avoidance scheme. *See id.* ¶¶ 120–21. De Beers Centenary AG is also alleged to be involved in expanding business activities in the United States, including bringing litigation and enforcing trademarks or other valuable rights, under the De Beers name. *Id.* ¶ 122. Moreover, this entity is effectively alleged to be a successor in interest to De Beers Consolidated Mines Ltd. (as formed in 1888) and responsible for actions as part of various entities in the “De Beers Group,” which have been created since the 1970s and act as “successors in interest and beneficiaries of Cape’s liability-avoidance scheme, co-responsible for Cape’s tortious conduct.” *See id.* ¶¶ 45, 112, 122.

Other public materials buttress the Receiver’s assertions that De Beers Centenary AG may bear responsibility as a successor in interest to Anglo American Corporation of South Africa Ltd. and/or De Beers Consolidated Mines Ltd., in light of the terms and structure of its creation in 1990 by being spun off from De Beers Consolidated Mines Ltd. *See, e.g., De Beers to Become 2 Companies*, N.Y. Times (Mar. 7, 1990) (“De Beers Consolidated Mines Ltd., the huge South African diamond mining concern, said today that it would split itself in two and base one of the newly formed companies in Switzerland. The Swiss company will oversee De Beers’s foreign businesses, which accounted for 80 percent of the company’s 1989 net profit. The move appeared to be an attempt by the company to minimize its exposure to potential political turbulence in South Africa, where a newly energized black majority has vowed to nationalize major industries if it wins power from the white minority.”).³⁵

³⁵ *See also, e.g.,* Indictment, *United States v. General Elec. Co. et al.*, No. CR-2-94-019 (S.D. Ohio Feb. 17, 1994) (collectively referring to De Beers Consolidated Mines Ltd. and De Beers Centenary AG as “De Beers,” responsible for “own[ing] or control[ing] various companies that manufactured, distributed, and sold industrial diamond products”), *available at* <https://www.justice.gov/sites/default/files/atr/legacy/2006/03/20/indictment.pdf>; *De Beers Signs Pact for Soviet Diamonds*, Roanoke Times (July 26, 1990) (referencing a multi-billion dollar agreement between De Beers Centenary AG and the Soviet Union, accomplished because the

Based on these allegations and the record before the Court at this preliminary stage, the Court finds (i) the Receiver has made the required *prima facie* showing that De Beers Centenary AG, whether individually or as a successor in interest to De Beers Consolidated Mines Ltd. and/or Anglo American Corporation of South Africa Ltd., was an alter ego of Cape or part of an amalgamated, single business enterprise, or benefitted from the use of Cape as its agent, with respect to the mining, production, manufacture, and distribution of asbestos fiber (among other valuable minerals, metals, and other materials handled by the Oppenheimer mining empire) from South Africa to the United States of America, including to South Carolina, and (ii) the exercise of personal jurisdiction over De Beers Centenary AG is proper at this time, including based on the longstanding activities and business of the Anglo/De Beers Group to mine, market, and distribute various minerals, including asbestos and diamonds, to the United States of America, including South Carolina.

iv. De Beers PLC.

De Beers PLC is alleged to be a corporation organized under the laws of the Bailiwick of Jersey, with its principal place of business in St. Helier, Jersey. Third-Party Compl. ¶ 3. De Beers PLC is among certain Oppenheimer Third-Party Defendants—with or through predecessors in interest—alleged to have owned, controlled, operated, or dominated Cape in furtherance or in concert with Oppenheimer business interests in South Africa, the United Kingdom, and elsewhere, thereby financially benefiting with respect to Cape’s asbestos business in the United States and its perpetuation of the liability-avoidance scheme. *See id.* ¶¶ 120–21. Moreover, this entity is

Soviets were willing to “openly do business” only with the Swiss arm of De Beers, having “refused to deal directly with the South African company because of apartheid”), *available at* <https://scholar.lib.vt.edu/VA-news/ROA-Times/issues/1990/rt9007/900726/07260532.htm>.

effectively alleged to be a successor in interest to De Beers Consolidated Mines Ltd. (as formed in 1888) and responsible for actions as part of various entities in the “De Beers Group,” which have been created since the 1970s and act as “successors in interest and beneficiaries of Cape’s liability-avoidance scheme, co-responsible for Cape’s tortious conduct.” *See id.* ¶¶ 45, 112, 122.

As this Third-Party Defendant admits, it was formed in 2000 as a “[h]olding company of De Beers group.” Oppenheimer Personal Jurisdiction Chart (submitted by Third-Party Defendants to the Court during the hearing on Oct. 25, 2023). Other public materials likewise buttress the Receiver’s assertions that De Beers PLC may bear responsibility as successor in interest to Anglo American Corporation of South Africa Ltd. and/or De Beers Consolidated Mines Ltd., in light of De Beers PLC directly controlling De Beers Consolidated Mines Ltd. (with 74% shareholding as of 2021) and effectively being dominated by Anglo American PLC (with 85% shareholding). *See* De Beers Consolidated Mines Proprietary Ltd. Manual, at 2 (June 2021), https://www.debeersgroup.com/~/_media/Files/D/De-Beers-Group-V2/documents/dbcm-and-subsidiaries-paia-manual.pdf; De Beers PLC Annual Financial Statements for the Year Ended 31 December 2022, at 2 (“The Company is the holding company for the De Beers Group of companies, which consists of the Company, and all entities (which include subsidiaries, joint arrangements and associates) that are controlled, jointly controlled or significantly influenced by the Company (the ‘Group’ or ‘De Beers’). . . . De Beers is 85% owned by Anglo American plc, with the remaining 15% interest held by the Government of the Republic of Botswana.”). De Beers PLC also acts as a direct successor in interest to a Duchy of Luxembourg holding company also named as a Third-Party Defendant in this lawsuit, De Beers S.A., which ceased operation in 2016, after its registered office was changed to the Bailiwick of Jersey and name changed to De Beers PLC. *See* Minutes of De Beers S.A. Shareholders Meeting, at 3 (Nov. 10, 2016).

Based on these allegations and the record before the Court at this preliminary stage, the Court finds (i) the Receiver has made the required *prima facie* showing that De Beers PLC, whether individually or as a successor in interest to De Beers Consolidated Mines Ltd. and/or Anglo American Corporation of South Africa Ltd., was an alter ego of Cape or part of an amalgamated, single business enterprise, or benefitted from the use of Cape as its agent, with respect to the mining, production, manufacture, and distribution of asbestos fiber (among other valuable minerals, metals, and other materials handled by the Oppenheimer mining empire) from South Africa to the United States of America, including to South Carolina, and (ii) the exercise of personal jurisdiction over De Beers PLC is proper at this time, including based on the longstanding activities and business of the Anglo/De Beers Group to mine, market, and distribute various minerals, including asbestos and diamonds, to the United States of America, including South Carolina.

v. De Beers UK Ltd.

De Beers UK Ltd. is alleged to be a corporation organized under the laws of England, United Kingdom, with its principal place of business in London, England, United Kingdom. Third-Party Compl. ¶ 7. De Beers UK Ltd. is among certain Oppenheimer Third-Party Defendants—with or through predecessors in interest—alleged to have owned, controlled, operated, or dominated Cape in furtherance or in concert with Oppenheimer business interests in South Africa, the United kingdom, and elsewhere, thereby financially benefiting with respect to Cape’s asbestos business in the United States and its perpetuation of the liability-avoidance scheme. *See id.* ¶¶ 120–21. De Beers UK Ltd. is also alleged to be involved in expanding business activities in the United States under the De Beers name, including bringing litigation and enforcing trademarks or other valuable rights. *Id.* ¶ 122. Moreover, this entity is effectively alleged to be a successor in interest

to De Beers Consolidated Mines Ltd. (as formed in 1888) and responsible for actions as part of various entities in the “De Beers Group,” which have been created since the 1970s and act as “successors in interest and beneficiaries of Cape’s liability-avoidance scheme, co-responsible for Cape’s tortious conduct.” *See id.* ¶¶ 45, 112, 122.

Other public materials buttress the Receiver’s assertions that De Beers UK Ltd. may bear responsibility as a successor in interest to Anglo American Corporation of South Africa Ltd. and/or De Beers Consolidated Mines Ltd., in light of the terms and structure of its creation in 1986 (*e.g.*, as a potential forerunner to other corporate maneuvers of the Anglo/De Beers Group to mitigate corporate/geopolitical risks during the 1990s through major reorganizations, as referenced above). In addition, materials published by De Beers UK Ltd. confirm the close relationship and operation with other members of the De Beers Group, with De Beers UK Ltd. acting as a “wholly-owned subsidiary of De Beers plc,” which in turn “is an 85% owned subsidiary of Anglo American plc,” whose “principal activity is the provision of corporate functions and marketing services for the De Beers Group . . . and development and maintenance of intellectual property.” De Beers UK Limited Annual Report and Financial Statements for the Year Ended 31 December 2022, at 1.

Based on these allegations and the record before the Court at this preliminary stage, the Court finds (i) the Receiver has made the required *prima facie* showing that De Beers UK Ltd., whether individually or as a successor in interest to De Beers Consolidated Mines Ltd. and/or Anglo American Corporation of South Africa Ltd., as an alter ego of Cape or part of an amalgamated, single business enterprise, or benefitted from the use of Cape as its agent, with respect to the mining, production, manufacture, and distribution of asbestos fiber (among other valuable minerals, metals, and other materials handled by the Oppenheimer mining empire) from South Africa to the United States of America, including to South Carolina, and (ii) the exercise of

personal jurisdiction over De Beers UK Ltd. is proper at this time, including based on the longstanding activities and business of the Anglo/De Beers Group to mine, market, and distribute various minerals, including asbestos and diamonds, to the United States of America, including South Carolina.

C. The Charter Third-Party Defendants.

The Receiver also has alleged sufficient facts to make a *prima facie* showing that the exercise of jurisdiction is proper over the Charter Third-Party Defendants under both the alter ego and single business enterprise theories. As alleged in the Third-Party Complaint, and further supported by publicly available materials that have been presented to the Court, both Charter and Central Mining were alter egos of Cape—used to exert significant control over Cape and to expand the Oppenheimer family’s business holdings internationally. *E.g.*, Third-Party Compl. ¶¶ 54, 58. As their parent and alleged successor in interest, ESAB runs Central Mining and Charter, exercising control over these two entities critical to Cape’s business and perpetuation of the liability-avoidance scheme (including in furtherance of the Oppenheimer mining empire, *supra*). For the reasons described below, jurisdiction should be exercised over the Charter Third-Party Defendants.

i. Central Mining.

a. Alter Ego.

The Third-Party Complaint alleges specific facts indicating that Central Mining, an Anglo-controlled entity, exerted significant control and operational oversight over Cape, acting as its alter ego. The Third-Party Complaint alleges facts in support of each of the *Builder Mart* factors. As alleged, in 1905, Central Mining was organized “to take over the assets and business interests of Wernher, Beit & Co., which included interests in Cape Asbestos”—*i.e.*, common ownership.

Third-Party Compl. ¶ 48. Central Mining or other affiliates of the Corner House Group continued to control Cape in the 1930s and after. *See id.* ¶ 50 & n.4. As of the Second World War, Central Mining “had become affiliated as an ‘Oppenheimer’ company’ and was also Cape’s majority shareholder.” *Id.* By 1949, Central Mining controlled Cape’s board of directors. *Id.* Central Mining’s control over Cape was not just based on ownership and financial dependence; it also exercised control over Cape’s personnel and operations. As alleged, Central Mining “leveraged its expertise and methods in gold mining to improve the performance at Cape mines by seconding its employees to Cape in South Africa” (at Anglo’s, rather than Cape’s, cost). *Id.* ¶ 52. According to the allegations of the Third-Party Complaint, during the years that Cape was shipping asbestos into the United States (including into South Carolina) through NAAC, it was predominately controlled by Central Mining (and later, Charter). *See In re Polyester Staple Antitrust Litig.*, 2008 WL 906331, at *13 (where one entity exercises significant control over the “day to day” operations of another entity, contacts of the subsidiary can be imputed to the parent). As a result, the Court finds it is appropriate to impute Cape’s contacts onto Central Mining to establish personal jurisdiction.

b. Single Business Enterprise.

For the same reasons this Court has personal jurisdiction over Central Mining as an alter ego of Cape, so too does the single business enterprise theory establish jurisdiction. The Third-Party Complaint alleges facts showing that Central Mining (including under Anglo’s ownership), controlled Cape for a period of decades during which it was flooding the U.S. (and South Carolina) market with asbestos, including with the assistance of NAAC, demonstrating that the entities were acting with a “common business purpose.” And the Third-Party Complaint alleges ample abuse, wrongdoing, and injustice in connection with that “common business purpose,” namely the effort

to take advantage of the lucrative U.S. (and South Carolina) market for asbestos while hiding the known dangers of that product and siphoning profits from the United States to foreign affiliates for the purpose of insulating Cape from exposure to American creditors injured by its asbestos. *Pertuis*, 817 S.E.2d at 279–81; Third Party Compl. ¶ 70.

ii. Charter

The Court finds personal jurisdiction over Charter is also present, both as an alter ego of Cape and under the single business enterprise theory. An alter ego claim “requires a showing of (1) total domination and control of one entity by another and (2) inequitable consequences caused thereby.” *Oskin v. Johnson*, 400 S.C. 390, 400, 735 S.E.2d 459, 465 (2012) (citing *Colleton Cnty. Taxpayers Ass’n v. Sch. Dist. of Colleton Cnty.*, 371 S.C. 224, 237, 638 S.E.2d 685, 692 (2006)). The Third-Party Complaint meets these substantive requirements, along with the *Builder Mart* factors.

a. Alter Ego.

The Third-Party Complaint is replete with detailed factual allegations suggesting that Charter, as an instrumentality of the Oppenheimer Third-Party Defendants, dominated Cape. For example, it alleges that, in 1965, the Oppenheimer family merged Central Mining with two other mining companies to create Charter. While Charter had direct and indirect interests in Cape since its founding, in 1969, Charter acquired majority ownership of Cape, thereby gaining control over Cape. Third-Party Compl. ¶ 55. Taken as true, as the Court must at this stage, the Third-Party Complaint alleges the distinctions between Charter and Anglo were superficial, including that the entities shared office space, personnel, and board members—with the Oppenheimers consistently dictating major decisions within the Anglo/De Beers/Charter “Greater Group.” *Id.* ¶¶ 57, 59. Cape was Charter’s primary operating company and principal industrial subsidiary, and, by extension,

Cape and its subsidiaries were part of the Anglo American group of companies that dominated the mining economy in South Africa. *E.g., id.* ¶¶ 55–56, 61–62. Having comprehensively alleged ownership, financial, operational, and decision-making control, the Third-Party Complaint also makes extensive allegations concerning the resulting harm, or “inequitable consequences” produced by Charter’s control over Cape. As with Central Mining, during Cape’s “most bountiful years” of shipping asbestos into the United States (including into South Carolina) through NAAC, without regard for the grave harm it would cause, it was owned and controlled by Central Mining and Charter, both of which were controlled in turn by the Anglo/De Beers Group. *Id.*, ¶¶ 50–65, 70.

b. Single Business Enterprise.

The alleged lack of meaningful separation between Anglo, Cape, Charter, and Central Mining coupled with their coordinated effort to capitalize on the U.S. market for asbestos while avoiding the attendant liabilities associated with mining, marketing, and distributing a product with known health hazards support the conferral of jurisdiction over these entities as a single business enterprise. As alleged in the Third-Party Complaint, Charter was designed to serve as a “corporate cushion” for Anglo that could quickly purge cash to other Oppenheimer-affiliated entities and add a level of separation between Anglo and Cape, in an attempt to insulate Anglo from the liability associated with a profitable asbestos business. *Id.* ¶ 65. The Oppenheimer family’s control of Central Mining, Charter, Cape, and its other enterprises was central to the management of its businesses and the domination of the South African mining economy, and support conferral of jurisdiction as a single business enterprise.³⁶ *Id.* ¶¶ 67–68.

³⁶ Asbestos plaintiffs have previously sought—with some success—to hold Charter and Central Mining liable for Cape’s unethical business practices. *See, e.g., Cameron v. Owens-Corning Fiberglas Corp.*, 296 Ill. App. 3d 978, 989 (1998) (“Plaintiffs have alleged a conspiracy with

iii. ESAB.

As the alleged parent company of and successor in interest to Central Mining and Charter, the Third-Party Complaint alleges sufficient facts demonstrating that jurisdiction over ESAB is likewise proper under both the alter ego and single business enterprise theories. The Third-Party Complaint and the record before the Court ties ESAB to Cape through its subsidiaries, Central Mining and Charter. The Third-Party Complaint alleges that, in the 1980s and 1990s, the Oppenheimer's chose to demote the role of Charter in its portfolio, including re-registering it as a public company (renamed Charter PLC) in 1993. *Id.* ¶ 123. Three years later, Charter sold its

sufficient specificity to provide the circuit court with jurisdiction over Charter.”); *Craig v. Johns-Manville Corp.*, 1987 WL 10191, at *18 (E.D. Pa. Apr. 23, 1987) (predicting that “on the present record, the New Jersey Supreme Court would not hesitate to pierce the ‘diaphanous veil’ between Charter and Cape”), *rev’d*, 843 F.2d 145, 150 (3d Cir. 1988) (on appeal, contradicting the trial judge’s assessment and myopically interpreting Cape’s history to find that “evasion of tort liability has never, in itself, been sufficient basis to disregard corporate separateness” under N.J. law); *Paravati v. Bell Asbestos Mines, Ltd.*, 1986 WL 492, at *1 (E.D. Pa. Dec. 3, 1986) (denying Charter’s motion for partial summary judgment because “the case in its current posture has disputed issues of material fact”); *Parker v. Bell Asbestos Mines, Ltd.*, 607 F. Supp. 1397, 1404 (E.D. Pa. 1985) (“[I]f the plaintiff . . . can prove that Charter controls Cape, and that Cape has deliberately avoided liability to American plaintiffs, it will be fair to ask Charter to stay and defend Cape’s position.”); *Barber v. Pittsburgh Corning Corp.*, 464 A.2d 323, 328–29 (Pa. Super. Ct. 1983) (finding that “the record shows clearly the extent to which [Cape] comprises an operating arm of Charter”). Dismissals of Charter in prior lawsuits in other states are not binding on this Court—and are distinguishable from the facts alleged in this third-party action, which is still at an early stage in the proceeding. *See Culbreth v. Amosa (Pty.) Ltd.*, 898 F.2d 13, 14–15 (3d Cir. 1990) (affirming summary judgment dismissal of alter ego claim under Pennsylvania law on an apparently bare record showing only that Charter became Cape’s majority owner in 1969); *Mohn v. Int’l Vermiculite Co.*, 498 N.E.2d 375, 376–77 (Ill. App. Ct. 1986) (declining to reverse ruling that “Charter was [not] estopped from relitigating its relationship with Cape”). This action is not a “subsequent suit by the same parties when the claims arise out of the same transaction or occurrence that is the subject of the prior suit between those parties.” *Sub-Zero Freezer Co. v. R.J. Clarkson Co.*, 308 S.C. 188, 190–91, 417 S.E.2d 569, 571 (1992). Instead, those cases involve a course of conduct that is not within the same scope of the allegations in the Third-Party Complaint, which are exhaustive in implicating other members of a broader scheme involving Cape. Further, the issues addressed in the Third Circuit and otherwise have never been decided under South Carolina law. The doctrines of res judicata and/or collateral estoppel do not apply.

interest in Cape for approximately £48 million. *Id.* In 2008, Charter PLC became Charter International PLC, and was acquired by Colfax Corporation (“Colfax”) in 2012 at a valuation of \$2.4 billion. *Id.* In 2022, Colfax spun off ESAB. *Id.* ¶ 124. ESAB now is the parent company of both Charter and Central Mining, and as the alleged successor in interest as well, may bear responsibility for them. *Brown*, 128 S.C. 428, 123 S.E. at 98–99.

In addition, as detailed in the Receiver’s Omnibus Opposition to the Personal Jurisdiction Motions, it appears ESAB may conduct material business in the State of South Carolina. Discovery may reveal the extent of that business, as well as other facts regarding ESAB’s relation with Central Mining and Charter that further support holding ESAB liable as a corporate successor. For example, public materials suggest that (i) Charter and Central Mining (as Charter’s subsidiary) are not actively engaged in business, (ii) Charter and Central Mining rely on ESAB for “sufficient financial resources and support” to remain a going concern, including through a letter of financial support provided by ESAB, and (iii) Charter and Central Mining are assessed as a going concern on a year-to-year basis. *See* Strategic Report, Report of the Directors and Audited Financial Statements for the Year Ended 31 December 2021 for Charter Consolidated Limited, at 3, 5, 12, 21 (Oct. 19, 2022); Strategic Report, Report of the Directors and Audited Financial Statements for the Year Ended 31 December 2022 for Charter Consolidated Limited, at 3, 12, 16, 21 (Oct. 24, 2023). Discovery may reveal additional details of these financial arrangements and how and why the historic mining houses of Central Mining and Charter—alleged to be directly responsible for Cape’s business practices and liability-avoidance scheme—are being maintained as going concerns by a Maryland-based welding and cutting business (ESAB).

Because the acts of Charter and Central Mining are alleged to have been carried over to ESAB, ESAB cannot skirt jurisdiction at this time.

V. The Exercise of Specific Jurisdiction Over Each Third-Party Defendant Conforms with the Constitutional Requirements.

As detailed above, the Third-Party Defendants’ contacts with South Carolina—including through their agent, Cape—satisfy South Carolina’s test for the exercise of specific jurisdiction. *See* S.C. Code §§ 36-2-803(4), (8) (contemplating jurisdiction over a person who acts directly or through agent). Specifically, Cape allegedly acted as the agent of the Third-Party Defendants in functioning as “the asbestos-mining leg of an amalgamated mining empire based out of South Africa” that facilitated the movement of asbestos from South African mines to the United States (including into South Carolina) over a period of decades, while concealing its known dangers. Third-Party Compl. ¶¶ 51, 85–86. It further is alleged to have acted as the agent of the Third-Party Defendants in its implementation of a liability-avoidance scheme pursuant to which it accelerated the flow offshore of proceeds from asbestos sales in the United States, minimizing the capital available to compensate South Carolinians hurt or killed by its asbestos, and refusing to accept process or appear in U.S. legal proceedings. *Id.* ¶¶ 91, 93, 97.

The Court finds the exercise of specific jurisdiction is proper because the Third-Party Complaint’s allegations demonstrate (i) the Third-Party Defendants have purposefully availed themselves of the privilege of conduct activities in South Carolina, (ii) the claims at issue arise from those activities, and (iii) the exercise of personal jurisdiction would be constitutionally reasonable. *Charleston Equities*, 2017 WL 10504748, at *2.

First, through their agent, Cape, the Third-Party Defendants have purposefully availed themselves of the benefits and protections of South Carolina’s law, including purposefully targeting the U.S. market for asbestos—as well as for numerous other minerals, including diamonds, in the case of certain Third-Party Defendants—and, as a result, reaping massive profits from the sale of such minerals (including without limitation crocidolite and amosite asbestos) in

that market, including in South Carolina, over a period of decades. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475–76 (1985).

Second, the claims arise out of and relate to those activities—namely, the coordinated effort to mine, market, and sell massive amounts of asbestos (among other minerals) into the United States, including in South Carolina, funnel the resulting profits overseas (thereby minimizing the capital available to compensate South Carolinians hurt or killed by Cape’s asbestos), and then refuse to accept process or appear in U.S. legal proceedings. Through this litigation, the Receiver seeks to identify, preserve, and marshal the assets of Cape and its affiliates, including those that were funneled overseas, to ensure they are available to redress the devastating toll caused by this scheme. *Helicopteros*, 466 U.S. at 414.

Third, exercise of personal jurisdiction over the Third-Party Defendants “would comport with ‘fair play and substantial justice.’” *Burger King*, 471 U.S. at 476 (quoting *Int’l Shoe v. Washington*, 326 U.S. 310, 320 (1945)). In so finding, this Court has weighed “the burden on the defendant, the forum State’s interest in adjudicating the dispute, the Plaintiff’s interest in obtaining convenient and effective relief, the interstate judicial system’s interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies.” *Christian Sci. Bd. of Dirs. of the First Church of Christ, Scientist v. Nolan*, 259 F.3d 209, 217 (4th Cir. 2001) (quoting *Burger King*, 471 U.S. at 477). The Court finds that fair play and substantial justice sharply favor the exercise of personal jurisdiction, especially at this stage of the litigation and in light of the substantial allegations and supporting documentation presented to the Court thus far.³⁷

³⁷ See, e.g., Talley Affidavit ¶ 41 (“Assuming the facts as alleged in the third-party complaint by the Receiver are true (which I take to be true for purposes of this affidavit), they resemble a textbook case of strategic and inefficient asset stripping—one that suggests the costs of [limited

Exercise of such jurisdiction does not offend traditional notions of fair play and substantial justice, because “South Carolina has a substantial interest in protecting its citizens from unfair actions by out of state defendants who use the corporate form as a shield from liability.” *Charleston Equities*, 2017 WL 10504748, at *5. Taking the allegations as true, as the Court must at this stage, the Third-Party Defendants participated in or benefitted from a scheme to shrug off the serious injury and death they knew would result from distributing asbestos in pursuit of even higher profits, to actively conceal or mispresent health risks of asbestos, and to siphon funds out of the United States to benefit foreign affiliates to reduce the proceeds available to individuals hurt or killed by asbestos in South Carolina. *See, e.g.*, Buxton Affidavit ¶ 7 (“A dismissal at this stage of pleadings would only embolden domestic and international abuse of our system of corporate jurisprudence in South Carolina, a system ultimately established for the benefit of its citizens and not for use in purposefully harming them.”).

* * * * *

For the reasons set forth herein, the Court **DENIES** the Dissolution Motions in their entirety. Further, for the reasons set forth herein, the Court concludes that its exercise of personal jurisdiction is proper as to each of the remaining Third-Party Defendants and therefore **DENIES** each of the Personal Jurisdiction Motions.

IT IS SO ORDERED.

[JUDGE’S E-SIGNATURE PAGE FOLLOWS]

liability] exceed the benefits of [limited liability] in these circumstances. Such inefficiencies, as shown above, can be efficiently deterred by a credible commitment to relax the [limited liability] shield. Consequently, and on this basis, economic case for disregarding the veil of limited liability among the defendants (or a sizeable number of them) appears strong.”).



Richland Common Pleas

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

Case Number: 2023CP4001759

Type: Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2023-12-06 10:19:46 page 74 of 74

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

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

Plaintiff,

vs.

Winston & Strawn, LLP,

Defendant.

In re: Asbestos Personal Injury Litigation
Coordinated Docket

Civil Action Number:

SUMMONS

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Original Complaint in this action, a copy of which is hereby served on you, and to serve a copy of your Answer to the said Complaint upon the subscribers at 1722 Main Street, Suite 200, Columbia, South Carolina 29201, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in such Complaint.

HARLING & WEST, LLC

By: s/W. Jonathan Harling
W. Jonathan Harling, Esquire
SC Bar# 16658
1722 Main Street, Suite 200
Columbia, SC 29201
Phone: 803-252-2050
Fax: 800-762-4915
Email: jharling@harlingandwest.com
Columbia, South Carolina

Robert T. Bonds, Esquire
RIKARD & PROTOPAPAS
SC Bar #106271
2104 N. Beltline Blvd.
Columbia, SC 29204
803.978.6111

rbonds@rplegalgroup.com

Attorneys for the Plaintiff

September 5, 2024

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

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

Plaintiff,

vs.

Winston & Strawn, LLP,

Defendant.

In re: Asbestos Personal Injury Litigation
Coordinated Docket

Civil Action Number:

COMPLAINT

COMES NOW the duly appointed South Carolina Receiver for Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited (“Receiver” or “Plaintiff”) complaining of the Defendant Winston & Strawn, LLP (“Defendant” or “Winston”), who through undersigned counsel respectfully shows unto the Court as follows:

This case arises out of Winston’s threat to sue South Carolina attorney Peter D. Protopapas personally and related to his official acts as the court-appointed receiver for Cape PLC in the High Court of London and Wales. The *Barton* doctrine bars Winston’s gambit in London, and Winston knows that. The United States Supreme Court, the United States Court of Appeals for the Fourth Circuit, and the United States District Court for the District of South Carolina have all determined that, pursuant to the *Barton* doctrine, the South Carolina receiver court appointing the receiver has exclusive jurisdiction over any action against that state court-appointed receiver.¹ Winston threatens Mr. Protopapas with litigation against him personally if he will not agree to the entry of

¹ See, e.g., *Protopapas v. Travelers Casualty & Surety Co.*, 94 F.4th 351, 358 (4th Cir. 2024) (“[e]xercising federal jurisdiction over a suit by or against a state-appointed receiver, who functions as an “arm” or “executive” of the state-receivership court, would infringe on the state court’s control over the receivership assets—its exclusive jurisdiction. Thus, as a matter of comity, as well as custom, the *Barton* doctrine rests on this exclusivity of the state receivership over the assets before it as a matter of jurisdiction”).

an order which on its face violates the lawful orders of the receivership court appointing him as receiver and tasking him with an array of specific duties. The Receiver seeks declarations as to the relationship between the parties, the role of the Receiver, and the nature of the Winston letter which demands violation of this Court's orders.

PARTIES

1. The Receiver is a lawyer who was appointed as Receiver for Plaintiff, by Order of The Honorable Chief Justice Jean H. Toal (ret.) on March 17, 2023, in *Keith W. Park, Individually and as Personal Representative of the Estate of Isabella Park vs. Armstrong International, Inc., et al.* (Civil Action 2021-CP-40-02727, Richland County). The Receiver maintains his residence and principal place of business in Richland County, South Carolina. The Receiver has not been to England for over 20 years.

2. Cape PLC, n/k/a Cape Intermediate Holdings Ltd., the entity in Receivership, was deeply involved in all elements of the global asbestos industry, mining raw asbestos in Apartheid-era South Africa, and then selling asbestos fiber to manufacturers of asbestos products in the United States, of which substantial quantities which were sold and used in South Carolina. Because Cape failed to answer a South Carolina asbestos personal injury case in this Court (thereby defaulting), Chief Justice Toal (ret.) appointed the Plaintiff "with the power and authority [to] fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape whatever they may be." See Order of Appointment. Pursuant to Court Order and years of well-established jurisprudence, the Receiver acts as an arm of the Court appointing the Receiver (the "Receiver Court"). The Receiver Court maintains exclusive jurisdiction over the Receivership and lawsuits against the Receiver.

3. Plaintiff is informed and believes the Defendant, Winston & Strawn, LLP, is a limited liability partnership organized under the laws of the State of Delaware with offices in North

Carolina and lawyers licensed in the State of South Carolina, including Kobi Kennedy Brinson, Terry Brown Jr., Stacie Knight, and Alyson Traw. As lawyers licensed in the State of South Carolina, Kobi Kennedy Brinson, Terry Brown Jr., Stacie Knight, and Alyson Traw are familiar, or should be familiar, with laws governing lawyers and receiverships. On information and belief, Winston & Strawn LLP is the ultimate parent company of Winston & Strawn London LLP, and Winston & Strawn LLP holds Winston & Strawn London LLP as the London office of its international law firm, one of fifteen offices identified as part of Winston & Strawn LLP.

JURISDICTION

4. This Court has jurisdiction over the matters alleged herein pursuant to S.C. Code Ann. §§ 36-2-802 and 36-2-803, Article V of the Constitution of the State of South Carolina, and the Court's plenary powers.

VENUE

5. Venue is proper in this Court because it is the Receiver Court, and as such, all pending and new filings related to the Receivership must be filed in this Court. Further, on March 3, 2019, pursuant to the Order of the Supreme Court of South Carolina, Order Number 2017-03-03-01, the Chief Justice Toal (ret.) was appointed to have jurisdiction in all circuits in the State to dispose of all pretrial matters and motions, as well as trials, arising out of asbestos and asbestos litigation filed within the South Carolina state court system. Thus, the Honorable Jean H. Toal has jurisdiction over this matter.

FACTS

6. Once again, lawyers are attempting to assist Cape in avoiding liability for the damage its asbestos caused in the United States.

7. Defendant purports to represent Cape Intermediate Holdings Limited ("CIHL"), the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd. and Cape PLC)

(“Cape”), and a Bailiwick of Jersey entity also named Cape plc formed in 2011. Cape was considered an industrial gem of the Anglo and De Beers mining houses, which were controlled by the powerful Oppenheimer family of Johannesburg, South Africa.² Cape owned and operated asbestos mines in South Africa and was involved in all elements of the global asbestos industry, including the mining of raw asbestos fiber and then selling it to the most dominant manufacturers of asbestos-containing products in the United States—substantial quantities of which were used in South Carolina. From the time Cape entered the U.S. market through its wholly owned subsidiary, North American Asbestos Corporation (“NAAC”), Cape was well aware its asbestos harmed U.S. citizens but still sent this material into the United States and South Carolina.

8. By 1977, Cape and its subsidiary NAAC were named as defendants in asbestos personal injury lawsuits in the United States, and ultimately contributed \$1 million to a settlement in litigation in Tyler, Texas. Rather than take further responsibility for its tortious conduct, Cape liquidated NAAC, created a new, disguised United States company to continue its American operations, and openly refused to participate in future United States tort litigation.

9. Having employed complex and fraudulent legal maneuvering to avoid liability in American asbestos litigation—in the face of the bankruptcies of scores of companies that used Cape-supplied raw asbestos fiber—a post-asbestos Cape emerged as a world leader in its industrial insulation, scaffolding, and corrosion protection activities under the name Cape Industrial Services. In 2017, Cape plc was acquired by the Altrad Group, “a world leader in industrial services with turnover of £5 billion per year.”³

² See Laurie Flynn, *Studded with Diamonds and Paved with Gold: Miners, Mining Companies and Human Rights in Southern Africa* 180 (1992) [hereinafter, “Flynn (1992)”] (“Cape Industries, a British-registered part of Harry Oppenheimer’s Anglo American empire . . . [was] among the biggest asbestos producers from the beginning. . .”).

³ See *Exhibit 1*, Letter from Winston & Strawn to Peter D. Protopapas, Aug. 30, 2024, at 2.

10. Cape and its successors, including Altrad Group-related entities, are now forced to reckon with their U.S. asbestos scheme after more than four decades of liability avoidance. These entities, which the Receiver named as Third-Party Defendants to an asbestos personal injury action in South Carolina state court, have gone to great lengths to avoid the merits of the litigation—serially appealing non-appealable orders, improperly removing a state court case to federal court, and now threatening the receiver personally with an extra-jurisdictional temporary restraining order in the High Court of Justice of England and Wales.

BACKGROUND OF RECEIVERSHIP

A. The Receiver was duly appointed pursuant to South Carolina law when Cape failed to appear in an asbestos personal injury action.

11. On June 4, 2021, Isabella Park filed a lawsuit in Richland County, South Carolina asserting personal injury claims arising from asbestos exposure against (among others), Cape plc, individually and as successor in interest to Cape Asbestos Company Ltd. *See Park v. Armstrong Int’l, Inc. et al.*, Summons and Complaint, No. 21-CP-40-02727 (June 4, 2021), at 1, 7. Ms. Park sought relief after being “diagnosed with mesothelioma caused by exposure to asbestos dust and fibers” unintentionally “brought home” for years “as a result of her husband’s work with and around asbestos-containing products.” *Id.* at ¶ 4.

12. On June 9, 2021, less than five months after her diagnosis, and within five days of filing her lawsuit, Ms. Park passed away. On November 17, 2021, Ms. Park’s son, Keith, amended the complaint, appearing individually and as personal representative to Ms. Park’s estate (the “*Park* Plaintiffs”), to assert a wrongful death action. *See Park et al. v. Armstrong Int’l, Inc., et al.*, First Amended Simmons and Complaint, No. 21-CP40-02727 (Nov. 17, 2021). The amended complaint added Cape Intermediate Holdings Limited (f/k/a Cape Intermediate Holdings PLC) as a defendant, though both Cape Intermediate Holdings Limited and Cape PLC referred to the same

English company originally named Cape Asbestos Co. Ltd. and were identified as successors in interest to Cape Asbestos Company Ltd. *Id.* at 9; *see also id.* at ¶¶ 26–27. In December 2021, the *Park* Plaintiffs served the named Cape entity, which (as has been its practice for decades) never answered, moved, or otherwise responded to this complaint.

13. When Cape failed to answer the Park Complaint, Mr. Park moved for the appointment of a Receiver. *See Park et al. v. Armstrong Int’l, Inc., et al* March 6, 2023, Motion to Appoint Receiver, 21-CP-40-02727, Richland County). On March 17, 2023, Chief Justice Jean H. Toal (ret.) appointed Peter D. Protopapas as 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. *See Park et al. v. Armstrong Int’l, Inc., et al.*, Order Appointing Receiver, . 2021-CP-40-02727 (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.*

14. In his role as Receiver, the Plaintiff was and is charged by order of the Court to:

(F)ully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape whatever they may be. This order is inclusive of, but not limited to, the right and obligation to administer any insurance assets of Cape as well as any claims related to the actions or failure to act of Cape’s insurance carriers.

Id.

15. The South Carolina Receivership Court further Ordered, in relevant part, that it

(E)xpects the Receiver to investigate the existence of all insurance coverages potentially available to the company in receivership.

...

The Court further orders that, as the Receiver Court, the Receiver or Cape may not be sued outside this Court without

obtaining the Receiver's consent or an order of this Court prior to doing so.

Id. (emphasis added).

B. Chief Justice Jean Hoefer Toal (ret.), a prominent and respected South Carolina jurist, appointed the Receiver.

16. Then Chief Justice of the South Carolina Supreme Court Donald W. Beatty appointed Chief Justice Jean H. Toal as the Chief Judge for Administrative Purposes over all asbestosis and asbestos litigation filed within the South Carolina state court system on May 28, 2019. As former United States Supreme Court Justice Sandra Day O'Connor wrote of Chief Justice Toal, "Jean is truly a trailblazer in her state." W. Lewis Burke, Jr. & Joan P. Assey, *Madam Chief Justice: Jean Hoefer Toal of South Carolina*(2016) at 1. Another former United States Supreme Court Justice, Ruth Bader Ginsburg, with whom Justice Toal worked on a seminal South Carolina civil rights case from 1971 to 1973, wrote of Justice Toal, "I am pleased that I was able to collaborate with Jean at the very beginning of her career and to watch with admiration as she has risen to the pinnacle of South Carolina's judicial system." *Id.* at 6.

17. The South Carolina Supreme Court's biography of Justice Toal best articulates her storied career. "Chief Justice Jean Hoefer Toal began her service as an Associate Justice on the Supreme Court of South Carolina on March 17, 1988, becoming the first woman to serve as a Justice of the South Carolina Supreme Court. She was re-elected in February of 1996 and was elected as Chief Justice of the South Carolian Supreme Court on March 23, 2000, for the balance of the term of her predecessor, which expired June 30, 2004. She was re-elected as Chief Justice in February of 2004 and again in February of 2014, each time for ten-year terms."⁴

⁴ *Chief Justice Jean Hoefer Toal*, South Carolina Judicial Branch Biography, available at <https://www.sccourts.org/supreme/displayJustice.cfm?judgeID=1118> (last accessed Sept. 4, 2024).

18. Prior to becoming a Justice on the South Carolina Supreme Court, Justice Toal was a practicing lawyer. “As a lawyer she appeared on a frequent basis in all levels of trial and appellate courts in South Carolina. She also had considerable experience as a litigator in United States District Court, the Fourth Circuit Court of Appeals and appeared as co-counsel before the United States Supreme Court. Her twenty years as a practicing lawyer included a balance of plaintiff and defense work, criminal trial work, and complex constitutional litigation. She wrote many trial and appellate briefs at all court levels. She also had considerable administrative law experience in litigation involving environmental matters, federal and state procurement, hospital certificates of need, employment matters and election matters.”⁵

19. “In addition to practicing law, Chief Justice Toal utilized her law degree in public service. Beginning in 1975 she served in the South Carolina House of Representatives representing Richland County for 13 years. She was the first woman in South Carolina to chair a standing committee of the House of Representatives. She served as Chairman of the House Rules Committee and Chairman of the Constitutional Laws Sub-Committee of the House Judiciary Committee. Her legislative service included floor leadership of complex legislation in the fields of constitutional law, utilities regulation, criminal law, structure of local government, budgetary matters, structure of the judicial system, banking and finance legislation, corporate law, tort claims, workers' compensation, freedom of information act and environmental law.”⁶

20. “During her 27 years on the Supreme Court, Justice Toal has written opinions addressing the full range of issues both criminal and civil which come before her Court. Also, she and two of her law clerks have authored a book entitled Appellate Practice in South Carolina.”⁷

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

21. “In addition to her work on the bench, Chief Justice Toal has become chief advocate for South Carolina's Judicial Automation Project. Under her leadership, technology initiatives are being integrated into the eight levels of the South Carolina Judiciary. Some of the technology projects include high-speed network connectivity to all 46 county courthouses and an on-line, statewide case management system. Because of her efforts in promoting technology as a way to create a more efficient court system, Chief Justice Toal was recognized by Government Technology magazine as one of the 2002 "Top 25 Doers, Dreamers & Drivers" of technology in government.”⁸

C. Following his appointment, the Receiver initiated a Third-Party Action against participants in and beneficiaries of Cape’s liability avoidance scheme.

22. Once appointed, the Receiver quickly discovered through analysis of publicly available court records and other documentation that Cape’s failure to appear in *Park* was just one example of a decades-long liability avoidance scheme concocted from the time that Cape’s U.S. subsidiary NAAC was established in 1953 to facilitate Cape’s sale of raw asbestos fibers to customers in the United States, and relied upon to escape U.S. liability once NAAC and Cape began facing torrents of asbestos-related litigation in the late 1970s.

23. On June 30, 2023, the Receiver filed a Third-Party Complaint against Mohed Altrad and Altrad Investment Authority S.A.S. (“Altrad Owners Third Party Defendants”); the U.S. subsidiaries of the Altrad Group, Arranco US LLC (“Arranco”) Hawk Bidco (US) Inc., and Sparrows Offshore, LLC (“Altrad Sparrows Third-Party Defendants”); Central Mining & Investment Corporation Ltd, Charter Consolidated Ltd., and ESAB Corporation (“Charter Third-Party Defendants”); Anglo American PLC (individually and as successor in interest to Anglo American Corporation of South Africa Ltd.), De Beers PLC, De Beers Centenary AG, De Beers

⁸ *Id.*

UK Ltd., and De Beers Consolidated Mines Pty. Ltd. (“Oppenheimer Third Party Defendants”) (collectively, the “Third Party Defendants”), asserting claims for (i) unjust enrichment, (ii) constructive trust, (iii) alter ego and veil-piercing liability, and (iv) an accounting. *See Tibbs v. 3M Company, et al.*, Summons and Third Party Complaint, No. 23-CP-40-01759 (June 30, 2023). Each of the Third-Party Defendants named in the Third-Party Complaint is alleged to have facilitated, caused, or directed Cape’s U.S.-based asbestos sales and liability-avoidance scheme, or otherwise acted as successors in interest to or beneficiaries of entities involved in that scheme, and are therefore responsible for the bodily injuries underlying the claims against Cape, including specifically those claims asserted by South Carolinians.

24. The 65-page Third-Party Complaint alleges a deliberate system of avoiding responsibility for the harm caused by Cape’s asbestos over a period of decades. In doing so, it categorizes the Third-Party Defendants into three groups: The Altrad Third-Party Defendants (Third-Party Compl. ¶ 119); the Oppenheimer Third-Party Defendants (*id.* ¶ 122); and the Charter Third-Party Defendants (*id.* ¶ 124). The Third-Party Complaint (along with other publicly available information) comprehensively describes the alleged interconnected history of Cape and certain of these entities, their alleged dominion over the South African commodity mining industry, and their alleged role in controlling, continuing, and/or benefitting from Cape’s strategic exploitation of the U.S. asbestos market as well as its accompanying alleged scheme to insulate itself, and its foreign affiliates and agents, from the resulting tort litigation exposure. *See Third-Party Complaint.*

ACTIVITIES IN CLEAR CONTRAVENTION OF THE *BARTON* DOCTRINE

25. Any claim by or against the Receiver falls squarely within the exclusive jurisdiction of the South Carolina Receivership Court under the doctrine articulated in *Barton v. Barbour*, 104 U.S. 126 (1881). Under the “*Barton* doctrine,” the state court that appoints a receiver maintains exclusive jurisdiction over all claims filed by and against that receiver—subject only to the state court’s own waiver of that exclusive jurisdiction. *McDaniel v. Blust*, 668 F.3d 153, 157 (4th Cir. 2012). In elaborating on the doctrine in *Porter v. Sabin*, 149 U.S. 473 (1893), the Supreme Court emphasized that federal courts *lack* jurisdiction because state receivership courts have *exclusive* jurisdiction over matters involving court-appointed receivers. The Supreme Court explained that “[w]hen a court exercising jurisdiction in equity appoints a receiver of all the property of a corporation, the court assumes the administration of the estate,” and “[t]he possession of the receiver is the possession of the court.” *Id.* at 479. The Receivership Court exercises exclusive *in rem* jurisdiction over all the property in its possession, including the Receiver’s claims on behalf of the estate. *See Penn Gen. Cas. Co. v. Commonwealth of Pennsylvania ex rel. Schnader*, 294 U.S. 189, 195 (1935) (“[T]he principle, applicable to both federal and state courts, is established that the court first assuming jurisdiction over the property may maintain and exercise that jurisdiction to the exclusion of the other. This is the settled rule with respect to suits in equity for the control by receivership of the assets of an insolvent corporation.”). And “[i]t is for *that court*, in its discretion, to decide whether it will determine for itself all claims of or against the receiver or will allow them to be litigated elsewhere.” *Porter*, 149 U.S. at 479 (emphasis added).

26. Further, the *Barton* doctrine is *not* an abstention doctrine, and no court has held that it is. Instead, it is an expression of the exclusivity of *in rem* jurisdiction. *See Penn Gen. Cas. Co.*, 294 U.S. at 195. Unlike familiar abstention doctrines, the *Barton* doctrine now also has a statutory basis as 28 U.S.C. § 959 codified the *Barton* doctrine and legislatively carved out one exception

from it. *See In re McKenzie*, 716 F.3d 404, 423 (6th Cir. 2013) (describing Section 959(a) as adding an “exception” to the *Barton* doctrine); *Satterfeld v. Malloy*, 700 F.3d 1231, 1237 (10th Cir. 2012) (same); *SEC v. Rubera*, 535 F. App’x 553, 554 (9th Cir. 2013) (“In *Barton v. Barbour*, the Supreme Court set forth the general rule—which, with a specific exception, is now embodied in 28 U.S.C. § 959(a).”).

27. The United States Court of Appeals for the Fourth Circuit in *Protopapas v. Travelers Casualty & Surety Co.*, 94 F.4th 351 (4th Cir. 2024), applying *Barton*, confirmed that the state court appointing a receiver has exclusive jurisdiction over that receiver :

Exercising federal jurisdiction over a suit by or against a state-appointed receiver, who functions as an “arm” or “executive” of the state-receivership court, would infringe on the state court’s control over the receivership assets—its exclusive jurisdiction. Thus, as a matter of comity, as well as custom, the *Barton* doctrine rests on this exclusivity of the state receivership over the assets before it as a matter of jurisdiction, and indeed we have confirmed as much. *See, e.g., Conway [v. Smith Dev., Inc.]*, 64 F.4th [540,] 545 [4th Cir. 2023] (noting that “*Barton* concerns subject-matter jurisdiction”); *McDaniel [v. Blust]*, 668 F.3d [153,] 156 [4th Cir. 2012] (noting that “[t]he Supreme Court established in *Barton* that before another court may obtain subject-matter jurisdiction over a suit filed against a receiver for acts committed in his official capacity, the plaintiff must obtain leave of the court that appointed the receiver”).

Id. at 358.

28. The United States District Court for the District of South Carolina likewise has routinely rejected attempts to remove cases involving receivers—properly remanding them back to the receivership courts that enjoy exclusive jurisdiction over them. *See, e.g., Pipe & Boiler Insulation, Inc. v. Conti’l Ins. Co. et al.*, No. 3:21-cv-03033-SAL, ECF No. 153, at 4–9 (S.C. Ct. Com. Pl. Mar. 9, 2023) (remanding receivership matter because “the *Barton* doctrine prevents Defendants from removing this matter, filed *by* a Receiver, to federal court,” while also considering judicial economy in light of the fact that any “settlement agreement is not final until the

Receivership Court approves the settlement”); *Protopapas v. Zurich Am. Ins. Co. et al.*, No. 3:21-cv-04086-DCC, ECF No. 180, at 4–6, 10 (S.C. Ct. Com. Pl. Feb. 24, 2023) (remanding receivership case because “*Barton*, and its subsequent application in *Porter*, act as a limitation on federal jurisdiction when a state court has previously exercised its authority by appointing a receiver,” such that allowing removal “would directly interfere with the exclusive jurisdiction of the receivership court over this dispute”); *see also Southern Insulation, Inc. v. OneBeacon Ins. Grp., Ltd.*, No. 3:22-cv-01308-MGL, ECF No. 46, at 4–6 (S.C. Ct. Com. Pl. Nov. 8, 2022) (remanding receivership case on other basis).

29. Despite these clear pronouncements from the United States Supreme Court, the United States Court of Appeals for the Fourth Circuit, and the United States District Court for the District of South Carolina, Anglo American plc improperly removed the entire case from the receivership court to federal court on June 28, 2024—almost a year after the Receiver filed its third-party action against the Third-Party Defendants in *Tibbs*. Even though Altrad Investment Authority S.A.S. and Mohed Altrad have repeatedly asserted that their appeals of prior orders of the Receivership Court prevent the matter from proceeding despite orders from the South Carolina Court of Appeals to the contrary, they also consented to this belated attempt at removal to federal court, on the improper contention that this matter is “not properly characterized as a third-party action,” while also incorrectly asserting that “plaintiffs had dismissed their claims against Cape.”

30. On August 13, 2024, the Honorable Judge Mary G. Lewis of the United States District Court for the District of South Carolina remanded the case to the South Carolina state court. *See* August 13, 2024, Order Granting Motion to Remand, United States District Court, Columbia Division, 3:24-3771-MGL, ECF No. 75. Judge Lewis reasoned that South Carolina state court appointed the receiver “pursuant to S.C. Code Ann. § 15-65-10, ‘A receiver represents the Court appointing him; he is an officer of the Court and is the agency through which the Court acts.

As he has no power other than that given him by the Order of appointment, his authority is derived solely from the Court. He is subject only to the Court's direction.'" *Id.* at 5.

31. Judge Lewis further explained,

The Removing Defendants contend the Barton doctrine does not apply because (1) since the Removing Defendants do not have assets in South Carolina, removal does not interfere with the state court's control over in-state assets; (2) the Receiver is acting ultra vires because he cannot assert control over assets outside of South Carolina; (3) the Receiver's lawsuit violates the Commerce Clause of the United States Constitution; (4) and the Receiver's lawsuit violates South Carolina's receivership statute. Anglo American's Opp'n to Pl.'s Mot. to Remand, ECF No. 45 at 19-28. These and other questions interpreting the statutory authority of the Receiver must be raised in state court and, if necessary, appealed through the state system. **It is not for this Court to sit in judgment of the Receiver's actions taken as a representative of the court that appointed him.** *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

Id. at 7-8 (emphasis added).

**SOUTH CAROLINA BARRED LAWYER EMPLOYEES OF DEFENDANT
ARE AWARE OF SOUTH CAROLINA RECEIVERSHIP LAW**

32. Defendant is fully aware of the exclusive jurisdiction of this Court. In its August 30, 2024, Pre-Action Letter to the Receiver, Winston & Strawn specifically notes the Third-Party Defendants' failed removal: "As you will be aware, various of the Third-Party Defendants in the 3P Complaint, applied to transfer the 3P Complaint from the South Carolina Court to a Federal Court. By an order of 13 August 2024, the Federal Court remanded the case back to the South Carolina Court." *See Exhibit 1.*

33. This admission was made within the context of a Pre-Action Letter in which Cape Intermediate Holdings Limited and Cape PLC threaten "to commence proceedings" against the Receiver personally if he does not consent to a one-sided, self-serving "Draft Order." *Id.* at 1. Among other items, the Order declares that "Mr. Protopapas has and had no power or authority to

act as receiver in relation to the Claimants in England and Wales *or worldwide* and has no power or authority in respect of the Claimants in England and Wales *or worldwide* to carry out the acts referred to in paragraphs 5-8 below. *Id.* at 10 (emphasis added). Further, paragraphs 7 and 8 of the Order appear to enjoin the Receiver Court in South Carolina from acting, in direct contravention of the *Barton* doctrine:

7. Mr. Protopapas be enjoined from acting or purporting to act as a receiver of the Claimants in the Park Claim and the Tibbs Claim (as defined in Oren 1.)

8. Mr. Protopapas be enjoined from litigating as “Cape plc” or CIHL in any legal proceedings in the State of South Carolina, USA or elsewhere.

Id. at 10.

34. Defendant Winston & Strawn is an international law firm with multiple offices in the United States.

35. Advertising itself as a “global powerhouse in the restructuring and insolvency space,” Winston & Strawn offers “a fully integrated team of attorneys across a global platform to guide clients through any distressed situation.”⁹ Winston & Strawn’s lawyers have contributed to scholarship in the restructuring space, some of which specifically address the application of the *Barton* doctrine. For instance, JoAnn J. Brighton, identified as associated with Winston & Strawn, contributed to the 2013 American College of Bankruptcy Circuit Review of Consumer Cases.¹⁰ Ms. Brighton contributed to a section related to the Fourth Circuit, which highlighted the Fourth Circuit opinion in *McDaniel v. Blust*, 668 F.3d 153 (4th Cir. 2012). The summary specifically referenced the Court’s holding as to the *Barton* doctrine’s application to bankruptcy trustees:

⁹ Restructuring & Insolvency, Winston & Strawn, available at <https://www.winston.com/en/capabilities/services/restructuring-and-insolvency> (last accessed Sept. 4, 2024).

¹⁰ PDF available at <https://www.americancollegeofbankruptcy.com/file.cfm/38/docs/2013-Consumer-Circuit-Review.pdf> (last accessed Sept. 4, 2024).

Principals of a chapter 7 debtor sued the chapter 7 trustee's counsel in state court for various acts of misconduct by counsel in connection with the filing of an adversary proceeding. The case was removed to federal district court, which found that the Barton doctrine applied and dismissed the suit as to trustee's counsel. On appeal the Fourth Circuit affirmed. **Under the Barton doctrine, which applies to bankruptcy trustees, a plaintiff must obtain approval from the appointing bankruptcy court prior to filing suit against the trustee for acts committed in the trustee's official capacity. Moreover, "a bankruptcy trustee 'is an officer of the court that appoints him,' and therefore that court 'has a strong interest in protecting him from unjustified personal liability for acts taken within the scope of his official duties.'"** *Id.* at 157. The trustee retained counsel to prosecute the adversary proceeding, and counsel's activities were within the scope of its employment even if some of its activities had not been directed by the trustee.¹¹

36. Additionally, Winston & Strawn partner James T. Bentley serves on the Bankruptcy Advisory Board of Strafford, a Barbri Company.¹² Strafford currently is advertising a Bankruptcy CLE webinar on Thursday, October 24, 2024, entitled "Representing Chapter 11 Trustees in Operating Cases: Navigating 28 U.S.C. 959, Barton Doctrine, Limits of Immunity." The preview outline of the CLE includes a section on "Heightened protection under Barton doctrine and quasi judicial immunity."¹³

37. Winston & Strawn employees Kobi K. Brinson, Terry M. Brown, Stacie Knight, and Alyson G. Traw are barred in South Carolina. *See* South Carolina Bar Associations Member Directory as of August 30, 2024. Employee Brinson herself is a member of the firm's Bank Receivership Task Force, presumably meaning that she has familiarity with Receivership law including the *Barton* Doctrine.

¹¹ *Id.* at 48.

¹² Representing Chapter 11 Trustees in Operating Cases: Navigating 28 U.S.C. 959, Barton Doctrine, Limits of Immunity, available at <https://www.straffordpub.com/products/representing-chapter-11-trustees-in-operating-cases-navigating-28-u-s-c-959-barton-doctrine-limits-of-immunity-2024-10-24> (last accessed Sept. 4, 2024).

¹³ *Id.*

38. As South Carolina lawyers, these individuals are keenly aware of this Court's exclusive jurisdiction over the Receiver under *Barton v. Barbour*, 104 U.S. 126 (1881); *Porter v. Sabin*, 149 U.S. 473 (1893); *Protopapas v. Travelers Casualty & Surety Co.*, 94 F.4th 351 (4th Cir. 2024); and the South Carolina federal district court order of August 13, 2024 in this action, 3:24-3771-MGL, ECF No. 75.

39. Against this backdrop, ignoring decisions of the United States Supreme Court, the United States Court of Appeals for the Fourth Circuit, and the United States District Court for the District of South Carolina, Defendant has threatened the Receiver personally with litigation in a foreign jurisdiction designed both to intimidate Mr. Protopapas as an individual and to seek to avoid the December 9, 2024, trial in this action.

USE OF PROCEDURAL TACTICS TO AVOID LITIGATION IN STATE COURT

40. Winston's threats against the receiver in its August 30, 2024 letter are only the latest in a series of actions designed to avoid a December 9, 2024 bench trial action in the receivership court. The Third-Party Defendants initially attempted to avoid its South Carolina asbestos liabilities as alleged in the Third-Party Complaint by moving to dissolve the Cape receivership. In an Order dated December 6, 2023, Chief Justice Toal (ret.) first denied the Third-Party Defendants' arguments that Cape was not properly served:

The Court is disturbed by evidence in the record indicating a decades-long practice by Cape of ignoring asbestos lawsuits filed against it in the United States—simply accepting defaults ostensibly because it believes defaults entered by this Court cannot be enforced. Cape's own disclosures are before this Court, and they reveal Cape never intends to respond to litigation pending in the United States in the future, because that would purportedly "have a materially adverse effect on the financial status of the Group and almost certainly result in insolvency proceedings." It is against that backdrop that the Court examines Third-Party Defendants' arguments regarding service and ultimately rejects them as unfounded.

See Tibbs v. 3M Company, et al., Order Denying Certain Third Party Defendants’ Motions to Dissolve Receivership, No. 2023-CP-40-01759 (December 6, 2023) at 16. The Third-Party Defendants attempted to inject confusion into the question of service by introducing a second Cape PLC entity that was allegedly created in the Bailiwick of Jersey in April 2011 and identified in the *Park* litigation for the first time by the Third-Party defendants in their responsive pleadings to the Receiver’s Third-Party Complaint as the entity that the plaintiffs intended to sue. *Id.* at 17. The Court identified this as a “red herring argument,” summarily dismissed it, and found that the *Park* Plaintiffs effectively served the 130-year old Cape entity (known as Cape PLC from 1989 to 2011) organized under the laws of the United Kingdom. *Id.* at 18-19.

41. Chief Justice Toal (ret.) also rejected the Third-Party Defendants’ arguments that the Receiver was improperly appointed. *See Id.* at 23-25.

42. Finally, in the same December 6, 2023 Order, Chief Justice Toal (ret.) denied the Third-Party Defendants’ respective personal jurisdiction motions. *See id.* at 26-73. Specifically, the Court found that it had jurisdiction:

(O)ver Cape as a “person who act[ed] directly or by an agent as to a cause of action arising from” Cape’s and NAAC’s (i) “causing tortious injury or death in this State by an act or omission outside this State” and by “regularly . . . engag[ing] in [a] persistent course of conduct, or deriv[ing] substantial revenue from goods used or consumed or services rendered in this State,” and/or (ii) “production, manufacture, or distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed.” S.C. Code §§ 36-2-803(4), (8).

Id. at 36.

43. Further, in a carefully considered, nine-page analysis of personal jurisdiction as to the Altrad Third-Party Defendants, the Court found:

The Third-Party Complaint, along with the submitted affidavits and publicly available materials presented to the Court, adequately alleges facts sufficient to support the exercise of personal jurisdiction over each of the Responding Altrad Third-Party

Defendants—the current owners of Cape—under an alter ego, guiding light, and/or single business enterprise theory. . . . The Altrad Third-Party Defendants are alleged to be responsible, with Cape, for an ongoing scheme to evade responsibility for harm caused to South Carolinians by Cape’s asbestos, while also financially benefitting from that scheme as effective alter egos of Cape. As detailed below, the Court finds that consistent with fair play and substantial justice, it can exercise jurisdiction over each of these Responding Altrad Third-Party Defendants, based on the record before the Court at this early stage.

Id. at 38.

USE OF SERIAL APPEALS IN FURTHERANCE OF LITIGATION AVOIDANCE

44. In furtherance of their attempt to avoid the impending December 9, 2024 trial date in the Receivership Court, the Third-Party defendants have filed 13 appeals in South Carolina. Most recently, on September 3, 2024, Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. filed a Petition for Writ of Certiorari in the South Carolina Supreme Court seeking review of the South Carolina Court of Appeals’ May 9, 2024 decision dismissing the Third-Party Defendants’ appeal of the December 6, 2023 Order denying the Motion to Dissolve the Receivership as not immediately appealable.

45. Further, on August 30, 2023, the multiple entities consisting of the Charter Third-Party Defendants, Altrad Owner Third-Party Defendants, and Altrad Sparrows Third-Party Defendants each filed appeals couched as “mode of trial” appeals. In each of the three mode of trial appeals, the Third-Party Defendants assert that they have been deprived of their constitutional right to a jury trial because the circuit court issued a Scheduling Order setting the Receiver’s Third-Party Action in *Tibbs* for a non-jury trial on December 9, 2024. The Receiver has moved to dismiss the appeals because (1) none of the Receiver’s claims are triable by a jury, (2) the scheduling order is not appealable, and (3) the Third-Party Defendants waived their ability to argue their entitlement to a jury trial because they never contested that this case would be tried in a bench trial, despite myriad opportunities to do so.

46. These mode of trial appeals are substantially similar to those employed by another defendant to an unrelated receivership action, Penn National, which successfully delayed a December 12, 2022 scheduled trial in that case for nearly a year. The Court of Appeals dismissed Penn National's appeal, and, on November 7, 2023, the South Carolina Supreme Court denied the Petition for Certiorari in *Covil Corp. v. Penn Nat'l Mut. Cas. Ins. Co.*, 2023-001079. That case was finally tried on November 27 and 28, 2023.

47. The volume of appeals of interlocutory orders—all of which are not immediately appealable under South Carolina law—has frustrated the Receiver Court and the court-appointed Receiver's ability to fulfill his duties.

48. Further, in its decision in *Childers v. Davis Mechanical Contractors*, Appellate Case No. 2023-000727 (Sep. 08, 2023), the South Carolina Court of Appeals, considering the effect of an appeal of a motion to dismiss third-party claims and dissolve the Payne & Keller receivership, stated that the Order Denying the Motion to Dismiss and Dissolve the Receivership “is not stayed during the pendency of this appeal. . . . Accordingly, the receivership action and the receiver's ability to carry out his duties are not stayed.” *Id.* at 3. Directly violating the South Carolina Court of Appeals' order, many of the Third-Party Defendants, including the Altrad defendants, assert that the pendency of their appeals protects them from answering discovery—even after the trial court issued sanctions and adverse inferences against them for failure to participate in discovery.¹⁴

¹⁴ See, e.g. Third-Party Defendant Mohed Altrad's Responses and Objections to the Receiver's Second Set of Interrogatories and Second Set of Requests for Production, at 3 (“In addition to the Reservation of Rights stated above, the Third-Party Defendant objects to this Interrogatory on the grounds that the Circuit Court lacks jurisdiction, and the Receiver is without authority, to proceed with this matter at the present time, as all issues regarding the purported Receiver's appointment and his purported authority to engage in litigation are presently pending before the South Carolina Court of Appeals”).

**FLAGRANT REFUSAL TO PARTICIPATE IN THE SOUTH CAROLINA STATE
COURT ACTION**

49. The Receiver’s Third-Party Action in *Tibbs* initially was scheduled for a bench trial set to commence April 15, 2024. The Court was forced to continue the bench trial during an April 10, 2024 pre-trial hearing “because of the Altrad and Charter Third Party Defendants’ refusal to provide **any** discovery to the Receiver to prepare this case for trial.” *Tibbs v. 3M Company, et al.*, Order, No. 23-CP-40-01759 (May 23, 2024) at 10-11.

50. The Altrad and Charter Third Party Defendants’ failure to participate in discovery initially was the subject of a first motion to compel, which the Court granted on March 12, 2024. Pursuant to the March 12 Order, the Court directed all Third-Party Defendants “(i) to provide responsive, substantive, and complete answers to the Receiver’s Discovery Requests within 14 days of entry of this Order and (ii) to begin producing documents in response to the Receiver’s Requests for Production the same day,” and (iii) as to Arranco and Central Mining, “to designate witnesses for . . . Rule 30(b)(6) depositions” by March 19, and “produce those witnesses” by April 2. *Tibbs v. 3M Company, et al.*, Order, No. 23-CP-40-01759 (March 12, 2024) at 13.

51. In the May 23 Order in *Tibbs*, the Court found that the “only excuses offered by these Third-Party defendants are frivolous. . . . They argue that Rule 205, SCACR, poses a jurisdictional bar preventing this third-party action from continuing, because by simply appealing [their] denied motions to dissolve the receivership, they can deprive the trial court of jurisdiction for an indeterminate time period.” *See Tibbs*, Order of May 23, 2024, at 11-12. Citing a string of orders by the South Carolina Court of Appeals and the South Carolina Supreme Court in receivership actions, the Court reasoned, “Thus, the Supreme Court and Court of Appeals have

made clear that—categorically—the denial of motions to dismiss and dissolve a receivership, like discovery orders, are not immediately appealable.” *Id.* at 12.

52. The Court further noted that the Altrad and Charter Third-Party Defendants “continue to refuse any effort at compliance with the Court’s orders and the discovery rules of this State,” and their continuation of their misconduct “[d]espite multiple warnings by this Court and directives to **proceed with discovery**.” *Id.* at 15 (emphasis in original). As a result, the Court found that “this continued discovery misconduct on the part of these Third-Party Defendants amounts to bad faith, willful disobedience, and gross indifference to the rights of the Receiver and this Court’s management of its docket.” *Id.* Based on this discovery misconduct, the Court found “Certain adverse inferences to be warranted . . . against the Altrad and Charter Third-Party Defendants on facts and matters underlying the Receiver’s claims.” *Id.*

53. Given these findings, as to the Altrad Third-Party Defendants, the Court drew the adverse inference “that each of the Altrad Third-Party Defendants was at relevant times the alter ego of Cape, requiring piercing of the corporate veil. Likewise, each of the Altrad Third-Party Defendants is responsible for or has benefitted unjustly from Cape’s liability-avoidance scheme.” *Id.* at 27. To reach that general inference the Court also entered 47 separate adverse inferences related to the relationship between Altrad and Cape, Altrad’s responsibility for Cape, the relationship between Altrad and the Altrad Sparrows Third-Party Defendants, the common ownership between Altrad and Cape and Altrad’s liability for Cape’s activities, the Altrad Defendants’ liability as the alter ego of Cape, and the unjust enrichment from which the Altrad Defendants have benefitted as a result of the Cape liability avoidance scheme. *Id.* at 27-31. The Court also emphasized that those inferences were rebuttable, should these Third-Party Defendants choose to start participating in the litigation and offering a viable defense. Instead of participating

in the South Carolina proceeding, Winston now threatens the South Carolina receiver with litigation in London if he does not defy the lawful court orders appointing him.

FOR A FIRST CAUSE OF ACTION

(Declaratory Judgment)

1. The foregoing allegations are realleged and reincorporated as if fully set forth herein verbatim to the extent not inconsistent herewith.
2. Defendant has threatened the Receiver personally with litigation in the High Court of England and Wales.
3. Pursuant to SC Code Ann § 15-53-10, et. seq, the Receiver seeks a declaratory judgment as follows:
 - a. Plaintiff seeks a declaration of the legal relationship between Plaintiff and Defendant.
 - b. That Plaintiff is the duly appointed receiver for Cape PLC;
 - c. That Plaintiff is a court appointed officer of the Court;
 - d. That Defendant is improperly demanding Plaintiff violate orders of the South Carolina courts;
 - e. That Defendant is improperly interfering with an Officer of the Court in the conduct of his duties;
 - f. That Defendant is attempting to induce Plaintiff to violate the Rules of Professional Conduct that governs lawyers in South Carolina;
 - g. That Defendant's conduct has violated the Rules of Professional Conduct in South Carolina;
 - h. That Defendant is attempting to intimidate and Officer of the Court in the conduct of his duties;

- i. That Defendant is acting outside the scope of its representation of a client when it threatens to a Receiver in the performance of his duties;
 - j. That Defendant does not represent Plaintiff and therefore can take no action on his behalf;
 - k. That Defendant is no longer acting as attorneys when it attempts to threaten, extort, and/or intimidate a Receiver during the performance of his duties;
 - l. That Defendant's conduct is an attempt to obstruct justice;
 - m. That Defendant's conduct is in violation of the Court's order appointing Plaintiff as Receiver;
 - n. That Defendant's conduct is a wrongful attempt to interfere with the due administration of justice; and
 - o. That Defendant's conduct is a fraud on the court.
4. Plaintiff also seeks a further declaration that Plaintiff shall comply with his duly-assigned obligations as Receiver without interference from Defendant.
5. Plaintiff also seeks a further declaration that Defendant, with its South Carolina licensed lawyer employees, is not entitled or permitted to be used as an instrumentality to aid and abet Cape's decades old litigation avoidance scheme designed to insulate it from the significant tort liability arising from its history of sales of asbestos fiber across the United States market, including in South Carolina.

PRAYER FOR RELIEF

WHEREFORE, Peter D. Protopapas, as the duly-appointed Receiver for Cape PLC, demands judgment against defendants as follows:

- A. For Plaintiff's costs, expenses, and attorneys' fees for bringing this action;
- B. For the declaratory relief stated above;
- C. For such other and further relief as the Court may deem just and proper, including pre-judgment and post-judgment interest as provided by South Carolina.

HARLING & WEST, LLC

By: s/W. Jonathan Harling
W. Jonathan Harling, Esquire
SC Bar# 16658
1722 Main Street, Suite 200
Columbia, SC 29201
Phone: 803-252-2050
Fax: 800-762-4915
Email: jharling@harlingandwest.com

Robert T. Bonds, Esquire
RIKARD & PROTOPAPAS
SC Bar #106271
2104 N. Beltline Blvd.
Columbia, SC 29204
803.978.6111
rbonds@rplegalgroup.com

Attorneys for the Plaintiff

September 5, 2024

COMPLAINT EXHIBIT 1

WINSTON
& STRAWN

NORTH AMERICA
SOUTH AMERICA
EUROPE
ASIA

Winston & Strawn London LLP
100 Bishopsgate
London EC2N 4AG
United Kingdom
T +44 (0)20 7011 8700 F +44 (0)20 7011 8800

BEN BRUTON

Partner

BBruton@winston.com

+44 20 7011 8932

PAUL FLEMING

Partner

PFleming@winston.com

+44 20 7011 8807

SUZANNE LABI

Associate

SLabi@winston.com

+44 20 7011 8916

30 August 2024

FAO: Peter D. Protopapas
Rikard & Protopapas, LLC,
2110 N Beltline Blvd,
Columbia SC 29204

BY EMAIL ONLY: pdp@rplegalgroup.com

Dear Mr Protopapas

Re: Pre-Action Letter Regarding Declaratory and Injunctive Relief Contemplated Before the English court

Introduction

We are instructed by Cape Intermediate Holdings Limited ("**CIHL**") (a company incorporated in England and Wales) and Cape Plc ("**Cape plc**") (a company incorporated under the laws of Jersey) (together, "**the Claimants**").

We are writing to request that:

1. you agree to consent by 12 pm on Friday 6 September to the terms of the draft court order we propose to seek from the English Court, which is provided at Annex A ("**the Draft Order**").
2. alternatively, should you be unwilling to agree to the terms of the Draft Order, you agree to accept service of our clients' claim form and related documents on counsel you have engaged in London (Morgan, Lewis & Bockius UK LLP), or out of the jurisdiction at 2110 N Beltline Blvd, Columbia, South Carolina 29204, United States of America.

Should you decline to consent to the Draft Order, our clients intend to commence proceedings against you in the English Court pursuant to Part 8 of the CPR for an order substantially in the form set out in the Draft Order ("**the Part 8 Claim**"). Should you decline to provide your agreement to accept service, our clients will make an application for permission to serve the Claim out of the jurisdiction.

Winston & Strawn London LLP is a limited liability partnership registered in England and Wales under number OC386268. It is authorised and regulated by the Solicitors Regulation Authority. The word 'partner' is used to refer to a member of the LLP or to an employee or consultant with equivalent status. A list of members is open to inspection at the registered office. Winston & Strawn London LLP is affiliated with Winston & Strawn LLP, which operates Winston & Strawn offices outside of England and Wales.

Cert. Petition App. 698

ELECTRONICALLY FILED - 2024 Sep 05 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2024CP4005397

Factual background to the Part 8 Claim

CIHL is a holding company registered in England and Wales and is the successor to “Cape Asbestos Company Ltd” (which was incorporated in 1893).

Cape plc is a company incorporated in Jersey in 2011. It is the ultimate parent company of the Cape group of companies (“**the Cape Group**”). In 2017 Cape plc was acquired by Altrad UK Ltd (which is part of the Altrad group of companies – “**the Altrad Group**” – a world leader in industrial services with a turnover of £5 billion per year).

The Part 8 Claim arises in the context of (and relates to) certain legal proceedings in the US commenced against “Cape plc” and CIHL.

These proceedings (“**the USA Proceedings**”) involve two separate actions in the Court of Common Pleas, State of South Carolina, County of Richland (“**the South Carolina Court**”) against various defendants for the alleged exposure of the respective plaintiffs to asbestos. The two separate actions are: (1) the “**Park Claim**” (which was initiated in June 2021 by Ms Park, and subsequently taken over by her son) and (2) the “**Tibbs Claim**” (which was brought in April 2023 by Mr and Mrs Tibbs).

In the Park Claim, the Summons and Complaint names “Cape plc” as a defendant – and an Amended Summons and Complaint has added CIHL as a defendant. In the Tibbs Claim, “Cape plc” is a named defendant (but CIHL is not a named defendant).

The Part 8 Claim relates to certain of your actions in the Park Claim and the Tibbs Claim – which actions you purport to pursue in the name of and on behalf of the Claimants. Specifically, we refer to the following:

1. The Receivership Order.

- (a) This is the receivership order of Toal J dated 16 March 2023 (“**the Receivership Order**”) that was granted pursuant to the Park Plaintiffs’ motion dated 6 March 2023 (“**the Receivership Motion**”). (see enclosure)
- (b) The Receivership Order¹ appears to provide you with very broad powers in your capacity as receiver, including “**the power and authority [to] fully administer all assets of Cape², accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape whatever they may be**” (emphasis added).
- (c) The Receivership Motion was based on rule 15-65-10(4) of the South Carolina Code which provides that a receivership order can be made in relation to a company where it (1) is dissolved (2) is insolvent or in imminent danger of insolvency or (3)

¹ While it is only Cape plc that is named in the Receivership Order, you have subsequently confirmed that CIHL was the only company over which the Receivership Order was intended to be made, and the Claim has been issued in the name of both the Claimants (i.e. CIHL and Cape plc) as ‘belt and braces’ and in order to provide maximum security/protection to those companies’ respective positions.

² “Cape” is defined in the Receivership Order as “*Cape PLC as the successor in interest to Cape Industries Ltd. (f/k/a Cape AsbestosCompany Ltd.) (“Cape Asbestos”) and its subsidiaries and global affiliates*”.

has forfeited its corporate rights. Neither Cape plc or CIHL have been dissolved, nor are they insolvent, nor are they in imminent danger of insolvency.

- (d) Despite the Tibbs Plaintiffs never having issued a motion seeking to appoint you as a receiver of Cape plc or CIHL in the Tibbs Claim, you have purported to act as such.

(1) The 3P Complaint.

- (a) These are the third-party proceedings issued by you on 30 June 2023 in the name of and on behalf of Cape plc against a variety of defendants ("**the 3P Complaint**").
- (b) The 3P Complaint was stated to be brought by "*Cape plc, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas*" against various third party defendants ("**the Third-Party Defendants**") including, but not limited to, "Cape Holdco Ltd", "Cape Industrial Services Group Ltd", "Mohed Altrad", "Altrad UK Ltd", "Cape UK Holdings NewCo Ltd", "Altrad Services Ltd., f/k/a Cape Industrial Services Ltd", "Altrad Investment Authority S.A.S.", "Sparrows Offshore Group Limited", "Hawk Bidco US Inc", "Arranco US, LLC", "Sparrows Offshore, LLC" and "The Sparrows Group LLC".
- (c) The Third-Party Defendants include, *inter alia*, both the direct subsidiaries and the immediate parent companies of the Claimants.
- (d) The 3P Complaint is based on many highly contentious and wide-ranging allegations against Cape itself – and also purports to constitute admissions by Cape which are against the best interests of Cape.
- (e) The claims sought in the 3P Complaint are based on unjust enrichment and/or constructive trust and/or alter-ego and veil-piercing liability and/or accounting. The claims are for an indeterminate amount.
- (f) There is no express authority given to a receiver under rule 15-65-10(4) of the South Carolina Code to pursue third-party derivative claims and the Receivership Order did not expressly authorise you to initiate any third-party derivative proceedings.
- (g) Despite this, you have taken the various steps in the name of Cape plc in pursuit of the 3P Complaint. Amongst other things, this has included: (i) seeking and obtaining the 3P Complaint Default Judgement against certain Third-Party Defendants including the Claimants' direct parent and subsidiaries (which include companies in the Altrad Group, and upon which the Cape Group rely for funding/financing and business cross-opportunities); (ii) making motions for disclosure, adverse inferences and sanctions for adverse inferences against certain Third-Party Defendants.

In terms of the Park Claim and the Tibbs Claim, the position is that at no stage have CIHL or Cape plc submitted to the jurisdiction of the South Carolina Court in the Park Claim or the Tibbs Claim. In this regard, CIHL and Cape plc refer to and rely upon the decision of the English Court of Appeal in *Adams v Cape Industries Plc* [1990] 1 Ch 433 ("**Adams v Cape**"). Nor has there been any judgment made in the Park Claim or the Tibbs Claim against CIHL or Cape plc in the State of South Carolina.

Our clients' reasons for requesting relief from the English court should you fail to agree to the terms of the Draft Order

As a matter of English private international law (which is the law governing the incorporation of CIHL) the Receivership Order has not been made by a court of competent authority, it cannot be recognised or enforced as such in England and Wales, and it provides no legitimate basis upon which you can act as the receiver of CIHL. You therefore have no authority or mandate to act on behalf of CIHL, and the directors of CIHL require you to cease and desist from purporting to do so. The same applies in respect of Jersey law and Cape plc.

In this regard:

1. CIHL is a holding company incorporated in England, which is where its management and control is based. It does not carry on any business activities in the US, or the State of South Carolina (and never has) and its management and control is not, and never has been, in the US or the State of South Carolina. It also has no, and never has had any, assets in the US or the State of South Carolina.
2. Cape plc is a holding company incorporated in Jersey, its management and control is not in the US or the State of South Carolina, it does not carry on business in the US, or the State of South Carolina and it has no, and never has had any, assets in the US or the State of South Carolina.
3. Accordingly, neither CIHL nor Cape plc have any connection with the State of South Carolina.
4. In terms of the Park Claim and the Tibbs Claim, the position is that at no stage have CIHL or Cape plc submitted to the jurisdiction of the South Carolina Court in the Park Claim or the Tibbs Claim.
5. In these circumstances, as a matter of English private international law the Receivership Order made by the South Carolina Court is not capable of recognition or enforcement by the English Court. It does not satisfy the "*sufficient connection*" threshold test for the recognition of the appointment of a foreign receiver as a matter of English private international law (in relation to which see the decision *Goulding J in Re Schemmer* [1975] Ch 273). As to this:
 - (a) Pursuant to this test, the English Court is required to determine whether a foreign court was jurisdictionally capable to make the appointment according to the relevant principles of English private international law.
 - (b) The "*sufficient connection*" test involves looking at the place of incorporation, where a company's management and control is based, whether a company is carrying on business within the jurisdiction of the foreign court and whether a company has submitted to the jurisdiction of the foreign court.
 - (c) In the light of the above facts, none of those criteria are satisfied in this case.
6. In this regard, it should be noted that the only relevant American subsidiary of CIHL was North American Asbestos Corporation, which was dissolved in 1978 and has been the subject of controversy in historic American asbestos litigation. However, in *Adams v Cape* the English Court of Appeal specifically found that CIHL was not present in the US jurisdiction via NAAC

for the purposes of applying the common law test on the recognition of foreign judgments and that it had not otherwise submitted to the jurisdiction of the US Courts. That is the established legal position.

7. Given that, the English Court cannot recognise a final (let alone an interlocutory) US judgment against CIHL as having been made by a jurisdictionally competent foreign court it therefore follows that the English Court cannot recognise a receivership order against CIHL made on the same basis. The same applies in respect of Cape plc.
8. In this regard, the question of capacity and the constitution of the Claimants, namely, whether the acts of its directors, or others who purport to be the companies' agents, are the acts of CIHL is exclusively a question of English law, in the case of CIHL, and Jersey law in the case of Cape Plc. The law of the place of incorporation determines who are the corporation's officials authorised to act on its behalf. The appointments of the directors of CIHL are therefore governed by the law of England in the case of CIHL, and Jersey in the case of Cape plc.
9. Further, as a matter of English law, the appointment of the directors of CIHL and their competence to act on its behalf is legally unaffected by the Receivership Order made by the South Carolina Court. The same applies under Jersey law in respect of Cape plc. In this regard, any questions in relation to the governance of a company incorporated in England and Wales are plainly and properly a matter for the supervision and determination of the English Court.
10. The *de jure* directors of the Claimants (whose authority arises pursuant to the Claimants' articles of association, as well as the English Companies Act 2006 and the Jersey Companies Law 1991) remain in lawful control of the Claimants. Accordingly, the directors of both of the Claimants are entitled to seek the relief sought from the Court to be able to manage respectively CIHL and Cape plc in accordance with their best interests.
11. Accordingly, and for these reasons, and given that as a matter of English law the South Carolina Court was not jurisdictionally competent to make the Receivership Order, you have had no legitimate basis for acting and you have been acting without the Claimants' authority and/or any mandate from the Claimants.
12. The directors of CIHL and Cape plc are entitled to the relief sought against you to prevent the actual and potential harm caused by your actions. They rely *inter alia* on the following:
 - a. The negative impact on directors/management. There are currently two conflicting centres of authority, which is highly prejudicial to the directors of the Claimants and the proper management of those companies (and the broader group of which they form part).
 - b. The negative impact on operations/business. Customers and/or suppliers of the Cape Group (who will carry out regular credit checks and adverse media checks through their online reporting databases) will be concerned as to the extent to which authority is apparently vested in yourself as receiver and this could adversely impact their willingness to do business with the companies within the Cape Group (which are the operational subsidiaries of CIHL and Cape plc).
 - c. The issues associated with your purported authority to deal with all the assets of the Claimants on a worldwide basis. In this regard, the Claimants own substantial assets

worldwide (for example, the shares that they own in the subsidiary trading companies of the Cape Group – which has a turnover of approximately £1 billion per year).

- d. The negative impact on the reputation of the Claimants and the broader Cape Group. The Cape Group has a valuable brand, both in the UK and abroad, which it has sought to protect and secure.
 - e. The negative impact on the Scheme of Arrangement in respect of CIHL (and 12 other subsidiary companies in the Cape Group) which was sanctioned in 2006 and continues to be supervised by the English High Court.
 - f. The negative impact on the funding/financing arrangements of the Altrad Group (which have an indirect effect on the funding/financing of the Claimants and the broader Cape Group).
13. In addition, the issuing and pursuit of the 3P Complaint is abusive, vexatious and unconscionable. The 3P Complaint makes multiple – and highly contentious – allegations directed against the Claimants. It also purports to constitute admissions that have not been authorised by the directors of the Companies.
14. The 3P Complaint is self-evidently contrary to the Companies' best interests and the Companies are entitled to injunctions from the English Court requiring you to cease and desist pursuing such claims in their respective names.

In these circumstances, the directors of CIHL and Cape plc are entitled to the assistance of the English court as the duly appointed directors of CIHL and Cape plc in order to enable them to administer, manage and run the companies efficaciously in accordance with their legal duties and in the best interests of the companies; and to prevent and contain the manifest prejudice to both them and the wider Cape group of companies by your conduct, which is directly contrary to the interests of CIHL and Cape plc and is abusive, vexatious and unconscionable.

There is a real and present dispute as to who is in control and authorised to act on behalf of the Claimants, and it is appropriate for the Court to make the declarations sought. In addition, it is appropriate to grant the injunctive relief sought where (1) you have no legitimate authority to act on behalf of the Claimants (and, in that regard, you have harmed the rights of the Claimants) and (2) your conduct is abusive, vexatious and unconscionable.

Accordingly, CIHL and Cape plc seek your consent to the Draft Order and, if not provided, the assistance of the English Court to obtain clarification that you have no legal authority to act on behalf of our clients, that authority remains vested in the directors, and restraining you from taking any further steps in the name of Cape as set out in the Draft Order.

Requirement for you to provide consent on an urgent basis

As you will be aware, various of the Third-Party Defendants in the 3P Complaint, applied to transfer the 3P Complaint from the South Carolina Court to a Federal Court. By an order of 13 August 2024, the Federal Court remanded the case back to the South Carolina Court.

In these circumstances and given the imminent trial of the 3P Complaint on 9 December 2024 – which is not being brought with the authority of the Claimants and is plainly contrary to their interests – it is paramount that the Claim is addressed urgently.

In consideration for our clients refraining from taking action against you in the English Court, you are required to agree to the terms of the Draft Order by no later than 12pm on 6 September 2024.

Should you fail to do so, we will without further notice apply to the English Court for the relief in the form of the Draft Order.

For the avoidance of doubt, nothing in this letter should be considered as a waiver of any of our clients' rights which are, to the fullest extent, reserved.

Part 8 of the Civil Procedure Rules

In accordance with paragraph 13.3 of the Business and Property Courts of England & Wales Chancery Guide 2022, we hereby notify you that the use of Part 8 of the England & Wales Civil Procedure Rules is being contemplated to issue the intended claim against you.

We consider that Part 8 is the more appropriate route than Part 7 in the circumstances of the current dispute, for the following reasons:

1. The contemplated claim does not relate to any substantial dispute of fact. The contemplated claim is merely requesting the court's decision on a question by way of declaratory and injunctive relief.
2. A quick resolution of the contemplated claim is required given the imminent trial date of the 3P Complaint on 9 December 2024.

In accordance with paragraph 13.3 of the Chancery Guide, we have attached the Draft Order at Annex A (which we ask you to consent to).

Given that the relief sought in the Claim arises out of the application of well-established principles of English private international law to the USA Proceedings, we do not contemplate that there will a substantial factual dispute (or that disclosure will be necessary).

Agreement to Service Out of the Jurisdiction

As you are aware, on 13 July 2023 you used David Waldron of Morgan, Lewis & Bockius UK LLP to attempt to serve documents from the USA Proceedings on Altrad Services Ltd.

In accordance with the provisions of the English Civil Procedure Rules, and to the extent that you do not agree to provide the undertakings requested above, we request your agreement to accept service of the claim form and associated documents:

1. by way of service on Morgan, Lewis & Bockius UK LLP, Condor House, 5-10 St. Paul's Churchyard, London EC4M 8AL; or, in the alternative,
2. outside the jurisdiction of England and Wales at your address at 2110 N Beltline Blvd, Columbia, South Carolina 29204, United States of America

Please confirm your consent to accept service of the claim form by either (1) or (2) by 6 September 2024, so as to facilitate the efficient and timely progress of the contemplated proceedings. Should you

fail to provide your agreement to accept service, our clients will make an application for permission to serve out of the jurisdiction.

Pre-Action Protocol

This letter is being sent to you in accordance with the Practice Direction on Pre-Action Conduct and Protocols (the “**Pre-Action PD**”) contained in the Civil Procedure Rules (CPR) (albeit that, as envisaged in paragraph 13 of the Pre-Action PD, the urgency of the matter means that it is not possible to give you the full time suggested for your response to this letter). We refer you to paragraphs 13 to 16 of the Pre-Action PD concerning the court’s powers to impose sanctions for failing to comply with its provisions.

We enclose the key documents which we intend to rely on to substantiate our clients’ claims. Ignoring this letter will lead our clients to commence proceedings against you and may increase your liability for costs.

We look forward to your response.

Yours faithfully,

Winston & Strawn London LLP

Winston & Strawn London LLP

Enc. Receivership Order

ELECTRONICALLY FILED - 2024 Sep 05 3:14 PM - RICHLAND - COMMON PLEAS - CASE#2024CP4005397

Annex A – Draft Order

Claim No. [#]

IN THE HIGH COURT OF JUSTICE
OF ENGLAND AND WALES

BUSINESS AND PROPERTY COURTS

BUSINESS LIST (CHD)

Before [Mr]/[Mrs] Justice []

B E T W E E N:

- (1) CAPE INTERMEDIATE HOLDINGS LIMITED
(2) CAPE PLC (a company incorporated under the laws of Jersey)

Claimants

- and -

PETER D. PROTOPAPAS

Defendant

[DRAFT] ORDER

UPON THE CLAIM of Cape Intermediate Holdings Limited (“**CIHL**”) and Cape plc (“**the Claimants**”) issued by Part 8 Claim Form on [] September 2024

AND UPON HEARING Leading Counsel for the Claimants [and Leading Counsel for the Defendant]

AND UPON READING the evidence, being the first witness statement of Ran Oren dated [] September 2024 (“**Oren 1**”)

IT IS DECLARED THAT

1. The receivership order of the Court of Common Pleas for the Fifth Judicial Circuit of the State of South Carolina, County of Richland (“**the South Carolina Court**”) dated 16 March 2023 appointing Mr Peter Protopapas (“**Mr Protopapas**”) as a receiver over the Claimants (“**the Receivership Order**”) is not recognised and has no legal effect in England and Wales and worldwide.
2. Mr Protopapas has and had no power or authority to act as a receiver in relation to the Claimants in England and Wales or worldwide and has no power or authority in respect of

the Claimants in England and Wales or worldwide to carry out the acts referred to in paragraph 5-8 below.

3. The rights and duties of the directors of the Claimants remain unaffected by the appointment of Mr Protopapas as receiver of the Claimants pursuant to the Receivership Order.
4. Mr Protopapas has and had no power or authority to act as the receiver of the Claimants in the South Carolina Court in respect of the Park claim and the Tibbs Claim (as defined in Oren 1) and has and had no power or authority to issue third party claims in the Tibbs Claim against any of the third party defendants in those proceedings, including (i) Mohed Altrad (ii) Altrad Investment Authority SAS (iii) Altrad UK Ltd (iv) Cape UK Holdings Newco Ltd (v) Cape Industrial Services Group Ltd (vi) Cape Holdco Ltd (vii) Altrad Services Ltd (viii) Hawk Bidco (US) Inc (ix) ArranCo US LL (x) Sparrows Offshore LLC.

AND IT IS ORDERED THAT:

5. Mr Protopapas be enjoined in England and Wales and worldwide from acting or purporting to act as a receiver of the Claimants pursuant to the Receivership Order.
6. Mr Protopapas be enjoined in England and Wales and worldwide from appropriating, interfering with or usurping (in any way whatsoever) the lawful exercise of the rights and duties of the directors of the Claimants.
7. Mr Protopapas be enjoined from acting or purporting to act as a receiver of the Claimants in the Park Claim and the Tibbs Claim (as defined in Oren 1).
8. Mr Protopapas be enjoined from litigating as "Cape plc" or CIHL in any legal proceedings in the State of South Carolina, USA or elsewhere.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

KEITH W. PARK, INDIVIDUALLY
AND AS THE PERSONAL
REPRESENTATIVE OF THE ESTATE
OF ISABELLA PARK,

Plaintiff,

vs.

ARMSTRONG INTERNATIONAL,
INC. ET AL,

Defendant,

CAPE, PLC, BY AND THROUGH ITS
DULY APPOINTED RECEIVER,
PETER D. PROTOPAPAS,

Third-Party Plaintiff,

vs.

LOCKE LORD, LLP,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS FOR
THE FIFTH JUDICIAL CIRCUIT

Docket No.: 2021CP4002727

AMENDED SUMMONS

(Non Jury)

TO: THE ABOVE-NAMED THIRD-PARTY DEFENDANT:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, a copy of which is hereby served on you, and to serve a copy of your Answer to said Amended Complaint upon the subscribers at 1722 Main Street, Suite 200, Columbia, SC 29201, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Amended Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in such Amended Complaint.

Respectfully Submitted,

HARLING & WEST, LLC

s/W. Jonathan Harling
W. Jonathan Harling, Esquire
SC Bar 16658
Harling & West, LLC
1722 Main Street Suite 200
Columbia, SC 29201
Phone: 803.252.2050
Fax: 800.762.4915
jharling@harlingandwest.com

Brian M. Barnwell, Esquire
SC Bar 78249
Rikard & Protopapas, LLC
2110 N. Beltline Blvd.
Columbia, SC 29204
Phone: 803.978.6111
Fax: 803.978.6112
bb@rplegalgroup.com

ATTORNEYS FOR THIRD-PARTY
PLAINTIFF

Columbia, South Carolina
August 8, 2023

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

KEITH W. PARK, INDIVIDUALLY
AND AS THE PERSONAL
REPRESENTATIVE OF THE ESTATE
OF ISABELLA PARK,

Plaintiff,

vs.

ARMSTRONG INTERNATIONAL,
INC. ET AL,

Defendant,

CAPE, PLC, BY AND THROUGH ITS
DULY APPOINTED RECEIVER,
PETER D. PROTOPAPAS,

Third-Party Plaintiff,

vs.

LOCKE LORD, LLP,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS FOR
THE FIFTH JUDICIAL CIRCUIT

Docket No.: 2021CP4002727

AMENDED COMPLAINT

(Non Jury)

COMES NOW CAPE, PLC, by and through its duly appointed Receiver, Peter D. Protopapas (“Plaintiff” or “Cape”), complaint of the third-party defendant, Locke Lord, LLP, (“Defendant” or “Locke Lord”), who through undersigned counsel respectfully shows unto the Court as follows:

PARTIES

1. The Receiver is a lawyer who was appointed as Receiver of Cape, PLC, (and its affiliate, North American Asbestos Corporation), by Order on March 16, 2023, and who maintains his principal place of business in Richland County, South Carolina.
2. The Receiver is a court appointed officer tasked with marshaling the assets of Cape and its affiliates.
3. Pursuant to Court Order, the Receiver controls the Attorney client privilege of Cape and its affiliates. **See Exhibit A, 3/16/2023 Order Appointing Receiver.**
4. Defendant is a limited liability partnership organized under the laws of the State of Delaware with its principal place of business in the State of Texas.
5. The amount in controversy is under \$75,000.00.

JURISDICTION

6. This Court has jurisdiction over the matters alleged herein pursuant to S.C. Code Ann. §36-2-803, Article V of the Constitution of the State of South Carolina, and the Court's plenary powers.
7. In particular, Defendant purported to represent Cape and its affiliates in matters impacting the asbestos litigation in South Carolina.

VENUE

8. Plaintiff is informed and believes that venue is proper in Richland County, South Carolina.

FACTS

9. Defendant is a law firm that represented Cape and/or its affiliates in connection with asbestos-related matters impacting the South Carolina asbestos litigation.

10. As part of his job as Receiver, Plaintiff wrote to Defendant for the production of Cape and its affiliates' files.

11. On March 20, 2023, Plaintiff wrote to Defendant and provided its Firm Chair with a copy of the Order of Appointment. Plaintiff requested "Cape and its affiliates" files (whether in hard copy or electronic format). **See Exhibit B, March 20, 2023, e-mail, and attachment.**

12. After not having heard back from Defendant, Plaintiff followed up on his request on April 11, 2023. **See Exhibit C, April 11, 2023, email.**

13. Defendant law firm claims:

"Throughout our more than 135-year history, we've cultivated partnerships with a broad range of public and private companies, from Fortune 500 leaders to startups and emerging businesses. Our team can design strategic solutions that meet your long-term goals no matter how large or small your matter, apply our established tradition of responsive, personalized service."

See Exhibit D, Defendant website at www.lockelord.com/about-us

14. Defendant law firm, however, ignored Plaintiff – who stands in the shoes of Defendant's former Client Cape and its affiliates and controls the attorney client privilege of Cape and its affiliates – requests causing unnecessary and costly delay.

15. Defendant also asserts that: "Corporate responsibility is also an important part of Locke Lord's mission[.]" **See Exhibit D, Defendant website at www.lockelord.com/about-us.**

16. On April 17, 2023, Defendant advised Plaintiff "we have determined that the paper files of NAAC were destroyed pursuant to our document retention policy. As a result, we have no responsive records or documents pertaining to your request." **See Exhibit E, April 17, 2023, email.**

17. On July 18, 2023, Plaintiff deposed a Rule 30(b)(6) designee of Defendant regarding Capes files and Cape's relationship with Defendant. **See Exhibit F, Notice of Rule 30(b)(6) deposition.**
18. Defendant's designee testified it was in possession of documents and information related to Cape's file.
19. Defendant's designee testified it was not providing Plaintiff with these documents and information because a lawsuit had been filed.
20. Defendant's designee testified Plaintiff would have to pursue written discovery to obtain Cape's files.
21. Defendant's designee testified it had destroyed files related to Cape in 2021 and 2022.
22. Defendant's designee testified it did not know the contents of the files that were destroyed in 2021 and 2022.
23. Defendant's designee testified Defendant is in possession of financial information regarding Cape.
24. Defendant's designee testified it is in possession of matter numbers and matter descriptions related to Cape.
25. Defendant has made no meaningful effort to locate Plaintiff's files.
26. Defendant has ignored Plaintiff's interests by refusing to provide him with his files and thereby causing delay and increased costs.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

27. The foregoing allegations are realleged and reincorporated as if fully set forth herein verbatim to the extent not inconsistent herewith.

28. Defendant is in possession of Plaintiff's legal files and other information regarding its representation of Cape.
29. Defendant has delayed and impeded, and continues to delay and impede, Plaintiff's access to Plaintiff's files.
30. Defendant has placed its interest ahead of Plaintiff's interests regarding Plaintiff's files.
31. Defendant believes it is not required to provide Plaintiff his files.
32. Defendant has destroyed Plaintiff's files without notice to or consent from Cape.
33. Pursuant to S.C. Code Ann. §15-53-10, et seq, Plaintiff seeks a declaration of the legal relationship between Plaintiff and Defendant.
34. Plaintiff also seeks a further declaration that Plaintiff is entitled to Cape and its affiliates' files and information related to these files.
35. Plaintiff seeks a declaration that Defendant is required to cooperate with the Plaintiff in providing information regarding Defendant's past representation of Cape and its affiliates.
36. Plaintiff seeks a declaration that Defendant is required to provide Plaintiff with all information in its possession regarding Cape's files.
37. Plaintiff seeks a declaration that Defendant has engaged in the spoliation of evidence.
38. Plaintiff seeks a declaration that Defendant has violated its duties to Plaintiff regarding providing Plaintiff with all information in its possession regarding Cape's files.

FOR A SECOND CAUSE OF ACTION
Accounting

39. The foregoing allegations are realleged and reincorporated as if fully set forth herein verbatim to the extent not inconsistent herewith.
40. A confidential or fiduciary relationship exists between Cape and Defendant, as Defendant has served as Cape's attorney for many years.

41. During this representation, Cape has entrusted money or property to Defendant, thereby creating a duty to account.
42. Defendant has failed to account to Cape as it has not provided Plaintiff with any financial records or files despite being requested to do so.
43. Plaintiff is without an adequate remedy at law to obtain this information from Defendant as Defendant has refused to provide it to Plaintiff.
44. Plaintiff seeks an accounting from Defendant for all money or property entrusted to Defendant during Defendant's representation of Cape.

WHEREFORE, Cape and its affiliates, by and through their duly appointed Receiver, demands judgment against Defendant as follows:

- A. For Plaintiff's costs, expenses, and attorneys' fees for bringing this action;
- B. For an Order requiring Defendant to turn over to Plaintiff, Plaintiff's files in their entirety;
- C. For an Order requiring Defendant to answer Plaintiff's questions regarding Defendant's past representation of Plaintiff;
- D. For an Order stating Defendant has engaged in the spoliation of evidence;
- E. For an Order stating Defendant has violated its duties to Plaintiff regarding its files;
- F. For an Order compelling Defendant to account to Plaintiff for all property and money entrusted to Defendant during the course of its representation; and

G. For such other and further relief as the Court may deem just and proper,
including pre-judgment and post-judgment interest as provided by
South Carolina law.

Respectfully submitted,

HARLING & WEST, LLC

s/W. Jonathan Harling
W. Jonathan Harling, Esquire
SC Bar 16658
Harling & West, LLC
1722 Main Street Suite 200
Columbia, SC 29201
Phone: 803.252.2050
Fax: 800.762.4915
jharling@harlingandwest.com

Brian M. Barnwell, Esquire
SC Bar 78249
Rikard & Protopapas, LLC
2110 N. Beltline Blvd.
Columbia, SC 29204
Phone: 803.978.6111
Fax: 803.978.6112
bb@rplegalgroup.com

ATTORNEYS FOR THIRD-PARTY
PLAINTIFF

Columbia, South Carolina
August 8, 2023

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	)	Case No.: 2021-CP-40-02727
REPRESENTATIVE OF THE	)	
ESTATE OF ISABELLA PARK,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	THIRD-PARTY DEFENDANT LOCKE
ARMSTRONG INTERNATIONAL,	)	LORD LLP'S MOTION TO DISSOLVE
INC., <i>et al.</i> ,	)	THE CAPE PLC "RECEIVERSHIP"
	)	
Defendant,	)	
	)	
CAPE, PLC, BY AND THROUGH ITS	)	
DULY APPOINTED RECEIVER,	)	
PETER D. PROTOPAPAS,	)	
	)	
Third-Party	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
LOCKE LORD, LLP,	)	
	)	
Third-Party	)	
Defendant.	)	
	)	

Subject to and without waiving its earlier filed objections to personal jurisdiction in South Carolina, Third-Party Defendant Locke Lord LLP ("Locke Lord" or "the Firm") moves to dissolve the purported receivership of Peter D. Protopapas ("Receiver") over "Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited." By filing this motion, Locke Lord does not waive, but instead specifically preserves, its objection to personal jurisdiction in South Carolina,

for the reasons explained in the Rule 12(b)(2) motion filed prior to this motion and incorporated in full by reference. Locke Lord specifically requests that the Court rule on its motion to dismiss for lack of personal jurisdiction before addressing any of the arguments raised in the present motion to dissolve the receivership, all of which are asserted in the strict alternative to Locke Lord's personal jurisdiction objections.

GROUND FOR DISSOLVING THE PUTATIVE RECEIVERSHIP

The Court must dissolve the receivership for at least the following reasons, which are based on information reflected on the public dockets of this Court or publicly available information that Mr. Park or the Receiver could have located by exercising a modicum of reasonable diligence:

1. Nothing in the record suggests that Cape PLC, a Jersey company, was lawfully served in the *Park* Lawsuit.
2. Cape PLC was not lawfully served with either the summons and complaint or with the motion to appoint the receiver (in violation of South Carolina Code § 15-65-20).
3. Park's counsel attached no proof of service to his motion to appoint the receiver showing lawful service on Cape PLC. In fact, despite the motion representing to the Court that the proof of service was attached as Exhibit A, in fact it was not.
4. On August 28, 2023 – more than fifteen months after this Court was told that Mr. Park's claims were “fully resolved” and more than five months after the Court entered an Order Appointing Receiver, Mr. Park filed a “Notice of Filing Missing Exhibit,” attaching an Affirmation of Andrew Morgan regarding his claimed service of the First Amended Summons – not the Complaint, just the Summons – on

“Cape PLC,” an entity he identifies as having “Companies House Reference Number 00040203.”

5. This “Missing Exhibit” does nothing to cure the defects related to service which compel dissolution of the receivership. The “Motion to Appoint Receiver” sought the appointment following Cape’s “failing to respond to the **Second** Amended Summons in this action, properly served pursuant to Article 10 of the Hague Convention on March 8, 2022, *See*, Ex. A.” (Emphasis added). *See*, Ex. 1 at 5. The document filed by Mr. Park on August 28, 2023, does not indicate service of a **Second** Amended Complaint; at best it indicates service of the **First Amended Summons**. *Id.* Moreover, it does not allege that this occurred in March 2022, it alleges that the mailing occurred “[o]n 14 December 2021” and that under “CPR Part 6.26, proceedings sent by First Class Royal Mail post to an address within the jurisdiction are deemed to have been served on *“the second day after it was posted, left with, delivered to or collected by the relevant service provider ...”* *Id.*, (Emphasis in original) This would make service of the **First** Amended Summons – but not the Complaint – on December 16, 2021.

6. As of the date of the filing of this Motion to Terminate Receivership, there is still nothing in the record of this Court to support the representation that “Cape PLC” was served with the “Second Amended Summons,” upon which this Court apparently predicated its exercise of discretion in issuing the Order Appointing Receiver.

7. The Court did not perform any of the steps legally necessary to appoint a receiver over Cape PLC for purposes of the *Park* Lawsuit, including by confirming

lawful service of process in the *Park* Lawsuit, entering default against Cape PLC, granting a default judgment against Cape PLC, and entering judgment against Cape PLC purporting to reflect a liquidated sum of damages due to the *Park* plaintiffs based on a sufficient factual showing.

8. Nor could any finding of default ever be entered or any adverse action be taken against Cape PLC in this matter because, as of the date of this filing, the record shows service of only the **First** Amended Summons, and even assuming such service was proper service upon the actual Cape PLC (it was not pursuant to Article 10 of the Hague Convention), the time for the entity with Company No. 00040203 to respond has never expired because a **Second** Amended Complaint was filed on December 27, 2021, making it the operative pleading in the case. Contrary to the representations of Mr. Park's counsel, at the time this Court appointed the receiver and as late as the date of the filing of this motion by Locke Lord, there is no evidence in the record of service of the **Second** Amended Summons (or Complaint) on the entity with Company No. 00040203, or any other "Cape" entity. To the contrary, the docket for this case reveals the following timeline:

6/4/2021	Original Complaint filed
11/17/2021	First Amended Complaint filed
12/2/2021	Case placed on trial calendar
12/14/2021	First Amended Summons put in mail in UK for service on Cape (effective service 12/16/2021)
12/27/2021	Second Amended Complaint filed
6/20/2022	Trial date for Park case

9. Mr. Park's counsel procured the order appointing the receiver based on incorrect contentions including that (a) Cape PLC is "dissolved," (b) Cape PLC has "forfeited its charter," (c) Cape PLC was lawfully served with the Second Amended

Summons in the *Park* Lawsuit, and (d) Cape PLC is the successor-in-interest to the Cape Asbestos Company Limited. None of these contentions, which were alleged in the motion to appoint the receiver, and which were reflected in the order appointing the receiver, were true, as any reasonably diligent review of the public record would have revealed.

10. Publicly available records unequivocally demonstrate that Cape PLC is not the successor-in-interest to Cape Asbestos Company Limited, as any reasonably diligent review of the public record would have revealed.

11. The order appointing a receiver is unconstitutional and unlawful because the Court does not have, and made no finding that it has, personal jurisdiction over the target of the receivership – Cape PLC, which all public records clearly show is a Jersey corporation first organized in 2011.

12. The order appointing a receiver is unlawful because, as stated by the South Carolina Supreme Court, “an adjudication of a receivership is a harsh and drastic remedy, one to be granted only with great caution.” *Penn Mut. Life Ins. Co. v. Cudd*, 172 S.C. 88, 91, 172 S.E. 787, 788 (1934). Principles of equity did not and do not support the appointment of a receiver over a foreign company incorporated in Jersey (a) that is not dissolved and is a going concern, (b) with no demonstration of the existence of any assets in South Carolina, (c) based on a single purported default, (d) in a lawsuit in which it was not served with process, and (e) without any adjudication or allocation of liability, or entry of default judgment in the previously “fully resolved” *Park* Lawsuit.

13. There is no justiciable controversy, and the Court has no jurisdiction to issue the advisory opinion sought by the Receiver because Mr. Park's claims were completely resolved and settled prior to the filing of the motion to appoint the receiver. Moreover, Mr. Park lacked standing to even seek the appointment of a receiver as he was not a judgment creditor of Cape PLC.

14. The order appointing the Receiver, based on its plain language and pursuant to South Carolina law, does not authorize the Receiver to file lawsuits on behalf of a foreign company against an out-of-state law firm that has never represented the entity over whom the Receiver was apparently appointed. Even if the Receiver had been appointed over an entity that the Firm had represented, nothing in South Carolina law permits him to file lawsuits pertaining to representation that occurred more than thirty years ago. As explained by the South Carolina Supreme Court, "[t]he power of a receiver only extends to the boundaries of the territorial jurisdiction of the court appointing him." *Pollock v. B. & L. Ass'n*, 48 S.C. 65, 74, 25 S.E. 977, 980 (1896).

15. The Order appointing the Receiver is unlawful because it purports to give the Receiver "the power and authority fully [sic] administer all assets of Cape," when S.C. Code § 15-65-10(4) limits a South Carolina receivership "in like cases, of the property within this State of foreign corporations." The reference to "like cases" regarding foreign corporations is a clear limitation on a receiver's power only where a South Carolina court has *in rem* jurisdiction. On its face, the statute only allows a South Carolina court to appoint a receiver over the assets of a foreign corporation that are found "within this State." Thus, even if the Receiver had been appointed over

Cape Industrial Holdings, Limited – the name of the entity that actually currently holds Company No. 00040203 and which appears to be a successor to the Cape PLC whom lawyers with Lord Bissell Brook represented in and before the 1980s, the law firm of Locke Lord has no assets within the State of South Carolina, and the Amended Third-Party Complaint does not allege that it does or that any of the documents or information sought is now or was ever within the boundaries of the State. There is thus no client property “within the State” of South Carolina for the Receiver to administer.

16. The Order appointing the Receiver is unlawful to the extent based on S.C. Code § 15-65-10(4) because public records show that Cape PLC is not dissolved, not insolvent, and not in imminent danger of insolvency, it has not forfeited its corporate rights in its jurisdiction of incorporation, Jersey, and it never had corporate rights to forfeit in South Carolina, including because there is nothing in the record demonstrating that South Carolina has personal jurisdiction over Cape PLC.

17. The Order appointing the Receiver is unlawful to the extent it is based on S.C. Code § 15-65-10(4) because that statute does not allow a South Carolina court to create a receivership over a foreign corporation that does not have any property in the state and has not had any judgment entered against it.

18. The Order appointing the Receiver is unlawful to the extent based on S.C. Code § 15-65-10(5) because the appointment of a South Carolina receiver over an active Jersey company that was first incorporated in 2011 – decades after the alleged events identified as the “fraud warranting appointment of a receiver” – is not consistent with “existing practice” in South Carolina.

19. The Receiver does not have authority to pursue claims through the vehicle of a third-party complaint under Rule 14, SCRCP because that procedural vehicle only allows for derivative liability for claims adjudicated in the primary action. Only a receiver appointed under S.C. Code §§ 15-65-10(2) or 15-65-10(3) “[a]fter judgment” has authority to pursue such derivative claims. The receiver in the *Park* Lawsuit was appointed under §§ 15-65-10(4) and 15-65-10(5). Mr. Park’s claims were declared fully resolved without entry of any judgment as against Cape PLC.

20. The Order appointing the Receiver violates the South Carolina receivership statute, which does not authorize receiverships of foreign companies over which the South Carolina courts have no jurisdiction, does not authorize receiverships over foreign companies with no property in South Carolina, and does not authorize receivers to file lawsuits on behalf of foreign corporations.

21. The Order appointing the Receiver is unlawful and violates principles of international comity because it purports to interfere with the pre-existing exclusive jurisdiction of the U.K. courts, which previously exercised jurisdiction over the assets of the true successor-in-interest to Cape Asbestos Company Limited in 2006, as described in the Scheme of Arrangement summarized in Note 32 of Cape PLC’s Annual Report 2022, which is available to the public for download from the Jersey companies website.

22. The Order appointing the Receiver is unlawful and violates principles of international comity because it purports to interfere with the pre-existing exclusive jurisdiction of the Jersey courts to exercise oversight and management over the internal affairs of a Jersey company.

23. The Order appointing the Receiver violates *inter alia* the Dormant Commerce Clause, the Foreign Commerce Clause, the Taking Clause, the Due Process Clause, the Excessive Fines Clause, the Equal Protection Clause, and the Supremacy Clause of the U.S. Constitution.

BACKGROUND

On November 17, 2021, the plaintiff Keith Park filed an amended complaint that named “Cape Intermediate Holdings Limited” and “Cape PLC” as defendants. A Second Amended Complaint was filed on December 27, 2021. In Paragraph 15 of the Second Amended pleading, Mr. Park alleged that each of these entities is the “successor-in-interest to Cape Asbestos Company.” In Paragraphs 26 and 27 of that pleading, Mr. Park alleged that each of these entities is a presently-operating company organized under the laws of the United Kingdom with its principal place of business in England.

Publicly available information shows that the allegations in Mr. Park’s Second Amended Complaint are incorrect as Cape PLC is a Jersey company that was created in 2011. *See* Ex. 2, Jersey Financial Services Commission Registry for Cape PLC, at www.jerseyfsc.org/registry/registry-entities/entity/292339. Regardless, there are no other allegations specific to either of these entities anywhere else in that or any other pleading filed in *Park*.

The Court ordered *Park* to begin trial on June 20, 2022. (Ex. 3, Docketing Order at 2 (filed Dec. 1, 2021, in *Park*)) On June 3, 2022, Mr. Park’s counsel reported to the Court that the case was “fully resolved.” (Ex. 4, Email from Ms. McVey to 479 recipients (June 3, 2022)) Other than stipulations of dismissal being filed, the case

was over, and no damages or liability were ever attributed to Cape Intermediate Holdings Limited or Cape PLC. In fact, at the time the case was to be called to trial, there was no indication in the record Mr. Park ever even attempted to serve either of these entities with process in the first place.

But then, nine months later, without a live case or controversy pending, Mr. Park – whose case was already “fully resolved” according to his lawyer – filed a 130-page motion with exhibits to have the Court appoint a receiver over “Cape PLC and its subsidiaries, affiliates, successors, and assigns,” a group that is undefined in the motion. (Ex. 1 Mot. to Appoint Receiver at 1 (filed Mar. 6, 2023, in *Park*)) In its Motion to Appoint Receiver, Counsel represents to the Court that Cape PLC was served with the *Park* Second Amended Summons on March 8, 2022, via the Hague Convention, and cites to an Exhibit A that did not exist in the Court’s docket at the time of filing the motion or the entry of the Order Appointing Receiver, and does not exist on review of the Court’s docket today. As such, there still is nothing in the record, other than counsel’s misrepresentations that it was so, to indicate Mr. Park ever completed service on Cape PLC.

On March 17, 2023, the Court granted that motion without a hearing, explaining:

This Court finds that the application [to appoint Mr. Protopapas as receiver] is meritorious under the applicable statute because Cape PLC as the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) (“Cape Asbestos”) and its subsidiaries and global affiliates (collectively, “Cape” or the “Company”) have dissolved and Cape, a foreign corporation, has forfeited its charter and has further failed to answer this case and therefore, Plaintiffs request for an expedited ruling on this motion is appropriate and also granted.

(Ex. 5 Order Appointing Cape PLC Receiver at 1 (filed Mar. 17, 2023, in *Park*)) It then tasked Mr. Protopapas with taking “any and all steps necessary to protect the interests of Cape whatever they may be.” (*Id.*)

One month later, Mr. Protopapas, in his supposed capacity as the receiver for “Cape PLC,” filed a third-party complaint against Locke Lord. But rather than plead a case whereby Cape PLC attempts to shift derivative liability to a third-party defendant – which is the only permissible use of third-party practice recognized by Rule 14, SCRCP, and which would make no sense here because Mr. Park’s asbestos case had been “fully resolved” for eight months and no liability for damages was adjudicated to Cape PLC – Mr. Protopapas sought declaratory judgment on matters regarding Locke Lord’s representation of Cape PLC through attorneys who were formerly affiliated with one of its predecessor law firms in Chicago, Illinois, more than forty years before his appointment. This is clearly not one of the permitted purposes of a third-party complaint under Rule 14.

Everything about this supposed receivership runs afoul of the law. For each of the numerous reasons listed above and discussed below, the Receiver has no standing to proceed, and the receivership appointment must be dissolved immediately.

ARGUMENT

I. The factual grounds for appointing the Receiver were false.

The Court should dissolve its Order appointing the Receiver for the threshold reason that it is based on false factual statements. South Carolina Code § 15-65-10 identifies the limited circumstances under which a court can consider appointing a receiver over property. The *Park* Court cited Sections (4) and (5) of this statute when

appointing Mr. Protopapas. Those statutes provide that a receiver may be appointed to marshal property within the State of South Carolina:

- (4) When a corporation has been dissolved, is insolvent or in imminent danger of insolvency or has forfeited its corporate rights, and, in like cases, of the property within this State of foreign corporations; and
- (5) In such other cases as are provided by law or may in accordance with the existing practice, except as otherwise provided in this Code.

This situation meets none of these conditions.

No Corporate Dissolution. In the appointment order, the Court stated that “Cape Industries Ltd.” (as well as an unspecified, undescribed, unidentified number of “its subsidiaries and global affiliates”) has “dissolved.” The Court used this supposed dissolution as a basis for appointing a receiver over “Cape PLC,” citing Section 15-65-10(4)’s permission for a court to appoint a receiver over the property of a dissolved company. But this is categorically untrue.

First, as noted above, Cape PLC is a registered public company in Jersey, and it is a going concern. It is not dissolved, and the Jersey online corporate database makes this inescapable: www.jerseyfsc.org/registry/registry-entities/entity/292339.¹

See, Ex. 2. Cape PLC is the only company actually identified by name in the

¹ The Court should take judicial notice of the content of the United Kingdom and Jersey government databases. See generally Rule 201(b), SCRE (explaining that courts can take judicial notice of facts that are “not subject to reasonable dispute”); *id.* 201(f) (“Judicial notice may be taken at any stage of the proceeding.”); see also *State v. Squires*, 311 S.C. 11, 15, 426 S.E.2d 738, 740 (1992) (taking judicial notice “that the infrared spectroscopy process utilized by [an infrared breath-testing device] has gained general acceptance in the scientific community”).

appointment order, and its very existence demonstrates the impropriety of the receivership order.

Likewise, the receivership order incorrectly states that Cape PLC is the “successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.),” suggesting that the receivership is somehow intended to reach whatever companies have existed along this historical line of entities.² But that lineage exists, too, and has not dissolved. The United Kingdom’s public database for corporate registration reveals that Cape Industries Ltd. changed its name to Cape Industries PLC, then to Cape PLC, then to Cape Intermediate Holdings PLC, and currently operates as Cape Intermediate Holdings Ltd. - the entity that presently holds Company Number 00040203.³ Documents demonstrating this corporate lineage are attached as Exhibit 6, which the United Kingdom makes publicly available for free and can be located within minutes by a simple search of the internet: <https://find-and-update.company-information.service.gov.uk/company/00040203/filing-history>. Significantly, the motion to appoint the receiver was not addressed to or served upon Cape Intermediate Holdings Ltd. and the order appointing the receiver did not reference that entity.

² The receivership order incorrectly recites the corporate structure, but this is beside the point – no matter what entity the Court thought it was appointing Mr. Protopapas to be the receiver over, there is no corporate dissolution, and thus no lawful basis for the appointment.

³ Cape Intermediate Holdings Ltd. was identified as a defendant in the *Park* case, but was never served. It does not appear anywhere in the motion or order appointing the challenged receivership, and it cannot legitimately be deemed to fall within the scope of the receivership order.

At bottom, no entity over which the Court attempted to appoint Mr. Protopapas as a receiver has dissolved. The Court's statements on this point are incorrect based on indisputable facts contained in government records that are readily available to anyone with internet access. The appointment order should be vacated immediately.

No Evidence of Service. The receivership order lists Cape PLC's "fail[ure] to answer this case" as an additional reason to appoint Mr. Protopapas as a receiver. Nothing in the law allows this to be a basis for a court to seize private property through a receivership appointment. But even if the law did allow it, there is nothing in the record to indicate that Cape PLC or any other entity that is conceivably contemplated by the Court's ambiguous catch-all descriptor "Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) and its subsidiaries and global affiliates" was ever served with the operative Second Amended Summons and Complaint in *Park*. The lack of service is fatal to the receivership order.

First, Rules 4 and 4.1, SCRCF, govern service of process for cases in South Carolina state courts. Both require plaintiffs to file proof of service so that a court can evaluate whether it actually has jurisdiction over a defendant. *Id.* 4(g), 4.1(c). The Public Index for this case contains pages and pages of entries, but not a single indication that Cape PLC or any other entity potentially within the undefined scope of the phrase "Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) and its subsidiaries and global affiliates" was ever served with process, or with notice of Mr. Park's motion to appoint a receiver.⁴ (Ex. 7) A court cannot secure personal

⁴ Cape Intermediate Holdings Ltd. was also never served in *Park* despite being listed as a defendant.

jurisdiction over a defendant without proper service of process. *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006). An order – even a default judgment – “is void if a court acts without personal jurisdiction.” *Id.*

Second, when Mr. Park moved to appoint a receiver over Cape PLC, he represented to the Court that Cape PLC “fail[ed] to respond to the Second Amended Summons in this action, as properly served pursuant to Article 10 of the Hague Convention on March 8, 2022.” (Ex. 1, Mot. to Appoint Receiver at 4–5 in *Park*) On August 28, 2023 – nearly seven months after he moved for that appointment – Mr. Park filed a “Notice of Filing of Ommitted [sic] Exhibit” that purported to substantiate the representation in his motion to appoint a receiver. (Ex. 8) But that belated filing only confirms the impropriety of Mr. Park’s motion and the invalidity of the receivership:

1. The purported “Affirmation” of service indicates that the process server attempted to serve Cape PLC “within the jurisdiction of England and Wales.” (Affirmation ¶ 2 & accompanying photographs in *Park*) But Cape PLC is a Jersey company. Not only is Cape PLC not at the address at which service was purportedly made, it isn’t even within the jurisdiction of where service was apparently attempted.
2. The idea that the “Affirmation” proves that Mr. Park’s representation that he served the “Second Amended Summons” on Cape PLC is false. To the extent the “Affirmation” could operate as proof of anything, it specifically attests that the process server attempted to serve the “***First*** Amended Summons” on Cape PLC. (*Id.* ¶ 6 & accompanying cover

letters (emphasis added)) What’s more, the “Affirmation” indicates that service supposedly began on December 14, 2021, and that the pleadings were “deemed to have been served” on December 16, 2021. (*Id.* ¶¶ 10, 13 & accompanying pictures) But the Second Amended Summons and Second Amended Complaint were filed on December 23, 2021—*a full week later*. There is no way the “Affirmation” can constitute service of the “Second Amended Summons” on anyone when leave to file that pleading did not even exist at the time of alleged service on Cape PLC.

3. As a matter of law, Cape PLC (and Cape Intermediate Holdings Limited, for that matter) had no pleading obligation to Mr. Park because, as a matter of law, he mooted the First Amended Summons and First Amended Complaint by filing – but never serving – the Second Amended Summons and Second Amended Complaint.

Assuming *arguendo* that Cape PLC was properly served as described in the “Affirmation,” Cape PLC’s deadline to respond to the First Amended Summons and First Amended Complaint would have been Tuesday, January 18, 2022 – the first business day following 30 days after service on December 16, 2021, an intervening weekend, and Martin Luther King, Jr. Day. Rules 6(a), 12(a), SCRCR. But before that deadline arrived, Mr. Park re-amended his complaint and filed a Second Amended Summons and a Second Amended Complaint on December 23, 2021. Mr. Park did so with the Court’s approval earlier that same day. (Ex. 9, Order Granting Mr. Park’s Motion for Leave to Amend (Dec. 23, 2021), in *Park*)

As a matter of law, the filing of a new complaint moots the earlier pleading and voids its effect. *See, e.g., Fawzy v. Wauquiez Boats SNC*, 873 F.3d 451, 455 (4th Cir. 2017) (“Because a properly filed amended complaint supersedes the original one and becomes the operative complaint in the case, it renders the original complaint ‘of no effect.’” (quoting *Young v. City of Mt. Ranier*, 238 F.3d 567, 573 (4th Cir. 2001))); *Schein v. Lamar*, 284 S.C. 252, 255, 325 S.E.2d 573, 574 (Ct. App. 1985) (“Since the First Amended Complaint has been superseded by the Second Amended Complaint, it is no longer the operative pleading in the case. Thus, any questions as to the sufficiency of the First Amended Complaint are now moot.”).

Because Mr. Park mooted his First Amended Complaint by filing a Second Amended Complaint, he was obligated to serve that new pleading on Cape PLC (and Cape Intermediate Holdings) if he intended for them to become parties to his case. But he did not. There is still no proof anywhere in the record that Cape PLC (or Cape Intermediate Holdings) was ever served with an operative pleading in this case, so the Court never acquired jurisdiction to enter any orders involving Cape PLC – including the receivership order. It is void as a matter of law, and the “receivership” should be dissolved accordingly. *See Innovative Waste Mgmt. Inc. v. Crest Energy Partners GP, LLC*, 423 S.C. 611, 613, 815 S.E.2d 780, 781 (Ct. App. 2018) (“Void judgments are defined as those from courts that lacked personal or subject matter jurisdiction, or failed to provide due process.”), *aff’d as modified on unrelated point* 425 S.C. 568, 824 S.E.2d 214 (2019).

Because the Court had no jurisdiction over the entity or entities for whose assets it attempted to appoint Mr. Protopapas as receiver, the appointment order is

void as a matter of law. It should be vacated, and the receivership appointment dissolved accordingly.

II. The receivership order is void as a matter of constitutional law.

In addition to failing to meet the plain language of South Carolina Code § 15-65-10 for when a receiver may be appointed, the appointment order should be dissolved because it unlawfully purports to have an extraterritorial effect.

The appointment order purports to vest Mr. Protopapas with “the power and authority [to] fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape whatever they may be.” (Ex. 5, Appointment Order at 1 (emphasis added)) But all publicly available information shows that Cape PLC is a Jersey company that has nothing to do with South Carolina. “Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) and its subsidiaries and global affiliates” likewise have nothing to do with South Carolina, and there’s nothing anywhere in the record to suggest otherwise.

Standing alone, the absence of proof of any property within South Carolina voids the receivership appointment. *See Boynton v. Consol. Indem. & Ins. Co.*, 180 S.C. 279, 293, 185 S.E. 731, 737 (1936) (reversing the appointment of a receiver where there was a “total failure of any proof” that the foreign company “has property in this state”).

Moreover, a South Carolina state court cannot lawfully take assets away from foreign businesses (over which it has no personal jurisdiction) and give them to a South Carolina receiver to “fully administer.” The South Carolina receivership

statute acknowledges this in-state-only limitation on the reach of a receivership. *See* S.C. Code Ann. § 15-65-10(4) (limiting a receiver’s ability to marshal only “the property within this State of foreign corporations”).

Such a limitation is rooted in the constitutional requirement that a state law cannot have extraterritorial effect; to do otherwise would run afoul of, at least, the Commerce Clause, which gives Congress alone the authority to regulate interstate and international commerce:

The South Carolina Supreme Court has written repeatedly that South Carolina statutes have no extraterritorial effect because the general rule is that no state or nation can, by its laws, directly affect, bind, or operate upon property or persons beyond its territorial jurisdiction.

* * * * *

The principle that state laws may not generally operate extraterritorially is one of constitutional magnitude. One state may not “project its legislation” into another, as the Commerce Clause “precludes the application of a state statute to commerce that takes place wholly outside of the State’s borders, whether or not the commerce has effects within the State.”

Carolina Trucks & Equip., Inc. v. Volvo Trucks of N.A., Inc., 492 F3d 484, 489–90 (4th Cir. 2007) (cleaned up).

A receiver’s ability to marshal property across state or national lines undoubtedly involves interstate or foreign commerce, as Congress itself has limited when such authority exists and has made such a remedy available only through the federal courts. 28 U.S.C. §§ 754, 3103. By attempting to displace federal receivership law with a South Carolina statute, the receivership order runs afoul of the Supremacy Clause as well.

Finally, attempting to enforce a South Carolina receivership statute against an entity or entities over which it has no personal jurisdiction also violates the Due Process Clause. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491–92, 611 S.E.2d 505, 508 (2005). And authorizing a receiver to seize all of a private company’s assets without any notice and without any compensation (and without any lawful basis) also violates not only due process, but also likely constitutes an unlawful taking, an excessive fine, and a violation of equal protection, given that the Receiver purportedly operates as an extension of the court.

Because the appointment order purports to give a South Carolina receiver authority over property that is not located in and has no relationship to South Carolina, and seeks to do so without any notice to or jurisdiction over the impacted foreign companies, it is unconstitutional on its face and should be vacated for this additional reason.⁵

CONCLUSION

This receivership is based on factual errors obvious on the face of the order appointing the Receiver. It runs contrary to both the South Carolina Code and the United States Constitution. And the Receiver’s conduct since being appointed demonstrates the impropriety of this receivership continuing. Accordingly, the Court

⁵ Subject to and without waiving its personal jurisdiction objection, the movants respectfully reserve the right to recover all costs, fees, expenses, and damages associated with this proceeding, including from *inter alia* Keith W. Park, the party who sought to create this unlawful receivership in the first place. See S.C. Code Ann. § 15-65-90 (allowing a party opposing a receivership to recover “his actual damages by reason of such receivership” from “the party or parties having procured such receiver”).

should dissolve the receivership and vacate its order appointing Mr. Protopapas as receiver over Cape PLC.

Respectfully submitted this 15th day of September, 2023.

WOMBLE BOND DICKINSON (US) LLP

/s/ M. Elizabeth O'Neill

M. Elizabeth O'Neill (S.C. Bar No. 104013)
One Wells Fargo Center
301 S. College Street, Suite 3500
Charlotte, North Carolina 28202-6037
(704) 350-6310
Elizabeth.ONeill@wbd-us.com
WBD.SCASBESTOS@wbd-us.com

Kevin A. Hall (S.C. Bar No. 015063)
M. Todd Carroll (S.C. Bar No. 74000)
1221 Main Street, Suite 1600
Columbia, South Carolina 29201
(803) 454-7710
kevin.hall@wbd-us.com
todd.carroll@wbd-us.com

**TURNER PADGET GRAHAM & LANEY,
P.A.**

Mark Goddard (S.C. Bar No.: 73965)
1901 Main Street, 17th Floor
Columbia, SC 29201
Ph.: (803) 227-4334
mgoddard@turnerpadget.com

J. Kenneth Carter (S.C. Bar No.: 12812)
Post Office Box 1509
Greenville, SC 29602
Ph.: (864) 552-4611
kcarter@turnerpadget.com

*Attorneys for Third-Party Defendant
Locke Lord LLP*

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2023-
Circuit Court Case No. 2023-CP-40-01759

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

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Hesterton Company; ABB Inc.; Air & Liquid Systems Corporation; AIW-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited ASCO, L.P.; Atlas Asbestos Co.; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas CT, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Lowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services; Orporation Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply,

Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Inc.; SPX Corporation; Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable, LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc.; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; and Zurn Industries, LLC, ...	Defendants,
Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas,.....	Third-Party Plaintiff/Respondent,

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa Ltd.; DeBeers PLC; DeBeers Centenary AG; DeBeers Consolidated Mines Ltd.; DeBeers S.A.; DeBeers UK Ltd.; DeBeers Jewelers US, Inc.; Anglo American US Holdings Inc.; Element Six US Corp.; Element Six Technologies US Corp.; Element Six Technologies (OR) Corp.; First Mode Holdings, Inc.; Platinum Guild International (USA) Jewelry Inc.; Forevermark US Inc.; Anglo American Crop Nutrients (USA), LLC; Charter Consolidated Ltd.; ESAB Corporation; Central Mining & Investment Corporation Ltd.; Cape Holdco Ltd.; The Law Debenture Corporation PLC; Cape Industrial Services Group Ltd.; Mohed Altrad; Altrad UK Ltd.; Cape UK Holdings Newco Ltd.; Altrad Services Ltd., f/k/a Cape Industrial Services Ltd.; Altrad Investment Authority SAS; Sparrows Offshore Group Ltd.; Hawk Bidco US Inc.; Arranco US, LLC; Sparrows Offshore, LLC; The Sparrows Group, LLC, ...	Third-Party Defendants,

of which

Mohed Altrad and Altrad Investment Authority SAS are the.....	Appellants.

NOTICE OF APPEAL

Please take notice that Mohed Altrad and Altrad Investment Authority SAS appeal the order captioned “Order Denying Certain Third-Party Defendants’ Motions to Dissolve Receivership and Third-Party Defendants’ Motions to Dismiss for Lack of Personal Jurisdiction,” entered on December 6, 2023. This order is immediately appealable pursuant to South Carolina Code § 14-3-330(4) because, among other things, it specifically continues a receivership despite a motion to dissolve the receivership, it modifies the scope of the receivership in numerous ways, and it has the effect of granting a new receivership over a corporate entity that was never involved in the initial motion to create this receivership.

Mr. Altrad and Altrad Investment Authority received written notice of entry of this order on December 6, 2023, making this notice timely. Mr. Altrad and Altrad Investment Authority further state that all necessary transcripts for this appeal have been received from the appropriate court reporter.

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.

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 Mohed Altrad and Altrad
Investment Authority SAS

December 18, 2023

Other Counsel of Record:

James H. Elliott, Jr.
jelliott@richardsonplowden.com
Cameron D. Berthelsen
cberthelsen@richardsonplowden.com
Richardson Plowden & Robinson, P.A.
235 Magrath Darby Blvd., Ste. 100
Mt. Pleasant, SC 29464
t. 843.805.6550

Mary Rose Alexander
mary.rose.alexander@lw.com
Caitlin Dahl
catilin.dahl@lw.com
Pro Hac Vice
Latham & Watkins LLP
330 North Wabash Ave., Ste. 2800
Chicago, IL 60611
t. 312.876.7700

Michele D. Johnson
michele.johnson@lw.com
Pro Hac Vice
Latham & Watkins LLP
650 Town Center Drive, 20th Floor
Costa Mesa, CA 92626-1925
t. 714.540.1235

Counsel for the AA/DB Non-US Third-Party Defendants

Steven J. Pugh
spugh@richardsonplowden.com
Benjamin P. Carlton
bcarlton@richardsonplowden.com
Richardson Plowden & Robinson, P.A.
1900 Barnwell Street
Columbia, SC 29201
t. 803.771.4400

Counsel for ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC

A. Victor Rawl, Jr.
vrawl@grsm.com
Gordon Rees Scully Manshukhani, LLP
40 Calhoun Street, Suite 350
Charleston, SC 29407
t. 843.714.2501

Counsel for ESAB Corporation; Central Mining and Investment Corp., Ltd.; and Charter Consolidated Ltd.

John T. Lay, Jr.
jlay@gwblawfirm.com
Gray T. Culbreath
gculbreath@gwblawfirm.com
Lindsay A. Joyner
ljoyner@gwblawfirm.com
Laura W. Jordan
ljordan@gwblawfirm.com
Eleanor L. Jones
ejones@gwblawfirm.com
Gallivan, White & Boyd, PA
1201 Main Street, Suite 1200
Columbia, SC 29201
t. 803.779.1833

Jonathan M. Robinson
jon@smithrobinsonlaw.com
Shanon N. Peake
shanonp@smithrobinsonlaw.com
G. Murrell Smith, Jr.
murrell@smithrobinsonlaw.com
2530 Devine Street, Third Floor
Columbia, SC 29205
t. 803.254.5445

Troy S. Brown
troy.brown@morganlawis.com
Dana E. Becker
dana.becker@morganlewis.com
Brady Edwards
brady.edwards@morganlewis.com
Robert W. Jacques
robert.jacques@morganlewis.com
Paul A. Scrudato
paul.scrudato@morganlewis.com
Morgan Lewis & Bockius LLP

1701 Market Street
Philadelphia, PA 19103
t. 215.963.5000

Counsel for the Receiver for Cape PLC

Theile B. McVey (SC Bar No. 16682)
tmcvey@kassellaw.com
John D. Kassel (SC Bar No. 3286)
jkassel@kassellaw.com
Jamie D. Rutkoski (SC Bar No. 103270)
jrutkoski@kassellaw.com
KASSEL MCVEY ATTORNEYS AT LAW
1330 Laurel Street
Post Office Box 1476
Columbia, South Carolina 29202-1476
T: 803-256-4242

Charles William Branham, III
tbranham@dobslegal.com
Kevin W. Paul
kpaul@dobslegal.com
David Christopher Humen
dhumen@dobslegal.com
DEAN OMAR BRANHAM SHIRLEY, LLP
302 N. Market Street, Suite 300
Dallas, TX 75202
T: 214-722-5990
F: 214-722-5991

Attorneys for Plaintiffs

Angela G. Strickland (SC Bar No. 73705)
Angela.strickland@bowmanandbrooke.com
Patrick J. Cleary (SC Bar No. 80808)
Patrick.cleary@bowmanandbrooke.com
DeShawn H. Mitchell (SC Bar No. 101813)
Deshawn.Mitchell@bowmanandbrooke.com
BOWMAN AND BROOKE LLP
1441 Main Street, Suite 1200
Columbia, SC 29201
Tel.: 803-726-7420
Fax: 803-726-7421

*Attorneys for Defendants 3M Company f/k/a Minnesota Mining and Manufacturing Company;
HPC Industrial Services, LLC and Brand Insulation Inc.*

William A. Coates (SC Bar No. 1289)
wac@roecassidy.com
ROE CASSIDY COATES & PRICE, P.A.
Post Office Box 10529
Greenville, South Carolina 29603
Tel.: (864) 349-2600

and

Christian J. Singewald, Esq. (Of Counsel)
SingewaldC@WhiteandWilliams.com
WHITE AND WILLIAMS, LLP
Courthouse Square
600 North King Street, Suite 800
Wilmington, Delaware 19801-3722

Attorneys for Defendant 4520 Corp., Inc., as successor-in-interest to Benjamin F. Shaw Company

M. Elizabeth Jowers (SC Bar No. 68288)
bjowers@maynardnexsen.com
Kelly Jones (SC Bar No. 74732)
kjones@maynardnexsen.com
MAYNARD NEXSEN PRUET PC
205 King Street, Suite 400
Charleston, SC 29401
Tel: (843) 577-9440
Fax: (843) 720-1777

Attorneys for Defendant sued as General Boiler Casing Company, Inc.; and Piedmont Insulation Company, Inc.

Krista M. McGuire (SC Bar No. 72021)
kristamcguire@parkerpoe.com
PARKER POE ADAMS & BERNSTEIN LLP
850 Morrison Drive, Suite 400
Charleston, SC 29403
(843) 727- 2650 (Office)

Attorneys for Defendant Mine Safety Appliances Company, LLC

Jennifer M. Techman SC State Bar No. 70202
JMTechman@EWHlaw.com
Andrew S. Rogers SC State Bar No. 75804
ASRogers@EWHlaw.com
EVERT WEATHERSBY HOUFF

3455 Peachtree Road NE, Suite 1550
Atlanta, GA 30326
Tel: (678) 651-1200

Attorneys for Defendants Paramount Global f/k/a ViacomCBS Inc., General Electric Company; Spirax Sarco, Inc.; Copes Vulcan, Inc.; A.W. Chesterton Company; and Foster Wheeler Energy Corporation

William Early (SC Bar No. 15657)
willearly@piercesloan.com
PIERCE SLOAN KENNEDY & EARLY LLC
The Blake-Grimké House
321 East Bay Street
Post Office Box 22437
Charleston, South Carolina 29413
PH: (843) 722-7733
Fax: (843) 722-7732

Attorneys for Defendants ABB, Inc.; Vistra Intermediate Company LLC; Riley Power, Inc.; Howden North America

Carl E. Pierce, II (SC Bar No. 7946)
carlpierce@piercesloan.com
Benjamin Catlett Smoot, II (SC Bar No. 101372)
bensmoot@piercesloan.com
PIERCE SLOAN KENNEDY & EARLY LLC
The Blake-Grimké House
321 East Bay Street
Post Office Box 22437
Charleston, South Carolina 29413
PH: (843) 722-7733
Fax: (843) 722-7732

Attorneys for Defendants Great Barrier Insulation Co.; CB&I Laurens Inc.; Starr Davis Company of SC; and Starr Davis Company, Inc.

Joseph E. Thoensen (SC Bar #72563)
jthoensen@richardsonplowden.com
R. Wilder Harte (SC Bar # 101228)
wharte@richardsonplowden.com
Megan C. White (SC Bar # 101895)
mwhite@richardsonplowden.com
RICHARDSON PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street (29201)
Post Office Drawer 7788
Columbia, South Carolina 29202

(803) 771-4400

Attorneys for Defendants BW/IP; AECOM Energy & Construction, Inc.; Yeargin Construction Company, Inc.; ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC

Stephanie G. Flynn (SC Bar No. 16653)

sgflynn@FoxRothschild.com

Nicolas J. Cherry (SC Bar No. 102671)

ncherry@FoxRothschild.com

Allyson R. Twilley (SC Bar No. 101884)

atwilley@FoxRothschild.com

FOX ROTHSCCHILD LLP

2 W. Washington St., Ste. 1100

PO Box 87, Greenville, SC 29602

864-751-7607/FAX 864-751-7800

Attorneys for Defendants Armstrong International, Inc.; Gardner Denver Nash LLC; Viking Pump, Inc.; Joy Global Underground Mining LLC; Rockwell Automation Inc.; and RSCC Wire & Cable LLC

Stephen L. Brown (SC Bar No. 66468)

sbrown@ycrlaw.com

James D. Gandy, III (SC Bar No. 11925)

tgandy@ycrlaw.com

Stephen A. Griffith (SC Bar No.: 103744)

sgriffith@ycrlaw.com

CLEMENT RIVERS, LLP

P.O. Box 993, Charleston, SC 29402

Telephone: (843) 720-5488

Facsimile: (843) 579-1369

Attorneys for Defendants Asbestos Corporation Limited and Atlas Turner, Inc.

George L. Inabinet, Jr., Esq. (SC Bar No. 16575)

bi@maronmarvel.com

Casey L. Austin, Esq. (SC Bar No. 101998)

cla@maronmarvel.com

Kelly L. Near, Esq. (SC Bar No. 75239)

Kln@maronmarvel.com

MARON MARVEL BRADLEY ANDERSON & TARDY LLC

259 Seven Farms, Suite 300

Charleston, SC 29492

PH: (843) 727-0001

Fax: (843) 727-0003

Attorneys for Defendants Consolidated Electrical Distributors

Derrick C. Foard (SC Bar No. 105062)
derrick.foard@elliswinters.com
Ashley K. Brathwaite (SC Bar No. 76952)
ashley.brathwaite@elliswinters.com
ELLIS & WINTERS LLP
P.O. Box 2752
Greensboro, North Carolina 27402
Telephone: (336) 217-4193
Facsimile: (336) 217-4198
Telephone: (919) 865-7000
Facsimile: (919) 865-7010

*Counsel for Defendants Beaty Investments, Inc f/k/a Guy M. Beaty & Co.; Covil Corporation;
and Standard Insulation Company of North Carolina, Inc.*

Amy H. Geddes (SC Bar No. 16960)
AGeddes@maynardnexsen.com
MAYNARD NEXSEN, PC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, SC 29202
Telephone: 803.771.8900

Attorneys for Defendants Bechtel Corporation, Sequoia Ventures, Inc.

Brian M. Barnwell (S.C. Bar # 78249)
bb@rplegalgroup.com
RIKARD & PROTOPAPAS, LLC
2110 N. Beltline Blvd. PO Box 5640
Columbia, SC 29204
Phone: 803.978.6111

Attorneys for the Receiver of Beaty Investments, Inc.

Robert O. Meriwether SC Bar No. 0009828
robert.meriwether@cs-law.com
Telephone: (803) 529-1783
James B. Glenn SC Bar No. 0077731
jase.glenn@cs-law.com
Telephone: (803) 529-1782
COSMICH SIMMONS & BROWN, PLLC
701 Gervais Street, Ste 150, #109
Columbia, SC 29201
sc-asbestos@cs-law.com

Attorneys for Defendants Carboline Company; Cleaver-Brooks, Inc.; Gould Electronics Inc.; Goulds Pumps LLC; Grinnell LLC; ITT LLC; Carrier Corporation; York International Corporation; and Zurn Industries, LLC

Taylor J. Stewart (SC Bar No. 101974)
Taylor.Stewart@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD SMITH LLP
24 Drayton Street Suite 300
Savannah, GA 31401
Tel: (912) 525-4960

and

S. Christopher Collier (GA Bar No. 178307)
Chris.Collier@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD SMITH LLP
600 Peachtree Street, NE Suite 4700
Atlanta, Georgia 30308 Telephone:
(404) 348-8585
Fax: (404) 467-8845

Attorneys for Defendants DeZurik, Inc.; General Cable Industries, Inc., and General Cable Corporation

E. Elaine Shofner (SC Bar No. 100501)
eshofner@hpylaw.com
HAWKINS PARNELL & YOUNG LLP
303 Peachtree Street, NE Suite 4000
Atlanta, Georgia 30308
Telephone: (404) 614-7400
Fax: (404) 614-7500

Attorney for Defendant Eaton Corporation

M. Elizabeth O'Neill (SC Bar No. 104013)
Elizabeth.ONeill@wbd-us.com
WBD.SCAsbestos@wbd-us.com
WOMBLE BOND DICKINSON (US) LLP
One Wells Fargo Center
301 S. College Street, Suite 3500
Charlotte, North Carolina 28202-6037
Ph.: (704) 350-6310

Attorneys for Defendants Flowserve Corporation, f/k/a The Duriron Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; ASCO, L.P.; and Kinney Vacuum Pump Company

J. Michael Montgomery (SC Bar No. 74930)
mmontgomery@robinsongray.com
Rachel M. Hutchens (SC Bar No. 78303)
rhutchens@robinsongray.com
ROBINSON GRAY STEPP & LAFFITTE, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Defendants Flowserve US Inc., solely as successor to Edward Valves, Inc. and Rockwell Manufacturing, Individually, and as successor in interest to Allen Bradley Company LLC

W. David Conner (SC Bar No. 66358)
dconner@hsblawfirm.com
Scott E. Frick (SC Bar No. 68306)
sfrick@hsblawfirm.com
HAYNSWORTH SINKLER BOYD, P.A.
Post Office Box 2048
Greenville, SC 29602
(864) 240-3200 – phone
(864) 240-3300 – fax

Attorneys for Defendants Fluor Enterprises, Inc.; Fluor Daniel Services Corporation; Defendant Fluor Constructors International, Inc., on behalf of itself and the incorrectly named Defendant Fluor Constructors International, f/k/a Fluor Corporation; Daniel International Corporation; FMC Corporation, Sterling Fluid Systems USA LLC; Patterson Pump Company; and Union Carbide Corporation

Andrew G. Melling (S.C. Bar No. 9521)
amelling@burr.com
BURR & FORMAN LLP
P.O. Box 11390
Columbia, SC 29211
(803) 799-9800

Attorneys for Defendant Stafford Insulation Company

Mark H. Wall, Esq.
Mark.Wall@WallTempleton.com
WALL TEMPLETON & HALDRUP, P.A.
145 King Street, Suite 300 (29401)
Post Office Box 1200
Charleston, SC 29402

Tel.: (843) 329-9500
Fax: (843) 329-9501

Attorneys for Defendant Metropolitan Life Insurance Company a/k/a Metlife

Jennifer A. Jordan (SC Bar No. 066222)
jenny.jordan@nelsonmullins.com
Erika Karnaszewski Fedelini (SC Bar No. 101774)
erika.fedelini@nelsonmullins.com
NELSON MULLINS RILEY & SCARBOROUGH LLP
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

and

John S. Slosson (SC Bar No. 69589)
jack.slosson@nelsonmullins.com
301 South College Street / 23rd Floor
Charlotte, NC 28202-6041
(704) 417-3000

Attorneys for Defendant Occidental Chemical Corporation

Matthew D. Patterson (S.C. Bar No. 68316)
matt.patterson@nelsonmullins.com
James H. Burns (S.C. Bar No. 70313)
james.burns@nelsonmullins.com
Michael P. Stover (S.C. Bar No. 104757)
michael.stover@nelsonmullins.com
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

G. Mark Phillips (S.C. Bar No. 7945)
mark.phillips@nelsonmullins.com
NELSON MULLINS RILEY & SCARBOROUGH LLP
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239 (843) 853-5200

Attorneys for Defendants Anchor Darling Valve Company; Carboline Company; Zurn Industries LLC; Hajoca Corporation; Cleaver-Brooks, Inc.; Grinnell LLC; Goulds Pumps LLC; The

William Powell Company; ITT LLC; Valves and Controls USA, Air & Liquid Systems Corporation; Weir Valves & Controls USA, Inc.; and Barretts Minerals Inc.

James G. Kennedy (jameskennedy@piercesloan.com)
PIERCE SLOAN KENNEDY & EARLY LLC
The Blake-Grimké House
321 East Bay Street
Post Office Box 22437
Charleston, South Carolina 29413
PH: (843) 722-7733
Fax: (843) 722-7732

Attorneys for Defendants Flame Refractories Inc. and Davis Mechanical Contractors, Inc.

Stephen M. Kozick, Esq. (skozick@kernodlelaw.com)
KERNODLE COLEMAN
914 Folly Road, Suite G (29412)
P. O. Box 13897
Charleston, SC 29422
Tel.: (843) 795-7800
Fax: (843) 795-3032

Attorneys for Defendants Crane Instrumentation & Sampling, Inc., f/k/a CIRCOR Instrumentation Technologies, Inc., f/k/a Hoke, Inc.

Carmelo B. Sammataro (SSammataro@TurnerPadget.com)
Abigail C. Bray (ABray@TurnerPadget.com)
TURNER PADGET GRAHAM AND LANEY P.A.
Post Office Box 1473
Columbia, SC 29202
Phone: (803) 254-2200
Fax: (803) 799-3957

Attorneys for Defendant PECW Holding Company, f/k/a as Plastics Engineering Company d/b/a PLENCO

Tara C. Sullivan (tara.sullivan@klgates.com)
K&L GATES LLP
134 Meeting Street, Suite 500
Charleston, SC 29401
Telephone: 843.579.5600
Facsimile: 843.579.5601

Attorney for Defendant Redco Corporation f/k/a Crane Co.

David G. Harris II (dharris@goldbergsegalla.com)

Brady Yntema (byntema@goldbergsegall.com)
GOLDBERG SEGALLA LLP
701 Green Valley Road, Suite 310
Greensboro, NC 27408
Telephone: 336.419.4900

And

Kirby D. Shealy III (Kirby.shealy@arlaw.com)
Luke M. Allen (Luke.allen@arlaw.com)
ADAMS AND REESE LLP
1221 Main Street, Suite 1200
Columbia, SC 29201
Telephone: (803) 254-4190
Facsimile: (803) 779-4749

Attorneys for Third-Party Defendant Pennsylvania National Mutual Insurance Company

Jessica W. Laffitte (jlaffitte@gwblawfirm.com)
GALLIVAN, WHITE & BOYD, P.A.
PO Box 7368
Columbia, SC 29202-7368
(803) 779-1833 Ofc

Attorney for Defendant Schneider Electric USA, Inc. f/k/a Square D Company

Louis P. HERNs (louis@milliganlawfirm.com)
MILLIGAN & HERNs, PC
721 Long Point Road, Suite 401
Mt. Pleasant, SC 29464
PH: (843) 971-6750
Fax: (843) 971-6509

Attorney for Defendant A.O. Smith Corporation

Francis J. Gordon (fgordon@mgsattorneys.com)
MILLBERG GORDON STEWART PLLC
1101 Haynes Street, Suite 104
Raleigh, NC 27604
T: 919/ 836.0090
F: 919/ 836.8027

Attorneys for Defendant Canvas CT, LLC f/k/a SPX Cooling Technologies, LLC, f/k/a SPX Cooling Technologies, Inc., f/k/a The Marley Cooling Tower Company

C. Mitchell Brown
mitch.brown@nelsonmullins.com

Matthew D. Patterson
matt.patterson@nelsonmullins.com
James H. Burns (SC Bar No. 70313)
james.burns@nelsonmullins.com
A. Mattison Bogan SC Bar No. 72629
matt.bogan@nelsonmullins.com
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Defendant Wind Up, Ltd. f/k/a Pipe & Boiler Insulation, Inc.; Pfizer, Inc.; Presnell Insulation Co., Inc.;

David M. Burkoff (SC Bar No. 100339)
HUNTER, MACLEAN, EXLEY & DUNN, P.C.
200 East Saint Julian Street
Post Office Box 9848
Savannah, Georgia 31412-0048
Telephone: 912.236.0261
Facsimile: 912.236.4936

Attorney for Defendant AWT Air Company, Inc. f/k/a Research-Cottrell, Inc

PROOF OF SERVICE

I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Appellants Mohed Altrad and Altrad Investment Authority SAS, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

Pleading(s): Notice of Appeal

Parties Served:

John T. Lay, Jr. (jlay@gwblawfirm.com)
Gray T. Culbreath (gculbreath@gwblawfirm.com)
Lindsay A. Joyner (ljoyner@gwblawfirm.com)
Laura W. Jordan (ljordan@gwblawfirm.com)
Eleanor L. Jones (ejones@gwblawfirm.com)
Jonathan M. Robinson (jon@smithrobinsonlaw.com)
Shanon N. Peake (shanonp@smithrobinsonlaw.com)
G. Murrell Smith, Jr. (murrell@smithrobinsonlaw.com)
Troy S. Brown (troy.brown@morganlawis.com)
Dana E. Becker (dana.becker@morganlewis.com)
Brady Edwards (brady.edwards@morganlewis.com)
Robert W. Jacques (robert.jacques@morganlewis.com)
Paul A. Scrudato (paul.scrudato@morganlewis.com)

Counsel for the Receiver for Cape PLC

Theile B. McVey (tmcvey@kassellaw.com)
John D. Kassel (jkassel@kassellaw.com)
Jamie D. Rutkoski (jrutkoski@kassellaw.com)
Charles William Branham, III (tbranham@dobslegal.com)
Kevin W. Paul (kpaul@dobslegal.com)
David Christopher Humen (dhumen@dobslegal.com)

Attorneys for Plaintiffs

By: /s/ M. Todd Carroll

December 18, 2023

RECEIVED

Feb 22 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2023-001461
Circuit Court Case No. 2023-CP-40-01759

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

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Hesterton Company; ABB Inc.; Air & Liquid Systems Corporation; AIW-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited ASCO, L.P.; Atlas Asbestos Co.; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas CT, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Lowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services; Orporation Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply,

Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Incl; SPX Corporation; Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable, LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; and Zurn Industries, LLC, ...	Defendants,

of which

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

and

Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas,.....	Third-Party Plaintiff/ Respondent,

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa Ltd.; DeBeers PLC; DeBeers Centenary AG; DeBeers Consolidated Mines Ltd.; DeBeers S.A.; DeBeers UK Ltd.; DeBeers Jewelers US, Inc.; Angle American US Holdings Inc.; Element Six US Corp.; Element Six Technologies US Corp.; Element Six Technologies (OR) Corp.; First Mode Holdings, Inc.; Platinum Guild International (USA) Jewelry Inc.; Forevermark US Inc.; Anglo American Crop Nutrients (USA), LLC; Charter Consolidated Ltd.; ESAB Corporation; Central Mining & Investment Corporation Ltd.; Cape Holdco Ltd.; The Law Debenture Corporation PLC; Cape Industrial Services Group Ltd.; Mohed Altrad; Altrad UK Ltd.; Cape UK Holdings Newco Ltd.; Altrad Services Ltd., f/k/a Cape Industrial Services Ltd.; Altrad Investment Authority SAS; Sparrows Offshore Group Ltd.; Hawk Bidco US Inc.; Arranco US, LLC; Sparrows Offshore, LLC; The Sparrows Group, LLC, ...	Third-Party Defendants,

of which

Mohed Altrad; Altrad Investment Authority SAS; ArranCo US, LLC; Hawk Bidco US Inc.; Sparrows Offshore, LLC; Angle American PLC; De Beers PLC; De Beers Centenary AG; De Beers Consolidated Mines Proprietary Ltd.; De Beers UK Ltd.; ESAB Corporation; Charter Consolidated Ltd.; and Central Mining & Investment Corporation Ltd. are the Appellants.

INITIAL BRIEF OF THE ALTRAD DEFENDANTS

WOMBLE BOND DICKINSON (US) LLP

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*

February 22, 2024

TABLE OF CONTENTS

TABLE OF AUTHORITIES	II
INTRODUCTION	1
STATEMENT OF THE CASE.....	3
SUMMARY OF ARGUMENT	8
STANDARD OF REVIEW	10
ARGUMENT.....	10
I. The receivership appointment violates the substantive requirements of the South Carolina statute governing receiverships.	14
A. The receivership appointment is not consistent with any “existing practice.”	14
B. The Receiver is improperly acting as an advocate for the plaintiffs who are responsible for his appointment.	16
C. A receivership cannot be created in perpetuity for all future South Carolina asbestos cases.....	20
II. The receivership appointment violates the United States Constitution and federal law.	20
A. The receivership must be dissolved because its extraterritorial scope violates the dormant and foreign Commerce Clause.	20
B. A receivership cannot be misused to bypass the Due Process Clause by bring claims against foreign entities and individuals who are beyond the circuit court’s jurisdiction.	23
C. The receivership violates the Takings, Due Process, Equal Protection, and Excessive Fines Clauses of the U.S. Constitution.	36
III. The receivership appointment violated the procedural requirements of the South Carolina statute governing receiverships.	40
A. The receivership must be dissolved because CIHL was not provided statutory notice of the motion to appoint the receiver in the <i>Park</i> lawsuit as required by South Carolina Code § 15-65-20.	41
B. The receivership must be dissolved because the <i>Park</i> lawsuit was completely resolved and settled before the motion to appoint the receiver was filed.	46
CONCLUSION.....	46
APPENDIX: TABLES OF RECEIVERSHIP APPOINTMENTS FROM THE ASBESTOS DOCKET	48
Table 1: Receivership Appointments from the Asbestos Docket	49
Table 2: Foreign Companies Placed in Receivership in the Asbestos Docket	50

TABLE OF AUTHORITIES

Cases

<i>Abdulla v. S. Bank</i> , 439 S.C. 391, 887 S.E.2d 138 (Ct. App. 2023)	10, 24
<i>Atl. Mach. & Equip., Inc. v. Tigercat Indus.</i> , 427 F. Supp. 2d 657 (E.D. Va. 2006).....	23
<i>BNSF Ry. V. Tyrrell</i> , 581 U.S. 402 (2017)	24
<i>Booth v. Clark</i> , 58 U.S. 322 (1854)	10
<i>Boynton v. Consol. Indem. & Ins. Co.</i> , 180 S.C. 279, 185 S.E. 731 (1936)	15
<i>Branch ex rel. Me. Nat’l Bank v. United States</i> , 69 F.3d 1571 (Fed. Cir. 1995)	37
<i>Calder v. Jones</i> , 465 U.S. 783 (1984).....	29
<i>Carolina Trucks & Equip., Inc. v. Volvo Trucks of N.A., Inc.</i> , 492 F.3d 484 (4th Cir. 2007)	21, 22
<i>Cockrell v. Hillerich & Bradsby Co.</i> , 363 S.C. 485, 611 S.E.2d 505 (2005)	24
<i>Dofrman v. Marriott Int’l Hotels, Inc.</i> , No. 99 CIV 10496(CSH), 2002 WL 143643 (S.D.N.Y. Jan. 3, 2002).....	29
<i>Duong v. N. Am. Trans. Servs. LLC</i> , No. 2:17-cv-01089-DC, 2019 WL 13109647 (D.S.C. Sept. 25, 2019)	29
<i>Ex parte First Penn. Banking & Tr. Co.</i> , 247 S.C. 506, 148 S.E.2d 373 (1966).....	21
<i>Griffin v. Capital Cash</i> , 310 S.C. 288, 423 S.E.2d 143 (Ct. App. 1992).....	43, 44, 45
<i>Haw. Hous. Auth. v. Midkiff</i> , 467 U.S. 229 (1984).....	37
<i>Healy v. Beer Inst.</i> , 491 U.S. 324 (1989).....	23
<i>In re Am. Slicing Mach. Co.</i> , 125 S.C. 214, 118 S.E. 303 (1923)	36
<i>Kelo v. City of New London</i> , 545 U.S. 469 (2005)	37
<i>Korangy v. FDA</i> , 498 F.3d 272 (4th Cir. 2007).....	39
<i>Las Palmas Assocs. v. Las Palmas Ct. Assocs.</i> , 235 Cal. App. 3d 1120 (1991).....	29
<i>McCall v. IKON</i> , 363 S.C. 646, 611 S.E.2d 315 (Ct. App. 2005)	45
<i>Metro. Life Ins. Co. v. Ward</i> , 470 U.S. 869 (1985).....	39
<i>Moosally W.W. Norton & Co.</i> , 358 S.C. 320, 594 S.E.2d 878 (Ct. App. 2004).....	24
<i>Penn Mut. Life Ins. Co. v. Cudd</i> , 172 S.C. 88, 172 S.E. 787 (1934)	17, 20
<i>Pertuis v. Front Roe Rests., Inc.</i> , 423 S.C. 640, 817 S.E.2d 273 (2018)	29
<i>Pollock v. B. & L. Ass’n</i> , 48 S.C. 65, 25 S.E. 977 (1896).....	10, 21, 22
<i>Powell v. Keel</i> , 433 S.C. 457, 860 S.E.2d 344 (2021)	10
<i>Richland Cnty. v. S.C. DOR</i> , 422 S.C. 292, 811 S.E.2d 758 (2018).....	16
<i>Ruiz v. Economics Lab., Inc.</i> , 290 F. Supp. 701 (D.P.R. 1968).....	29
<i>S.C. DOR v. Anonymous Co. A</i> , 401 S.C. 513, 678 S.E.2d 255 (2009).....	15
<i>Sansotta v. Town of Nags Head</i> , 724 F.3d 533 (4th Cir. 2013).....	38
<i>SCE&G v. UGI Utils., Inc.</i> , Case No. 2:06-cv-2627-CWH, 2012 U.S. Dist. LEXIS 61487, (D.S.C. Apr. 11, 2012)	19
<i>Shapemasters Golf Course Builders, Inc. v. Shapemasters, Inc.</i> , 360 S.C. 473, 602 S.E.2d 83 (Ct. App. 2004)	11
<i>Snider Int’l Corp. v. Town of Forest Heights, Md.</i> , 739 F.3d 140 (4th Cir. 2014)	38
<i>Star Sci., Inc. v. Beales</i> , 278 F.3d 339 (4th Cir. 2002)	23
<i>State v. Sweat</i> , 379 S.C. 367, 665 S.E.2d 645 (Ct. App. 2008)	14
<i>Stop the Beach Renourishment, Inc. v. Fla. Dep’t of Env’tl. Prot.</i> , 560 U.S. 702 (2010)	37
<i>Tunstall v. Lerner Shops, Inc.</i> , 160 S.C. 557, 159 S.E. 386 (1931).....	45
<i>United States ex rel. Drakeford v. Tuomey</i> , 792 F.3d 364 (4th Cir. 2015).....	39

<i>United States v. 79,650.00 Seized from Bank of Am. Account Ending in 8247</i> , 650 F.3d 381 (4th Cir. 2011)	39
<i>Vasiliades v. Vasiliades</i> , 231 S.C. 366, 98 S.E.2d 810 (1957)	16
<i>Virginia-Carolina Chemical v. Hunter</i> , 84 S.C. 214, 66 S.E. 177 (1909).....	16, 17, 18
<i>Walbeck v. I’On, Co.</i> , 439 S.C. 568, 889 S.E.2d 537 (2023).....	29
<i>Wellin v. Wellin</i> , 427 S.C. 15, 828 S.E.2d 767 (Ct. App. 2019)	19
<i>Williamson v. Lee Optical of Okla.</i> , 348 U.S. 483 (1955)	39
<i>Wrenn v. Wrenn</i> , 228 S.C. 588, 91 S.E.2d 267 (1956)	20

Statutes

28 U.S.C. § 3103	21
28 U.S.C. § 754	21
S.C. Code Ann. § 14-3-330(4)	2
S.C. Code Ann. § 15-65-10(4)	passim
S.C. Code Ann. § 15-65-10(5)	2, 8, 12, 14
S.C. Code Ann. § 15-65-20.....	9, 40, 41
S.C. Code Ann. § 33-1-400(4)	11
S.C. Code Ann. § 33-14-320(a)	5, 11
S.C. Code Ann. § 33-14-320(c)(2).....	5
S.C. Code Ann. § 39-3-20.....	13

Rules

Rule 14, SCRCF	7
Rule 205, SCACR.....	47

Constitutional Provisions

U.S. Const. amend. V.....	37, 38
U.S. Const. amend. XIV	38

INTRODUCTION

This appeal addresses the circuit court’s unlawful expansion of South Carolina’s receivership statute beyond the outer limits imposed by South Carolina law and the United States Constitution. This case represents the latest chapter in the gradual and unlawful creep of the receivership statute in dozens of asbestos cases—starting with receiverships over dissolved South Carolina companies, expanding to dissolved foreign companies, and now purporting to seize total control of active foreign companies with no assets in South Carolina.¹ The receivership in this case must be dissolved because a South Carolina court has no authority to appoint a receiver over an active foreign company with no assets in this State for the purpose of suing other foreign companies and individuals and seizing their foreign assets.

Under the circuit court’s incorrect interpretation of the South Carolina receivership statute, it has universal jurisdiction to appoint receivers with plenary power over active foreign companies located anywhere in the world, without regard to whether those companies have any assets in or connection to South Carolina. The Receiver purports to exercise *in personam* control over the foreign company itself, not just *in rem* control over its (nonexistent) assets located in this State. The Receiver then purports to have a roving license to sue other foreign companies and individuals located anywhere in the world, asserting meritless “alter ego,” “veil piercing,” and other equitable claims, to extract the targets’ *foreign* assets and bring them *into* South Carolina. This is so far beyond the traditional and limited role of state court receiverships—to marshal domestic (*i.e.*, South Carolina) assets to pay domestic creditors (of which there are none here)—that it is unprecedented and alien to the jurisprudence of South Carolina or anywhere else.

¹ Appendix, Table 1: Receivership Appointments from the Asbestos Docket, and Table 2: Foreign Companies Placed in Receivership in the Asbestos Docket.

The circuit court’s limitless interpretation turns South Carolina’s receivership statute on its head, which on its face only allows a receivership over the *domestic* assets of a *defunct* foreign company *that is dissolved, insolvent, or has forfeited its corporate rights*. S.C. Code Ann. § 15-65-10(4). None of the entities in receivership meet these criteria, and none of the foreign individuals or companies sued by the Receiver have any assets in or connection to South Carolina. While the Receiver claims that his takeover of an active foreign company is “in accordance with existing practice,” *id.* § 15-65-10(5), with the exception of the single circuit judge below, no South Carolina court has ever done this before. And for good reason—South Carolina law and the United States Constitution forbid it.

This appeal arises from an order not only refusing to dissolve an unlawful receivership, but instead continuing and modifying the receivership to seemingly create a new receivership appointment over yet another active foreign company with no assets in South Carolina and without any notice of these proceedings. *See id.* § 14-3-330(4) (granting appellate jurisdiction over interlocutory orders “granting, continuing, modifying, or refusing the appointment of a receiver”).

The circuit court originally granted a receivership in the *Park v. Armstrong International Inc.* lawsuit over Cape PLC, an active foreign company incorporated in the Bailiwick of Jersey in 2011. Cape PLC has no assets in South Carolina, no involvement in any of the historical asbestos-related activities that form the basis of the present *Tibbs* lawsuit (or the *Park* lawsuit in which the receivership originated, for that matter), no contacts with this state sufficient to establish personal jurisdiction in South Carolina, and was never served with anything in the *Park* case. But even though both the motion seeking the receivership and the order creating the receivership in the *Park* lawsuit purported to put Cape PLC into receivership, the appealed order in this case purported to modify the receivership to apply to an entirely different, active foreign company—Cape

Intermediate Holdings Limited (“CIHL”)—which was incorporated in the United Kingdom in 1893, and which was never referenced in either the motion or the order creating this receivership in the first place. Like Cape PLC, CIHL has no assets in South Carolina, and South Carolina courts have no personal jurisdiction over it either.

The challenged order raises several issues regarding whether the circuit court’s continuance and modification of this unprecedented receivership is consistent with South Carolina and federal law. It is not, and the order below should be vacated and the purported receivership dissolved.

STATEMENT OF ISSUES

This appeal presents the following issues for the Court’s consideration:

- I. Does the purported receivership—whether over Cape PLC or CIHL, both active foreign companies with no assets in this state—violate substantive requirements in the South Carolina statute governing receiverships?
- II. Does the purported receivership—whether over Cape PLC or CIHL, both active foreign companies with no assets in this state—violate the U.S. Constitution and federal law?
- III. Does the purported receivership—whether over Cape PLC or CIHL, both active foreign companies with no assets in this state—violate procedural requirements in the South Carolina statute governing receiverships?

STATEMENT OF THE CASE

The receivership at issue originated in *Park v. Armstrong International, Inc.*, Case No. 2021-CP-40-02727. There, an asbestos plaintiff named both Cape PLC and CIHL as defendants within a sea of asbestos defendants. (R. p. ____; *Park* Sec. Am. Compl.) Mr. Park alleged that each of these entities is a presently-operating company organized under the laws of the United Kingdom with its principal place of business in England. Publicly available information shows that Mr. Park was incorrect, as Cape PLC is a Jersey company that was created in 2011. (R. p. ____; Jersey Financial Services Commission Registry for Cape PLC.) Regardless, there are no other allegations specific to either of these entities anywhere else in that or any other pleading filed in *Park*.

The circuit court ordered *Park* to begin trial on June 20, 2022. (R. p. ____; Docketing Order at 2 (filed Dec. 1, 2021, in *Park*)). On June 3, 2022, Mr. Park’s counsel reported to the Court that the case was “fully resolved.” (R. p. ____; Email from Ms. McVey to 479 recipients (June 3, 2022)). Other than stipulations of dismissal being filed, the case was over, and no damages or liability were ever attributed to Cape PLC or CIHL. There was no motion for entry of default or default judgment entered against either Cape PLC or CIHL in the *Park* lawsuit.

But nine months later, without a live case or controversy pending, counsel for Mr. Park—whose case was already “fully resolved”—filed a 130-page motion with exhibits to have the Court appoint a receiver over “Cape PLC and its subsidiaries, affiliates, successors, and assigns,” a group that is undefined in the motion. (R. p. ____; Mot. to Appoint Receiver at 1 (filed Mar. 6, 2023, in *Park*)). In its motion to appoint receiver, Mr. Park’s counsel incorrectly stated that Cape PLC was served with the *Park* Second Amended Summons on March 8, 2022 via the Hague Convention, and cited to an Exhibit A that did not exist on the Court’s docket.

On March 17, 2023, the Court granted that motion without a hearing, explaining:

This Court finds that the application [to appoint Mr. Protopapas as receiver] is meritorious under the applicable statute because Cape PLC as the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) (“Cape Asbestos”) and its subsidiaries and global affiliates (collectively, “Cape” or the “Company”) have dissolved and Cape, a foreign corporation, has forfeited its charter and has further failed to answer this case and therefore, Plaintiffs request for an expedited ruling on this motion is appropriate and also granted.

(R. p. ____; Order Appointing Cape PLC Receiver at 1 (filed Mar. 17, 2023, in *Park*)).

The appointment order was sweeping and not limited to marshaling South Carolina assets, stating that the Receiver has “the power and authority to fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape whatever they may be.” (*Id.*) The order also purported to give the Receiver power to

“collect all accounts receivable of Respondent and all rents due,” to “endorse and cash all checks and negotiable instruments payable to Respondent,” and even to “sell any real property . . . belonging to Respondents,” all without regard to where these assets are located. (*Id.*) To be sure, the appointment order reads as if it was appointing a custodian to run the daily affairs of Cape PLC, rather than a receiver of its (nonexistent) domestic assets, even though South Carolina law does not allow a court to appoint a custodian over foreign companies. *See* S.C. Code Ann. §§ 33-14-320(a) & (c)(2) (authorizing the circuit court to appoint a custodian to “exercise all of the powers” of domestic corporations only).

Three months later, Mr. Protopapas, in his supposed capacity as the receiver for “Cape PLC,” filed a third-party complaint in *Tibbs v. 3M Company*, Case No. 2023-CP-40-01759. But rather than plead a case whereby Cape PLC attempts to shift derivative liability to a third-party defendant—which is the only permissible use of third-party practice recognized by Rule 14, SCRCPP, and which would make no sense here, as Cape PLC has no predicate liability and has never had any—the Receiver alleged that he is a crusader against dozens of companies that he contends have shielded Cape PLC from having liability, trumpeting that his pleading “begins their reckoning.” (R. p. ____; Third-Party Compl. at “Introductory Statement” (June 30, 2023).) In other words, rather than “protect the interests” of Cape PLC as is his obligation, the Receiver is instead attempting to manufacture liability against Cape PLC and the other named third-party defendants in *Tibbs*.

Faced with claims asserted by a Receiver who had no authority to act under state or federal law, Mr. Altrad and AIA immediately filed a motion to dismiss for lack of personal jurisdiction, and a conditional motion to dissolve the receivership and motion to dismiss under Rules 12 and 14, SCRCPP, both of which were subject to their personal jurisdiction objections. While the Receiver could do nothing to fix the substantive defects in his appointment, his opposition to the motion to dissolve made a series of incorrect or misleading statements in an effort to cover up the procedural defects.

First, when presented with undeniable proof that Cape PLC had never been served with anything in the *Park* case, the Receiver attempted to conflate Cape PLC with CIHL by liberally using the “n/k/a” or “now known as” acronym that appears nowhere in the *Park* pleadings, in the motion to appoint the receiver, or the order appointing the receiver. And the “n/k/a” label is nowhere to be found in *Park* for an obvious reason: Cape PLC is a standalone Jersey entity that was created in 2011. What’s more, even though CIHL was separately named as a defendant in *Park*, it was not mentioned in the motion or the order appointing a receiver over Cape PLC. (R. p. ____.)

Stunningly, despite the admitted separateness of these two entities and the total absence of CIHL from any of the filings that created this receivership, the Receiver argued that the circuit court could swap the name CIHL for Cape PLC and retroactively rewrite the original appointment order from *Park* in this case. He made this argument despite conceding every material point that rebuts it:

1. Cape PLC is not the same entity as CIHL.²
2. Cape PLC—the Jersey entity that is the subject of the receivership order—was never served with any pleading or the motion to appoint the receiver in *Park*.³
3. Neither the motion to appoint nor the order appointing the Receiver in *Park* made any reference whatsoever to CIHL, and never used the n/k/a acronym that the Receiver misleadingly used throughout his opposition to the motion to dissolve.⁴

² (See R. p. ____; Opp. at 3 (conceding that in the *Park* case, Plaintiffs attempted to add Cape Intermediate Holdings Limited “as a defendant, apart from Cape PLC”).)

³ (See R. p. ____; *id.* at 10 (conceding that “there has been no reference to the Jersey entity” in “the underlying *Park* and *Tibbs* Lawsuits, and in this third-party action,” and “the conduct of the 130-year-old Cape entity in England (and not the recently formed holding company in the Bailiwick of Jersey) is at issue”) (emphasis in original).)

⁴ (See R. p. ____; *id.* at 20 n.15 (proposing the Court’s “amendment of the Appointment Order to identify Cape Intermediate Holdings Ltd.,” thus conceding that Cape Intermediate Holdings Limited is not identified at all in the current order).)

4. The *Park* Plaintiffs represented to the Court in June 2022 that the case was “fully resolved,” nine months before the Court purported to appoint a receiver over Cape PLC.⁵
5. Neither Cape PLC nor CIHL ever defaulted, nor was any default judgment entered against either company: not in *Park*, and not in any other case in South Carolina.⁶
6. Cape PLC has no assets in South Carolina.⁷

Despite these concessions, the circuit court denied the motion to dissolve the receivership and modified the original receivership appointment to seemingly include CIHL despite the absence of any notice to that foreign company at all of the Receiver’s arguments or the potential appointment of a receiver over its assets. (R. p. ____; Order (Dec. 6, 2023).) **Standing alone**, this should result in dismissal of the entire Third-Party Complaint, as Mr. Tibbs has not brought any claims against CIHL, meaning that a receiver over CIHL has no possible liability to impute to third-party defendants. Rule 14, SCRCP.

Additionally, the circuit court held that it had personal jurisdiction over the Altrad Defendants (and all of the other third-party defendants) at the Receiver’s request despite the absence of any material allegations against either Mr. Altrad or AIA in the Receiver’s pleadings; despite the fact that neither of the Altrad Defendants have any connection whatsoever to South Carolina; and despite the fact that neither of the Altrad Defendants had anything to do with Cape PLC or CIHL until 2017, long after anything happened that could possibly give rise to any liability to any asbestos plaintiff in South Carolina or anywhere else. (R. p. ____; Order (Dec. 6, 2023).)

The only basis for the circuit court’s personal jurisdiction ruling were alleged connections between Mr. Altrad and AIA, on the one hand, and Cape PLC or CIHL, on the other, which were

⁵ (See R. p. ____; *id.* (conceding the validity of Ms. Park’s counsel’s message to the Court).)

⁶ (See R. p. ____; *id.* at 18 (conceding there is “no entry of a default against Cape PLC or a judgment reflecting a liquidated sum due to the *Park* Plaintiffs”).)

⁷ (See R. p. ____; *id.* at 18–19 (conceding that Cape PLC “lacks assets in South Carolina”).)

grounded in nothing other than a “self-piercing” claim alleged by the Receiver himself. Such a baseless ruling simply cannot pass any type of appellate scrutiny.

The circuit court entered the order on appeal on December 6, 2023. This appeal timely followed on December 18, 2023, and the order should be vacated in full as it runs directly contrary to long-established South Carolina and constitutional law.

SUMMARY OF ARGUMENT

This Court should reverse the order denying the motion to dissolve the receivership because the circuit court’s order is replete with errors. Those errors include:

South Carolina Law Prohibits the Creation of this Receivership. The circuit court had no statutory basis under South Carolina law to continue and modify the receivership over Cape PLC (or CIHL, for that matter). The circuit court disclaimed reliance on South Carolina Code § 15-65-10(4), notwithstanding the fact that both it and the *Park* Plaintiffs expressly relied on the statute in the original *Park* appointment order.

Section (4) is facially inapplicable because neither Cape PLC nor CIHL has any assets in South Carolina; neither is dissolved, insolvent, or in imminent danger of insolvency; and neither’s corporate rights have been forfeited in South Carolina or any other jurisdiction. Section (4) only allows for *in rem* jurisdiction over the *property* of a foreign company located within South Carolina, not *in personam* jurisdiction over all affairs of the foreign company generally.

That leaves only South Carolina Code § 15-65-10(5), which does not authorize the receivership here because the appointment of a receiver over an active foreign company with no assets in South Carolina is not consistent with “existing practice” in South Carolina or anywhere else. The circuit court cannot rely on the “existing practice” provision of Section (5) to obtain a receivership over a foreign company that directly conflicts with Section (4)’s express limitations.

Federal Law Prohibits the Creation of this Receivership. The strict statutory limits on state court receiverships over foreign companies found in South Carolina Code § 15-65-10 has federal constitutional underpinnings. The present purported receivership over Cape PLC or CIHL exceeds those statutory limits and therefore violates federal law.

First, the limitation of the scope of the receivership to the South Carolina property of foreign corporations is compelled by the dormant and foreign Commerce Clauses of the U.S. Constitution, which prohibit state courts from exercising extraterritorial jurisdiction over foreign companies, foreign individuals, and foreign assets located outside of the State.

Second, Section (4) only allows the creation of a receivership over “the property within this State of foreign corporations,” not over the foreign corporation itself. This limitation implicates the circuit court’s personal jurisdiction over the foreign entities targeted by the Receiver. The receivership must be dissolved because the circuit court has no personal jurisdiction over foreign targets of the Receiver’s third-party complaint—Mr. Altrad or AIA.

Finally, allowing a state court to seize control over an active foreign company to assert alter ego and veil piercing claims against other foreign companies and individuals violates the Takings, Due Process, Equal Protection, and Excessive Fines Clauses, both as to the entity in receivership (whether Cape PLC or CIHL) and the third-party defendants targeted by the Receiver.

The Appointment Failed to Give Proper Notice. The receivership also must be dissolved because neither Cape PLC nor CIHL was given proper notice of the application for appointment of the receiver as required by South Carolina Code § 15-65-20. The failure to identify CIHL as the purported receivership target in the motion to appoint the receiver and the order appointing the Receiver is an incurable defect.

STANDARD OF REVIEW

The proper interpretation of a statute is a question of law, which this Court reviews *de novo* and “without any deference to the court below.” *Powell v. Keel*, 433 S.C. 457, 462, 860 S.E.2d 344, 346 (2021).

Likewise, to the extent the Court determines that any aspect of this appeal is subject to the abuse-of-discretion standard of review, a legal error or a factual conclusion lacking evidentiary support amounts to an abuse of discretion. *Abdulla v. S. Bank*, 439 S.C. 391, 400, 887 S.E.2d 138, 143 (Ct. App. 2023).

ARGUMENT

This Court should reverse the appealed order continuing and modifying a receivership over Cape PLC and creating a receivership over CIHL because neither South Carolina nor federal law authorizes the creation of a receivership over an active foreign corporation with no assets in South Carolina. The circuit court’s order is replete with errors of law, and, respectfully, it reflects basic misunderstandings of receiverships and the scope of the circuit court’s limited jurisdiction.

The United States Supreme Court limits the territorial authority of a receiver to the property within the state in which he or she is appointed. *Booth v. Clark*, 58 U.S. 322, 331 (1854). So does the South Carolina Supreme Court. *See Pollock v. B. & L. Ass’n*, 48 S.C. 65, 74, 25 S.E. 977, 980 (1896) (“The power of a receiver only extends to the boundaries of the territorial jurisdiction of the court appointing him.”).

Recognizing this limitation, the General Assembly limited the creation of receiverships over foreign companies to property located within South Carolina. *See* S.C. Code Ann. § 15-65-10(4) (limiting receiverships to “property within this State of foreign corporations”). In other words, the maximum scope of a foreign receivership in South Carolina is *in rem* (over the domestic

assets of the foreign corporation), not *in personam* (over the corporate person of a foreign corporation). The corollary to this limitation is that any action by a receiver is limited to marshaling domestic assets in South Carolina, not suing foreign third parties (on behalf of foreign Cape PLC or foreign CIHL) to bring their foreign assets into this State.

This distinction is critical to assessing this appeal. South Carolina has no statutory vehicle for a circuit court to exercise *in personam* control over the person and affairs of a foreign corporation. Notably, South Carolina Code § 33-14-320 allows for appointment of a custodian, with the power to manage the affairs of an active business, in a judicial proceeding to dissolve a domestic corporation. But that provision applies exclusively to South Carolina corporations because South Carolina corporations, unlike foreign entities, are created by the State and are within the State’s jurisdiction. *See* S.C. Code Ann. § 33-1-400(4) (defining “corporation” for purposes of Chapter 14 of Title 33 as “a corporation for profit, *which is not a foreign corporation*”) (emphasis added).

But a custodian is fundamentally different than a receiver, as this Court has recognized: “A receiver’s duty is to wind up and liquidate the business and affairs of a corporation, while custodians manage the affairs of the corporation.” *Shapemasters Golf Course Builders, Inc. v. Shapemasters, Inc.*, 360 S.C. 473, 479, 602 S.E.2d 83, 86 (Ct. App. 2004). In the limited context of dissolving a domestic corporation, the “court appointing a receiver or custodian has exclusive jurisdiction over the corporation *and all of its property wherever located.*” S.C. Code § 33-14-320(a) (emphasis added).

There is absolutely no authority—statutory or otherwise—for the circuit court to appoint a custodian over an active foreign company. Accordingly, the circuit court here relied on the much more limited receivership provisions of Title 15, but it invoked Section 15-65-10 to effectively

appoint a custodian over Cape PLC (or, subsequently, CIHL) to manage the affairs of an active foreign company. That statute does not allow for *any* form of custodianship over a foreign corporation, and its allowance for a receivership is limited to the assets of a defunct foreign company located within South Carolina. Unlike Section 33-14-320(a), there is no provision of Section 15-65-10 stating that receiverships over a foreign corporation extend to “all of its property wherever located.” The reason why there is no such thing as a custodianship over a foreign corporation and its worldwide assets is simple—it would be unconstitutional. Yet that is exactly what the receivership order on appeal purported to create.

South Carolina Code § 15-65-10 identifies the limited circumstances under which a court can consider appointing a receiver. The original appointment order cited Sections (4) and (5) of this statute when originally appointing Mr. Protopapas as receiver over Cape PLC, but the circuit court below abandoned Section (4) and relied exclusively on Section (5) when modifying the receivership to apply to CIHL. These sections allow a receivership appointment to marshal property within the State of South Carolina in the following limited circumstances:

- (4) When a corporation has been dissolved, is insolvent or in imminent danger of insolvency or has forfeited its corporate rights, and, in like cases, of the property within this State of foreign corporations; and
- (5) In such other cases as are provided by law or may in accordance with the existing practice, except as otherwise provided in this Code.

This situation meets none of these conditions.

As to Section (4), neither Cape PLC nor CIHL is dissolved, neither is insolvent, and neither has any property in South Carolina. Unable to dispute those points, the Receiver previously argued that appointment under Section (4) is proper because Cape PLC or CIHL has “forfeited its corporate rights” based on the unadjudicated allegations of wrongdoing in the Receiver’s own Third-Party Complaint. Not so.

The statutory reference to “forfeiture” is a term of art that refers to a forfeiture action against a domestic corporation resulting in a final forfeiture judgment by a South Carolina court pursuant to established South Carolina law. *See, e.g.*, S.C. Code Ann. § 39-3-20 (authorizing the Attorney General to “begin an action against such *domestic* corporation to forfeit its charter” for certain antitrust violations) (emphasis added). Here, the Receiver argued a nonexistent “forfeiture” over a foreign company, based on the incorrect and unadjudicated allegations in the motion to appoint the Receiver, and citation to Black’s Law Dictionary. A plaintiff cannot simply cite his own unproven allegations of wrongdoing to trigger the “forfeiture” clause of Section (4)—that would make a prejudgment receivership available in every case. Additionally, even assuming that the reference to “forfeiture” in Section (4) can be read to include final forfeiture judgments imposed under the laws of foreign states or nations, the Receiver has identified no such foreign judgment forfeiting the corporate rights of Cape PLC or CIHL in Jersey or the U.K., respectively. There are none.

Even the circuit court recognized the error of the Receiver’s position, as it abandoned any reliance on Section (4) in its order continuing and modifying this receivership. (*See* Order at 23–25 & n.16 (Dec. 6, 2023) (attempting to justify the receivership under Section (5) and conceding that “the Order appointing the Receiver incorrectly described Cape as ‘dissolved,’ even though Cape is still a going concern in the United Kingdom [sic: Bailiwick of Jersey]”).)

Left without Section (4), the circuit court relied exclusively on Section (5) to justify this receivership, finding that appointing a receiver to control all property of an active foreign company was “in accordance with the existing practice.” (*Id.*) There is not one South Carolina case appointing a receiver in circumstances remotely similar to those presented here. Every old case cited by the Receiver or relied on by the circuit court involved receiverships over domestic parties

and property in South Carolina. The circuit court’s now-exclusive reliance on Section (5) to justify extension of the receivership to Cape PLC or CIHL is improper because it interprets Section (5) to allow an *in personam* receivership over an active foreign company that Section (4) expressly forbids.

This contention violates the basic canon of statutory construction that one provision of a statute cannot be interpreted in a manner that renders another meaningless, and it ignores the qualifying clause in Section (5) stating “existing practice” can support the creation of receiverships “except as otherwise provided in this Code.” The circuit court’s misconstruction of Section (5) resulted in a series of legal errors that require reversal and vacating the receivership.

I. The receivership appointment violates the substantive requirements of the South Carolina statute governing receiverships.

A. The receivership appointment is not consistent with any “existing practice.”

The circuit court erred in relying on South Carolina Code § 15-65-10(5) to continue and modify the receivership over Cape PLC or CIHL because the creation of a receivership over an active foreign entity with no assets in South Carolina is not “in accordance with the existing practice” in South Carolina, and reliance on Section (5) to create this receivership renders the limitations of Section (4) a nullity and ignores the “except as otherwise provided in this Code” qualifying language of Section (5). *See State v. Sweat*, 379 S.C. 367, 377, 665 S.E.2d 645, 651 (Ct. App. 2008) (“A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.”).

Section 15-65-10(5) provides that the circuit court may appoint a receiver “[i]n such other cases as are provided by law or may be in accordance with the existing practice, *except as otherwise provided in this Code.*” S.C. Code Ann. § 15-65-10(5) (emphasis added). As explained above, Section (4) prohibits the creation of a receivership over an active foreign company without

any property in South Carolina, so the “except as otherwise” clause prohibits the Receiver and the circuit court from evading those limitations through reliance on Section (5). *See S.C. DOR v. Anonymous Co. A*, 401 S.C. 513, 519, 678 S.E.2d 255, 258 (2009) (agreeing that “[t]here is nothing to indicate an intent that this catch-all phrase was intended to alter the status of any of the specifically listed entities” in the same statute).

Even setting aside the obvious conflict with Section (4), this receivership is not in accordance with “existing practice.” There are no published cases in South Carolina that have affirmed the appointment of a receiver with plenary authority over an active foreign company with no assets in this state. On the other hand, there are cases in which appellate courts reversed such an improper appointment of a receiver. *See, e.g., Boynton v. Consol. Indem. & Ins. Co.*, 180 S.C. 279, 185 S.E. 731, 737 (1936) (reversing the appointment of a receiver over a foreign corporation because “there [wa]s a total failure of any proof that it ha[d] property in this state”).

The circuit court identified no discernible standard for applying Section (5); it simply claimed that a receivership can be created out of whole cloth “to correct injustice” when a “creditor” is being prevented from collecting a debt owed. (R. p. ____; Order at 24 (Dec. 6, 2023).) But neither Cape PLC nor CIHL have any “creditors” in South Carolina. The *Park* Plaintiffs have no judgment against Cape PLC or CIHL (there is not even a motion for entry of default in that case), and they unequivocally advised the circuit court that they had “fully resolved” their case over sixteen months ago without any liability attaching to Cape PLC or CIHL.⁸ (R. p. ____.) And, there are no other judgment creditors against Cape PLC or CIHL anywhere in South Carolina.

⁸ Nor will there ever be any default judgment entered against Cape PLC or CIHL in *Park*, as the circuit court has allowed the Receiver to file a third-party complaint in that case against the Locke Lord law firm, which also has no South Carolina presence or connection. (R. p. ____; Am. Compl. filed by the Receiver for Cape, PLC, in *Park v. Armstrong Int’l Inc.*, Case No. 2021-CP-40-02727 (Aug. 9, 2023).) Locke Lord moved to dismiss that pleading and to dissolve this receivership; the

None of the cases cited by the circuit court support the contention that it is consistent with “existing practice” to give receivers plenary power over a foreign company with no assets in this case and allow the receiver to sue other foreign companies to bring foreign assets to South Carolina. The circuit court cited *Virginia-Carolina Chemical v. Hunter*, 84 S.C. 214, 66 S.E. 177 (1909), and the Alex Murdaugh situation for examples of existing practice. Those cases are not applicable because they involved receiverships over South Carolina parties and property with known South Carolina creditors—and the 21st Century Murdaugh case obviously cannot possibly be considered an “existing practice” for a statute that dates to the 19th Century. This receivership order purporting to seize the foreign assets of an active foreign company without notice and without any South Carolina creditors is unprecedented, and it must be dissolved as being contrary to all South Carolina authority, including the limitations for foreign receiverships expressly created by the General Assembly in South Carolina Code § 15-65-10(4) and incorporated into Section (5).

B. The Receiver is improperly acting as an advocate for the plaintiffs who are responsible for his appointment.

In South Carolina, as elsewhere, “[t]he appointment of a receiver is a drastic remedy, and should be granted only with reluctance and caution.” *Richland Cnty. v. S.C. DOR*, 422 S.C. 292, 313, 811 S.E.2d 758, 769 (2018) (quoting *Midlands Util., Inc. v. S.C. DHEC*, 301 S.C. 224, 228, 391 S.E.2d 535, 538 (1989)). Because receiverships are so highly disfavored—after all, they involve a state court attempting to seize private property and placing it in the hands of a third party—the Supreme Court has commanded that the “refusal of revocation [of a receivership], under changed circumstances, is also drastic.” *Vasiliades v. Vasiliades*, 231 S.C. 366, 376, 98 S.E.2d 810, 815 (1957).

circuit court has not heard that motion. In his pleading there, the Receiver purports to be the Receiver for Cape PLC, without any mention whatsoever of CIHL. (R. p. ____.)

Because a receivership involves the seizure of private property by a third party, the Supreme Court has also been clear that a receiver must be scrupulously neutral and cannot act as an advocate or agent of a plaintiff. In fact, the single case cited by the circuit court involved the appointment of a receiver over the assets of a South Carolina citizen, Mr. Hunter, who owed substantial undisputed debts to multiple persons and engaged in a series of transfers to dodge his creditors (including transferring property to his sister and to his lawyer: then-Senator, future-Governor Blease). *Hunter*, 84 S.C. at 221–23, 66 S.E. at 179–80. And while the Supreme Court agreed that a receiver was proper in that situation—involving a South Carolina defendant, identifiable South Carolina creditors, and South Carolina property, none of which are present here—it remanded the matter for consideration of whether the person who had been appointed should be removed because “he was one of the agents of the plaintiff, actively pressing its claims against the defendant.” *Id.* at 224, 66 S.E. at 180. As the Court held: “The rule is, that the Court ought to appoint a receiver entirely impartial.” *Id.*

Nor is *Hunter* an isolated case. *See, e.g., Penn Mut. Life Ins. Co. v. Cudd*, 172 S.C. 88, 92, 172 S.E. 787, 789 (1934) (warning that appointing “an agent of a creditor of the debtor, who had been placed in receivership,” is improper).

But the appointment here violates this rule of neutrality. The Receiver in the *Tibbs* lawsuit is acting *ultra vires*, has incurable conflicts of interest, and is incapable of acting as a receiver, because Mr. Protopapas is not “entirely impartial,” but instead is acting as “one of the agents of the plaintiff, actively pressing its claims against the defendant.” *Hunter*, 84 S.C. at 224, 66 S.E. at 180. As noted in Table 1 in the Appendix, even though a receivership is supposed to be a rarely-invoked and drastic remedy, this same receiver has already been appointed as a receiver two dozen times in the Asbestos Docket, always at the request of the same plaintiffs’ counsel.

And the Receiver’s advocacy on behalf of the asbestos plaintiffs is not mere speculation or guessing by the Altrad Defendants; it is based on the Receiver’s own actions and the Receiver’s own words.

The Receiver argued below that his goal is to “successfully marshal assets [that] will directly inure to the benefit of the *Park* Plaintiffs,” the very plaintiffs who are responsible for his appointment. (R. p. ____; Receiver’s Mem. in Opp’n to Dissolution at 22.) But the *Park* Plaintiffs have “fully resolved” their case without any judgment against either Cape PLC or CIHL; the *Park* Plaintiffs are not entitled to a dime from either of these foreign entities and never will be, yet the Receiver claims that he will be responsible for “their reckoning” on behalf of asbestos plaintiffs. (R. p. ____; Third-Party Complaint at “Introductory Statement.”)

To ensure no doubt about his role as an advocate for plaintiffs, at the hearing on the motion to dissolve the receivership, the Receiver boasted that he is holding Cape PLC and CIHL “to account for the first time in over 50 years. They haven’t even been in a courtroom in the United States, and here we are because a receiver got appointed.” (R. p. ____; Hr’g Tr. 27:5–8.) He continued: “And they’re being held to account now in this courtroom via the receiver.” (R. p. ____; *id.* 28:16–17.) And he concluded by praising his own ambition on behalf of the asbestos plaintiffs who are responsible for his appointments: “If South Carolina is not going to do it [through the receivership]—not going to do it, who is?” (R. p. ____; Hr’g Tr. 37:24–25.)

Given his stated goal of advocating for asbestos plaintiffs, it is not surprising that the Receiver has entirely abdicated his responsibility to protect Cape PLC’s and CIHL’s interests and demonstrated that he is “so closely connected with one of the parties in interest” that he cannot continue to serve. *Hunter*, 84 S.C. at 224, 66 S.E. at 179–80. In his responsive pleading in *Tibbs*, he has essentially conceded liability as to the entity in receivership by purporting to waive viable

defenses like personal jurisdiction as part of his “day of reckoning” crusade.⁹ After admitting liability without any proof or adjudication that unspecified “Cape” fibers caused injury to any South Carolina resident—including the *Park* Plaintiffs or the *Tibbs* Plaintiffs—he then began pursuing his “reckoning” against the Third-Party Defendants based on liabilities he seeks to manufacture.

The Receiver’s Third-Party Complaint in *Tibbs* attempts to create liability for Cape PLC or CIHL, and then transfer the very liabilities he creates to dozens of third-party defendants. The law specifically prohibits attempts at “self-piercing” like that urged by the Receiver here. *See, e.g., SCE&G v. UGI Utils., Inc.*, Case No. 2:06-cv-2627-CWH, 2012 U.S. Dist. LEXIS 61487, at *169–70 (D.S.C. Apr. 11, 2012) (explaining that as a general matter, “the corporate veil is never pierced for the benefit of the corporation or its stockholders,” and observing that “[s]elf-piercing claims are rare and often rejected out of hand” (quoting 18 Am. Jur. 2d *Corporations* § 46)).

The Receiver’s efforts to generate liability against Cape PLC and CIHL on behalf of asbestos plaintiffs (none of whom have ever received a judgment against either entity) directly defy the circuit court’s original charge that he “protect the interests of Cape whatever they may be.” (R. p. ____; Appointment Order at 1.) That outrageous conduct leads to the unavoidable conclusion that the Receiver cannot lawfully continue to serve. *See generally Cudd*, 172 S.C. at 91–92, 172 S.E.2d at 788–

⁹ Although the Receiver was appointed *prejudgment* to protect the interests of Cape PLC (later switched to CIHL) whatever they may be, he has already purported to answer the *Tibbs* complaint on behalf of Cape PLC and thus waived Cape PLC’s personal jurisdiction objection. *Wellin v. Wellin*, 427 S.C. 15, 24, 828 S.E.2d 767, 772 (Ct. App. 2019). The Receiver also argued in his opposition to the motion to dissolve the Receivership that the circuit court has personal jurisdiction over Cape PLC and CIHL, and he submitted a proposed order to the circuit court (which was signed without alteration) finding personal jurisdiction over the entities he was charged with protecting. (R. pp. ____–____; Order at 35–36 (Dec. 6, 2023).) Not only is this receivership attempting to engage in an unlawful seizure of foreign assets, it is unconscionable to forfeit ironclad, constitutional defenses held by the foreign companies for whom he purports to speak.

89 (reinforcing that only someone “untrammelled in his relations, entirely indifferent between the parties, and absolutely fair and impartial” can serve as a receiver).

C. A receivership cannot be created in perpetuity for all future South Carolina asbestos cases.

Nor is the circuit court correct that the Receiver’s appointment in the *Park* lawsuit is sufficient to deputize him as the Receiver for Cape PLC (or CIHL) for any and all future asbestos lawsuits in which Cape PLC (or CIHL) is named as a party—including the separate *Tibbs* lawsuit. Appointment of a receiver is an exceptional remedy that must be assessed on a case-by-case basis and is contingent on the unique facts and circumstances of a particular case. *See, e.g., Wrenn v. Wrenn*, 228 S.C. 588, 593, 91 S.E.2d 267, 269 (1956) (explaining “the facts of the particular case at hand ought to govern” and no receiver should be appointed “unless the particular circumstances render it advisable”). There is no South Carolina authority holding that an appointment under Section 15-65-10 applies forever and for all cases, without regard to the specific facts of those future and different cases, and neither the Receiver nor the circuit court has identified any.

This Court must reject this perpetual appointment theory because it conflicts with Section 15-65-10 (which calls for a case-by-case analysis), South Carolina precedent (which always reviews the propriety of receivership orders based on the specific facts of the underlying case in which the appointment is made), and because the theory is unconstitutional for the reasons explained below, particularly in the prejudgment context seen here.

II. The receivership appointment violates the United States Constitution and federal law.

A. The receivership must be dissolved because its extraterritorial scope violates the dormant and foreign Commerce Clause.

A South Carolina state court cannot lawfully take assets away from foreign businesses (over which it has no personal jurisdiction) and give them to a South Carolina receiver to “fully

administer.” The South Carolina receivership statute acknowledges this in-state-only limitation on the reach of a receivership. *See* S.C. Code Ann. § 15-65-10(4) (limiting a receiver’s ability to marshal only “the property within this State of foreign corporations”). Such a limitation is rooted in the constitutional requirement that a state law cannot have extraterritorial effect:

The South Carolina Supreme Court has written repeatedly that South Carolina statutes have no extraterritorial effect because the general rule is that no state or nation can, by its laws, directly affect, bind, or operate upon property or persons beyond its territorial jurisdiction.

* * * * *

The principle that state laws may not generally operate extraterritorially is one of constitutional magnitude. One state may not “project its legislation” into another, as the Commerce Clause “precludes the application of a state statute to commerce that takes place wholly outside of the State’s borders, whether or not the commerce has effects within the State.”

Carolina Trucks & Equip., Inc. v. Volvo Trucks of N.A., Inc., 492 F.3d 484, 489–90 (4th Cir. 2007) (cleaned up).

A receiver’s ability to marshal property across state or national lines involves interstate or foreign commerce, as Congress itself has limited when such authority exists and has made such a remedy available only through the federal courts. 28 U.S.C. §§ 754, 3103. The South Carolina Supreme Court has recognized these federal constitutional limits on the scope of a state court receivership: “The power of a receiver only extends to the boundaries of the territorial jurisdiction of the court appointing him.” *Pollock v. Carolina Interstate B. & L. Assn.*, 48 S.C. 65, 25 S.E. 977, 980 (1896) (quoting *Gluck & B. Rec.* p. 3). “[C]ourts of equity cannot acquire extraterritorial jurisdiction over property by appointing receivers.” *Id.* (quoting 20 Am. & Eng. Enc. Law, 65, 66). “[T]he jurisdiction of a state is restricted to its own territorial limits.” *Ex parte First Penn. Banking & Tr. Co.*, 247 S.C. 506, 508, 148 S.E.2d 373, 374 (1966). “[T]he general rule is that no state or nation can, by its laws, directly affect, bind, or operate upon property or persons beyond its territorial jurisdiction. A statute which purports to have such operation is invalid.” *Id.* “South Carolina rules

of construction provide that statutes must not be read to operate outside the state's borders.” *Carolina Trucks*, 492 F.3d at 489. “The South Carolina Supreme Court has written repeatedly that South Carolina statutes have no extraterritorial effect because the general rule is that no state or nation can, by its laws, directly affect, bind, or operate upon property or persons beyond its territorial jurisdiction.” *Id.* (cleaned up).

In *Pollock*, the South Carolina Supreme Court had to determine whether the North Carolina state court's appointment of a temporary receiver for the defendant association rendered service in this state invalid. The Supreme Court made an extensive review of the territorial power of receivers. It noted that the United States Supreme Court ruled that a receiver has “*no extraterritorial power of official action*; none which the court appointing him can confer, with authority to enable him to go into a foreign jurisdiction to take possession of the debtor's property; none which can give him, upon the principle of comity, a privilege to sue in a foreign court, or another jurisdiction.” *Pollock*, 48 S.C. 65, 25 S.E. at 980 (quoting *Booth*, 58 U.S. at 338.) (emphasis added). The Supreme Court also noted that it had previously “held that an administrator appointed by the courts of Massachusetts had no legal capacity to sue in this state, and that his assignment of the bond and mortgage to a citizen of this state did not give the latter capacity to sue.” *Id.* (citing *Dial v. Gary*, 14 S.C. 573 (1881)). It concluded that “[t]his is supported by reason, and the jurisdiction and the power exercised by courts.” *Id.* The Supreme Court elaborated that a “court deriving its power from the laws of North Carolina cannot confer any greater power than it is given. Having the right to appoint a receiver in their territory alone, such appointee is a creature of the appointing power, and cannot have greater power than his creator.” *Id.* “The stream cannot rise higher than its source.” *Id.*

The principle against extraterritoriality as it relates to the dormant Commerce Clause is derived from the notion that “a State may not regulate commerce occurring wholly outside of its borders.” *Star Sci., Inc. v. Beales*, 278 F.3d 339, 355 (4th Cir. 2002). “Although the language of dormant Commerce Clause jurisprudence most often concerns interstate commerce, essentially the same doctrine applies to international commerce.” *Atl. Mach. & Equip., Inc. v. Tigercat Indus.*, 427 F. Supp. 2d 657, 663–64 (E.D. Va. 2006) (quoting *Antilles Cement Corp. v. Anibal Acevedo Vila*, 408 F.3d 41, 46 (1st Cir. 2005)). “[A] state law that has the ‘practical effect’ of regulating commerce occurring wholly outside that State’s borders is invalid under the Commerce Clause.” *Healy v. Beer Inst.*, 491 U.S. 324, 332 (1989).

The circuit court’s rulings ignore the concept of interstate and international commerce reserved to the federal government, not the states. The circuit court has no authority or jurisdiction outside of South Carolina, yet it construed Section 15-65-10(5) to allow it to put extraterritorial assets into a receivership as punishment for Cape PLC and CIHL “refusing to appear in the United States.” (R. p. ____; Order at 24 (Dec. 6, 2023).) But the circuit court and the Receiver cannot take charge over any property outside of the South Carolina, let alone outside of the United States. The circuit court’s extraterritorial interpretation of Section (5) violates the dormant and foreign Commerce Clause and is an error of constitutional law.

B. A receivership cannot be misused to bypass the Due Process Clause by bring claims against foreign entities and individuals who are beyond the circuit court’s jurisdiction.

Not only are Cape PLC and CIHL beyond the reach of the circuit court’s authority to create a receivership, so too are the Altrad Defendants with respect to the circuit court’s ability to exercise personal jurisdiction over them through the Receiver. Attempting to enforce a South Carolina receivership statute against a foreign person or entity over which the court has no personal

jurisdiction—in order to seize foreign assets—violates the Due Process Clause of the U.S. Constitution. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491–92, 611 S.E.2d 505, 508 (2005). Here, though, the circuit court has wrongly ignored basic Due Process jurisprudence in order to extend the Receiver’s reach extraterritorially. The circuit court incorrectly treats claims by a foreign company against other foreign companies and individuals as “property within this State” without assessing whether it has personal jurisdiction over those foreigners in the first place. S.C. Code Ann. § 15-65-10(4). This is an error of black-letter law.

Importantly, the circuit court did not attempt to find that it had general or specific jurisdiction over either Mr. Altrad or AIA. (R. pp. ____–____; Order at 38–47 (Dec. 6, 2023).) Nor can the circuit court legitimately exercise personal jurisdiction over either.

Neither Mr. Altrad nor AIA is “at home” in South Carolina, as neither has ever had anything to do with this State. *See BNSF Ry. V. Tyrrell*, 581 U.S. 402, 413 (2017) (reiterating that general jurisdiction is only available when a defendant’s operations are so “continuous and systematic” in a forum that it is “at home” in that state).

Nor can specific jurisdiction attach to either. In order to exercise personal jurisdiction—general or specific—“[d]ue process requires that there exist minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Abdulla v. S. Bank*, 439 S.C. 391, 400, 887 S.E.2d 138, 143 (Ct. App. 2023) (quoting *Moosally W.W. Norton & Co.*, 358 S.C. 320, 330, 594 S.E.2d 878, 883 (Ct. App. 2004)). The Receiver bore the burden of proving that Mr. Altrad and AIA are subject to personal jurisdiction before the circuit court. *Moosally*, 358 S.C. at 327, 594 S.E.2d at 882.

The record evidence is unambiguous that no such showing has been made here.

Mr. Altrad. Mr. Altrad is barely mentioned in the Receiver’s Third-Party Complaint. Aside from the caption, the Third-Party Complaint specifically mentions Mr. Altrad only four times, none of which even suggest Mr. Altrad has any connection with South Carolina:

- Once in the opening paragraph listing the Third-Party Defendants;
- Once in Paragraph 25 to acknowledge the fact that Mr. Altrad is ***not*** a resident of the State of South Carolina;
- Once in Paragraph 118 to allege in a single, conclusory sentence that “[t]he Altrad Group—and thus Cape” is “controlled” by Mr. Altrad, based on his status as the “President and Founder” of the “Altrad Group”; and
- Once in the table included as part of Paragraph 119 along with other “Altrad Ownership” entities purportedly comprising a factually inaccurate listing of “Altrad Third-Party Defendants,” as defined by the Receiver himself.

But Mr. Altrad’s Affidavit establishes that he has “no connection to South Carolina whatsoever,” (R. p. ____; Aff. Altrad ¶ 6) because:

- He is a citizen of France and resides in Montpellier, France. (*Id.* ¶ 2.)
- He has never visited South Carolina for any purpose. (*Id.* ¶ 5.)
- He has no assets of any sort in South Carolina. (*Id.* ¶ 7.)
- He has never acquired ownership, possession, or control of any asset or thing of value present within South Carolina. (*Id.* ¶ 13.)
- He has never sought to procure insurance for any person or property, tangible and intangible, in South Carolina. (*Id.* ¶ 14.)
- He has never opened, conducted, engaged in, or carried on a business or business venture in South Carolina. (*Id.* ¶ 16.)
- He had never owed or paid corporate, employment, sales tax, or real property taxes in South Carolina. (*Id.* ¶¶ 19–20.)
- He had never contracted to supply services, goods, or things in South Carolina, and he had never supplied services or delivered goods or things in South Carolina. (*Id.* ¶ 23.)

These facts were uncontroverted below, and they demonstrate that Mr. Altrad is not subject to either general or specific personal jurisdiction in South Carolina: he is not essentially “at home” in this State, and he has not purposely availed himself of the benefits of something within the State of South Carolina to support imposition of personal jurisdiction. The idea that the Receiver could force Mr. Altrad, a foreign citizen, to appear and defend claims simply based on four passing mentions of his name in a 65-page, 145-paragraph third-party complaint offends all legitimate notions of due process.

More specifically, given the absence of any connection between Mr. Altrad and South Carolina, there are not sufficient minimum contacts with South Carolina to render the circuit court’s exercise of personal jurisdiction over Mr. Altrad permissible under the Due Process Clause. Mr. Altrad never had any personal involvement, in any capacity, in the milling, mining, or sale of asbestos anywhere in the world, nor has he ever had any personal involvement in the production, manufacture, or distribution of asbestos or asbestos-containing products for use in any state of the United States, including South Carolina—and there isn’t a single fact, allegation, or finding by the circuit court to the contrary. (R. p. ____; Aff. Altrad ¶¶ 29–30.)

Altrad Investment Authority. So, too, is the Receiver’s pleading devoid of any basis for a South Carolina court to exercise personal jurisdiction over AIA. The Third-Party Complaint acknowledges that AIA is “a corporation organized under the laws of France, with its principal place of business in Florensac, France.” (R. p. ____; Third-Party Complaint ¶ 29.) Other than the caption, the Third-Party Complaint specifically mentions AIA only four times:

- Once in the opening paragraph listing the Third-Party Defendants;
- Once in Paragraph 29 to acknowledge the fact that AIA is *not* a resident of the State of South Carolina;

- Once in Paragraph 116 to allege that a separate subsidiary of AIA “acquired and has since controlled Cape” as of October 9, 2017; and
- Once in the table included as part of Paragraph 119 along with other “Altrad Ownership” entities purportedly comprising a factually inaccurate listing of “Altrad Third-Party Defendants,” as defined by the Receiver.

As further detailed in the Affidavit of Richard M. Alcock, AIA is a non-resident of the State of South Carolina and has no connection to South Carolina in that, among other things:

- On December 23, 2010, AIA was organized under the laws of France (registered number 529222879) as a French SAS (Société par Actions Simplifiée) and has always been organized under the laws of France. (R. p. ____; Aff. Alcock ¶ 3.)
- AIA conducts no operations and does not have, and never has had, its principal place of business in South Carolina. (*Id.* ¶ 4.)
- AIA has never been registered as a foreign company authorized to transact business or otherwise licensed in South Carolina, and AIA has never transacted any business in South Carolina. (*Id.* ¶ 7.)
- AIA has never owned or operated any manufacturing, sales, distribution, or other facilities in South Carolina, and AIA has never had an office or agency in South Carolina. (*Id.* ¶ 10.)
- AIA has never owned, leased, or held an interest in or possession of any real or tangible property within South Carolina and has no offices in South Carolina. (*Id.* ¶ 11.)
- AIA has never had insurance policies that afford coverage of any kind for specific entities located in South Carolina, and AIA has not sought to procure insurance for any person or property, tangible and intangible, in South Carolina. (*Id.* ¶ 17.)
- AIA has never invested any dollars in business operations in South Carolina. (*Id.* ¶ 18.)
- AIA has never contracted to supply services, goods, or things in South Carolina, and AIA has never supplied services or delivered goods or things in South Carolina. (*Id.* ¶ 20.)
- AIA has never marketed or advertised, or engaged in solicitation with respect to, its goods, services, or general business in South Carolina. (*Id.* ¶ 21.)
- AIA has never acquired ownership, possession, or control of any asset or thing of value present within South Carolina. (*Id.* ¶ 29.)

- AIA has never had any subsidiaries incorporated in South Carolina or with their principal place of business in South Carolina. (*Id.* ¶ 30.)
- AIA has never opened, conducted, engaged in, or carried on a business or business venture in South Carolina. (*Id.* ¶ 32.)
- AIA has never produced, manufactured, or distributed goods with the reasonable expectation that those goods are to be used or consumed in South Carolina, and are so used or consumed. (*Id.* ¶ 35.)
- AIA has never milled, mined, or sold asbestos anywhere (and has never done so in South Carolina), and has never produced, manufactured, or distributed asbestos or asbestos-containing products for use in any state, including South Carolina. (*Id.* ¶ 6.)

The Third-Party Complaint contains zero allegations of any connections AIA has with South Carolina. Like the allegations regarding Mr. Altrad, it does not even make any generic or conclusory ones. Like Mr. Altrad, AIA is not subject to either general or specific personal jurisdiction in South Carolina: it is not essentially “at home” in this State, and it has not purposely availed itself of the benefits of something within the State of South Carolina to support imposition of personal jurisdiction. And like Mr. Altrad, a finding of personal jurisdiction cannot be based on four passing mentions of AIA’s name in a 65-page, 145-paragraph Third- Party Complaint.

* * * * *

The absence of personal jurisdiction here should be obvious. But the circuit court shunned the traditional personal jurisdiction “minimum contacts and fundamental fairness” analysis and, instead, relied on three novel “equitable grounds” for personal jurisdiction—an “alter ego” theory, a “single business enterprise” theory, and a “guiding spirit” theory—to force a French individual and a French company to defend themselves in South Carolina.

This was legal error for several reasons. First, there is no authority that would allow the circuit court to exercise personal jurisdiction over disparate defendants based on an “amalgamation” or a “single-business enterprise” theory. The United States Supreme Court has

been clear that “[e]ach defendant’s contact with the forum State must be assessed individually” for purposes of personal jurisdiction. *Calder v. Jones*, 465 U.S. 783, 790 (1984). The circuit court cited several alleged “enterprise” cases, but none of those cases actually applied such a theory to establish personal jurisdiction over numerous defendants; instead, the “theory” was always limited to a merits inquiry about liability, not jurisdiction.¹⁰

Second, the circuit court only attempted use its equitable theories to displace Due Process as a basis for personal jurisdiction over the Altrad Defendants after it first found that Cape PLC (a Jersey company that did not even exist until 2011) was rightly subject to personal jurisdiction in South Carolina. But the only basis for the circuit court’s finding is *the Receiver’s own statements* about how a company other than Cape PLC had a national distribution network of asbestos sales decades ago and decades before either of the Altrad Defendants ever had an ownership interest in Cape PLC. (R. pp. ___, ___–___; Order at 35, 71–73 (Dec. 6, 2023).)

In other words, the circuit court appointed a Receiver over an active foreign company with no property in South Carolina; that Receiver then purported to concede personal jurisdiction within South Carolina on behalf of Cape PLC or CIHL; and the circuit court then used that “concession”

¹⁰ These cases are cited on Pages 32 through 35 of the December 6th Order. *See Las Palmas Assocs. v. Las Palmas Ct. Assocs.*, 235 Cal. App. 3d 1120, 1249–50 (1991) (stating that “under the single-enterprise rule, liability can be found between sister companies,” without addressing personal jurisdiction); *Walbeck v. I’On, Co.*, 439 S.C. 568, 590–94, 889 S.E.2d 537, 548–50 (2023) (similar); *Pertuis v. Front Roe Rests., Inc.*, 423 S.C. 640, 655, 817 S.E.2d 273, 280 (2018) (“formally recogniz[ing] today this single business enterprise theory” of liability without evaluating its applicability to the personal jurisdiction analysis); *Duong v. N. Am. Trans. Servs. LLC*, No. 2:17-cv-01089-DC, 2019 WL 13109647, at *13 (D.S.C. Sept. 25, 2019) (rejecting applicability of the “single business enterprise theory” of personal jurisdiction because “there are no contacts for the court to impute” to each of the individual defendant entities); *DorFman v. Marriott Int’l Hotels, Inc.*, No. 99 CIV 10496(CSH), 2002 WL 143643, at *11 (S.D.N.Y. Jan. 3, 2002) (exercising personal jurisdiction based on an alter-ego finding that there was an “agency relationship” between the two companies); *Ruiz v. Economics Lab., Inc.*, 290 F. Supp. 701, 703 (D.P.R. 1968) (similar).

as an “equitable” end-run around the Due Process Clause’s prohibition on exercising personal jurisdiction over the Altrad Defendants, who had nothing to do with Cape PLC or CIHL until 2017.

That does not comport with any conception of the Due Process Clause, it is an unlawful extension of the Receiver’s authority to reach outside of South Carolina, and it reinforces the impropriety of the Receiver’s performance of his role as an advocate for the asbestos plaintiffs who are responsible for his appointment.

Third, these “equitable” avenues to circumvent the Due Process Clause fail on their merits. In the Third-Party Complaint, the Receiver did not make any effort to establish personal jurisdiction over the Altrad Defendants through a corporate veil-piercing, alter ego, or any related theory. Mr. Altrad argued that a veil-piercing theory cannot establish personal jurisdiction over Mr. Altrad—a French citizen—based merely on his status as a corporate officer and indirect shareholder of AIA—a French company. (R. p. ____; Aff. Altrad ¶ 32.) The Receiver’s one-word allegation that the undefined “Cape” is “controlled” by Mr. Altrad by virtue of his status as a shareholder and corporate officer of AIA is conclusory, and it is also irrelevant to veil piercing or alter ego because Mr. Altrad’s alleged “control” started in 2017—decades after the conduct at issue.

Before 2017, Mr. Altrad had no affiliation or connection with Cape PLC, with CIHL, with any direct or indirect subsidiary of Cape PLC, with any direct or indirect subsidiary of CIHL, or with any predecessor or successor to those entities. (R. p. ____; *id.* ¶ 31.) Cape PLC was a publicly traded company on the London Stock Exchange through 2017, and its shares were owned by the general public. (R. p. ____; *id.* ¶ 34.) In 2017, Altrad UK Limited, a wholly-owned subsidiary of AIA, acquired Cape PLC through a public tender offer to purchase all shares of Cape PLC, except the IDC Scheme Share, which resulted in Cape PLC becoming a wholly-owned subsidiary of

Altrad UK Limited. (R. p. ____; *id.* ¶ 35.) This timing is critical because both the alleged asbestos exposure that is the basis of the *Tibbs* Complaint and the alleged “liability-avoidance scheme” that is the basis of the Third-Party Complaint occurred decades earlier. Thus, Mr. Altrad could not have exerted any “control” over “Cape” during the relevant time period.

Even after 2017, Mr. Altrad never had any direct or indirect influence or control, or sought to directly or indirectly influence or control, any corporate entity, in a manner that prevents that organization from maintaining its independent existence and corporate structure, observing all corporate formalities, having duly appointed and functioning corporate management and executive officers, maintaining separate corporate records, maintaining appropriate corporate controls and accounting for all financial distributions and payments, being adequately capitalized to meet its ongoing operational and financial obligations, and in all ways operating in a manner consistent with its corporate existence as an independent entity—and, again, there isn’t a single allegation to the contrary. (R. p. ____; *id.* ¶ 36.) Because Mr. Altrad has never even been alleged to use the corporate form of any entity for any improper or fraudulent purpose to cause harm to anyone, there is no basis for the Court to exercise personal jurisdiction over him on an alter ego theory or any other legal theory. (R. p. ____; *id.* ¶ 37.) As explained above, the Third-Party Complaint is completely devoid of any factual allegations *specific* to Mr. Altrad that would support the exercise of personal jurisdiction over this French citizen.

The Receiver’s pleadings suffer from the same fatal defects with respect to AIA, as it also makes no effort to establish personal jurisdiction through a corporate veil-piercing, alter ego, or any related theory. The conclusory allegation that AIA “failed to follow corporate formalities” is not enough. Here, the only allegation in the Third-Party Complaint with respect to AIA is that its wholly-owned subsidiary, Altrad UK Limited, acquired the stock of undefined “Cape” in 2017.

(R. p. ____; Third-Party Complaint ¶ 116.) However, the acquisition of Cape’s publicly traded shares by an AIA foreign subsidiary through a public tender offer in 2017 cannot possibly subject AIA, the foreign parent, to the jurisdiction of South Carolina’s courts. The Receiver’s allegation that AIA “acquired and has since controlled Cape” is conclusory, and it is also irrelevant to veil piercing or alter ego because, as with Mr. Altrad individually, AIA’s alleged “control” started in 2017—decades after the conduct at issue.

Like Mr. Altrad himself, before 2017, AIA had no affiliation or connection with Third-Party Plaintiff Cape PLC, CIHL, any direct or indirect subsidiary of Cape PLC, any direct or indirect subsidiary of CIHL, or any predecessor or successor to those entities. (R. p. ____; Aff. Alcock ¶ 39.) Cape PLC was a publicly traded company on the London Stock Exchange through 2017, and its shares were owned by the general public. (*Id.* ¶ 40.) In 2017, Altrad UK Limited, a wholly-owned subsidiary of AIA, acquired Cape PLC through a public tender offer to purchase all shares of Cape PLC, except the IDC Scheme Share, which resulted in Cape PLC becoming a wholly-owned subsidiary of Altrad UK Limited. (*Id.* ¶ 41.) At no time has Cape PLC or any of its direct or indirect subsidiaries been combined with, merged into, or transferred their liabilities to AIA or any of AIA’s other direct or indirect subsidiaries, including in connection with the Cape PLC Acquisition. (*Id.* ¶ 42.) This timing is important because the alleged asbestos exposure that is the basis of the *Tibbs* Complaint, and the alleged “liability-avoidance scheme” that is the basis of the Third-Party Complaint, occurred decades earlier. Thus, AIA could not have exerted any “control” over “Cape” during the relevant time period, so there is no basis for personal jurisdiction over AIA.

Even after 2017, AIA and all of its direct and indirect subsidiaries, including Cape PLC, have maintained their own separate corporate structures, observed corporate formalities, have duly

appointed and functioning corporate management and executive officers, have maintained separate corporate records, have maintained appropriate corporate controls and accounting for all financial distributions and payments, have been adequately capitalized to meet their ongoing operational and financial obligations, if any, and in all ways have operated in a manner consistent with their existence as separate corporate entities. (*Id.* ¶ 43.) Furthermore, AIA and all of its direct and indirect subsidiaries, including Cape PLC, have maintained separate bank accounts from each other, have not commingled assets or funds with each other, have maintained separate books and records from each other, and have maintained appropriate corporate controls and accounting for all financial distributions and payments. (*Id.* ¶ 44.) The Third-Party Complaint is completely devoid of any factual allegations specific to AIA that would support the exercise of jurisdiction over this French company. The sole allegation that AIA's wholly-owned subsidiary acquired the publicly-traded stock of Cape is insufficient to obtain personal jurisdiction over AIA under an alter ego theory or any other.

Finally, the Third-Party Complaint does not establish personal jurisdiction through a corporate veil-piercing, alter ego, or any related theory because AIA has never had any direct or indirect influence or control, or sought to directly or indirectly influence or control, any corporate entity in a manner that prevents that organization from maintaining its independent existence and corporate structure, observing all corporate formalities, having duly appointed and functioning corporate management and executive officers, maintaining separate corporate records, maintaining appropriate corporate controls and accounting for all financial distributions and payments, being adequately capitalized to meet its ongoing operational and financial obligations, and in all ways operating in a manner consistent with its corporate existence as an independent entity. (*Id.* ¶ 46.) Thus, Cape PLC and its direct and indirect subsidiaries are distinct business entities with separate corporate structures, separate corporate formalities, and separate financials from its direct and indirect parent companies, including Altrad UK

Limited and AIA. (*Id.* ¶ 45.) As such, the Court cannot exercise personal jurisdiction over AIA based on a veil piercing or alter ego theory, because AIA and Cape have observed corporate formalities and maintained their separate corporate existence. (*Id.* ¶¶ 43–49.)

The order purporting to find sufficient basis to exercise personal jurisdiction over Mr. Altrad and AIA does not rely on the obviously and admittedly insufficient allegations of the Third-Party Complaint. General jurisdiction as to this French individual and French company is impossible; the circuit court disavowed any reliance on general jurisdiction in a footnote. As to specific jurisdiction, the meager and conclusory allegations described in the Third-Party Complaint are clearly insufficient. The complete absence of jurisdictional facts as to Mr. Altrad or AIA in the Third-Party Complaint leaves as the only basis for imposition of personal jurisdiction the circuit court’s reliance on annual reports of the Altrad Group and various websites that the Receiver cited during motions practice that are not in the Third-Party Complaint. None of these sources establish personal jurisdiction on “equitable grounds” based on facts specific to these two French parties, as none mention South Carolina in any way.¹¹

Amazingly, the order actually purports to predicate the exercise of personal jurisdiction over Mr. Altrad based upon a news report regarding a finding that Mr. Altrad conspired with the World Rugby vice-chairman Bernard Laporte for certain sponsorship rights for Altrad Group regarding the French national rugby team. (R. p. ____; Order at 45 n.27 (Dec. 6, 2023).) To state the obvious, rugby has nothing to do with asbestos, and South Carolina does not have a

¹¹ For instance, a Reuters article relied on by the circuit court does not contain any facts which could support imposition of personal jurisdiction over these non-resident defendants as a matter of law: no references to South Carolina, the word “asbestos” or the names “Cape Asbestos,” “Cape Industrial Holdings Limited,” or Mr. Altrad. (*See* R. p. ____; Order at 39 n.22 (Dec. 6, 2023) (citing <https://www.reuters.com/article/cape-ma-altrad-investment/altrad-investment-to-buy-uk-oil-services-firm-cape-for-332-2-mln-poundsidUSL4N1JY2KG>).)

professional rugby team, rendering the article wholly irrelevant to the question of personal jurisdiction. Nor does there appear any support for exercise of personal jurisdiction in the embedded links to other articles regarding the Altrad Group. (R. p. ____; *id.* at 46.)¹² Notably missing from all links and articles cited by the circuit court: any reference to the State of South Carolina, the words “asbestos,” “Cape,” “Cape Asbestos,” or “Cape Industrial Holdings.” And, in fact, instead of supporting the proposed order’s finding that Mr. Altrad is the “spirit guide” who personally controls all decisions of all of the companies, these links specifically explain that although it is a privately held company, the Altrad Group follows the rules for governance of publicly listed French companies. The website makes clear that Altrad Group is led by multiple people including 11 members of the Board of Directors “who guarantee the objectivity of the proceedings” through a system of governance that “reinforces the power of control and independence of directors.”

The order on appeal finds the Altrad Defendants within the circuit court’s jurisdictional reach, and the Receiver’s claims against them legitimately within South Carolina, not upon facts contained in the record, but upon the Receiver’s interpretation of website content viewed through the prism of his self-appointed quest to bring a “day of reckoning.” The evidence cited as the basis of the order is insufficient as a matter of law to support the exercise of personal jurisdiction over these foreign third-party defendants.

At bottom, by disregarding the actual personal jurisdiction analysis required by the Due Process Clause in favor of “equitably” exercising personal jurisdiction over foreign people and

¹² The links in the circuit court’s order are to generic information regarding the Altrad Group: <https://www.altrad.com/en/our-history.html> and <https://www.altrad.com/en/governance.html#:~:text=It%20is%20headed%20Mohed,humanist%20conception%20of%20the%20company.>

companies based on the Receiver's mischaracterizations, the circuit court wrongly treated the Receiver's third-party claims against foreign defendants as if they were in-state property subject to the court's jurisdiction without regard to the Due Process protections afforded litigants. But none of the personal jurisdiction arguments raised in the appealed order withstand scrutiny. If this Court accepts the circuit court's analysis, then the Receiver will be able to drag any foreign shareholder, officer, parent, subsidiary, or affiliate into a South Carolina court by alleging in conclusory fashion, and without any factual basis at all, that they are all the "guiding spirit" of the entity in receivership, and that they are all part of "a single business enterprise." Merely alleging alter ego and reciting these magic words is not enough to obtain universal jurisdiction over foreign individuals and entities. Due Process demands more, and the circuit court's disregard of constitutional safeguards is legal error.

C. The receivership violates the Takings, Due Process, Equal Protection, and Excessive Fines Clauses of the U.S. Constitution.

"A Receiver is the officer of the Court—as he has been termed, the arm of the Court." *In re Am. Slicing Mach. Co.*, 125 S.C. 214, 217, 118 S.E. 303, 304 (1923). As such, the appointment of a receiver implicates the restrictions on arbitrary state action contained in the U.S. Constitution. In addition to violating the Commerce Clause and Due Process Clauses, allowing the receivership to proceed in these circumstances would contravene the Taking Clause, the Excessive Fines Clause, and the Equal Protection Clause of the U.S. Constitution.

Taken at face value, the appointment order relies on a single non-appearance in the *Park* case—where no default was ever entered, and where lawful service of process on Cape PLC or CIHL is not found anywhere in the record—to give the Receiver control of the affairs of an entire foreign company, dispose of foreign assets, concede liabilities, control the defense of the company in South Carolina for all time, and sue foreign third parties on its behalf, among other things. This

state action implicates the constitutional rights of both the entity in receivership and the targets of that receivership. Because the Receiver pleads that Mr. Altrad and AIA have an indirect ownership interest in Cape PLC (or CIHL), state interference in their property interests is implicated as well.

Particularly in the absence of any civil judgment or criminal conviction, this prejudgment receivership that purports to seize control of an active foreign company and its foreign assets without any predicate adjudication of liability runs afoul of the Takings Clause. *See Branch ex rel. Me. Nat'l Bank v. United States*, 69 F.3d 1571, 1576 (Fed. Cir. 1995) (holding that the legal predicate for creating a receivership “might be challenged on Takings Clause or other constitutional grounds”). “[T]hough the classic taking is a transfer of property to the State or to another private party by eminent domain, the Takings Clause applies to other state actions that achieve the same thing.” *Stop the Beach Renourishment, Inc. v. Fla. Dep’t of Env’tl. Prot.*, 560 U.S. 702, 713 (2010).

As noted in the text of the Fifth Amendment itself, governments may only effect takings that are for “public use.” U.S. Const. amend. V. This means, for example, the government may not transfer private property from one party for the sole purpose of benefitting another private party. *See Kelo v. City of New London*, 545 U.S. 469, 477 (2005) (“the City would no doubt be forbidden from taking petitioners’ land for the purpose of conferring a private benefit on a particular private party”); *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 241 (1984). The public use requirement circumscribes the scope of government power to seize private property: the Government may compel an individual to forfeit his property for the public’s use, but not for the benefit of another private person. *See id.* This receivership violates the Takings Clause because the Receiver (an arm of the state) is purporting to seize control of Cape PLC (or CIHL)—and taking possession of its foreign assets—for the purported purpose of distributing those assets to South Carolina residents

who are not even creditors of either Cape PLC or CIHL. There is no just (or any) compensation for this taking, and the exercise is designed to redistribute assets for the benefit of private persons, not the public at large.

This receivership also violates the Due Process Clause, which states that the Government must provide a person with due process of law when acquiring his property. U.S. Const. amends. V, XIV. To plead a procedural due process claim, a plaintiff must demonstrate he (1) “had a constitutionally cognizable life, liberty, or property interest,” (2) “the deprivation of that interest was caused by some form of state action,” and (3) “the procedures employed were constitutionally inadequate.” *Sansotta v. Town of Nags Head*, 724 F.3d 533, 540 (4th Cir. 2013) (cleaned up). “At bottom, procedural due process requires fair notice of impending state action and an opportunity to be heard.” *Snider Int’l Corp. v. Town of Forest Heights, Md.*, 739 F.3d 140, 146 (4th Cir. 2014).

There was no notice here, much less fair notice. As explained above and reiterated below, Cape PLC was not served with any papers in the *Park* action, and CIHL did not receive statutory notice of the motion to appoint the receiver in *Park* or the seeming modification of the receivership order in *Tibbs*. In addition to the lack of notice, the procedures employed here when creating this prejudgment receivership were constitutionally inadequate—the circuit court purported to seize control of a foreign company without any adjudication, much less a fair adjudication, that the target of the receivership was liable on any ground or to any person. Given the procedural defects in the appointment process—both in the *Park* and *Tibbs* lawsuits—the receivership does not pass constitutional muster.

This prejudgment receivership also violates the Excessive Fines Clause and the Substantive Due Process Clause. “The Excessive Fines Clause of the Eighth Amendment prohibits the government from imposing excessive fines as punishment.” *Korany v. FDA*, 498 F.3d 272, 277

(4th Cir. 2007). Where “a civil sanction ‘can only be explained as serving in part to punish,’ then the fine is subject to the Eighth Amendment.” *United States ex rel. Drakeford v. Tuomey*, 792 F.3d 364, 387 (4th Cir. 2015). In such a case, the fine “will be found constitutionally excessive only if it is ‘grossly disproportional to the gravity of [the] offense.’” *Id.* A civil forfeiture is considered to be a punishment and, thus, constitutes a fine for purposes of an Eighth Amendment proportionality analysis. *United States v. 79,650.00 Seized from Bank of Am. Account Ending in 8247*, 650 F.3d 381, 386 n.8 (4th Cir. 2011).

Relatedly, the Due Process Clause imposes limits on “grossly excessive” monetary penalties that go beyond what is necessary to vindicate the Government’s “legitimate interests in punishment and deterrence.” *Id.* Here, the purported prejudgment seizure of a foreign company and all its foreign assets by a South Carolina court can only be described as an extreme civil sanction and forfeiture. It is clearly disproportionate to the gravity of the offense because it was based upon Cape PLC’s alleged non-appearance in the *Park* lawsuit, without even an entry of default or a default judgment. These constitutional provisions bar a South Carolina court from giving power to a Receiver to take over a foreign company and its assets without any predicate adjudication of liability, and without the personal jurisdiction to do so, and distribute those assets in violation of the property rights of the foreign company and its owners.

Finally, “the Equal Protection Clause forbids a State to discriminate in favor of its own residents solely by burdening ‘the residents of other state members of our federation,’” and the same principle applies to gross discrimination against “foreign corporations.” *Metro. Life Ins. Co. v. Ward*, 470 U.S. 869, 878–79 (1985). The substantive Due Process analysis is virtually the same—that is, whether the challenged law is rationally related to a legitimate state purpose. *Id.* at 875; *Williamson v. Lee Optical of Okla.*, 348 U.S. 483, 487-488 (1955). The abuse of South

Carolina’s receivership statute to seize foreign assets on a prejudgment basis, strip the company of its ability to defend itself, and then redistribute them to an in-state receiver and non-creditor residents lacks the legitimacy required by the law. The order should be vacated accordingly.

III. The receivership appointment violated the procedural requirements of the South Carolina statute governing receiverships.

In addition to being substantively violative of South Carolina receivership law and the United States Constitution, the receivership over CIHL must be dissolved because the motion to appoint the Receiver in the *Park* lawsuit did not reference CIHL, meaning notice of the appointment was not properly provided to CIHL as required by South Carolina Code § 15-65-20.

Both the Receiver and circuit court admit that the active Jersey entity named in the order appointing the receiver—Cape PLC—was not served with any papers in the *Park* action. Cape PLC was not served with the summons and complaint or the motion to appoint the receiver. Indeed, the Receiver confirmed that Cape PLC was “organized under the laws of the Bailiwick of Jersey in 2011,” is an active foreign company that is not insolvent or dissolved, and is a “holding company of the Cape Group.” (R. p. ____.) Yet, the *Park* Second Amended Complaint and the Motion to Appoint Receiver were admittedly **not** served on Cape PLC through its registered agent in Jersey in accordance with the Hague Convention. These facts alone defeat the receivership as to Cape PLC a matter of law and render the initial appointment order a nullity, as notice of both the *Park* lawsuit and the motion to appoint the receiver are mandatory conditions precedent to the effectiveness of the receivership.

That leaves the U.K. entity CIHL. The circuit court recognized that the *Park* complaint named Cape PLC and CIHL as separate defendants. The circuit court further found that the *Park* plaintiffs attempted to separately serve Cape PLC and CIHL at the U.K. address for the registered agent of CIHL (an impossibility). Thus, the Court found that CIHL was properly served with the

First Amended Summons and First Amended Complaint in the *Park* lawsuit because the complaint named CIHL, the summons named CIHL, and the papers were addressed to CIHL and served on the registered agent for CIHL. However, after service of the complaint (which was not even the operative pleading, rendering service ineffective), neither the motion to appoint the Receiver nor the order actually appointing the Receiver referred to CIHL ***at all*** and thus did not give statutory notice to CIHL as required by South Carolina Code § 15-65-20. Nor is there any evidence in the record that CIHL was provided notice of the appealed order substituting CIHL for Cape PLC in the appointment order. This statutory notice requirement is mandatory, and failure to comply voids the appointment.

A. The receivership must be dissolved because CIHL was not provided statutory notice of the motion to appoint the receiver in the *Park* lawsuit as required by South Carolina Code § 15-65-20.

The notice provision for receiverships states as follows:

No receiver of the property of any person or corporation shall be appointed by any court or judge, either in term time or at chambers, ***without notice of the application for such appointment to the party to the action whose property is sought to be put in the hands of a receiver*** and to any party to the action in possession of such property claiming an interest therein under any contract, lease or conveyance thereof from the alleged owner. At least four days' notice of the application must be given, unless the court shall, upon it being made to appear that delay would work injustice, prescribe a shorter time.

S.C. Code Ann. § 15-65-20 (emphasis added).

The appealed order provides that “The Park Plaintiffs provided notice of the appointment by DHL mailing to the same address at which Cape was served” in the U.K. (R. p. ____; Order at 22 (Dec. 6, 2023).) Even assuming this is true—and there is no evidence that it is—it is undisputed that the motion for appointment requested a receivership over Cape PLC, ***not*** CIHL. The name CIHL is found nowhere in the motion to appoint the receiver or the order appointing the receiver.

(R. p. ____.) Thus, there is no evidence in the record that CIHL received notice that *CIHL's assets* were the subject of the original receivership order in the *Park* action, nor is there any evidence in the record that CIHL received any notice that it may be subject to the modified receivership order in the *Tibbs* lawsuit—a case in which CIHL is not even a party.

While the Receiver and the circuit court now use the “n/k/a” acronym to pretend that Cape PLC and CIHL are the same entity (which is obviously not true), there was no possible way CIHL could anticipate that the Receiver would try to morph from being a receiver over Cape PLC in *Park* to a receiver over CIHL in *Tibbs*.

The *Park* plaintiffs named Cape PLC and CIHL as separate defendants, and those two entities were purportedly served separately with a summons. The *Park* plaintiffs treated Cape PLC and CIHL as different entities for purposes of the pleadings and for purposes of their motion to appoint a receiver—because they are separate entities. The circuit court likewise treated Cape PLC and CIHL as different entities for purposes of its original appointment order—because they are separate entities.

Not until the receivership was challenged did the Receiver decide to change his identity from being a receiver for Cape PLC as originally ordered to now being a receiver for CIHL. Inexplicably, the circuit court accepted this identity-fluid position proposed by the Receiver, but there is no way an everchanging-based-on-the-circumstances receivership can possibly comport with the South Carolina Code’s specific requirements for appointing a receiver, the Supreme Court’s repeated warnings that receiverships are drastic and should be avoided, and any notion of Due Process. In short, a receiver cannot choose to identify as a receiver for one company when it suits his desires, but then identify as a receiver for a different company when his desires change.

The only way the circuit court attempted to justify its endorsement of this nebulous receivership was to point to South Carolina’s jurisprudence on “misnomer.” (*See* R. pp. ___, ___; Order at 19, 22–23 (Dec. 6, 2023) (relying on *Griffin v. Capital Cash*, 310 S.C. 288, 423 S.E.2d 143 (Ct. App. 1992), as the basis for allowing the receivership to change without any notice to CIHL).) But that line of authority has nothing to do with this situation.

In *Griffin*, the correct defendant was sued in its “d/b/a” name, a name under which it held itself out to the public as the correct business name. As this Court explained:

It is clear, however, that First Deposit National Bank is authorized to use the name [Capital Cash] and that it actually conducted business under the name. It is also undisputed that it was the only name under which First Deposit National Bank did business with Griffin. Griffin mailed her complaint to Capital Cash by certified mail return receipt requested to the address listed on her monthly billing statements. There is no dispute that Capital Cash received the pleadings.

310 S.C. at 290–91, 423 S.E.2d at 145.

Griffin has nothing to do with the situation here, where the record evidence reveals:

- The *Park* plaintiffs mailed a summons to CIHL. (R. p. ___.)
- The *Park* plaintiffs tried to mail a summons to Cape PLC at the wrong address. (R. p. ___.)
- The *Park* plaintiffs separately identified Cape PLC and CIHL in their pleadings. (R. p. ___.)
- The *Park* plaintiffs identified only Cape PLC as the target of their belated receivership request. (R. p. ___.)
- The circuit court only identified Cape PLC in its order appointing the Receiver in *Park*. (R. p. ___.)
- The Receiver filed a third-party complaint in *Park* in which he purported to be the receiver only for Cape PLC and made no mention of CIHL. (R. p. ___.)
- The *Tibbs* Plaintiffs have not included CIHL in this case. (R. p. ___.)

These facts bear no resemblance to those of *Griffin* or any other “misnomer” case. And perhaps most importantly, the *Park* Plaintiffs themselves have never suggested that they didn’t mean exactly what they said when they sought a receivership appointment over Cape PLC.

Ultimately, South Carolina law only allows a plaintiff to assert “misnomer” when “it appears the corporation could not have been, or it was not, misled.” *Griffin*, 310 S.C. at 292, 423 S.E.2d at 146. There is no possible way such an argument could prevail here; CIHL obviously would have had no idea that the circuit court in *Tibbs* would find that the receivership appointment in *Park* over Cape PLC was truly meant to apply to CIHL despite the absence of CIHL’s name from both the motion for a receiver and the order appointing a receiver in *Park*, despite the fact that the *Park* Plaintiffs have never even hinted that they meant for the appointment to cover CIHL, and despite the fact that CIHL is not even a party in the *Tibbs* case.

Nor is there any authority that supports the circuit court’s conclusion that misnomer can be invoked when a plaintiff sues two separate defendants in his complaint and a different litigant in a different case subsequently contends those two separate defendants are actually one and the same. In this scenario, and unlike the misnomer cases involving a single business operating under a trade name, CIHL would have been misled to its prejudice as to the nature of the receivership appointment. As such, misnomer authority cannot salvage the clear failure to give CIHL proper notice that CIHL’s assets would be the subject of the receivership, as required by South Carolina Code § 15-65-20.

As a last-ditch effort to salvage the receivership, the circuit court cited two misnomer cases in support of its conclusion that the notice is not void under South Carolina Code § 15-65-20 based on the fact that “the paperwork included a ‘formerly known as’ name for the Cape entity.” (R. p. ____; Order at 23 (Dec. 6, 2023).) Both of those cases are easily distinguishable because they

involved corporate defendants who were sued under the known trade names they used to do business with the plaintiff. *See Griffin*, 310 S.C. at 292, 423 S.E.2d at 146 (“Capital Cash was the name First Deposit National Bank used to do business with Griffin.”); *McCall v. IKON*, 363 S.C. 646, 653, 611 S.E.2d 315, 318 (Ct. App. 2005) (“The record unmistakably reveals that IKON Education Services (or IKON Educational Services) was the name IKON used in connection with its computer training courses offered in South Carolina.”).

In contrast, this case involves the amendment of a receivership order where the named entity—Cape PLC—is an active Jersey company, where Cape PLC and CIHL were separately named defendants in *Park*, and where the correct name of the entity implicates the due process and notice rights of multiple categories of stakeholders—the Receiver, the entity in receivership, and the Third-Party Defendants who are defending the matter. The Receiver’s contention that the wrong name in the receivership order did not mislead or prejudice anyone is absurd; given the fact that Cape PLC is an active Jersey entity, the Altrad Defendants did not know until reading the Receiver’s opposition arguments that the Receiver believed he was acting for CIHL. And his actions have certainly belied such a position, as the Receiver continues to make filings purportedly on behalf of Cape PLC in both *Park* and *Tibbs*.

The South Carolina Supreme Court has explained that “when an action is brought against a corporation, the general rule is that where the name is mistaken materially and substantially, or where there is such a variation that a different entity is indicated, the suit cannot be regarded as against the corporation, and it cannot be affected by the proceedings or judgment therein.” *Tunstall v. Lerner Shops, Inc.*, 160 S.C. 557, 563, 159 S.E. 386, 389 (1931). Because Cape PLC is an active Jersey entity that currently exists, and the fact that CIHL was separately named as a defendant and served with a summons in *Park*, the Altrad Defendants (and CIHL) had every reason to believe

that the reference to Cape PLC in the motion to appoint the receiver and the original appointment order referred to the actual Cape PLC in existence today, not anyone else, including CIHL. Because CIHL did not receive the notice required by South Carolina Code § 15-65-20, the order modifying the receivership to replace Cape PLC with CIHL is void as a matter of law and must be vacated.

B. The receivership must be dissolved because the *Park* lawsuit was completely resolved and settled before the motion to appoint the receiver was filed.

Finally, the appointment order from which this entire situation arises is void on its face because the *Park* case was “fully resolved” for several months before the *Park* plaintiffs even moved for the appointment of a receiver over Cape PLC. There is no dispute that the case was “fully resolved”; the Park family’s counsel specifically reported this to the circuit court. (R. p. ____.)

Without an active case, the Park family had no standing to attempt to create a receivership over an active foreign company. It also lacked standing to seek a receiver appointment because they aren’t judgment creditors of Cape PLC (or of CIHL, for that matter). But the Receiver, again purporting to speak for the *Park* Plaintiffs, has argued that the report that the *Park* case was “fully resolved” applied only to the “responding defendants”—a qualification found nowhere in the communication itself, and which is directly contrary to the *Park* Plaintiffs’ use of the term “fully.”

Without a justiciable controversy, and without an actual creditor, the circuit court lacked jurisdiction to appoint a receiver in the first place. Accordingly, this receivership fails from the outset and should be dissolved.

CONCLUSION

This receivership far exceeds the boundaries allowed by law. It runs afoul of every norm of South Carolina receivership law; the United States Constitution; and basic notions of jurisdiction, fairness, and due process.

The Receiver’s continuous shapeshifting behavior further exposes the unlawful nature underlying this situation. Respectfully, this Court should put a stop to this sooner rather than later, as the circuit court and the Receiver continue to ignore clear jurisdictional boundaries, even while this appeal is pending. *See generally* Rule 205, SCACR (vesting the appellate courts with “exclusive jurisdiction” over all matters “affected by the appeal”).

Accordingly, the circuit court’s order continuing and modifying the receivership over Cape PLC or appointing a receiver over CIHL should be vacated, and the Third-Party Complaint should be dismissed.¹³

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*

February 22, 2024

¹³ To the extent not inconsistent with the arguments presented herein, the Altrad Defendants respectfully adopt and incorporate by reference all arguments and issues presented by all of the other third-party defendants/appellants in this matter. Additionally, to ensure no doubt on the point, the Altrad Defendants submit this brief and their appeal without waiving, but instead specifically preserving, all arguments and objections to personal jurisdiction, which are inextricably intertwined with the merits of the receivership for the reasons explained herein.

**APPENDIX: TABLES OF RECEIVERSHIP APPOINTMENTS FROM THE ASBESTOS
DOCKET**

Table 1: Receivership Appointments from the Asbestos Docket

<u>Company Put in Receivership</u>	<u>Moving Counsel</u>	<u>Who is Appointed</u>	<u>Case in Which Appointment is Made</u>
Covil Corp.	Kassel McVey/Dean Omar Branham Shirley	Peter Protopapas	2018-CP-40-04940
Starr Davis Company, Inc.	Kassel McVey/DOBS	Peter Protopapas	2019-CP-40-00076
Starr Davis Company of S.C., Inc.	Kassel McVey/DOBS	Peter Protopapas	2019-CP-40-00076
Southern Insulation, Inc.	Kassel McVey/DOBS	Peter Protopapas	2019-CP-40-00076
Great Barrier Insulation Co.	Kassel McVey/DOBS	Peter Protopapas	2020-CP-40-02692
J&L Insulation, Inc.	Kassel McVey/DOBS	Peter Protopapas	2020-CP-40-01952
Pipe & Boiler Insulation, Inc.	Kassel McVey/DOBS	Peter Protopapas	2020-CP-40-01952
Piedmont Insulation Inc.	Kassel McVey/DOBS	Peter Protopapas	2020-CP-40-004475
Presnell Insulation Co., Inc.	Kassel McVey/DOBS	Peter Protopapas	2020-CP-40-01364
Flame Refractories, Inc.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
General Boiler Casing Co.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
Payne & Keller Co.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
United Construction Co. of Rome	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
Standard Insulation Co.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
Stafford Insulation Co.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
J.R. Deans Co., Inc.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
HEFCO, Inc.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
Davis Mechanical Contractors, Inc.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
Heat & Frost Insulation Co.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-06190
Whittaker Clark & Daniel, Inc.	Kassel McVey/DOBS	Peter Protopapas	2022-CP-40-01265
Beaty Investments, Inc.	Kassel McVey/DOBS	Peter Protopapas	2022-CP-40-01241
Cape PLC	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-02727
Atlas Turner Co., Ltd.	Kassel McVey/DOBS	Peter Protopapas	2022-CP-40-03834
Asbestos Co., Ltd.	Kassel McVey/DOBS	Peter Protopapas	2022-CP-40-03834

Table 2: Foreign Companies Placed in Receivership in the Asbestos Docket

<u>Company in Receivership</u>	<u>Where Located</u>	<u>Active/Dissolved</u>
Starr Davis Company, Inc.	North Carolina	Dissolved
Great Barrier Insulation Co.	Florida	Dissolved
J&L Insulation, Inc.	North Carolina	Dissolved
Piedmont Insulation Inc.	North Carolina	Dissolved
Presnell Insulation Co., Inc.	North Carolina	Dissolved
Flame Refractories, Inc.	Florida	Dissolved
General Boiler Casing Co.	North Carolina	Dissolved
Payne & Keller Co.	Texas	Dissolved (an improper circuit court order attempts to undo this dissolution)
United Construction Co. of Rome	North Carolina	Dissolved/merged with Flame Refractories
Standard Insulation Co.	North Carolina	Dissolved
Heat & Frost Insulation Co.	North Carolina	Dissolved
Whittaker Clark & Daniel, Inc.	New Jersey	Active—Bankruptcy Pending
Beaty Investments, Inc.	North Carolina	Dissolved
Cape PLC	International: Jersey	Active
Atlas Turner Co., Ltd.	International: Canada	Active
Asbestos Co., Ltd.	International: Canada	Active

Feb 22 2024

SC Court of Appeals

PROOF OF SERVICE

I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Appellants Altrad Investment Authority SAS and Mohed Altrad, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

Pleading(s): Altrad Defendants' Initial Brief

Parties Served:

John T. Lay, Jr. (jlay@gwblawfirm.com)
 Gray T. Culbreath (gculbreath@gwblawfirm.com)
 Lindsay A. Joyner (ljoyner@gwblawfirm.com)
 Laura W. Jordan (ljordan@gwblawfirm.com)
 Eleanor L. Jones (ejones@gwblawfirm.com)
 Jonathan M. Robinson (jon@smithrobinsonlaw.com)
 Shanon N. Peake (shanonp@smithrobinsonlaw.com)
 G. Murrell Smith, Jr. (murrell@smithrobinsonlaw.com)
 Troy S. Brown (troy.brown@morganlawis.com)
 Dana E. Becker (dana.becker@morganlewis.com)
 Brady Edwards (brady.edwards@morganlewis.com)
 Robert W. Jacques (robert.jacques@morganlewis.com)
 Paul A. Scrudato (paul.scrudato@morganlewis.com)

Counsel for the Receiver for Cape PLC

Theile B. McVey (tmcvey@kassellaw.com)
 John D. Kassel (jkassel@kassellaw.com)
 Jamie D. Rutkoski (jrutkoski@kassellaw.com)
 Charles William Branham, III (tbranham@dobslegal.com)
 Kevin W. Paul (kpaul@dobslegal.com)
 David Christopher Humen (dhumen@dobslegal.com)

Counsel for Plaintiffs

James H. Elliott, Jr. (jelliott@richardsonplowden.com)
 Cameron D. Berthelsen (cberthelsen@richardsonplowden.com)

Counsel for Co-Appellants AA/DB Non-US Third-Party Defendants

Steven J. Pugh (spugh@richardsonplowden.com)
Benjamin P. Carlton (bcarlton@richardsonplowden.com)
Carmen V. Ganjehsani (cganjehsani@richardsonplowden.com)
Ashwin R. Sanzgiri (asanzgiri@richardsonplowden.com)

Counsel for Co-Appellants ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC

A. Victor Rawl, Jr. (vrawl@grsm.com)

Counsel for Co-Appellants ESAB Corporation; Central Mining and Investment Corp., Ltd.; and Charter Consolidated Ltd.

Stephen L. Brown (sbrown@ycrlaw.com)
James D. Gandy, III (tgandy@ycrlaw.com)
Stephen A. Griffith (sgriffith@ycrlaw.com)

Counsel for Asbestos Corporation Limited

By: /s/ M. Todd Carroll

February 22, 2024

RECEIVED

Apr 16 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
In the Court of Common Pleas
For the Fifth Judicial Circuit
The Honorable Jean H. Toal,
Acting Circuit Court Judge

Civil Action No. 2023-CP-40-01759

Appellate Case Nos.
2023-002006
2023-002007
2023-002008
2023-002009
2023-002010
2023-002011

John A. Tibbs and Margaret B. Tibbs,

Plaintiffs,

v.

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

Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Incl; SPX Corporation; Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable, LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; and Zurn Industries, LLC,

Defendants,

and

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

Third-Party Plaintiff / Respondent

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa Ltd.; DeBeers PLC; DeBeers Centenary AG; DeBeers Consolidated Mines Ltd.; DeBeers S.A.; DeBeers UK Ltd.; DeBeers Jewelers US, Inc.; Anglo American US Holdings Inc.; Element Six US Corp.; Element Six Technologies US Corp.; Element Six Technologies (OR) Corp.; First Mode Holdings, Inc.; Platinum Guild International (USA) Jewelry Inc.; Forevermark US Inc.; Anglo American Crop Nutrients (USA), LLC; Charter Consolidated Ltd.; ESAB Corporation; Central Mining & Investment Corporation Ltd.; Cape Holdco Ltd.; The Law Debenture Corporation PLC; Cape Industrial Services Group Ltd.; Mohed Altrad; Altrad UK Ltd.; Cape UK Holdings Newco Ltd.; Altrad Services Ltd., f/k/a Cape Industrial Services Ltd.; Altrad Investment Authority SAS; Sparrows Offshore Group Ltd.; Hawk Bidco US Inc.; Arranco US, LLC; Sparrows Offshore, LLC; The Sparrows Group, LLC,

Third-Party Defendants,

of which

Mohed Altrad, Altrad Investment Authority S.A.S., ArranCo US, LLC, Hawk Bidco US Inc., Sparrows Offshore, LLC, Anglo American PLC, De Beers, PLC, De Beers Centenary AG, De Beers Consolidated Mines Proprietary Ltd., De Beers UK Ltd., ESAB Corporation, Charter Consolidated Ltd., and Central Mining & Investment Corporation Ltd are the

Appellants.

**MOTION TO DISMISS
INTERLOCUTORY APPEALS**

Pursuant to Rule 240 of the South Carolina Rules of Appellate Procedure, 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”) respectfully requests this Court dismiss the December 18, 2023 Notices of Appeal (the “December 2023 Notices”) filed by Appellants in the above-captioned cases.¹

The December 2023 Notices all seek premature, interlocutory review of a circuit court order entered on December 6, 2023, titled “Order Denying Certain Third-Party Defendants’ Motions to Dissolve Receivership and Third-Party Defendants’ Motions to Dismiss for Lack of Personal Jurisdiction,” which rejected appellants’ personal jurisdiction arguments for dismissal and their requests to dissolve the Cape Receivership (the “December 6 Interlocutory Order”). South Carolina law is clear—and has been clear for many years—that such orders are not immediately appealable.

Indeed, both the South Carolina Supreme Court and this Court have recently *and decisively* dismissed as premature similarly-situated, interlocutory appeals which too sought immediate

¹ Appellants and their corresponding case numbers are as follows:

- Mohed Altrad and Altrad Investment Authority S.A.S. (Appellate Case No. 2003-002006);
- Arranco US LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC (Appellate Case No. 2003-002007);
- Anglo American PLC, De Beers PLC, De Beers Consolidated Mines Proprietary Ltd., De Beers UK Ltd., and De Beers Centenary AG (Appellate Case No. 2003-002008);
- ESAB Corporation (Appellate Case No. 2003-002009);
- Charter Consolidated Ltd. (Appellate Case No. 2003-002010); and
- Central Mining & Investment Corporation Ltd. (Appellate Case No. 2003-002022).

review of orders rejecting personal jurisdiction arguments and orders declining to dissolve a receivership. See Packet of Orders attached hereto as **Exhibit A**, issued in *Childers v. Davis Mechanical Contractors, et al.* No. 2024-000005 (S.C. Sup. Ct. Order dated March 27, 2024)(dismissing, in an order signed by all five justices, as not immediately appealable an order denying appellants’ request to dissolve a receivership); *Welch v. Advance Auto Parts, et al.*, No. 2024-000337 (Ct. App. Order dated April 12, 2024)(dismissing as not immediately appealable an order denying appellants’ motions to dissolve a receivership and to dismiss, including on personal jurisdiction grounds, and an order denying appellants’ motions for protection from discovery); *Mitchell v. 3M Company, ABB Inc., et al.*, No. 2024-000341 (Ct. App. Order dated April 12, 2024)(same); *Link v. 3M Company, 4520 Corp., Inc., et al.*, No. 2024-000342 (Ct. App. Order dated April 12, 2024)(rejecting appellants’ contention that the circuit court’s order permitting the receiver to continue his duties during the pendency of the appeal is immediately appealable and dismissing the appeal). The outcome should be no different in this case, and Appellants should not be permitted to continue to clog our courts with meritless appeals like this one. Dismissal is warranted.²

(Signature page follows)

² The Receiver also requests that while this Court considers this motion, it hold in abeyance all other briefing and submission deadlines.

Respectfully Submitted,

GALLIVAN, WHITE & BOYD, P.A.

By: /s/ Lindsay A. Joyner

John T. Lay, Jr., SC Bar No. 64526

Gray T. Culbreath, SC Bar No. 11907

Lindsay A. Joyner, SC Bar No. 77437

Laura W. Jordan, SC Bar No. 100374

Eleanor L. Jones, SC Bar No. 104678

1201 Main Street, Suite 1200

PO Box 7368 (29202)

Columbia, SC 29201

jlay@gwblawfirm.com

gculbreath@gwblawfirm.com

ljoyner@gwblawfirm.com

ljordan@gwblawfirm.com

ejones@gwblawfirm.com

(803) 779-1833

Jonathan M. Robinson

Shanon N. Peake

SMITH | ROBINSON, LLC

2530 Devine Street, Third Floor

Columbia, SC 29205

jon@smithrobinsonlaw.com

shanonp@smithrobinsonlaw.com

(803) 254-5445

G. Murrell Smith, Jr.

SMITH | ROBINSON, LLC

PO Box 580

Sumter, SC 29151-0580

murrell@smithrobinsonlaw.com

(803) 778-2471

Troy S. Brown (*admitted pro hac vice*)

Dana E. Becker (*admitted pro hac vice*)

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*)
Robert W. Jacques
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue NW
Washington, DC 20004
brady.edwards@morganlewis.com
robert.jacques@morganlewis.com
(202) 739-3000

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

April 16, 2024

EXHIBIT A

The South Carolina Court of Appeals

Michael David Link and Sandra Strickland Link,
Plaintiffs,

v.

3M Company, 4520 Corp., Inc., ABB Inc., Amentum
Environment & Energy, Inc., Armstrong International,
Inc., Bahnson, Inc., Beaty Investments, Inc., Bechtel
Corporation, The Bonitz Company, Brenntag North
America, Inc., Brenntag Speacialties, LLC, Carboline
Company, Carrier Corporation, Celanese Corporation,
CNA Holdings, LLC, Cooper Crouse-Hinds, LLC, Covil
Corporation, Daniel International Corporation, Davis
Mechanical Contractors, Inc., Eaton Corporation,
Ellington Insulation Company, Inc., Emerson Electric
Co., Ericsson Inc., Fisher Controls International, LLC,
Flowserve Corporation, Flowserve US, Inc., Fluor
Constructors International, Fluor Constructors
International, Inc., Fluor Daniel Services Corporation,
Fluor Enterprises, Inc., General Cable Corporation,
General Cable Industries, Inc., General Electric
Company, Gould Electronics, Inc., Goulds Pumps,
Incorporated, Graybar Electric Company, Inc., Great
Barrier Insulation Co., Grinnell, LLC, Heat & Frost
Insulation Company, Inc., Henry Pratt Company, LLC,
Howden North America, Inc., ITT, LLC, J & L
Insulation, Inc., K-Mac Services, Inc., Kohler Co.,
Metropolitan Life Insurance Company, Michelin
Corporation, Michelin North America, Inc., Milliken &
Company, Occidental Chemical Corporation, The
Okonite Company, Inc., Paramount Global, PECW
Holding Company, Plastics Engineering Company,
Presnell Insulation Co., Inc., Prysmian Cables and
Systems USA, LLC, Raytheon Technologies
Corporation, Redco Corporation, Riley Power Inc.,
Rockwell Automation, Inc., R.T. Vanderbilt Holding
Company, Inc., Rust Engineering & Construction, Inc.,

Rust International, Inc., Saint-Gobain Abrasives, Inc.,
Schneider Electric USA, Inc., Sequoia Ventures, Inc.,
Siemens Industry, Inc., Southern Insulation, Inc., Spence
Engineering Company, Inc., Spirax Sarco, Inc., SPX
Cooling Technologies, LLC, Standard Insulation
Company of N.C., Inc., Starr Davis Company, Inc., Starr
Davis Company of S.C., Inc., Thermo Electric Company,
Inc., Union Carbide Corporation, Vanderbilt Minerals,
LLC, Viking Pump, Inc., Vistra Intermediate Company,
LLC, Whittaker, Clark & Daniels, Inc., The William
Powell Company, Wind Up, Ltd., York International
Corporation, Zurn Industries, LLC, Defendants,

AND

Heather Donaghy, as Personal Representative of the
Estate of Shirley Smiley Potter, Deceased, Plaintiffs,

v.

3M Company, 4520 Corp., Inc., ABB Inc., Amentum
Environment & Energy, Inc., Armstrong International,
Inc., Bahnson, Inc., Beaty Investments, Inc., Bechtel
Corporation, The Bonitz Company, Brenntag North
America, Inc., Brenntag Speacalties, LLC, Carboline
Company, Carrier Corporation, Celanese Corporation,
CNA Holdings, LLC, Cooper Crouse-Hinds, LLC, Covil
Corporation, Daniel International Corporation, Davis
Mechanical Contractors, Inc., Eaton Corporation,
Ellington Insulation Company, Inc., Emerson Electric
Co., Ericsson Inc., Fisher Controls International, LLC,
Flowserve Corporation, Flowserve US, Inc., Fluor
Constructors International, Fluor Constructors
International, Inc., Fluor Daniel Services Corporation,
Fluor Enterprises, Inc., General Cable Corporation,
General Cable Industries, Inc., General Electric
Company, Gould Electronics, Inc., Goulds Pumps,
Incorporated, Graybar Electric Company, Inc., Great
Barrier Insulation Co., Grinnell, LLC, Heat & Frost
Insulation Company, Inc., Henry Pratt Company, LLC,

Howden North America, Inc., ITT, LLC, J & L Insulation, Inc., K-Mac Services, Inc., Kohler Co., Metropolitan Life Insurance Company, Michelin Corporation, Michelin North America, Inc., Milliken & Company, Occidental Chemical Corporation, The Okonite Company, Inc., Paramount Global, PECW Holding Company, Plastics Engineering Company, Presnell Insulation Co., Inc., Prysmian Cables and Systems USA, LLC, Raytheon Technologies Corporation, Redco Corporation, Riley Power Inc., Rockwell Automation, Inc., R.T. Vanderbilt Holding Company, Inc., Rust Engineering & Construction, Inc., Rust International, Inc., Saint-Gobain Abrasives, Inc., Schneider Electric USA, Inc., Sequoia Ventures, Inc., Siemens Industry, Inc., Southern Insulation, Inc., Spence Engineering Company, Inc., Spirax Sarco, Inc., SPX Cooling Technologies, LLC, Standard Insulation Company of N.C., Inc., Starr Davis Company, Inc., Starr Davis Company of S.C., Inc., Thermo Electric Company, Inc., Union Carbide Corporation, Vanderbilt Minerals, LLC, Viking Pump, Inc., Vistra Intermediate Company, LLC, Whittaker, Clark & Daniels, Inc., The William Powell Company, Wind Up, Ltd., York International Corporation, Zurn Industries, LLC, Defendants, AND Heather Donaghy v. 4520 Corp., Inc.

Appellate Case No. 2024-000342

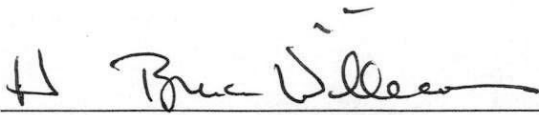
ORDER

This consolidated appeal arises out of a circuit court order dated February 23, 2024, denying the receiver's motion to terminate representation of Appellants' counsel of choice and directing Appellants' counsel to cooperate with the receiver. Appellants engaged the legal services of Clement Rivers, LLP. Appellants assert they were deprived of utilizing their choice of counsel, although the order on appeal denied the receiver's motion to terminate Appellants' representation by Clement Rivers. The denial of a motion to terminate representation is not

immediately appealable. See *EnerSys Delaware, Inc. v. Hopkins*, 401 S.C. 615, 619, 738 S.E.2d 478, 480 (2013) ("[A]n order denying a motion to disqualify an attorney is not immediately appealable."). Contrary to Appellants' assertions, the order on appeal is distinguishable from that in *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d, 707 (2005). In *Hagood*, the supreme court found "an order granting a motion to disqualify a party's preferred attorney *must* be immediately appealed or any later objection in a subsequent appeal [would] be waived." *Id.* at 198, 607 S.E.2d at 710. The action taken by the circuit court in this appeal is more akin to the order appealed in *Hopkins*, wherein the circuit court denied the motion to disqualify counsel. See *Hopkins*, 401 S.C. at 616, 619, 738 S.E.2d at 479, 480. Thus, this order is not immediately appealable.

Appellants also argue the order on appeal is immediately appealable pursuant to section 14-3-330(4) of the South Carolina Code (2017). Specifically, Appellants contend the circuit court's order impermissibly permits the receiver to continue his duties during the pendency of the appeal. This order is also not immediately appealable. See *Childers v. Davis Mech. Contractors, Inc.* (S.C. Sup. Ct. Order dated Mar. 27, 2024) (dismissing as not immediately appealable an order denying appellants' request to dissolve a receivership).

Based on the foregoing, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

 , C.J.
FOR THE COURT

Columbia, South Carolina

cc:

Stephen Lynwood Brown, Esquire
Russell Grainger Hines, Esquire
James D. Gandy, III, Esquire
Graydon V. Olive, IV, Esquire
Theile Branham McVey, Esquire
Jamie Rae Rutkoski, Esquire
Aaron Daniel Chapman, Esquire

FILED
Apr 12 2024

David Christopher Humen, Esquire
Richard Brandon Larrabee, Esquire
Robert Turner Bonds, Esquire
John Kenneth Chandler, Esquire
Stephen Augustus Griffith, Jr., Esquire
Charles William Branham, III, Esquire
Jonathan Marshall Holder, Esquire
John D. Kassel, Esquire
Brian Montgomery Barnwell, Esquire
Peter Demos Protopapas, Esquire
Shanon N. Peake, Esquire
Jonathan M. Robinson, Esquire

The South Carolina Court of Appeals

Donna B. Welch, individually and as Personal
Representative of the Estate of Melvin G. Welch,
deceased, Respondent,

v.

Advance Auto Parts, Inc., American Honda Motor Co.,
Inc., Atlas Asbestos Co, Atlas Turner, Inc. as successor
to Atlas Asbestos Co, a foreign company, Bahnson, Inc.,
Covil Corporation, Daniel International Corporation,
Davis Mechanical Contractors, Inc., Ellington Insulation
Company, Inc., Fluor Constructors International f/k/a
Fluor Corporation, Fluor Constructors International, Inc.,
Fluor Daniel Services Corporation, Fluor Enterprises,
Inc., General Parts, Inc. individually and as successor-in-
interest to Carquest Corporation; Goodrich Corporation
f/k/a The B. F. Goodrich Company, The Goodyear Tire
& Rubber Company, Graybar Electric Company, Inc.,
Honeywell International, Inc. individually and as
successor-in-interest to Allied Signal, Inc., as successor
to Bendix Corporation, Morse Tec LLC f/k/a Borgwarner
Morse Tec LLC, and successor-by-merger to Borg-
Warner Corporation, Occidental Chemical Corporation
as successor to Durez Corporation; O'reilly Automotive
Stores, Inc., Paramount Global f/k/a Viacomcbs Inc.,
f/k/a CBS Corporation, a Delaware corporation f/k/a
Viacom, Inc., successor-by-merger to CBS Corporation,
a Pennsylvania corporation, f/k/a Westinghouse Electric
Corporation, Pneumo Abex LLC successor-in-interest to
Abex Corporation, Redco Corporation f/k/a Crane Co.,
Reinz Wisconsin Gasket LLC f/k/a and/or successor to
Reinz Wisconsin Gasket Co. and Wisconsin Gasket
Manufacturing Co., a wholly owned subsidiary of Dco
LLC, Rust Engineering & Construction, Inc., Rust
International Inc., Southern Insulation, Inc., Spirax
Sarco, Inc., Union Carbide Corporation, Westrock
MWV, LLC individually and as successor-in-interest to

Westvaco, ZF Active Safety US Inc. f/k/a Kelsey-Hayes Company, Defendants,

of which Atlas Turner, Inc., The Continental Insurance Company, Certain Underwriters at Lloyd's London, and Certain London Market Companies are the Appellants,

and

Donna B. Welch, individually and Personal Representative of the Estate of Melvin G. Welch, deceased,

and

Peter D. Protopapas, Duly Appointed Receiver for Atlas Turner, Inc., are Respondents.

Appellate Case No. 2024-000337

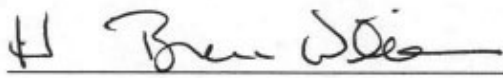
ORDER

This appeal arises out of an order of the circuit court denying Appellants' motions to dismiss and to dissolve the receivership, as well as an order denying Appellants' motions for protection from discovery. These orders are not immediately appealable. *See Huntley v. Young*, 319 S.C. 559, 560, 462 S.E.2d 860, 861 (1995) (holding the denial of a motion to dismiss under Rule 12(b)(6), SCRCP, is generally not immediately appealable); *Flavor-Inn, Inc. v. NCNB Nat. Bank of S.C.*, 309 S.C. 508, 513–14, 424 S.E.2d 534, 537 (Ct. App. 1992) ("Ordinarily, a trial court's denial of a motion to strike is not immediately appealable."); *Deskins v. Boltin*, 319 S.C. 356, 461 S.E.2d 395 (1995) (holding the denial of a motion to dismiss based on a lack of subject matter jurisdiction is not immediately appealable); *Mid-State Distrib., Inc. v. Century Imp., Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993) (holding the denial of a motion to dismiss based on a lack of personal jurisdiction is not immediately appealable); *Childers v. Davis Mech. Contractors, Inc.* (S.C. Sup. Ct. Order dated Mar. 27, 2024) (dismissing as not immediately appealable an order denying appellants' request to dissolve a

receivership); *Grosshuesch v. Cramer*, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008) ("[D]iscovery orders, in general, are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statute, involve the merits of the action or affect a substantial right."); *Davis v. Parkview Apartments*, 409 S.C. 266, 280, 762 S.E.2d 535, 543 (2014) ("[T]o challenge the specific rulings of the discovery orders, the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding."); *Hamm v. S.C. Pub. Serv. Comm'n*, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994) (holding discovery orders are interlocutory and not immediately appealable).

Appellant Continental Insurance Company filed a motion to enforce this court's exclusive jurisdiction over this matter. Respondents did not file a return. The motion is denied.

For the foregoing reasons, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

_____, C.J.
FOR THE COURT

Columbia, South Carolina

cc:

Matthew Todd Carroll, Esquire
Mary Elizabeth O'Neill, Esquire
Stephen Lynwood Brown, Esquire
James D. Gandy, III, Esquire
Stephen Augustus Griffith, Jr., Esquire
G. Murrell Smith, Jr., Esquire
Jonathan M. Robinson, Esquire
Shanon N. Peake, Esquire
Austin Tyler Reed, Esquire
Brian Montgomery Barnwell, Esquire
John Kenneth Chandler, Esquire
Harry Lee, Esquire
A. Victor Rawl, Jr., Esquire

FILED
Apr 12 2024

The South Carolina Court of Appeals

Ted Everette Mitchell, individually and as Executor of
the Estate of Patsy Ann Mitchell, Plaintiff,

v.

3M Company, ABB Inc.; Advance Auto Parts, Inc.; Air
& Liquid Systems Corporation; Alfa Laval, Inc.;
Amentum Environment & Energy, Inc.; Ametek, Inc.;
Anchor/Darling Valve Company; A.O. Smith
Corporation; Armstrong International, Inc.; Asbestos
Corporation Limited; Atlas Turner, Inc.; AWT Air
Company, Inc.; Bahnson, Inc.; Beaty Investments, Inc.;
Bechtel Investments, Inc.; The Bonitz Company; BW/IP
Inc.; Cameron International Corporation; Cape PLC;
Carrier Corporation; Carver Pump Company; Champlain
Cable Corporation; Cleaver-Brooks, Inc.; Clyde Union
Inc.; Covil Corporation; Crane Co.; Crane Instrument &
Sampling, Inc.; Daniel International Corporation; Davis
Mechanical Contractors, Inc.; Detroit Stoker Company,
LLC; Ellington Insulation Company, Inc.; Erico
International Corporation; Fisher Controls International,
LLC; Flowserve US Inc.; Fluor Constructors
International; Fluor Constructors International, Inc.;
Flour Daniel Services Corporation; Fluor Enterprises,
Inc.; FMC Corporation; Ford Motor Company; Foster
Wheeler Energy Corporation; Gardner Denver, Inc.;
General Electric Company; General Parts, Inc.; Genuine
Parts Company; The Goodyear Tire & Rubber Company;
The Gorman-Rupp Company; Goulds Pumps,
Incorporated; Graphic Packaging International, LLC;
Great Barrier Insulation Co.; Grinnell LLC; Hercules
LLC; Honeywell International, Inc.; IMO Industries Inc.;
Industrial Holdings Corporation; International Paper
Company; ITT LLC; J.&L. Insulation, Inc.; Metropolitan
Life Insurance Company; Morse Tec LLC; Moyno, Inc.;
NIBCO Inc.; Paramount Global; Pennsylvania
Transformer Technology, Inc.; Presnell Insulation Co.,

Inc.; Redco Corporation; Rust Engineering & Construction, Inc.; Rust International Inc.; Saint-Gobain Abrasives, Inc.; Schneider Electric Systems USA, Inc.; Sequoia Ventures Inc.; Service Products, Inc.; The Sherwin-Williams Company; Southern Insulation, Inc.; Spirax Sarco, Inc.; SPX Corporation; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc.; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; Zurn Industries, LLC, Defendants,

Asbestos Corporation Limited, by and through its duly appointed Receiver, Peter D. Protopapas, Third Party Plaintiff/Respondent,

v.

Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America; The Continental Insurance Company; Federal Insurance Company; Travelers Casualty and Surety Company f/k/a Aetna Life & Casualty Co., Third Party Defendants,

of which Travelers Casualty and Surety Company f/k/a Aetna Life and Casualty Co., and The Continental Insurance Company are the Appellants.

Appellate Case No. 2024-000341

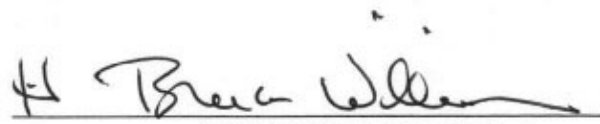
ORDER

This appeal arises out of an order of the circuit court denying Appellants' motions to dismiss and to dissolve the receivership, as well as an order denying Appellants'

motions for protection from discovery. These orders are not immediately appealable. *See Huntley v. Young*, 319 S.C. 559, 560, 462 S.E.2d 860, 861 (1995) (holding the denial of a motion to dismiss under Rule 12(b)(6), SCRCP, is generally not immediately appealable); *Flavor-Inn, Inc. v. NCNB Nat. Bank of S.C.*, 309 S.C. 508, 513–14, 424 S.E.2d 534, 537 (Ct. App. 1992) ("Ordinarily, a trial court's denial of a motion to strike is not immediately appealable."); *Deskins v. Boltin*, 319 S.C. 356, 461 S.E.2d 395 (1995) (holding the denial of a motion to dismiss based on a lack of subject matter jurisdiction is not immediately appealable); *Mid-State Distrib., Inc. v. Century Imp., Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993) (holding the denial of a motion to dismiss based on a lack of personal jurisdiction is not immediately appealable); *Childers v. Davis Mech. Contractors, Inc.* (S.C. Sup. Ct. Order dated Mar. 27, 2024) (dismissing as not immediately appealable an order denying appellants' request to dissolve a receivership); *Grosshuesch v. Cramer*, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008) ("[D]iscovery orders, in general, are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statute, involve the merits of the action or affect a substantial right."); *Davis v. Parkview Apartments*, 409 S.C. 266, 280, 762 S.E.2d 535, 543 (2014) ("[T]o challenge the specific rulings of the discovery orders, the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding."); *Hamm v. S.C. Pub. Serv. Comm'n*, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994) (holding discovery orders are interlocutory and not immediately appealable).

Appellant Continental Insurance Company filed a motion to enforce this court's exclusive jurisdiction over this matter. Respondents did not file a return. The motion is denied.

For the foregoing reasons, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

 C.J.
FOR THE COURT

Columbia, South Carolina

cc:

FILED
Apr 12 2024

Matthew Todd Carroll, Esquire
Mary Elizabeth O'Neill, Esquire
Stephen Lynwood Brown, Esquire
James D. Gandy, III, Esquire
Brian Montgomery Barnwell, Esquire
John Kenneth Chandler, Esquire
Stephen Augustus Griffith, Jr., Esquire
Austin Tyler Reed, Esquire
Jonathan M. Robinson, Esquire
Shanon N. Peake, Esquire
G. Murrell Smith, Jr., Esquire
Harry Lee, Esquire
A. Victor Rawl, Jr., Esquire

FILED
Apr 12 2024

The Supreme Court of South Carolina

Lenora Childers, Individually and as Personal
Representative of the Estate of Lewis C. Childers,
Plaintiff,

v.

Davis Mechanical Contractors, Inc.; Flame Refractories,
Inc.; General Boiler Casing Company, Inc.; HEFCO,
Inc.; J.R. Deans Company, Inc.; Payne & Keller
Company; SFB, Incorporated; Stafford Insulation
Company; Standard Insulation Company of N.C., Inc.;
Systra Engineering, Inc.; United Construction Co. of
Rome, Inc.; Wind Up, Ltd., Individually and as
Successor-in-Interest to Pipe & Boiler Insulation, Inc.
f/k/a Carolina Industrial Insulating Co.; Defendants.

Flame Refractories, Inc.; United Construction Co. of
Rome, Inc.; Wind Up, Ltd., Individually and as
Successor-in-Interest to Pipe & Boiler Insulation, Inc.
f/k/a Carolina Industrial Insulating Co.; and Payne &
Keller Company, By and Through Their Duly Appointed
Receiver, Peter D. Protopapas, Third-Party Plaintiffs,

v.

Zurich American Insurance Company (Individually and
as Successor to Northern Insurance Company of New
York, Maryland All American General Insurance
Company, and Maryland Casualty Company); Allstate
Insurance Company; John Tighe; Sean Antony Beatty;
Dennis William Cahill; Catherine Ann Carlino; Andre
Lefebvre; David Dean Shumway; Gil Chandler; Michael
Davenport; Linda Young Pettigrew; Gwyn Wallace
Fuller; Daniel Robert Keddie; Julie Ann Fortune;
Michael John Crall; James Francis Meehan; Larry Gene
Simmons; Arrowpoint Group, Inc.; Arrowpoint Capital

Corp.; Admiral Insurance Company; Continental Insurance Company, Individually and as Successor in interest to Harbor Insurance Company; Hartford Accident and Indemnity Company; Travelers Casualty & Surety Company f/k/a Aetna Casualty & Surety Company; National Union Fire Insurance Company of Pittsburgh, PA; Medmarc Casualty Insurance Company, Individually and as Successor in Interest to Dependable Insurance Company, Inc.; Berkshire Hathaway Specialty Insurance Company f/k/a Stonewall Insurance Company, Individually and as Successor in interest to Stonewall Surplus Lines Insurance Company; Lexington Insurance Company; First State Insurance Company; Certain Underwriters at Lloyd's of London and Various London Market Companies; South Carolina Property and Casualty Insurance Guaranty Association; R.L. Jarrett (Underwriting) Agency, Inc.; U.S. Risk, LLC; Rexel USA, Inc.; and Compass Risk Services, LLC, Third-Party Defendants,

Of which, Payne & Keller Company, By and Through Their Duly Appointed Receiver, Peter D. Protopapas, is the Respondent,

and

AIG Property Casualty Company, formerly known as Birmingham Fire Insurance Company; Lexington Insurance Company; National Union Fire Insurance Company of Pittsburgh, PA; Berkshire Hathaway Specialty Insurance Company f/k/a Stonewall Insurance Company, Individually and as Successor in interest to Stonewall Surplus Lines Insurance Company; and Continental Insurance Company, Individually and as Successor in interest to Harbor Insurance Company;

and

Travelers Casualty and Surety Company, f/k/a the Aetna

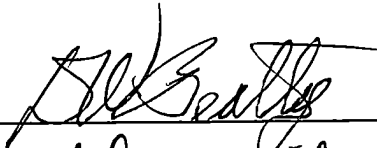
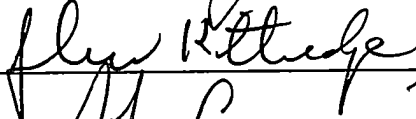
Casualty and Surety Company, are Appellants.

Appellate Case No. 2024-000005

ORDER

Appellant AIG Property Casualty Company (AIG) has filed a motion for certification of Appellate Case No. 2023-000727 pursuant to Rule 204(b), SCACR. Appellant Travelers Casualty and Surety Company has filed a motion joining AIG's motion for certification.

We grant the motion for certification and motion for joinder, dispense with further briefing, vacate the court of appeals denial of sanctions, and dismiss the appeal because the underlying circuit court order at issue is not immediately appealable.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina
March 27, 2024

cc:

Wesley Brian Sawyer
Brian Montgomery Barnwell
John Belton White, Jr.
Marghretta Hagood Shisko
Scott Shutte
Christopher Rutledge Jones

G. Murrell Smith, Jr.
Jonathan M. Robinson
Shanon N. Peake
Matthew Todd Carroll
Mary Elizabeth O'Neill
Harry Lee
The Honorable Jenny Abbott Kitchings

RECEIVED

Apr 16 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
In the Court of Common Pleas
For the Fifth Judicial Circuit

The Honorable Jean H. Toal,
Acting Circuit Court Judge

Case No. 2023-CP-40-01759

Appellate Case Nos.

2023-002006

2023-002007

2023-002008

2023-002009

2023-002010

2023-002011

John A. Tibbs v. Asbestos Corporation Limited, et al

PROOF OF SERVICE

I, Lindsay A. Joyner., of Gallivan White and Boyd, PA, *Attorney for Respondent Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas*, hereby certify that the **MOTION TO DISMISS INTERLOCUTORY APPEALS** was served on all other parties to this appeal on April 16, 2024, via email to their following counsel of record:

Theile B. McVey
tmcvey@kassellaw.com
Jamie D. Rutkoski
jrutkoski@kassellaw.com
KASSEL MCVEY ATTORNEYS AT LAW
1330 Laurel Street
Post Office Box 1476
Columbia, South Carolina, 29202-1476
and

Charles W. Branham, III
tbranham@dobslegal.com
Aaron D. Chapman
achapman@dobslegal.com
David C. Humen
dhumen@dobslegal.com
Ka'Leya Q. Hardin
khardin@dobslegal.com
Todd Barnes
tbarnes@dobslegal.com
DEAN OMAR BRANHAM SHIRLEY, LLP
302 N. Market Street, Suite 300
Dallas, Texas 75202

Attorneys for Respondents John A. Tibbs and Margaret B. Tibbs

Peter D. Protopapas
pdp@rplegalgroup.com
John K. Chandler
jchandler@rplegalgroup.com
Brian M. Barnwell
bb@rplegalgroup.com
RIKARD & PROTOPAPAS, LLC
2110 N. Beltline Blvd, Columbia, SC 29204
PO Box 5640, Columbia, SC 29250
Receiver for CAPE PLC

Matthew Todd Carroll
todd.carroll@wbd-us.com
Kevin A. Hall
kevin.hall@wbd-us.com
WOMBLE BOND DICKINSON (US) LLP
1221 Main Street, Suite 1600
Columbia, SC 29201
and
Mary Elizabeth O'Neill
elizabeth.oneill@wbd-us.com
WOMBLE BOND DICKINSON (US) LLP

301 South College Street, Suite 3500
Charlotte, NC 28202
Attorneys for Altrad Investment Authority S.A.S.; and Mohed Altrad

Steven James Pugh
spugh@richardsonplowden.com
Benjamin P. Carlton
bcarlton@richardsonplowden.com
Carmen V. Ganjehsani
cganjehsani@richardsonplowden.com
Ashwin R. Sanzgiri
asanzgiri@richardsonplowden.com
RICHARDSON PLOWDEN & ROBINSON, PA
1900 Barnwell Street
Columbia, SC 29201
Attorneys for ArranCo US, LLC; Hawk Bidco US Inc.; and Sparrows Offshore, LLC;

James H. Elliott, Jr.
jelliott@richardsonplowden.com
Cameron D. Berthelsen
cberthelsen@richardsonplowden.com
RICHARDSON PLOWDEN & ROBINSON, P.A.
235 Magrath Darby Blvd., Ste. 100
Mt. Pleasant, SC 29464
Attorneys for DeBeers Consolidated Mines LTD, De Beers PLC, De Beers UK Ltd, De Beers Centenary AG and Anglo American PLC

A. Victor Rawl, Jr.
vrawl@grsm.com
GORDON & REES LLP
677 King Street, Suite 450
Charleston, Sc 29403
Attorney for Central Mining & Investment Corporation Ltd.; Charter Consolidated Ltd.; and ESAB Corporation

Stephen L. Brown (SC Bar No. 66468)
sbrown@ycrlaw.com
Russell G. Hines (SC Bar No. 72100)
RHines@ycrlaw.com
James D. Gandy, III (SC Bar No. 11925)
tgandy@ycrlaw.com
Graydon V. Olive, IV (SC Bar No. 105319)
golive@ycrlaw.com
CLEMENT RIVERS, LLP
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
(843) 720-5488

Attorneys for Appellant Asbestos Corporation Limited

GALLIVAN, WHITE & BOYD, P.A.

By: /s/ Lindsay A. Joyner

John T. Lay, Jr., SC Bar No. 64526

Gray T. Culbreath, SC Bar No. 11907

Lindsay A. Joyner, SC Bar No. 77437

Laura W. Jordan, SC Bar No. 100374

Eleanor L. Jones, SC Bar No. 104678

1201 Main Street, Suite 1200

PO Box 7368 (29202)

Columbia, SC 29201

jlay@gwblawfirm.com

gculbreath@gwblawfirm.com

ljoyner@gwblawfirm.com

ljordan@gwblawfirm.com

ejones@gwblawfirm.com

(803) 779-1833

Jonathan M. Robinson

Shanon N. Peake

SMITH | ROBINSON, LLC

2530 Devine Street, Third Floor

Columbia, SC 29205

jon@smithrobinsonlaw.com

shanonp@smithrobinsonlaw.com

(803) 254-5445

G. Murrell Smith, Jr.

SMITH | ROBINSON, LLC

PO Box 580

Sumter, SC 29151-0580

murrell@smithrobinsonlaw.com

(803) 778-2471

Troy S. Brown (*admitted pro hac vice*)

Dana E. Becker (*admitted pro hac vice*)

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*)
Robert W. Jacques
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue NW
Washington, DC 20004
brady.edwards@morganlewis.com
robert.jacques@morganlewis.com
(202) 739-3000

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

April 16, 2024

From: [Lindsay Joyner](#)
To: ["James Elliott"](#); ["Cameron Berthelsen"](#); ["Marcy Dalton"](#); ["TMcVey@kassellaw.com"](#); ["jrutkoski@kassellaw.com"](#); ["tbranham@dobslegal.com"](#); ["achapman@dobslegal.com"](#); ["dhumen@dobslegal.com"](#); ["khardin@dobslegal.com"](#); ["tbarnes@dobslegal.com"](#); [Peter Protopapas](#); [John Chandler](#); [Brian Barnwell](#); ["Todd.carroll@wbd-us.com"](#); ["kevin.hall@wbd-us.com"](#); ["Elizabeth.ONeill@wbd-us.com"](#); ["Steve Pugh"](#); ["Ben Carlton"](#); ["Carmen Ganjehsani"](#); ["Ashwin Sanzgiri"](#); ["vrawl@grsm.com"](#); [Shannon Peake](#); [Jon Robinson](#); ["murrell@smithrobinsonlaw.com"](#); [John T. Lay](#); [Gray Culbreath](#); [Laura Jordan](#); [Eleanor Jones](#); ["sbrown@ycrlaw.com"](#); ["RHines@ycrlaw.com"](#); ["tgandy@ycrlaw.com"](#); ["golive@ycrlaw.com"](#); ["AJustman@ycrlaw.com"](#); ["pbell@ycrlaw.com"](#); ["Helen Elliott"](#); [Amelia Farmer](#); [Lori Seaborn](#); [Troy Brown](#); [Dana Becker](#); [Brady Edwards](#); [Robert Jacques](#); [Paul A. Scrudato](#)
Bcc: ["10565 1 Keith W Park individually and as the PR of the Estate of Isabella Park v Cape PLC et al Email 10565 1"](#)
Subject: [Tibbs v. Asbestos Corporation Limited, App. Case Nos.: 2023-002006, 2023-002007, 2023-002008, 2023-002009, 2023-002010, 2023-002011 \[IMAN-IMANMAIN.FID1086139\]](#)
Date: Tuesday, April 16, 2024 10:44:20 AM
Attachments: [04.16.24 MTD First Appeals w Exhibit and POS.pdf](#)

All,

Please find served upon you, in compliance with the Supreme Court's Order dated May 6, 2022, Respondent's Motion to Dismiss Interlocutory Appeals in the above-referenced appellate cases, which we will be filing with the Court of Appeals of South Carolina momentarily, which will include a copy of this email with the POS attached here as well.

Please let me know if you have any questions.

Thanks,
Lindsay



Lindsay Anne Joyner
Partner
ljoyner@gwblawfirm.com

Gallivan, White & Boyd P.A.
40 Calhoun Street | Suite 315 | Charleston SC 29401
843 414 8107 Direct | 843 735 7600 Main | 843 414 8070 Fax
Mailing Post Office Box 22768 | Charleston SC 29413

[vCard](#) | [BioURL](#) | [Website](#)

This message is from the law firm Gallivan, White & Boyd, PA and may be a confidential and privileged legal communication to the named recipient(s). If you receive this message in error or are not the named recipient(s), please notify the sender and delete this email. Thank you.

RECEIVED

May 06 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case Nos. 2023-002006 and 2024-000524
Circuit Court Case No. 2023-CP-40-01759

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

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Hesterton Company; ABB Inc.; Air & Liquid Systems Corporation; AIW-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited ASCO, L.P.; Atlas Asbestos Co.; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas CT, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Lowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services; Orporation Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply,

Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Incl; SPX Corporation; Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable, LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; and Zurn Industries, LLC, ...	Defendants,

of which

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

and

Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas,.....	Third-Party Plaintiff/ Respondent,

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa Ltd.; DeBeers PLC; DeBeers Centenary AG; DeBeers Consolidated Mines Ltd.; DeBeers S.A.; DeBeers UK Ltd.; DeBeers Jewelers US, Inc.; Angle American US Holdings Inc.; Element Six US Corp.; Element Six Technologies US Corp.; Element Six Technologies (OR) Corp.; First Mode Holdings, Inc.; Platinum Guild International (USA) Jewelry Inc.; Forevermark US Inc.; Anglo American Crop Nutrients (USA), LLC; Charter Consolidated Ltd.; ESAB Corporation; Central Mining & Investment Corporation Ltd.; Cape Holdco Ltd.; The Law Debenture Corporation PLC; Cape Industrial Services Group Ltd.; Mohed Altrad; Altrad UK Ltd.; Cape UK Holdings Newco Ltd.; Altrad Services Ltd., f/k/a Cape Industrial Services Ltd.; Altrad Investment Authority SAS; Sparrows Offshore Group Ltd.; Hawk Bidco US Inc.; Arranco US, LLC; Sparrows Offshore, LLC; The Sparrows Group, LLC, ...	Third-Party Defendants,

of which

Mohed Altrad and Altrad Investment Authority SAS are the..... Appellants.

ALTRAD DEFENDANTS’ OPPOSITION TO MOTION TO DISMISS APPEAL OF ORDER
GRANTING NEW RECEIVERSHIP AND MODIFYING PRIOR RECEIVERSHIP

INTRODUCTION

In a two-page filing with no substantive discussion whatsoever, the Receiver has requested this Court dismiss six separate appeals, all of which stem from a December 6 Order entered by the circuit court in the underlying action. Instead of any legal analysis, the Receiver attached a “Packet of Orders” and provided no explanation of why or how those orders apply here. The reason is obvious: they don’t. This case has nothing to do with any issue presented in that “packet.” This case is not one where a receiver is chasing insurance policies; this case involves unlawful third-party claims by a receiver against myriad companies located elsewhere in the United States, myriad companies located in foreign countries, and even an individual foreign citizen. The appellate courts must enforce the law as it is written, beginning with the appealability statute. Otherwise, it is unclear when or if the order unlawfully granting this receivership will ever be subject to appellate scrutiny.

As this Court has stated many times before, appealability of a lower court order is a case-by-case determination. Setting aside the conclusory nature of the Motion to Dismiss, the appellate court orders cited therein bear no similarity to this appeal beyond also involving a receivership. The actual issues involved in this appeal are fundamentally different from each of those cases in a way that renders the matters addressed in the circuit court’s December 6 Order immediately appealable for *one* simple, primary reason—the **December 6 Order *granted* a brand new receivership out of thin air and without notice to the company now supposedly in receivership.**

This is indisputable, and it brings this appeal directly within the scope of South Carolina Code § 14-3-330(4)’s plain language that any order—interlocutory or final—“granting, continuing, modifying, or refusing the appointment of a receiver” is immediately appealable. The Receiver’s motion to dismiss should be summarily denied, and the Receiver should be required to file a brief on the merits of this appeal.

PROCEDURAL BACKGROUND

The procedural background as to the Receiver’s appointment is key to understanding why the December 6 Order is immediately appealable. “The determination of whether a trial court’s order is immediately appealable is governed by statute.” *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 537, 773 S.E.2d 144, 145 (2015). The relevant statute gives parties a right to immediately appeal “[a]n interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.” S.C. Code Ann. § 14-3-330(4). As discussed below, the December 6 Order grants the appointment of a receiver and, in so doing, modifies and continues an existing receivership appointment.

Park Case. This case arises out of a Third-Party Complaint filed in the court below by Receiver, who was appointed over an entity named Cape PLC. To be clear, the Receiver was not appointed in this case, but rather was appointed in a separate asbestos lawsuit entitled *Park v. Armstrong International, Inc.*, Case No. 2021-CP-40-02727. In *Park*, the Plaintiffs sued many entities and specifically named both Cape PLC and Cape Intermediate Holdings Limited (“CIHL”)

among the defendants, correctly recognizing they are different entities. (App. 18, 88, *Park* First & Second Am. Compls. ¶¶ 26–27 (filed Nov. 17, 2021 and Dec. 23, 2021, respectively).)¹

Upon full conclusion of the *Park* case—after Plaintiffs’ counsel emailed the circuit court and other counsel that the case was “fully resolved”—both Cape PLC and CIHL were left with no adjudication of damages nor liability. (App. 215, Email from *Park* Counsel Confirming Case’s Conclusion (June 3, 2022).) Nothing in the record even suggests that Cape PLC or CIHL were served with the Second Amended Complaint in *Park* prior to the full resolution of that case.²

Receiver Appointed Over Cape PLC in *Park*. Mr. Park never got a judgment against either entity. Yet, nine months after his case was “fully resolved” according to his own counsel’s representations to the circuit court, Mr. Park inexplicably requested that the circuit court place Cape PLC—and only Cape PLC—into a receivership. (App. 142, *Park* Motion to Appoint Receiver.) Even though it was identified as a defendant in the *Park* case, the Park plaintiffs never sought a receivership over CIHL, nor did they even mention CIHL in their motion to appoint a receiver.

The Motion to Appoint the Receiver was never—and thus far has never been, according to the record—served on Cape PLC (and no proof of service has been provided as to CIHL, either).³

¹ Cape PLC is a registered public company in the Bailiwick of Jersey (an island located in the English Channel), and it is a going concern. It is not currently, nor has it ever been, dissolved. The amended pleadings in *Park* stated Cape PLC is organized under the laws of the United Kingdom with its principal place of business in England. (E.g., App. 88, *Park* First Am. Compl. ¶ 27.) That is incorrect, as Cape PLC is a Jersey company, created in 2011.

² On August 28, 2023, an affidavit of a U.K. process server was filed in *Park* stating only that the “First Amended Summons” was mailed, via Royal mail, to an address in the U.K., which the circuit court used to find proper service as to both Cape PLC and CIHL. *But see* Rule 4(d), SCRC (“The summons and complaint must be served together.”). Per this filed affidavit, the service of the “First Amended Summons” was asserted to have been effected on December 16, 2021—one week before the *Park* Plaintiffs filed their Second Amended Complaint. **Cape PLC was never served with any summons or pleading—initial or amended—in Park.**

³ The circuit court found Cape PLC was served with the Motion to Appoint via DHL solely because the *Park* Plaintiffs, in the Motion to Appoint itself, stated without any evidentiary support:

Nevertheless, less than two weeks after the motion was filed, without a hearing, and at the request of a non-creditor, the circuit court granted the motion and appointed a Receiver over Cape PLC pursuant to South Carolina Code §§ 15-65-10(4) and (5). The circuit court held that a receivership was proper because Cape PLC has “dissolved” and had “forfeited its charter,” **both of which are untrue.** (App. 418, *Park* Order Appointing Receiver.) And just like the *Park* plaintiffs, the circuit court never mentioned CIHL in its appointment order.⁴

Cape PLC Receiver Brings Third-Party Action in *Tibbs*. Cape PLC was identified as a defendant in another asbestos case, *Tibbs v. 3M Company*, Case No. 2023-CP-40-01759. On June 30, 2023, the Receiver filed a third-party complaint in *Tibbs* against over thirty companies and individual foreign citizen. **None are insurance carriers, and none are South Carolinians.**

Appointment Modified to Create a New Receivership Over CIHL. Several third-party defendants, including the Altrad Defendants—which includes the French company Altrad Investment Authority SAS, and an individual foreign defendant, Mohed Altrad—challenged the lawfulness of the Receiver’s appointment, among other arguments in support of dismissal of the third-party complaint. In ruling on Motions to Dissolve the Receivership filed by the Altrad Defendants and other third-

“Plaintiffs have placed into the hands of DHL, an international carrier, a copy of this motion and its exhibits, for delivery to the same address at which service was perfected.” The Altrad Defendants, along with other third-party defendants, have opposed that finding as not being supported by any affidavit or DHL delivery confirmation receipt and by noting the fact that the referenced “same address” in the U.K. was incorrect for Cape PLC, a Jersey entity. The Receiver has never challenged this assertion.

⁴ The *Park* Appointment Order states further that Cape PLC is the “successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.).” Through the United Kingdom’s official public corporate database, it is clear that Cape Asbestos Company Ltd. (U.K. Company Number 00040203) was incorporated in the U.K. in 1893 has been named “Cape Intermediate Holdings Limited” since 2013. Through Jersey’s official public corporate database, it is equally clear that Cape PLC (Jersey Registration Number 108031) was incorporated there in 2011 and has always been named Cape PLC. It is uncontroverted that they are two separate and distinct, active corporate entities—only one of which was even mentioned in the initial appointment motion and order.

party defendants, the circuit court acknowledged that Cape PLC isn't "dissolved," but it ignored the long list of procedural errors that plagued the appointment of the receiver and then, critically, **modified the receivership into a brand new appointment over CIHL**, a separate and wholly distinct legal entity from Cape PLC. (App. 358–368, Order on Appeal at 15–25 (Dec. 6, 2023).)

This newest appointment is especially jarring and requires immediate appellate scrutiny. CIHL is not even a defendant in the *Tibbs* case. It had no notice of anything in the *Tibbs* case and has no connection at all to South Carolina, much less any property here. Yet the circuit court proceeded to appoint a Receiver over CIHL citing the doctrine of "misnomer," an argument that no one but the Receiver himself put forward. Certainly, if the *Park* plaintiffs had really meant for their motion to apply to CIHL instead of Cape PLC, they would have said so—after all, their counsel attended and participated in the hearing in which the receivership appointment was modified to include CIHL, and they even offered a "court exhibit" regarding their failed attempts to serve the First Amended Summons from *Park* on Cape PLC. But they did not, and for good reason: South Carolina law prohibits the invocation of "misnomer" in the context of a receivership appointment, as discussed below.

ARGUMENT

I. The December 6 Order granted a new receivership and modified and continued an existing one.

Appellate jurisdiction is established by statute. South Carolina Code § 14-3-330(4) gives litigants a right to immediately appeal "[a]n interlocutory order or decree in a court of common pleas . . . granting, continuing, modifying, or refusing the appointment of a receiver." There cannot be any legitimate dispute that the circuit court's December 6 Order did at least three of these.

At an elementary, yet fundamental level, the December 6 Order created and granted a receivership—for the first time—over CIHL and, necessarily, modified and continued the initial

appointment order, which made no mention of CIHL whatsoever. While the Receiver contended otherwise below, determination of that answer is a core question on the merits at the appeal and must be resolved by this Court on full briefing and argument, not on a motion to dismiss.

The circuit court's December 6 Order contains numerous errors of law, as set forth in the Altrad Defendants' Initial Brief, and resulted in the *granting* of a receivership over CIHL, an active and solvent entity, and the simultaneous *continuation and modification* of the receivership over Cape PLC. Stated differently, the Receivership was sought and granted in *Park* over Cape PLC. Realizing Cape PLC was the wrong entity, the Receiver now seeks to have the *Park* appointment apply to CIHL in *Tibbs*. Obviously, that is not legally possible, but the December 6 Order ignored the long list of procedural errors and made it so through the improper misuse of "misnomer" to conflate two wholly different entities and treat them as if they are one. *See Porter v. Brown*, 149 S.C. 151, 146 S.E. 810, 811 (1929) (allowing immediate appeal of denial of dispositive motion in similar case wherein receivership was created over wrong entity and was challenged in action separate from action in which receivership was erroneously created).

Moreover, the *Park* plaintiffs knew Cape PLC and CIHL were two distinct entities—and named them as such in their complaint. There was no basis for the circuit court to rule in this manner, and the ruling is incorrect as evidenced both in the factual record and as a matter of law given binding South Carolina precedent "on all fours" with the circumstances here. Dismissive characterization of this legitimate appeal as some "strategy," rather than the Altrad Defendants seeking recognition of their appellate rights, misses the point. Simple review of the history of each entity named in *Park* and the one for which the Receiver was actually appointed makes the issues put before this Court clear. And the Receiver's circular reliance on the very errors in the December 6 Order that are the basis for this appeal to argue the December 6 Order cannot be appealed

completely misses the fact that those findings are demonstrably wrong—which is why the appellate process exists, and why the Legislature has vested parties like the Altrad Defendants with a right to immediately appeal orders granting receiverships in Section 14-3-330(4).

In *Porter*, the South Carolina Supreme Court assessed the legality of a receiver appointed over “New York Civic Opera Company,” which in the underlying complaint was referenced, in error, as a corporation organized under New York law when, in fact, the entity was a Florida corporation. 149 S.C. at 152, 146 S.E. at 810–11. Unlike the uncontroverted history of the instant case, the actual entity was served through an officer in New York as well as through a designated agent in Florida. *Id.* at 153, 146 S.E. at 811. In finding that the receiver had been unlawfully appointed and as further noting that all proceedings connected therewith were *coram non judice* and void, the Supreme Court explained:

It is clear that a *fatal mistake* was made when the following words were added: “A corporation organized under the laws of the state of New York.” This was vital in this case; there is no such corporation, *and all proceedings based on this error must fall*. A receiver was appointed for something that did not exist, because plaintiff bases his power and authority on an alleged act and creation of a corporation by the state of New York, and, when it appeared that the state of New York had created no such corporation, then there is an end to the matter. The existence of a person, corporation, or partnership for which an appointment of a receiver is sought is *fundamental*; and if there be no such person, corporation, or partnership, then it follows that there *can be no legally appointed receiver*. The existence of the New York corporation is the foundation of the alleged receivership proceedings, and, when it appears that there is no such New York corporation, then it follows that there can be no receiver who can bring any suit, and it also follows that, when [the receiver] attempts to bring any action against the defendant as such receiver, the defendants, who are the appellants in this case, have the right to object that the said [receiver] is not the legally appointed receiver in this case. It is therefore plain that the order appealed from must be reversed.

Id. at 157, 146 S.E. at 812–13 (emphasis added); *see also id.* at 161 & n.1, 146 S.E. at 813–14 & n.1 (Cothran, J., concurring) (collecting authorities for the propositions that: (1) “[i]t is well settled

as a general rule that the appointment of a receiver is an ancillary remedy in aid of the primary objection of the litigation between the parties”; and (2) “[i]f the Court is without jurisdiction to appoint a receiver[,] the order is void and may be attacked or disregarded whenever it comes collaterally in question” and “may be assailed collaterally and with impunity by anybody” (quotations omitted)).

Porter is controlling authority and conclusively establishes that the circuit court’s reliance on the “misnomer” doctrine to transform Cape PLC (a Jersey entity) into CIHL (a separate UK entity) is impermissible because the initial creation of a receivership over Cape PLC was a “fatal mistake.” The receivership over Cape PLC was void and uncorrectable under *Porter*, and the subsequent creation of a receivership over CIHL by definition “granted” a new receivership over CIHL, which is immediately appealable under *Porter* and South Carolina Code § 14-3-330(4). Critically, CIHL was not named in the original appointment order, Cape PLC and CIHL were separately named defendants in the *Tibbs* action in which the original receivership over Cape PLC was created (meaning the misnomer doctrine cannot apply because the *Tibbs* plaintiffs *intentionally* sued them as two separate entities), and Cape PLC and CIHL were incorporated in different foreign jurisdictions over one-hundred years apart. At a bare minimum, this Court must adjudicate this hotly contested jurisdictional dispute after full merits briefing—an outcome that the Receiver clearly wants to avoid as reflected in the bare-bones two page motion to dismiss that addresses none of the factual or legal issues necessary to resolve the jurisdictional point.

The import and validation of the errors in the case at hand and as fully detailed in the Altrad Defendants’ Initial Brief—and further given the binding precedent of the Supreme Court in *Porter*—in conjunction with the actual effect of the circuit court’s finding that a receivership requested in *Park* over Cape PLC could somehow be converted into a new, never-requested

receivership in *Tibbs* over both Cape PLC and now CIHL (two active, distinct, foreign entities with no connection to South Carolina or judgment against either) renders the circuit court's December 6 Order immediately appealable under South Carolina Code § 14-3-330(4).

II. Only the facts of this case can be relied upon to determine appealability.

The Motion to Dismiss improperly relies on procedural orders filed in other matters to ask this Court to summarily rule that this appeal is without merit and the December 6 Order is not immediately appealable. South Carolina law is clear that issues of appealability are determined “case-by-case.” *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 538, 773 S.E.2d 144, 146 (2015) (“By its nature, the question of whether an order is immediately appealable is determined on a case-by-case basis.”).

Accordingly, the facts set forth in the Procedural Background section this opposition memorandum determine why the December 6 Order is appealable. Yet, the Receiver posits orders in other appellate cases are determinative here due to the fact they are “identical to this appeal.” As set forth above, such a claim is wrong on its face; this appeal bears no resemblance to any other matter pending before a court in South Carolina or anywhere else.

And, to state the obvious, an error in the December 6 Order cannot be the basis to find that this case is similar to the others. At the most basic level, even if those orders are relevant here (which they are not), *none* of those appeals dealt with an order in which the circuit court *granted a new receivership*. Similarly, *none* of those appeals were as to circuit court orders that included inextricably linked issues as to personal jurisdiction over alleged affiliates targeted by the entity in receivership under non-traditional bases for exercising specific jurisdiction over entities with no connection with, or contacts to, South Carolina. These jurisdictional issues are foundational, touch

nearly everything currently before this Court, and further distinguish the circumstances relevant to the requisite “case-by-case” appealability inquiry to be conducted here.

A. The Supreme Court’s March 2024 *Payne & Keller* order is inapplicable.

On January 2, 2024, in *Childers v. Davis Mechanical Contractors, Inc., et al.* (hereinafter “*Payne & Keller*”), a number of third-party-defendant insurers filed a motion for certification of their appeal to the South Carolina Supreme Court. *See* C-Track entry dated January 3, 2024 in Appellate Case No. 2023-000727. That motion sought to certify an issue as to whether a receivership over *Payne & Keller* (a long-dissolved Texas company) was valid in light of the circuit court’s order denying a motion to dissolve that receivership. By signed order, the Supreme Court decided the issue, stating nothing more than:

Appellant AIG Property Casualty Company (AIG) has filed a motion for certification of Appellate Case No. 2023-000727 pursuant to Rule 204(b), SCACR. Appellant Travelers Casualty and Surety Company has filed a motion joining AIG’s motion for certification.

We grant the motion for certification and motion for joinder, dispense with further briefing, vacate the court of appeals denial of sanctions, and dismiss the appeal because the underlying circuit court order at issue is not immediately appealable.

Payne & Keller, S.C. Sup. Ct. Order, dated March 27, 2024 (Appellate Case No. 2024-000005).

The Supreme Court’s *Payne & Keller* order has **no** bearing on the appealability of the order in this case because of the stark factual distinctions between the receivership at issue there and the receivership in this matter. Review of the motion to certify filed in that case reveals issues of: (1) a receivership over a dissolved corporation resurrected by the circuit court in a foreign jurisdiction; and (2) issues relating to insurance coverage of an entity placed into a receivership. As evident from the factual recitation above—and as set forth more fully in the Altrad Defendants’ Initial Brief—there is **zero** congruency between the facts in *Payne & Keller* and the facts in this case.

Since appealability is determined case-by-case, blind reliance on a Supreme Court order containing no analytical discussion from a case as factually distinct as this one would be wholly inappropriate.

More specifically, in *Payne & Keller*, the insurer third-party defendants sought appellate review of the circuit court’s ruling denying the receivership dissolution relief sought. In response to this Court’s inquiry into appealability, a number of the insurers explained how the circuit court order fit within S.C. Code Ann. § 14-3-330(4), under the specific facts and procedural posture in that case, by arguing: (1) a denial of a motion to dissolve in effect and as a direct consequence thereof necessarily *continues* a receivership and (2) by permitting the Receiver to act outside of his appointment mandate—to “take any and all steps necessary to protect the interests of Payne & Keller whatever they may be”—through pursuit of a revocation of Payne & Keller’s Texas termination, this Court in effect and as a direct consequence thereof necessarily *modified* the receivership. *See* Response to Court’s Appealability Inquiry of AIG et al., dated May 15, 2023, at 9–10 (Appellate Case No. 2023-000727); Travelers’ Response Regarding Appealability, dated May 15, 2023, at 5–7 (Appellate Case No. 2023-000727). **And this Court agreed, finding that the insurers had “properly appealed” the circuit court’s order.** Order (Nov. 21, 2023) (Appellate Case No. 2023-000727). Beyond stating an outcome, the Supreme Court has not given the Bench or the Bar any indication why this Court’s November 21, 2023 ruling in that case was incorrect.

Here, the appealability inquiry as to this Court’s December 6 Order denying the Altrad Defendants’ Motion to Dissolve is fundamentally and factually different, as this appeal concerns the circuit court’s *grant* of an entirely new receivership (in *Tibbs*) over a legal entity (CIHL) separate and distinct from Cape PLC named in the court’s underlying Order of Appointment (in *Park*). By *granting* an entirely new receivership, misconstruing the inapplicable doctrine of “misnomer,” and ignoring South Carolina binding precedent, including as stated in *Porter*

(discussed above), the Court in fact also *modified* and *continued* a receivership. This is especially clear given that the circuit court’s December 6 Order was issued following briefing by the Receiver expressly requesting amendment and modification to the underlying Order of Appointment. (App. 445, Third-Party Plaintiff’s Omnibus Opposition to Motions to Dissolve at 17 n.13 (Oct. 18, 2023) (“The Court can simply amend the Appointment Order to clarify . . . if the Court finds that appropriate.”); App. 448, *id.* at 20, n.15 (“The Receiver would have no objection to the Court’s amendment of the Appointment Order to identify Cape Intermediate Holdings Ltd., if the Court finds that appropriate. *See, e.g., Griffin*, 310 S.C. at 292, 423 S.E.2d at 146 (‘If it later appears that the true name of the corporation is different . . ., the misnomer is properly a subject of amendment.’); S.C. Code § 33-14-320(c) (permitting amendment of appointment order).” (ellipsis supplied by the Receiver))).)

With the facts of an entirely different receivership, parties, circumstances, circuit court order, appellate procedure, briefing, and other significant substantive differences, a three-sentence Order—containing no explanation or citation—cannot have bearing on the issues in this case. Respectfully, the December 6 Order is appealable pursuant to South Carolina Code § 14-3-330(4), and the non-precedential order dismissing the obviously-distinguishable *Payne & Keller* appeal is simply irrelevant.

B. Orders in *Welch*, *Mitchell*, and *Link* are likewise inapplicable to the appealability determination here.

On April 12, 2024, this Court issued three Orders denying appeals brought pursuant to Section 14-3-330(4), finding each not immediately appealable. *See Mitchell*, Appellate Case No. 2024-000341; *Link & Donaghy*, Appellate Case No. 2024-000342; and *Welch*, Appellate Case No. 2024-000337. Like *Payne & Keller*, two of those appeals (*Welch* and *Mitchell*) were brought by *insurers* under the similar *Payne & Keller* argument that by denying a motion to dissolve a

receivership, the circuit court in effect and as a direct consequence thereof necessarily *continued* the receivership. *See* Travelers’ Response Regarding Appealability in both *Mitchell* and *Welch*, each dated March 25, 2024, at 6–9 (Appellate Case Nos. 2024-000341 & 2024-000341). *Mitchell* and *Welch* are as irrelevant here as *Payne & Keller*, as the issues presented in this appeal—including the granting of a new receivership—are fundamentally different from those cases.

The *Link & Donaghy* appealability argument is likewise irrelevant. Those appellants argued that a circuit court order in effect removed the chosen counsel of ACL and Atlas Turner and, accordingly, impaired a “substantial right” under South Carolina Code § 14-3-330(2). Appellants’ Memorandum on Appealability in *Link & Donaghy* at 6 (Mar. 25, 2024) (Appellate Case No. 2024-000342). In turn, the Receiver acknowledged that orders granting receiverships over ACL and Atlas Turner were properly before the Court of Appeals—Receiver’s Memorandum on Appealability in *Link & Donaghy* at 1 n.1 (Apr. 3, 2024) (Appellate Case No. 2024-000342)—but argued that a later order that instructed counsel for ACL and Atlas Turner to “cooperate” with the Receiver did not actually displace them as counsel. That obviously has nothing to do with the order on appeal in this case, which grants a new receivership over a different entity that is not even a party to the case from which the new appointment arises. This Court’s ruling in *Link & Donaghy*, therefore, does not inform the controlling analysis here.

III. The findings on personal jurisdiction in the December 6 Order are properly before this Court.

To the extent the Receiver’s motion is intended to only exclude the issue of personal jurisdiction from this appeal while leaving the remainder of the appeal intact, the Court should reject such posturing. As explained in the Altrad Defendants’ Initial Brief, personal jurisdiction is inextricably intertwined with the propriety of the receivership appointment. Attempting to enforce a South Carolina receivership statute against an active, solvent foreign entities over which the court

has no personal jurisdiction—in order to seize foreign assets—violates the Due Process Clause of the United States Constitution. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491–92, 611 S.E.2d 505, 508 (2005). “Although a pre-trial motion to dismiss based on lack of personal jurisdiction is not usually immediately appealable, it can be considered when other appealable issues are presented to an appellate court.” *QZO, Inc. v. Moyer*, 358 S.C. 246, 252, 594 S.E.2d 541, 545 (Ct. App. 2004). Stated differently, “an order that is not directly appealable will be considered if there is an appealable issue before the court.” *Cox v. Woodmen of World Ins. Co.*, 347 S.C. 460, 469, 556 S.E.2d 397, 402 (Ct. App. 2001). This has long been a part of South Carolina law, and these are clearly established tenets of the appealability of orders in South Carolina law.

Accordingly, the key inquiry is that the personal jurisdiction issues be presented with another issue that is immediately appealable under South Carolina law. Here, as set forth above, the December 6 Order’s granting, continuation, and modification of the “Cape PLC” Receivership is immediately appealable pursuant to the facts of this case, the nature of the underlying order on appeal, and Section 14-3-330(4)’s plain language. As detailed in the Altrad Defendants’ Initial Brief, the appointment of a receiver over an active, foreign company in order to leverage assets out of other foreign entities (with regard to the Altrad Defendants, a French company and an individual French citizen) inextricably intertwines personal jurisdiction with the issues that are immediately appealable under Section 14-3-330(4). And even if these issues weren’t inextricably intertwined, the circuit court’s rulings on personal jurisdiction are so clearly erroneous that judicial economy warrants resolution of all of these issues at once, as fully and extensively discussed in the Altrad Defendants’ Initial Brief. The Court should therefore reject the Receiver’s request to peel issues out of this appeal that are rightly before the Court.

CONCLUSION

With only two pages of superficial statements and citation to zero published opinions, the Receiver has moved to dismiss this appeal, which was brought as a matter of right under South Carolina Code § 14-3-330(4), rather than address the Altrad Defendants' valid merits-based arguments as to the multiple errors in the circuit court's December 6 Order and the constitutional violations intertwined therewith. As set forth herein, the issues as to the "Cape PLC" Receivership are immediately appealable under Section 14-3-330(4), and procedural orders from other cases that have nothing to do with the issues in this appeal are irrelevant to the appealability of the circuit court's order here. Accordingly, the Altrad Defendants respectfully request this Court deny the Receiver's motion to dismiss this appeal.⁵

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*

May 6, 2024

⁵ Per Rule 208(b)(6), SCACR, the Altrad Defendants incorporate herein, to the extent applicable, all additional arguments raised and authorities cited by all similarly-situated co-appellants in the related appeals, including the Sparrows Defendants, the Charter Defendants, and the DeBeers Defendants. For the sake of judicial economy, all citations to the Appendix herein are to the Appendix that accompanied the Sparrows Defendants' return in opposition to dismissal in Appellate Case No. 2023-002007 (filed May 6, 2024).

RECEIVED

May 06 2024

SC Court of Appeals

PROOF OF SERVICE

I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Appellants Altrad Investment Authority SAS and Mohed Altrad, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

Pleading(s): Altrad Defendants' Opposition to Motion to Dismiss Appeal of Order Granting New Receivership and Modifying Prior Receivership

Parties Served:

John T. Lay, Jr. (jlay@gwblawfirm.com)
Gray T. Culbreath (gculbreath@gwblawfirm.com)
Lindsay A. Joyner (ljoyner@gwblawfirm.com)
Laura W. Jordan (ljordan@gwblawfirm.com)
Eleanor L. Jones (ejones@gwblawfirm.com)
Jonathan M. Robinson (jon@smithrobinsonlaw.com)
Shanon N. Peake (shanonp@smithrobinsonlaw.com)
G. Murrell Smith, Jr. (murrell@smithrobinsonlaw.com)
Troy S. Brown (troy.brown@morganlawis.com)
Dana E. Becker (dana.becker@morganlewis.com)
Brady Edwards (brady.edwards@morganlewis.com)
Robert W. Jacques (robert.jacques@morganlewis.com)
Paul A. Scrudato (paul.scrudato@morganlewis.com)
Counsel for the Receiver for Cape PLC

Theile B. McVey (tmcvey@kassellaw.com)
John D. Kassel (jkassel@kassellaw.com)
Jamie D. Rutkoski (jrutkoski@kassellaw.com)
Charles William Branham, III (tbranham@dobslegal.com)
Kevin W. Paul (kpaul@dobslegal.com)
David Christopher Humen (dhumen@dobslegal.com)
Counsel for Plaintiffs

James H. Elliott, Jr. (jelliott@richardsonplowden.com)
Cameron D. Berthelsen (cberthelsen@richardsonplowden.com)
Counsel for Co-Appellants AA/DB Non-US Third-Party Defendants

Steven J. Pugh (spugh@richardsonplowden.com)
Benjamin P. Carlton (bcarlton@richardsonplowden.com)
Carmen V. Ganjehsani (cganjehsani@richardsonplowden.com)
Ashwin R. Sanzgiri (asanzgiri@richardsonplowden.com)
Counsel for Co-Appellants ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC

A. Victor Rawl, Jr. (vrawl@grsm.com)
Counsel for Co-Appellants ESAB Corporation; Central Mining and Investment Corp., Ltd.; and Charter Consolidated Ltd.

Stephen L. Brown (sbrown@ycrlaw.com)
James D. Gandy, III (tgandy@ycrlaw.com)
Stephen A. Griffith (sgriffith@ycrlaw.com)
Counsel for Asbestos Corporation Limited

By: /s/ M. Todd Carroll

May 6, 2024

The South Carolina Court of Appeals

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

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation;
A.W. Chesterton Company; ABB Inc.; Air & Liquid
Systems Corporation; AiW-2010 Wind Down Corp.;
Amentum Environment & Energy, Inc.; Anchor/Darling
Valve Company; Armstrong International, Inc.; Asbestos
Corporation Limited; ASCO, L.P.; Atlas Asbestos Co;
Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson,
Inc.; Banner Industries International, Inc.; Banner
Industries, LLC; Banner Industries Of N.E., Inc.; Barretts
Minerals Inc.; Beaty Investments, Inc.; Bechtel
Corporation; The Bonitz Company; Brand Insulations,
Inc.; BW/IP Inc.; Canvas Ct, LLC; Cape PLC; Carboline
Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.;
Consolidated Electrical Distributors, Inc.; Copes-Vulcan,
Inc.; Covil Corporation; Crane Instrumentation &
Sampling, Inc.; Crosby Valve, LLC; Daniel International
Corporation; Davis Mechanical Contractors, Inc.;
Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke
Energy Corporation; Eaton Corporation; Ellington
Insulation Company, Inc.; Emerson Electric Co.; Fisher
Controls International LLC; Flame Refractories, Inc.;
Flowserve Corporation; Flowserve US Inc.; Fluor
Constructors International; Fluor Constructors
International, Inc.; Fluor Daniel Services Corporation;
Fluor Enterprises, Inc.; FMC Corporation; Foster
Wheeler Energy Corporation; Gardner Denver Nash,
LLC; General Boiler Casing Company, Inc.; General
Cable Corporation; General Cable Industries, Inc.;
General Electric Company; Gould Electronics Inc.;
Goulds Pumps, Incorporated; Goulds Pumps LLC; Great
Barrier Insulation Co.; Grinnell LLC; Hajoca
Corporation; Howden North America Inc.; HPC
Industrial Services, LLC; IMO Industries Inc.; ITT LLC;

Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Inc.; SPX Corporation; Stafford Insulation Company; Standard Insulation Company Of N. C., Inc.; Starr Davis Company, Inc.; Starr Davis Company Of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves And Controls Us, Inc.; Velan Valve Corp.; Viking Pump, Inc.; Vistra Intermediate Company LLC; The William Powell Company Wind Up, Ltd.; Yuba Heat Transfer LLC; Zurn Industries, LLC, Defendants,

and

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

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa LTD., De Beers PLC, individually and as successor in interest to De Beers S.A., De Beers Centenary AG, De Beers Consolidated Mines Ltd., n/k/a De Beers Consolidated Mines Proprietary Ltd., De Beers UK Ltd., De Beers Jewellers LTD., De Beers Jewellers US, Inc., Anglo American US Holdings Inc., Element Six US Corp., Element Six Technologies US Corp., Element Six

Technologies (OR) Corp., First Mode Holdings, Inc., Platinum Guild International (U.S.A.) Jewelry Inc., Lightbox Jewelry Inc., Forevermark US Inc., Anglo American Crop Nutrients (U.S.A.) LLC, Charter Consolidated Ltd., ESAB Corporation, Central Mining & Investment Corporation Ltd., Cape Holdco Ltd., The Law Debenture Corporation PLC, Cape Industrial Services Group Ltd., Mohed Altrad, Altrad UK Ltd., Cape UK Holdings Newco Ltd., Altrad Services, Ltd., f/k/a Cape Industrial Services Ltd., Altrad Investment Authority S.A.S., Sparrows Offshore Group Ltd., Hawk Bidco US Inc., ArranCo US, LLC, Sparrows Offshore, LLC, and The Sparrows Group, LLC, Third-Party Defendants,

Of which Mohed Altrad and Altrad Investment Authority S.A.S. are the Appellants.

Appellate Case No. 2023-002006

ORDER

This appeal arises out of an order of the circuit court issued December 6, 2023, which denies the appellants' motion to dissolve the receivership and motion to dismiss for lack of personal jurisdiction. The appellants, Altrad Investment Authority S.A.S. and Mohed Altrad, filed a notice of appeal naming Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas, as the respondent.

The respondent filed a motion to dismiss, and the appellants filed a return. After careful consideration of the submissions from all parties, the motion to dismiss is granted. *See Mid-State Distrib., Inc. v. Century Imp., Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993) (holding the denial of a motion to dismiss based on a lack of personal jurisdiction is not immediately appealable); *Childers v. Davis Mech. Contractors, Inc.* (S.C. Sup. Ct. Order dated Mar. 27, 2024) (dismissing as not immediately appealable an order denying appellants' request to dissolve a receivership). The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

H. Bruce Allen, C.J.
FOR THE COURT

Columbia, South Carolina

FILED
May 09 2024

cc:

Matthew Todd Carroll, Esquire
Kevin A. Hall, Esquire
Mary Elizabeth O'Neill, Esquire
Shanon N. Peake, Esquire
G. Murrell Smith, Jr., Esquire
John Thomas Lay, Jr., Esquire
Gray Thomas Culbreath, Esquire
Lindsay Anne Joyner, Esquire
Laura Watkins Jordan, Esquire
Eleanor Lasseigne Jones, Esquire
Jonathan M. Robinson, Esquire

RECEIVED

May 24 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case Nos. 2023-002006 and 2024-000524
Circuit Court Case No. 2023-CP-40-01759

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

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Hesterton Company; ABB Inc.; Air & Liquid Systems Corporation; AIW-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited ASCO, L.P.; Atlas Asbestos Co.; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas CT, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services; Orporation Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply,

Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Incl; SPX Corporation; Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable, LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; and Zurn Industries, LLC, ...	Defendants,

of which

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

and

Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas,.....	Third-Party Plaintiff/ Respondent,

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa Ltd.; DeBeers PLC; DeBeers Centenary AG; DeBeers Consolidated Mines Ltd.; DeBeers S.A.; DeBeers UK Ltd.; DeBeers Jewelers US, Inc.; Angle American US Holdings Inc.; Element Six US Corp.; Element Six Technologies US Corp.; Element Six Technologies (OR) Corp.; First Mode Holdings, Inc.; Platinum Guild International (USA) Jewelry Inc.; Forevermark US Inc.; Anglo American Crop Nutrients (USA), LLC; Charter Consolidated Ltd.; ESAB Corporation; Central Mining & Investment Corporation Ltd.; Cape Holdco Ltd.; The Law Debenture Corporation PLC; Cape Industrial Services Group Ltd.; Mohed Altrad; Altrad UK Ltd.; Cape UK Holdings Newco Ltd.; Altrad Services Ltd., f/k/a Cape Industrial Services Ltd.; Altrad Investment Authority SAS; Sparrows Offshore Group Ltd.; Hawk Bidco US Inc.; Arranco US, LLC; Sparrows Offshore, LLC; The Sparrows Group, LLC, ...	Third-Party Defendants,

of which

Mohed Altrad and Altrad Investment Authority SAS are the..... Appellants.

ALTRAD DEFENDANTS' PETITION FOR REHEARING AND SUGGESTION FOR
REHEARING EN BANC

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

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*

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTRODUCTION	1
ARGUMENT	4
I. South Carolina Code § 14-3-330(4) is squarely on point, yet neither the Receiver’s motion to dismiss nor the order of dismissal account for this controlling statute.	4
II. Dismissal renders South Carolina Code § 14-3-330(4) void and without effect.	10
CONCLUSION.....	14
SUGGESTION FOR EN BANC REVIEW	14

TABLE OF AUTHORITIES

Cases

<i>A.O. Smith Corp. v. S.C. DHEC</i> , 428 S.C. 189, 833 S.E.2d 451 (Ct. App. 2019).....	2
<i>Alston v. Limehouse</i> , 60 S.C. 559, 39 S.E. 188 (1901).....	12
<i>Beaufort County v. S.C. State Election Comm’n</i> , 395 S.C. 366, 718 S.E.2d 432 (2011)	10
<i>Cape Romain Contrs., Inc. v. Wando E., LLC</i> , 405 S.C. 115, 747 S.E.2d 461 (2013).....	1, 10
<i>Denene, Inc. v. City of Charleston</i> , 352 S.C. 208, 574 S.E.2d 196 (2002).....	10
<i>Garlington v. Copeland</i> , 25 S.C. 41 (1886).....	12
<i>Hamilton v. Fulgham (In re Nov. 4, 2008 Bluffton Town Council Election)</i> , 385 S.C. 632, 686 S.E.2d 683 (2009)	2
<i>Holladay v. Hodge</i> , 84 S.C. 109, 65 S.E. 1019 (1909).....	13
<i>In re Joint Application of Duke Energy Carolinas</i> , Unpub. Op. No. 2016-UP-054, 2016 S.C. App. Unpub. LEXIS 65 (Ct. App. Feb. 10, 2016)	9
<i>Jackson v. Sanford</i> , 398 S.C. 580, 731 S.E.2d 722 (2011).....	9
<i>Lyles v. Williams</i> , 96 S.C. 290, 80 S.E. 470 (1913).....	13
<i>Midlands Util., Inc. v. S.C. DHEC</i> , 301 S.C. 224, 391 S.E.2d 535 (1989).....	5
<i>Miller v. S. Land & Lumber Co.</i> , 53 S.C. 364, 31 S.E. 281 (1898).....	12, 15
<i>Morrow v. Fundamental Long-Term Care Holdings, LLC</i> , 412 S.C. 534, 773 S.E.2d 144 (2015)	1, 9
<i>N. River Ins. Co. v. Gibson</i> , 244 S.C. 393, 137 S.E.2d 264 (1964).....	7
<i>Pollock v. Carolina Interstate B. & L. Assn.</i> , 48 S.C. 65, 25 S.E. 977 (1896)	6
<i>Poly-Med, Inc. v. Novus Sci. Pte. Ltd.</i> , 437 S.C. 343, 878 S.E.2d 896 (2022)	8
<i>Porter v. Brown</i> , 149 S.C. 151, 146 S.E. 810 (1929)	8
<i>Rainey v. Haley</i> , 404 S.C. 320, 745 S.E.2d 81 (2013).....	2
<i>Richland Cty. v. S.C. DOR</i> , 422 S.C. 292, 811 S.E.2d 758 (2018).....	5
<i>S.C. & Ga. R.R. Co. v. E. Shore Terminal Co.</i> , 48 S.C. 315, 26 S.E. 613 (1897)	12
<i>Shapemasters Golf Course Builders, Inc. v. Shapemasters, Inc.</i> , 360 S.C. 473, 602 S.E.2d 83 (Ct. App. 2004)	7
<i>Spalt v. S.C. DMV</i> , 423 S.C. 576, 816 S.E.2d 579 (2018).....	1, 9
<i>Tempel v. S.C. State Election Comm’n</i> , 400 S.C. 374, 735 S.E.2d 453 (2012).....	10
<i>Townsend v. Singleton</i> , 257 S.C. 1, 183 S.E.2d 893 (1971)	8
<i>Truesdell v. Johnson</i> , 144 S.C. 188, 142 S.E. 343 (1928).....	6
<i>Williams v. Jones</i> , 62 S.C. 472, 40 S.E. 881 (1902).....	13

Statutes

1896 S.C. Acts No. 3, § 16	11
1901 S.C. Acts No. 358	12
1991 S.C. Acts No. 115	13
S.C. Code Ann. § 14-3-330(4).....	passim
S.C. Code Ann. § 15-65-10(4).....	6
S.C. Code Ann. § 15-65-90.....	6
S.C. Code Ann. §§ 15-65-20 to -30	6
S.C. Code Ann. §§ 15-65-50 to -80	6

Rules

Rule 219(b), SCACR	15
Rule 221(a), SCACR	5

Rule 268(d)(2), SCACR.....	3

Treatises

Jean Hoefler Toal <i>et al.</i> , <i>Appellate Practice in South Carolina</i> (3d ed. 2016)	4

INTRODUCTION

This appeal challenges an order appointing a receiver over Cape Intermediate Holdings Limited, an active UK-based company that is not a party to this case, that has no connection whatsoever to South Carolina, and that had no notice it was even the subject of any proceedings, much less proceedings to have a South Carolina circuit court appoint a South Carolina attorney as a receiver over its property. The order below defies every norm of due process, jurisdictional boundaries, fair notice, and a host of obvious legal fatalities and errors of law. It is an incredible order that has no analog in South Carolina or any other known Western jurisprudence.

And it is immediately appealable as a matter of right. Respectfully, the order dismissing this appeal overlooked the controlling statute:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

S.C. Code Ann. § 14-3-330(4) (emphasis added).

The order dismissing this appeal also overlooked the controlling standard: the effect of an order, rather than its label, determines the order’s appealability. *See, e.g., Spalt v. S.C. DMV*, 423 S.C. 576, 584, 816 S.E.2d 579, 583 (2018) (“The label given to the order is not determinative of its immediate appealability.”); *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 540, 773 S.E.2d 144, 147 (2015) (holding that appellate courts must “evaluate the trial court’s order as what it is—not merely what it appears to be—and hold that it is one which is immediately appealable”); *Cape Romain Contrs., Inc. v. Wando E., LLC*, 405 S.C. 115, 121 n.4, 747 S.E.2d 461, 464 n.4 (2013) (explaining that whether an order is immediately appealable is a function of “substance rather than nomenclature”).

It has never been the policy of the South Carolina Judiciary not to enforce a statute exactly as it is written; in fact, basic separation-of-powers doctrine requires the opposite. *See, e.g., Rainey v. Haley*, 404 S.C. 320, 323, 745 S.E.2d 81, 83 (2013) (holding that when the words in a statute are “clear and definite,” the Judiciary “has no right to impose another meaning” (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000))); *see Hamilton v. Fulgham (In re Nov. 4, 2008 Bluffton Town Council Election)*, 385 S.C. 632, 639, 686 S.E.2d 683, 687 (2009) (“If a statute’s language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the Court has no right to look for or impose another meaning.”); *A.O. Smith Corp. v. S.C. DHEC*, 428 S.C. 189, 202, 833 S.E.2d 451, 458 (Ct. App. 2019) (“An appellate court cannot construe a statute without regard to its plain meaning and many not resort to a forced interpretation in an attempt to expand or limit the scope of a statute.” (quoting *Brown v. S.C. DHEC*, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002))).

* * * * *

The appealability statute is clear, and these legal principles are black-letter law. Yet, the Altrad Defendants—as well as all other third-party defendants to this case, along with the Bench and Bar—are left to wonder why this Court has dismissed an appeal of an order that not only continues an unlawful receivership in the face of myriad reasons why it must be dissolved at once, but that also modifies the initial receivership appointment to actually grant a brand new receivership appointment out of whole cloth.

This case is exactly what Section 14-3-330(4) is designed to channel into the appellate system without delay so that an unlawful receivership can be immediately vacated and private parties—here, foreign companies and foreign citizens—relieved of the burdens of having their property interfered with or seized by a purported receiver that has no legitimate authority to act.

And there is no doubt that this receivership—whether over Cape PLC (an active Jersey company that has no property in, connection to, claim pending against it in, or judgment against it in South Carolina) or over Cape Intermediate Holdings Limited (an active UK company that has no property in, connection to, claim pending against it in, or judgment against it in South Carolina)—is unlawful. The Altrad Defendants have already fully briefed this appeal, the Receiver has never responded, and his arguments below (and the circuit court’s order adopting them) are flatly contrary to settled South Carolina law and the jurisdictional boundaries and due process requirements established by the United States Constitution. It’s not a close call.

And there is also no doubt that the order below is immediately appealable. This Court never made an “appealability inquiry.” Nor did the Receiver file a motion to dismiss this appeal until after the Supreme Court issued its inapplicable and nonprecedential order dismissing an appeal in *Childers v. Davis Mechanical Contractors* without explanation or citation to any authority at all. But that order has nothing to do with this case, or any other. It contains no analysis or discussion, Appellate Court Rule 268(d)(2) specifically prohibits any reliance on it, and this appeal is plainly different in every material respect from that case—the Receiver has never rebutted any of these points.

But one thing is obvious: the Court should not indulge the Receiver’s procedural gamesmanship and strip the Altrad Defendants and other third-party defendants of their appellate rights. The Receiver was appointed over a never-served-with-process active foreign company in *Park*, which--by that plaintiffs’ own admission—was already “fully resolved,” meaning that no one was even left in that long-resolved case to be aware of, much less appeal, the appointment.

Now, the Receiver treats that unlawful appointment as a roving license to bring claims in cases other than *Park*, including asking the circuit court to appoint him as receiver over a different

un-served active foreign company that is not even a party to this case, while also continuing the earlier unlawful receivership—requests to “grant” a new receivership and to “modify” and “continue” a prior appointment, all of which the trial court approved in the order on appeal.

The Court should not endorse the compounding errors of state statutory and federal constitutional law that have poisoned this receivership appointment from its outset, and South Carolina Code § 14-3-330(4) unquestionably authorizes this appeal so that the Court can correct these clear errors of law now before further damage is done. If the Court somehow determines that the order below is not immediately reviewable, it would render the appellate statute a dead letter.

Accordingly, the Altrad Defendants respectfully request that the Court rehear this case, including a suggestion that it rehear this matter in an *en banc* capacity, and reinstate this important appeal so that it can be considered on its merits.

ARGUMENT

I. South Carolina Code § 14-3-330(4) is squarely on point, yet neither the Receiver’s motion to dismiss nor the order of dismissal account for this controlling statute.

In South Carolina, “[t]he right of appeal arises from, and is controlled by, statutory law. The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by section 14-3-330 of the South Carolina Code. An order generally must fall into one of several categories set forth in section 14-3-330 to be immediately appealable.” Jean Hoefer Toal *et al.*, *Appellate Practice in South Carolina* 140 (3d ed. 2016).

“Interlocutory orders are interim or temporary orders. Although finality is a general requirement of appealability, there are certain interlocutory orders that are immediately appealable. Absent some specialized statute, the immediate appealability of an interlocutory order depends on whether the order falls within one of the several categories of appealable judgments, decrees, or orders listed in section 14-3-330.” *Id.* at 143.

The Receiver’s motion to dismiss this appeal does not even mention the controlling statute. The order dismissing this appeal “overlooked” it as well. Rule 221(a), SCACR. But that statute controls the analysis, and it unquestionably authorizes this appeal.

The General Assembly has vested litigants with the right to appeal any order—including an “interlocutory order”—that does practically anything at all to a receivership appointment:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: (4) **An interlocutory order** or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or **granting, continuing, modifying**, or refusing the appointment of a receiver.

S.C. Code Ann. § 14-3-330(4) (emphasis added).

This constant judicial oversight is imperative because of how dangerous an improper receivership appointment can be. *See generally Richland Cty. v. S.C. DOR*, 422 S.C. 292, 313, 811 S.E.2d 758, 769 (2018) (warning that a receivership “is a drastic remedy, and should be granted only with reluctance and caution”); *Midlands Util., Inc. v. S.C. DHEC*, 301 S.C. 224, 228, 391 S.E.2d 535, 538 (1989) (“The appointment of a receiver is a drastic remedy, and should be granted only with reluctance and caution.”).

After all, a receiver exists strictly to take the property of another, a concept that is generally at odds with traditional notions of property ownership, representative democracy, and the Rule of Law recognized by Western cultures. That’s why receivers are to be rarely appointed in the first place. *See Richland County*, 422 S.C. at 313, 811 S.E.2d at 769 (“As a rule, a receiver will not be appointed during the progress of a cause, unless there is the strongest reason to believe that the plaintiff is entitled to the relief demanded in his complaint, and there is danger that the property will be materially injured before the case can be determined.” (quoting *Pelzer v. Hughes*, 27 S.C. 408, 416, 3 S.E. 781, 785 (1887))) (cleaned up).

That’s why the General Assembly prohibits receivers from being appointed without first giving notice to the entity whose property the receiver is tasked with taking, *which never happened here*. S.C. Code Ann. §§ 15-65-20 to -30.

That’s why the General Assembly prohibits receiverships before judgment unless a bond is also established so that the property supposedly in dispute can be secured without the “drastic remedy” of a receivership, *which also never happened here*. *Id.* §§ 15-65-50 to -80; *see Truesdell v. Johnson*, 144 S.C. 188, 204, 142 S.E. 343, 348 (1928) (holding that an order appointing and continuing a receivership “is void” because it failed to contain the “mandatory” bond provision).

That’s why the General Assembly (and the United States Constitution) prohibit receivers from reaching outside of South Carolina, which is a core component to this appeal. S.C. Code Ann. § 15-65-10(4); *see generally Pollock v. Carolina Interstate B. & L. Assn.*, 48 S.C. 65, 74, 25 S.E. 977, 980 (1896) (“The power of a receiver only extends to the boundaries of the territorial jurisdiction of the court appointing him.”).

That’s why the General Assembly holds parties who wrongfully “procure[] such receiver”—here, the *Park* Plaintiffs, who were responsible for the initial receivership appointment over Cape PLC, and the Receiver himself, as he alone convinced the circuit court to rewrite the Cape PLC appointment order to now appoint him as a receiver for Cape Intermediate Holdings Limited—financially responsible for all “costs,” “charges,” “expenses,” and “actual damages” incurred by “any party” that has “opposed such receivership.” S.C. Code Ann. § 15-65-90.

And that’s why the General Assembly counts on the appellate courts to keep receiverships from exceeding their narrow boundaries, as a receiver operating unlawfully can wreak untold

havoc on an individual, a company, or an entire industry or marketplace if not constantly checked by the Judiciary.¹

Accordingly, if the order below “granted,” “continued,” or “modified” the receivership appointment in any way, it is subject to immediate appellate review under Section 14-3-330(4)’s plain language and obvious legislative intent. Here, the order below did all three—the Receiver has never argued otherwise, nor did the dismissal order address this dispositive point in any way—making the order indisputably subject to an immediate appeal.

The words “granting,” “continuing,” and “modifying” are not abstract or obscure. They are common terms and have been given a consistent construction throughout South Carolina jurisprudence.

“Granting” means to approve of a request. *See, e.g., N. River Ins. Co. v. Gibson*, 244 S.C. 393, 397, 137 S.E.2d 264, 266 (1964) (“To deny means to withhold, to refuse to grant.” (quoting *Ballentine’s Law Dictionary*, at 360)). In the context of receiverships, this Court has previously held that “granting” is synonymous with “appointing” a receiver. *See Shapemasters Golf Course Builders, Inc. v. Shapemasters, Inc.*, 360 S.C. 473, 479–80, 602 S.E.2d 83, 86–87 (Ct. App. 2004) (holding that an order appointing a custodian was not immediately appealable under Section 14-3-330(4) because a “custodian” and a “receiver” are not the same under the law, while indicating that an order “appointing” a receiver would be immediately appealable).

Here, in response to myriad arguments that the initial appointment order creating a receivership over Cape PLC was defective as a matter of constitutional, statutory, and procedural

¹ To be sure, some private parties have recently warned this Court precisely of these concerns. *See generally* Amicus Curiae Br. of Underwriters at Lloyd’s, London at 20–27 (filed Apr. 26, 2024, in Appellate Case No. 2023-001461) (explaining that if left uncorrected by this Court, “the receivership order [involving an active Canadian company] will destabilize insurance markets, harm South Carolina insureds, and damage South Carolina’s economy”).

law, the Receiver argued that the receivership appointment should now include Cape Intermediate Holdings Limited. This was a stunning argument; in fact, the South Carolina Supreme Court has specifically rejected the Receiver’s “misnomer” argument as a matter of law. *See Porter v. Brown*, 149 S.C. 151, 157–59, 146 S.E. 810, 812–13 (1929) (vacating a receivership appointment despite a “misnomer” argument identical to the Receiver’s here). Nevertheless, the circuit court accepted that legally incorrect argument and granted the Receiver’s request to grant a brand-new receivership appointment over Cape Intermediate Holdings Limited—even though that company had no notice of the appointment request and is not even a party to the *Tibbs* case in which it was granted. That “granting” of a new receivership appointment renders the order below immediately appealable as a matter of right.

“Continuing” means that something is proceeding forward or carrying on. *See, e.g., Poly-Med, Inc. v. Novus Sci. Pte. Ltd.*, 437 S.C. 343, 348–49, 878 S.E.2d 896, 899 (2022) (describing the “blackletter definition” of the “continuing claim doctrine” as one where “a series of distinct events” is treated “as a single continuing event” for purposes of assessing a statute of limitations); *Townsend v. Singleton*, 257 S.C. 1, 10, 183 S.E.2d 893, 897 (1971) (“After such termination [of a lease], one continuing to occupy the premises, absent a new agreement, express or implied, comes squarely within the definition of a tenant at will.”).

Here, the circuit court order permitted the Receiver to press on unabated with his appointment over the objections of the Altrad Defendants and others regarding the unconstitutional and unlawful nature of the appointment and the Receiver’s subsequent conduct. Accordingly, the circuit court order “continued” the receivership appointment and is immediately appealable for a second, independent reason.

“Modifying” means that something has changed or altered. *See, e.g., Jackson v. Sanford*, 398 S.C. 580, 587, 731 S.E.2d 722, 725–26 (2011) (rejecting a gubernatorial veto because it did not eliminate all funding for a particular item, but instead only changed the amount of funding available, rendering the veto “an improper modification of legislation”); *see also In re Joint Application of Duke Energy Carolinas*, Unpub. Op. No. 2016-UP-054, 2016 S.C. App. Unpub. LEXIS 65, at *8 (Ct. App. Feb. 10, 2016) (“‘Modification’ is defined as a ‘small alteration, adjustment, or limitation.’” (quoting Webster’s II New College Dictionary (1999 ed.))).

Here, the circuit court order fundamentally altered the Receiver’s appointment from being over the Jersey-based Cape PLC to now include the UK-based Cape Intermediate Holdings Limited, a completely separate company that has nothing at all to do with South Carolina and that isn’t even a party to these proceedings. That “modification” of the initial appointment renders the circuit court’s order immediately appealable for a third, independent reason.

* * * * *

The conclusion that the order is immediately appealable as one that “grants,” “continues,” and “modifies” a receivership appointment is inescapable when tested against every norm of statutory interpretation, and there is no good-faith argument to the contrary. The Receiver has never even offered one. But most fundamentally, the order dismissing this appeal never engaged in this controlling analysis and appears to have overlooked South Carolina Code § 14-3-330(4).

What’s more, identifying whether the order below “grants,” “continues,” or “modifies” a receivership appointment requires this Court to assess the effect of the circuit court’s order. That analysis is required by South Carolina case law regarding the scope of appellate jurisdiction. *See, e.g., Spalt*, 423 S.C. at 584, 816 S.E.2d at 583 (“The label given to the order is not determinative of its immediate appealability.”); *Morrow*, 412 S.C. at 540, 773 S.E.2d at 147 (holding that

appellate courts must “evaluate the trial court’s order as what it is—not merely what it appears to be” when finding that a “bifurcation” order was immediately appealable); *Cape Romain Contractors*, 405 S.C. at 121 n.4, 747 S.E.2d at 464 n.4 (“Focusing, as we must, on substance rather than nomenclature, because Appellants sought only the precise relief afforded under the FAA, we find the trial court’s refusal to compel arbitration is immediately appealable [even though the order was styled as the denial of a motion to dismiss, exactly as here].”). "

But the dismissal order here did not contain any of the “effect of the order” analysis that is required by South Carolina law. Because the dismissal order appears to have overlooked this fundamental point, it should be reconsidered.

II. Dismissal renders South Carolina Code § 14-3-330(4) void and without effect.

Not only does the circuit court order fall squarely within the parameters of South Carolina Code § 14-3-330(4), it is precisely the type of interlocutory order that the Legislature had in mind when it vested the Court with appellate jurisdiction over the receivership process.

It is a bedrock principle of law and separation of powers that the Court has a duty to enforce statutes as they are written. As the Supreme Court has repeatedly explained: “The primary rule of statutory construction is to ascertain and give effect to the intent of the General Assembly.” *Beaufort County v. S.C. State Election Comm’n*, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011).

When discerning legislative intent, “[t]he Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something.” *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002). Put differently, “[t]his Court will not construe a statute in a way which leads to an absurd result or **renders it meaningless.**” *Tempel v. S.C. State Election Comm’n*, 400 S.C. 374, 378, 735 S.E.2d 453, 455 (2012) (emphasis added).

Here, the statute's history makes the General Assembly's intent unmistakable. When the Legislature reconstituted the South Carolina Supreme Court following passage of the 1895 Constitution, it gave the Supreme Court appellate jurisdiction in only three circumstances, none of which approximate current Section 14-3-330(4):

Section 16. The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: In law cases.

1. Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the Court of Common Pleas and General Sessions, brought there by original process, or removed there from any inferior Court or jurisdiction, and final judgments in such actions: Provided, If no appeal be taken until final judgment is entered, the Court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from.

A. D. 1896.

2. An order affecting a substantial right made in an action, when such order in effect determines the action and prevents a judgment from which an appeal might be taken, or discontinues the action, and when such order grants or refuses a new trial; or when such order strikes out an answer or any part thereof, or any pleading in any action; upon any appeal from an order granting a new trial on a case made, or on exceptions taken, if the Supreme Court shall determine that no error was committed in granting the new trial, it shall render judgment absolute upon the right of the appellant; and after the proceedings are remitted to the Court from which the appeal was taken, an assessment of damages, or other proceedings to render the judgment effectual, may be then and there had in cases where such subsequent proceedings are requisite.

3. A final order affecting a substantial right made in any special proceeding, or upon a summary application in any action after judgment, and upon such appeal to review any intermediate order involving the merits and necessarily affecting the order appealed from.

1896 S.C. Acts No. 3, § 16.

The blind spot in the Supreme Court’s appellate jurisdiction for certain interlocutory orders involving civil remedies of injunctions and receiverships became apparent. The Supreme Court rejected appeals in a series of cases based on the lack of appellate jurisdiction over such orders. *See, e.g., Alston v. Limehouse*, 60 S.C. 559, 569, 39 S.E. 188, 191 (1901) (“Ordinarily, an order granting a temporary injunction is not appealable, and under the foregoing construction of said orders, we see no reason why this case should not fall within the general rule.”); *S.C. & Ga. R.R. Co. v. E. Shore Terminal Co.*, 48 S.C. 315, 316, 26 S.E. 613, 613 (1897) (holding that an order denying a request for an injunction was not immediately appealable); *Garlington v. Copeland*, 25 S.C. 41, 43–44 (1886) (dismissing an appeal of an order continuing an injunction due to lack of appellate jurisdiction under the predecessor statute that contained the same limitations on appellate jurisdiction as did the 1896 statute).

But receiverships and injunction are “drastic” remedies that involve seizing private property or restricting private conduct without the benefit of a complete record. Even in that era, the Supreme Court recognized “the injury thereby caused [by the wrongful appointment of a receiver could] be far great than the injury sought to be averted.” *Miller v. S. Land & Lumber Co.*, 53 S.C. 364, 367, 31 S.E. 281, 282 (1898).

Because these procedural devices are ripe for potential irreversible abuse, the General Assembly patched this hole in the Court’s appellate jurisdiction in 1901 and added a new category of immediately-reviewable orders. It gave the Supreme Court jurisdiction to review “[a]n interlocutory order or decree in the Court of Common Pleas, granting or continuing or modifying or refusing an injunction, or else granting or continuing or modifying or refusing the appointment of a Receiver hereafter granted in any action,” and it accompanied this authority with other procedural points to govern such appeals. 1901 S.C. Acts No. 358.

The Supreme Court exercised this new appellate jurisdiction almost immediately. *See, e.g., Holladay v. Hodge*, 84 S.C. 109, 111, 65 S.E. 1019, 1020 (1909) (reviewing on direct appeal an order granting the appointment of a receiver); *Williams v. Jones*, 62 S.C. 472, 481, 40 S.E. 881, 884 (1902) (vacating a temporary injunction and acknowledging that the order was appealable under “the act of 1901”). And when, as here, an order fell within the scope of new Section (4)’s broad terms, the Supreme Court recognized it had a “clear[] duty . . . to pass upon the questions raised.” *See Lyles v. Williams*, 96 S.C. 290, 293, 80 S.E. 470, 471 (1913) (declining to dismiss an appeal of an interlocutory order refusing a receivership).

This aspect of the Supreme Court’s (and, once created, this Court’s) appellate jurisdiction remained unchanged until 1991, when the General Assembly amended Section (4) to its current form and deleted the procedures shortening the appellate timeline for interlocutory orders involving injunctions and receiverships that were included with the 1901 law. *See* 1991 S.C. Acts No. 115, § 2 (“Section 14-3-330(4) of the 1976 Code is amended to read: ‘(4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.’”).

Nothing in the statute’s plain language or its legislative history provides any reason for the Court to now construe the scope of Section (4) narrowly. The statute’s history makes clear that the General Assembly intended for the Court to provide ongoing oversight to cases involving injunctions and receiverships—two “drastic” civil remedies, and the Supreme Court recognized that it has a “duty” to address such appeals almost immediately after the Legislature expanded appellate jurisdiction over such orders. *Lyles*, 96 S.C. at 293, 80 S.E. at 470.

To date, neither this Court nor the Supreme Court have construed Section (4) with respect to the myriad receiverships that have come from the Asbestos Docket. The *Childers* order makes

no mention of this controlling statute at all. Respectfully, the Court has a “duty” to consider this appeal, which is unquestionably within the plain language of South Carolina Code § 14-3-330(4)’s broad scope for immediate review of interlocutory orders involving receiverships. Any other construction—including dismissing this appeal without any analysis or acknowledgment of this controlling statute—voids Section 14-3-330(4) without explanation and does considerable damage to the separation-of-powers and Rule-of-Law principles that are embodied by the Judiciary’s faithful enforcement of statutes that the Legislature passes.

CONCLUSION

If not now, it is unclear when the circuit court’s order, which is patently unconstitutional and which enables an unlawful receivership, can ever be reviewed on appeal. But one thing is clear: the General Assembly has vested the Altrad Defendants (and all other third-party defendants to this matter) with the right to appeal that order immediately, to have it vacated immediately, and to be relieved of the endless burdens of dealing with this receivership immediately.

Because South Carolina Code § 14-3-330(4) specifically creates immediate appellate jurisdiction to review the circuit court’s rulings below, the Altrad Defendants respectfully request that the Court reconsider the dismissal order and reinstate this appeal.

SUGGESTION FOR EN BANC REVIEW

As the Court is no doubt aware, the circuit court has appointed the same receiver at the request of the same counsel two dozen times, and rarely with a hearing. It is long settled in South Carolina that receiverships should seldom be invoked and only approved with extreme caution because they are so antithetical to norms of private property rights. As the Supreme Court warns: “While the court of equity, in proper cases, has the power to place a debtor’s property in the hands of a receiver, this power should be exercised with great caution, *lest the injury thereby caused be*

far greater than the injury sought to be averted.” *Miller*, 53 S.C. at 367, 31 S.E. at 282 (emphasis added).

Here, there is no “debtor.” The *Park* plaintiffs who got this Receiver appointed have no judgment or even a claim against the company in receivership, and the second company over which the Receiver himself sought an appointment has no claims pending against it, either. This litigation truly defies every applicable norm of United States constitutional law, South Carolina statutory law, myriad controlling cases from the South Carolina Supreme Court, and all manner of procedural rules and norms. The circuit court’s order should be reversed at once, as South Carolina Code § 14-3-330(4) specifically gives the Altrad Defendants (and every other third-party defendant) a right to have it reviewed immediately.

Because the dismissal order ignores both this statute and the well-established standards for assessing appellate jurisdiction, the Altrad Defendants respectfully suggest that the Court rehear this matter in an *en banc* capacity pursuant to Rule 219(b), SCACR; reinstate the appeal; and vacate the rulings below.²

Signature Page Attached

² The Altrad Defendants specifically adopt and incorporate by reference all of their prior appellate filings, including their argument that this Court should consider the myriad personal jurisdiction issues and arguments presented in this appeal. The Altrad Defendants also specifically adopt and join in all appellate filings and arguments by their co-third-party appellants in this and all related matters before the Court, including, but not limited to, the Charter Defendants’ arguments in Appellate Case Nos. 2023-002009 through 2023-002011 that this appeal is also proper under South Carolina Code § 14-3-330(2) as violating a substantial right.

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*

May 24, 2024

RECEIVED

May 24 2024

SC Court of Appeals

PROOF OF SERVICE

I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Appellants Altrad Investment Authority SAS and Mohed Altrad, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

Pleading(s): Altrad Defendants' Petition for Rehearing and Suggestion for Rehearing
En Banc

Parties Served:

John T. Lay, Jr. (jlay@gwblawfirm.com)
Gray T. Culbreath (gculbreath@gwblawfirm.com)
Lindsay A. Joyner (ljoyner@gwblawfirm.com)
Laura W. Jordan (ljordan@gwblawfirm.com)
Eleanor L. Jones (ejones@gwblawfirm.com)
Jonathan M. Robinson (jon@smithrobinsonlaw.com)
Shanon N. Peake (shanonp@smithrobinsonlaw.com)
G. Murrell Smith, Jr. (murrell@smithrobinsonlaw.com)
Troy S. Brown (troy.brown@morganlawis.com)
Dana E. Becker (dana.becker@morganlewis.com)
Brady Edwards (brady.edwards@morganlewis.com)
Robert W. Jacques (robert.jacques@morganlewis.com)
Paul A. Scrudato (paul.scrudato@morganlewis.com)

Counsel for the Receiver for Cape PLC

Theile B. McVey (tmcvey@kassellaw.com)
John D. Kassel (jkassel@kassellaw.com)
Jamie D. Rutkoski (jrutkoski@kassellaw.com)
Charles William Branham, III (tbranham@dobslegal.com)
Kevin W. Paul (kpaul@dobslegal.com)
David Christopher Humen (dhumen@dobslegal.com)

Counsel for Plaintiffs

James H. Elliott, Jr. (jelliott@richardsonplowden.com)
Cameron D. Berthelsen (cberthelsen@richardsonplowden.com)

Counsel for Co-Appellants AA/DB Non-US Third-Party Defendants

Steven J. Pugh (spugh@richardsonplowden.com)
Benjamin P. Carlton (bcarlton@richardsonplowden.com)
Carmen V. Ganjehsani (cganjehsani@richardsonplowden.com)
Ashwin R. Sanzgiri (asanzgiri@richardsonplowden.com)

Counsel for Co-Appellants ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC

A. Victor Rawl, Jr. (vrawl@grsm.com)

Counsel for Co-Appellants ESAB Corporation; Central Mining and Investment Corp., Ltd.; and Charter Consolidated Ltd.

Stephen L. Brown (sbrown@ycrlaw.com)
James D. Gandy, III (tgandy@ycrlaw.com)
Stephen A. Griffith (sgriffith@ycrlaw.com)

Counsel for Asbestos Corporation Limited

By: /s/ M. Todd Carroll

May 24, 2024

RECEIVED

Jun 10 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
In the Court of Common Pleas
For the Fifth Judicial Circuit
The Honorable Jean H. Toal,
Acting Circuit Court Judge

Civil Action No. 2023-CP-40-01759

Appellate Case Nos.
2023-002006
2023-002007
2023-002009
2023-002010
2023-002011

John A. Tibbs and Margaret B. Tibbs,

Plaintiffs,

v.

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

Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Incl; SPX Corporation; Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable, LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; and Zurn Industries, LLC,

Defendants,

and

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

Third-Party Plaintiff / Respondent

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa Ltd.; DeBeers PLC; DeBeers Centenary AG; DeBeers Consolidated Mines Ltd.; DeBeers S.A.; DeBeers UK Ltd.; DeBeers Jewelers US, Inc.; Angle American US Holdings Inc.; Element Six US Corp.; Element Six Technologies US Corp.; Element Six Technologies (OR) Corp.; First Mode Holdings, Inc.; Platinum Guild International (USA) Jewelry Inc.; Forevermark US Inc.; Anglo American Crop Nutrients (USA), LLC; Charter Consolidated Ltd.; ESAB Corporation; Central Mining & Investment Corporation Ltd.; Cape Holdco Ltd.; The Law Debenture Corporation PLC; Cape Industrial Services Group Ltd.; Mohed Altrad; Altrad UK Ltd.; Cape UK Holdings Newco Ltd.; Altrad Services Ltd., f/k/a Cape Industrial Services Ltd.; Altrad Investment Authority SAS; Sparrows Offshore Group Ltd.; Hawk Bidco US Inc.; Arranco US, LLC; Sparrows Offshore, LLC; The Sparrows Group, LLC,

Third-Party Defendants,

of which

Mohed Altrad, Altrad Investment Authority S.A.S., ArranCo US, LLC, Hawk Bidco US Inc., Sparrows Offshore, LLC, Anglo American PLC, De Beers, PLC, De Beers Centenary AG, De Beers Consolidated Mines Proprietary Ltd., De Beers UK Ltd., ESAB Corporation, Charter Consolidated Ltd., and Central Mining & Investment Corporation Ltd are the

Appellants.

RETURN TO PETITIONS FOR REHEARING

Pursuant to Rules 221 and 240 of the South Carolina Appellate Court Rules, 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. (“Respondent”), submits this return to the Petitions for Rehearing filed by Appellants in the above-captioned cases (collectively, the “Petitions”).¹

To briefly recap, Appellants sought premature, interlocutory review of a circuit court order entered on December 6, 2023, which rejected Appellants’ personal jurisdiction arguments for dismissal and their requests to dissolve the Cape Receivership (the “December 6 Interlocutory Order”). Respondent filed a motion to dismiss the appeals, and Appellants filed their respective returns. On May 9, 2024, “after careful consideration of the submissions from all parties,” Respondent’s motion to dismiss was granted. *See* Order attached hereto as **Exhibit A** (the “Order”).²

¹ Appellants and their corresponding case numbers are as follows:

- Mohed Altrad and Altrad Investment Authority S.A.S. (Appellate Case No. 2003-002006);
- Arranco US LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC (Appellate Case No. 2003-002007);
- ESAB Corporation (Appellate Case No. 2003-002009);
- Charter Consolidated Ltd. (Appellate Case No. 2003-002010); and
- Central Mining & Investment Corporation Ltd. (Appellate Case No. 2003-002011).

² This outcome is consistent with the recent *and decisive* dismissals by the South Carolina Supreme Court and this Court of premature, similarly-situated, interlocutory appeals which too sought immediate review of orders rejecting personal jurisdiction arguments and orders declining to dissolve a receivership. *See* Packet of Orders attached hereto as **Exhibit B**, issued in *Childers v. Davis Mechanical Contractors, et al.* No. 2024-000005 (S.C. Sup. Ct. Order dated March 27, 2024)(dismissing, in an order signed by all five justices, as not immediately appealable an order denying appellants’ request to dissolve a receivership); *Welch v. Advance Auto Parts, et al.*, No.

A petition for rehearing must “state with particularity the points supposed to have been overlooked or misapprehended by the court.” Rule 221(a), SCACR. It may not be used to “present the points [Appellants] overlooked themselves or to have the case tried in the Court of Appeals a second time.” *Checker Yellow Cab Co., Inc. v. Checker Cab and Parcel Service, Inc.*, 287 S.C. 608, 612, 340 S.E.2d 549, 552 (Ct. App. 1986). Appellants fail to meet this standard as they have not identified a point the Court of Appeals overlooked or misapprehended. To the contrary, in their Petitions, Appellants either rehash issues that were previously presented to and ruled upon by the Court or raise issues previously abandoned by Appellants that should not be considered now.³ Accordingly, this Court should deny the Petitions.

(Signature page follows)

2024-000337 (Ct. App. Order dated April 12, 2024)(dismissing as not immediately appealable an order denying appellants’ motions to dissolve a receivership and to dismiss, including on personal jurisdiction grounds, and an order denying appellants’ motions for protection from discovery); *Mitchell v. 3M Company, ABB Inc., et al.*, No. 2024-000341 (Ct. App. Order dated April 12, 2024)(same); *Link v. 3M Company, 4520 Corp., Inc., et al.*, No. 2024-000342 (Ct. App. Order dated April 12, 2024)(rejecting appellants’ contention that the circuit court’s order permitting the receiver to continue his duties during the pendency of the appeal is immediately appealable and dismissing the appeal).

³ For example, Appellants did not argue in their returns to Respondent’s motion to dismiss that the December 6 Interlocutory Order was immediately appealable pursuant to S.C. Code § 14-33-330(2). Such argument has therefore been abandoned by Appellants and should not be considered now. *Checker Yellow Cab Co., Inc.*, 287 S.C. at 612.

Respectfully Submitted,

GALLIVAN, WHITE & BOYD, P.A.

By: /s/ Lindsay A. Joyner

John T. Lay, Jr., SC Bar No. 64526

Gray T. Culbreath, SC Bar No. 11907

Lindsay A. Joyner, SC Bar No. 77437

Ioannis (Ian) G. Conits, SC Bar No. 102675

Eleanor L. Jones, SC Bar No. 104678

1201 Main Street, Suite 1200

PO Box 7368 (29202)

Columbia, SC 29201

jlay@gwblawfirm.com

gculbreath@gwblawfirm.com

ljoyner@gwblawfirm.com

iconits@gwblawfirm.com

ejones@gwblawfirm.com

(803) 779-1833

Jonathan M. Robinson

Shanon N. Peake

SMITH | ROBINSON, LLC

2530 Devine Street, Third Floor

Columbia, SC 29205

jon@smithrobinsonlaw.com

shanonp@smithrobinsonlaw.com

(803) 254-5445

G. Murrell Smith, Jr.

SMITH | ROBINSON, LLC

PO Box 580

Sumter, SC 29151-0580

murrell@smithrobinsonlaw.com

(803) 778-2471

Troy S. Brown (*admitted pro hac vice*)

Dana E. Becker (*admitted pro hac vice*)

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*)
Robert W. Jacques
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue NW
Washington, DC 20004
brady.edwards@morganlewis.com
robert.jacques@morganlewis.com
(202) 739-3000

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

June 10, 2024

RECEIVED

Jun 10 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
In the Court of Common Pleas
For the Fifth Judicial Circuit

The Honorable Jean H. Toal,
Acting Circuit Court Judge

Case No. 2023-CP-40-01759

Appellate Case Nos.
2023-002006
2023-002007
2023-002009
2023-002010
2023-002011

John A. Tibbs v. Asbestos Corporation Limited, et al

PROOF OF SERVICE

I, Lindsay A. Joyner., of Gallivan White and Boyd, PA, *Attorney for Respondent Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas*, hereby certify that the **RETURN TO PETITIONS FOR REHEARING** was served on all other parties to this appeal on June 10, 2024, via email to their following counsel of record:

Theile B. McVey
tmcvey@kassellaw.com
Jamie D. Rutkoski

jrutkoski@kassellaw.com

KASSEL MCVEY ATTORNEYS AT LAW

1330 Laurel Street

Post Office Box 1476

Columbia, South Carolina, 29202-1476

and

Charles W. Branham, III

tbranham@dobslegal.com

Aaron D. Chapman

achapman@dobslegal.com

David C. Humen

dhumen@dobslegal.com

Ka'Leya Q. Hardin

khardin@dobslegal.com

Todd Barnes

tbarnes@dobslegal.com

DEAN OMAR BRANHAM SHIRLEY, LLP

302 N. Market Street, Suite 300

Dallas, Texas 75202

Attorneys for Respondents John A. Tibbs and Margaret B. Tibbs

Peter D. Protopapas

pdp@rplegalgroup.com

John K. Chandler

jchandler@rplegalgroup.com

Brian M. Barnwell

bb@rplegalgroup.com

RIKARD & PROTOPAPAS, LLC

2110 N. Beltline Blvd, Columbia, SC 29204

PO Box 5640, Columbia, SC 29250

Receiver for CAPE PLC

Matthew Todd Carroll

todd.carroll@wbd-us.com

Kevin A. Hall

kevin.hall@wbd-us.com

WOMBLE BOND DICKINSON (US) LLP

1221 Main Street, Suite 1600

Columbia, SC 29201

and

Mary Elizabeth O'Neill

elizabeth.oneill@wbd-us.com

WOMBLE BOND DICKINSON (US) LLP

301 South College Street, Suite 3500
Charlotte, NC 28202
Attorneys for Altrad Investment Authority S.A.S.; and Mohed Altrad

Steven James Pugh
spugh@richardsonplowden.com
Benjamin P. Carlton
bcarlton@richardsonplowden.com
Carmen V. Ganjehsani
cganjehsani@richardsonplowden.com
Ashwin R. Sanzgiri
asanzgiri@richardsonplowden.com
RICHARDSON PLOWDEN & ROBINSON, PA
1900 Barnwell Street
Columbia, SC 29201
Attorneys for ArranCo US, LLC; Hawk Bidco US Inc.; and Sparrows Offshore, LLC;

James H. Elliott, Jr.
jelliott@richardsonplowden.com
Cameron D. Berthelsen
cberthelsen@richardsonplowden.com
RICHARDSON PLOWDEN & ROBINSON, P.A.
235 Magrath Darby Blvd., Ste. 100
Mt. Pleasant, SC 29464
Attorneys for DeBeers Consolidated Mines LTD, De Beers PLC, De Beers UK Ltd, De Beers Centenary AG and Anglo American PLC

A. Victor Rawl, Jr.
vrawl@grsm.com
GORDON & REES LLP
677 King Street, Suite 450
Charleston, Sc 29403
Attorney for Central Mining & Investment Corporation Ltd.; Charter Consolidated Ltd.; and ESAB Corporation

Stephen L. Brown (SC Bar No. 66468)
sbrown@ycrlaw.com
Russell G. Hines (SC Bar No. 72100)
RHines@ycrlaw.com
James D. Gandy, III (SC Bar No. 11925)
tgandy@ycrlaw.com
Graydon V. Olive, IV (SC Bar No. 105319)
golive@ycrlaw.com
CLEMENT RIVERS, LLP
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
(843) 720-5488

Attorneys for Appellant Asbestos Corporation Limited

GALLIVAN, WHITE & BOYD, P.A.

By: /s/ Lindsay A. Joyner

John T. Lay, Jr., SC Bar No. 64526
Gray T. Culbreath, SC Bar No. 11907
Lindsay A. Joyner, SC Bar No. 77437
Laura W. Jordan, SC Bar No. 100374
Eleanor L. Jones, SC Bar No. 104678
1201 Main Street, Suite 1200
PO Box 7368 (29202)
Columbia, SC 29201
jlay@gwblawfirm.com
gculbreath@gwblawfirm.com
ljoyner@gwblawfirm.com
ljordan@gwblawfirm.com
ejones@gwblawfirm.com
(803) 779-1833

Jonathan M. Robinson
Shanon N. Peake
SMITH | ROBINSON, LLC
2530 Devine Street, Third Floor
Columbia, SC 29205
jon@smithrobinsonlaw.com
shanonp@smithrobinsonlaw.com
(803) 254-5445

G. Murrell Smith, Jr.
SMITH | ROBINSON, LLC
PO Box 580
Sumter, SC 29151-0580
murrell@smithrobinsonlaw.com
(803) 778-2471

Troy S. Brown (*admitted pro hac vice*)
Dana E. Becker (*admitted pro hac vice*)
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*)
Robert W. Jacques
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue NW
Washington, DC 20004
brady.edwards@morganlewis.com
robert.jacques@morganlewis.com
(202) 739-3000

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

June 10, 2024

From: Lindsay Joyner
To: "James Elliott"; "Cameron Berthelsen"; "Marcy Dalton"; "TMCvey@kassellaw.com"; "jrutkoski@kassellaw.com"; "tbranham@dobslegal.com"; "achapman@dobslegal.com"; "dhumen@dobslegal.com"; "khardin@dobslegal.com"; "tbarnes@dobslegal.com"; Peter Protopapas; John Chandler; Brian Barnwell; "Todd.carroll@wbd-us.com"; "kevin.hall@wbd-us.com"; "Elizabeth.O'Neill@wbd-us.com"; "Steve Pugh"; "Ben Carlton"; "Carmen Ganjehsani"; "Ashwin Sanzgiri"; "vrawl@grsm.com"; Shannon Peake; Jon Robinson; "murrell@smithrobinsonlaw.com"; John T. Lay; Gray Culbreath; Eleanor Jones; "sbrown@ycrlaw.com"; "RHines@ycrlaw.com"; "tgandy@ycrlaw.com"; "golive@ycrlaw.com"; "AJustman@ycrlaw.com"; "pbell@ycrlaw.com"; "Helen Elliott"; Lori Seaborn; Troy Brown; Dana Becker; Brady Edwards; Robert Jacques; Paul A. Scrudato
Bcc: "10565 1 Keith W Park individually and as the PR of the Estate of Isabella Park v Cape PLC et al Email 10565 1 "
Subject: RE: Tibbs v. Asbestos Corporation Limited, App. Case Nos.: 2023-002006, 2023-002007, 2023-002009, 2023-002010, 2023-002011 [IMAN-IMANMAIN.FID1086139]
Date: Monday, June 10, 2024 4:22:45 PM
Attachments: 06.10.24 Return to Petitions for Rehearing(14492355.1).pdf
06.10.24 POS to Return to Petitions for Rehearing.pdf

All,

Please find served upon you, in compliance with the Supreme Court's Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024), Respondent's Return to the Petitions for Rehearing in the above-referenced appellate cases, which we will be filing with the Court of Appeals of South Carolina momentarily and to which will include a copy of this email with the POS attached here as well.

Please let me know if you have any questions.

Thanks,
Lindsay



Lindsay Anne Joyner
Partner
ljoyner@gwblawfirm.com

Gallivan, White & Boyd P.A.
40 Calhoun Street | Suite 315 | Charleston SC 29401
843 414 8107 Direct | 843 735 7600 Main | 843 414 8070 Fax
Mailing Post Office Box 22768 | Charleston SC 29413

[vCard](#) | [BioURL](#) | [Website](#)

This message is from the law firm Gallivan, White & Boyd, PA and may be a confidential and privileged legal communication to the named recipient(s). If you receive this message in error or are not the named recipient(s), please notify the sender and delete this email. Thank you.

From: Lindsay Joyner
Sent: Friday, May 3, 2024 4:29 PM
To: James Elliott <JElliott@RichardsonPlowden.com>; Cameron Berthelsen <CBerthelsen@RichardsonPlowden.com>; Marcy Dalton <MDalton@RichardsonPlowden.com>; TMCvey@kassellaw.com; jrutkoski@kassellaw.com; tbranham@dobslegal.com; achapman@dobslegal.com; dhumen@dobslegal.com; khardin@dobslegal.com; tbarnes@dobslegal.com; Peter Protopapas <pdp@rplegalgroup.com>; John Chandler <jchandler@rplegalgroup.com>; Brian

Barnwell <BB@rplegalgroup.com>; Todd.carroll@wbd-us.com; kevin.hall@wbd-us.com;
Elizabeth.ONeill@wbd-us.com; Steve Pugh <SPugh@RichardsonPlowden.com>; Ben Carlton
<BCarlton@RichardsonPlowden.com>; Carmen Ganjehsani <CGanjehsani@RichardsonPlowden.com>;
Ashwin Sanzgiri <ASanzgiri@RichardsonPlowden.com>; vrawl@grsm.com; Shannon Peake
<shanonp@smithrobinsonlaw.com>; Jon Robinson <jon@smithrobinsonlaw.com>;
murrell@smithrobinsonlaw.com; John T. Lay <jlay@gwblawfirm.com>; Gray Culbreath
<gculbreath@gwblawfirm.com>; Laura Jordan <ljordan@gwblawfirm.com>; Eleanor Jones
<ejones@gwblawfirm.com>; sbrown@ycrlaw.com; RHines@ycrlaw.com; tgandy@ycrlaw.com;
golive@ycrlaw.com; AJustman@ycrlaw.com; pbell@ycrlaw.com; Helen Elliott
<HElliott@RichardsonPlowden.com>; Amelia Farmer <afarmer@gwblawfirm.com>; Lori Seaborn
<lseaborn@gwblawfirm.com>; Troy Brown <troy.brown@morganlewis.com>; Dana Becker
<dana.becker@morganlewis.com>; Brady Edwards <brady.edwards@morganlewis.com>; Robert Jacques
<Robert.jacques@morganlewis.com>; Paul A. Scrudato <paul.scrudato@morganlewis.com>
Subject: RE: Tibbs v. Asbestos Corporation Limited, App. Case Nos.: 2023-002006, 2023-002007, 2023-002008, 2023-002009, 2023-002010, 2023-002011 [IMAN-IMANMAIN.FID1086139]

All,

Please find served upon you, in compliance with the Supreme Court's Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024), Respondent's Reply in Support of Motion to Dismiss Interlocutory Appeals (Specifically, The Appeal Filed By The Oppenheimer Appellants) in the above-referenced appellate cases, which we will be filing with the Court of Appeals of South Carolina momentarily, which will include a copy of this email with the POS attached here as well.

Please let me know if you have any questions.

Thanks,
Lindsay



Lindsay Anne Joyner
Partner
ljoyner@gwblawfirm.com

Gallivan, White & Boyd P.A.
40 Calhoun Street | Suite 315 | Charleston SC 29401
843 414 8107 Direct | [843 735 7600](tel:8437357600) Main | [843 414 8070](tel:8434148070) Fax
Mailing Post Office Box 22768 | Charleston SC 29413

[vCard](#) | [BioURL](#) | [Website](#)

This message is from the law firm Gallivan, White & Boyd, PA and may be a confidential and privileged legal communication to the named recipient(s). If you receive this message in error or are not the named recipient(s), please notify the sender and delete this email. Thank you.

RECEIVED

Jun 17 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case Nos. 2023-002006 and 2024-000524
Circuit Court Case No. 2023-CP-40-01759

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

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Hesterton Company; ABB Inc.; Air & Liquid Systems Corporation; AIW-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited ASCO, L.P.; Atlas Asbestos Co.; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas CT, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services; Corporation Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply,

Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Incl; SPX Corporation; Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable, LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; and Zurn Industries, LLC, ...	Defendants,

of which

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

and

Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas,.....	Third-Party Plaintiff/ Respondent,

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa Ltd.; DeBeers PLC; DeBeers Centenary AG; DeBeers Consolidated Mines Ltd.; DeBeers S.A.; DeBeers UK Ltd.; DeBeers Jewelers US, Inc.; Angle American US Holdings Inc.; Element Six US Corp.; Element Six Technologies US Corp.; Element Six Technologies (OR) Corp.; First Mode Holdings, Inc.; Platinum Guild International (USA) Jewelry Inc.; Forevermark US Inc.; Anglo American Crop Nutrients (USA), LLC; Charter Consolidated Ltd.; ESAB Corporation; Central Mining & Investment Corporation Ltd.; Cape Holdco Ltd.; The Law Debenture Corporation PLC; Cape Industrial Services Group Ltd.; Mohed Altrad; Altrad UK Ltd.; Cape UK Holdings Newco Ltd.; Altrad Services Ltd., f/k/a Cape Industrial Services Ltd.; Altrad Investment Authority SAS; Sparrows Offshore Group Ltd.; Hawk Bidco US Inc.; Arranco US, LLC; Sparrows Offshore, LLC; The Sparrows Group, LLC, ...	Third-Party Defendants,

of which

Mohed Altrad and Altrad Investment Authority SAS are the..... Appellants.

REPLY IN SUPPORT OF THE ALTRAD DEFENDANTS' PETITION FOR REHEARING
AND SUGGESTION FOR REHEARING EN BANC

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

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*

June 17, 2024

**REPLY IN SUPPORT OF PETITION FOR REHEARING AND SUGGESTION OF
REHEARING *EN BANC***

Like their co-Appellants, the Altrad Defendants filed a petition for rehearing and a suggestion for rehearing *en banc* that laid bare the points of law that the Court overlooked when dismissing this appeal. There is no getting around it. Everything that has happened below in this matter shocks the conscience, and the order creating and sustaining this unlawful situation is immediately appealable as a matter of right. S.C. Code Ann. § 14-3-330(4).

The Receiver has never defended what's happening below. Never. Because it is indefensible. Rather than providing any explanation based in law, the Receiver files papers that are the substantive equivalent of a caption and a signature block, and he counts on those gossamer filings to prompt the Judiciary to look the other way while he perpetuates punitive litigation tactics against foreign defendants that have absolutely no contact with or connection to South Carolina. It is truly unprecedented, and—because the Receiver also purports to be operating as an agent of the court—it is dangerous to the very concept of the Rule of Law.

Even now, in the face of a fully-briefed series of petitions for rehearing from the Altrad Defendants and their co-Appellants, the Receiver refuses to engage. This Court took the extraordinary step of requiring the Receiver to respond to the rehearing petitions, yet he still has not identified a single reason why he believes the Altrad Defendants cannot immediately appeal the circuit court's order. And the reason he has not provided a single argument or explanation to support his position is because there is none. The Receiver's response didn't even mention the governing appellate statute because he knows it requires this appeal to proceed.

The underlying order on appeal unlawfully continued the earlier appointment of a receiver over Cape PLC (a Jersey company), it modified the scope of the initial receivership order to retroactively allow the Receiver to undertake actions outside of the *Park* case from which the

appointment arose, and it further modified that order to grant a new receivership appointment over Cape Intermediate Holdings Limited (a UK company **that is not even a party to this litigation and had no notice of the putative appointment**). (Order on Appeal at 15–25 (Dec. 6, 2023).) And then the order parlayed these unprecedented rulings to sweep away the constitutional requirement of personal jurisdiction over the Altrad Defendants and others by pretending that these unlawful receiverships somehow create an “equitable” basis for the circuit court to disregard Due Process and exercise personal jurisdiction over myriad third parties that have absolutely no connection to or contact with the State of South Carolina. (*Id.* at 28–47.)

The appellate statute expressly vests the Altrad Defendants and the other co-Appellants with the unrestricted right to immediately appeal that order:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: (4) **An interlocutory order** or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or **granting, continuing, modifying**, or refusing the appointment of a receiver.

S.C. Code Ann. § 14-3-330(4) (emphasis added).

The reason the General Assembly created the right to immediately appeal such a ruling in 1901 and has left it intact for nearly a century and a quarter is because of the potential devastation an unlawful receivership can cause. *See, e.g., Miller v. S. Land & Lumber Co.*, 53 S.C. 364, 367, 31 S.E. 281, 282 (1898) (“While the court of equity, in proper cases, has the power to place a debtor’s property in the hands of a receiver, this power should be exercised with great caution, **lest the injury thereby caused be far greater than the injury sought to be averted**.”) (emphasis added).

The Receiver has no answer to any of this. In fact, he didn’t provide any explanation for why the Court should dismiss this appeal in the first place. And when the Altrad Defendants pointed out these basic errors of law in their Petition for Rehearing and the Court demanded that

the Receiver provide some justification for dismissal, the Receiver ignored the law altogether and didn't address the controlling statute at a single point in his three-paragraph response. The Receiver's sustained silence on the point in the face of the Altrad Defendants practically daring him—and this Court requiring him—to explain his position amounts to an abandonment of his motion to dismiss. *Cf. Holly Woods Ass'n of Residence Owners v. Hiller*, 392 S.C. 172, 190, 708 S.E.2d 787, 797 (Ct. App. 2011) (“An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority.”).

The closest the Receiver comes to providing any argument at all is to passively suggest that the Altrad Defendants “have not identified a point the Court of Appeals overlooked or misapprehended.” (Resp. ¶ 3.) This is not a serious response. The Petition for Rehearing says on the very first page: “Respectfully, the order dismissing this appeal overlooked the controlling statute,” right before quoting South Carolina Code § 14-3-330(4)—the controlling statute, which isn't mentioned anywhere in the dismissal order (or in any of the Receiver's filings, for that matter). (Pet. at 1.) To ensure that neither the Court nor the Receiver continue to overlook this statute and its unmistakable applicability here, a highlighted copy is attached. It controls appealability, and the Court should rehear and reinstate this appeal without further delay.

The Altrad Defendants have already filed their initial brief and designation of matter, and the Receiver should be required to answer for the unlawful receivership activity here, which runs squarely contrary to the United States Constitution, the South Carolina Code of Laws, and Supreme Court precedent. And because the Rule of Law requires that this appeal be reinstated and the circuit court's unprecedented rulings be carefully scrutinized and corrected to conform with Due Process and other controlling constitutional and statutory points, the Altrad Defendants respectfully renew their suggestion that the Court take up this petition and appeal *en banc*.

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*

June 17, 2024¹

¹ As before, the Altrad Defendants incorporate by reference all arguments and authorities presented in their prior filings in this appeal, and they join and adopt by reference all submissions, arguments, and authorities presented by their similarly-situated co-Appellants.

Attachment

South Carolina Code § 14-3-330

S.C. Code Ann. § 14-3-330

This document is current through 2024 Regular Session Act No. 120, not including changes and corrections made by the Code Commissioner.

South Carolina Code of Laws Annotated by LexisNexis® > Title 14. Courts (Chs. 1 — 31) > Chapter 3. Supreme Court (Arts. 1 — 9) > Article 3. Jurisdiction, Duties and Procedure (§§ 14-3-310 — 14-3-450)

§ 14-3-330. Appellate jurisdiction in law cases.

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
- (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
- (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
- (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

History

1962 Code § 15-123; 1952 Code § 15-123; 1942 Code § 26; 1932 Code § 26; Civ. P. '22 § 26; Civ. P. '12 § 11; Civ. P. '02 § 11; 1896 (22) § 1; 1901 (23) 623; 1991 Act No. 115, § 2, eff June 5, 1991.

Jun 17 2024

SC Court of Appeals

PROOF OF SERVICE

I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Appellants Altrad Investment Authority SAS and Mohed Altrad, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

Pleading(s): Reply in Support of the Altrad Defendants' Petition for Rehearing and Suggestion for Rehearing En Banc

Parties Served:

John T. Lay, Jr. (jlay@gwblawfirm.com)
Gray T. Culbreath (gculbreath@gwblawfirm.com)
Lindsay A. Joyner (ljoyner@gwblawfirm.com)
Laura W. Jordan (ljordan@gwblawfirm.com)
Eleanor L. Jones (ejones@gwblawfirm.com)
Jonathan M. Robinson (jon@smithrobinsonlaw.com)
Shanon N. Peake (shanonp@smithrobinsonlaw.com)
G. Murrell Smith, Jr. (murrell@smithrobinsonlaw.com)
Troy S. Brown (troy.brown@morganlawis.com)
Dana E. Becker (dana.becker@morganlewis.com)
Brady Edwards (brady.edwards@morganlewis.com)
Robert W. Jacques (robert.jacques@morganlewis.com)
Paul A. Scrudato (paul.scrudato@morganlewis.com)

Counsel for the Receiver for Cape PLC

Theile B. McVey (tmcvey@kassellaw.com)
John D. Kassel (jkassel@kassellaw.com)
Jamie D. Rutkoski (jrutkoski@kassellaw.com)
Charles William Branham, III (tbranham@dobslegal.com)
Kevin W. Paul (kpaul@dobslegal.com)
David Christopher Humen (dhumen@dobslegal.com)

Counsel for Plaintiffs

James H. Elliott, Jr. (jelliott@richardsonplowden.com)
Cameron D. Berthelsen (cberthelsen@richardsonplowden.com)

Counsel for Co-Appellants AA/DB Non-US Third-Party Defendants

Steven J. Pugh (spugh@richardsonplowden.com)
Benjamin P. Carlton (bcarlton@richardsonplowden.com)
Carmen V. Ganjehsani (cganjehsani@richardsonplowden.com)
Ashwin R. Sanzgiri (asanzgiri@richardsonplowden.com)

Counsel for Co-Appellants ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC

A. Victor Rawl, Jr. (vrawl@grsm.com)

Counsel for Co-Appellants ESAB Corporation; Central Mining and Investment Corp., Ltd.; and Charter Consolidated Ltd.

Stephen L. Brown (sbrown@ycrlaw.com)
James D. Gandy, III (tgandy@ycrlaw.com)
Stephen A. Griffith (sgriffith@ycrlaw.com)

Counsel for Asbestos Corporation Limited

By: /s/ M. Todd Carroll

June 17, 2024



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 01, 2024

Mr. Matthew Todd Carroll, Esquire
1221 Main Street
Suite 1600
Columbia SC 29201

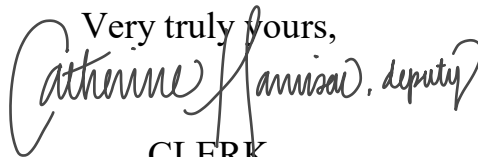
Mr. Kevin A. Hall, Esquire
1221 Main Street
Suite 1600
Columbia SC 29201

Ms. Mary Elizabeth O'Neill, Esquire
301 South College Street
Suite 3500
Charlotte NC 28202

Re: John A. Tibbs v. Asbestos Corporation Limited (2)
Appellate Case No. 2023-002006

Dear Counsel:

Enclosed is a copy of an order of the panel denying your petition for rehearing. Your petition for rehearing en banc was distributed to the judges, but it has been rejected. *See* Rule 219, SCACR.

Very truly yours,

CLERK

cc: Shanon N. Peake, Esquire
G. Murrell Smith, Jr., Esquire
John Thomas Lay, Jr., Esquire
Gray Thomas Culbreath, Esquire
Lindsay Anne Joyner, Esquire
Laura Watkins Jordan, Esquire
Eleanor Lasseigne Jones, Esquire
Jonathan M. Robinson, Esquire
Peter Demos Protopapas, Esquire
John Kenneth Chandler, Esquire
Brian Montgomery Barnwell, Esquire

The South Carolina Court of Appeals

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

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation;
A.W. Chesterton Company; ABB Inc.; Air & Liquid
Systems Corporation; Aiw-2010 Wind Down Corp.;
Amentum Environment & Energy, Inc.; Anchor/Darling
Valve Company; Armstrong International, Inc.; Asbestos
Corporation Limited; ASCO, L.P.; Atlas Asbestos Co;
Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson,
Inc.; Banner Industries International, Inc.; Banner
Industries, LLC; Banner Industries Of N.E., Inc.; Barretts
Minerals Inc.; Beaty Investments, Inc.; Bechtel
Corporation; The Bonitz Company; Brand Insulations,
Inc.; BW/IP Inc.; Canvas Ct, LLC; Cape PLC; Carboline
Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.;
Consolidated Electrical Distributors, Inc.; Copes-Vulcan,
Inc.; Covil Corporation; Crane Instrumentation &
Sampling, Inc.; Crosby Valve, LLC; Daniel International
Corporation; Davis Mechanical Contractors, Inc.;
Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke
Energy Corporation; Eaton Corporation; Ellington
Insulation Company, Inc.; Emerson Electric Co.; Fisher
Controls International LLC; Flame Refractories, Inc.;
Flowserve Corporation; Flowserve US Inc.; Fluor
Constructors International; Fluor Constructors
International, Inc.; Fluor Daniel Services Corporation;
Fluor Enterprises, Inc.; FMC Corporation; Foster
Wheeler Energy Corporation; Gardner Denver Nash,
LLC; General Boiler Casing Company, Inc.; General
Cable Corporation; General Cable Industries, Inc.;
General Electric Company; Gould Electronics Inc.;
Goulds Pumps, Incorporated; Goulds Pumps LLC; Great
Barrier Insulation Co.; Grinnell LLC; Hajoca
Corporation; Howden North America Inc.; HPC

Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Inc.; SPX Corporation; Stafford Insulation Company; Standard Insulation Company Of N. C., Inc.; Starr Davis Company, Inc.; Starr Davis Company Of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves And Controls Us, Inc.; Velan Valve Corp.; Viking Pump, Inc.; Vistra Intermediate Company LLC; The William Powell Company Wind Up, Ltd.; Yuba Heat Transfer LLC; Zurn Industries, LLC, Defendants,

and

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

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa LTD., De Beers PLC, individually and as successor in interest to De Beers S.A., De Beers Centenary AG, De Beers Consolidated Mines Ltd., n/k/a De Beers Consolidated Mines Proprietary Ltd., De Beers UK Ltd., De Beers Jewellers LTD., De Beers Jewellers US, Inc., Anglo American US Holdings Inc., Element Six US

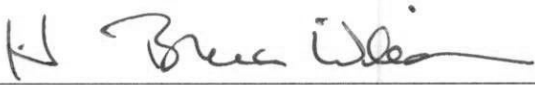
Corp., Element Six Technologies US Corp., Element Six Technologies (OR) Corp., First Mode Holdings, Inc., Platinum Guild International (U.S.A.) Jewelry Inc., Lightbox Jewelry Inc., Forevermark US Inc., Anglo American Crop Nutrients (U.S.A.) LLC, Charter Consolidated Ltd., ESAB Corporation, Central Mining & Investment Corporation Ltd., Cape Holdco Ltd., The Law Debenture Corporation PLC, Cape Industrial Services Group Ltd., Mohed Altrad, Altrad UK Ltd., Cape UK Holdings Newco Ltd., Altrad Services, Ltd., f/k/a Cape Industrial Services Ltd., Altrad Investment Authority S.A.S., Sparrows Offshore Group Ltd., Hawk Bidco US Inc., ArranCo US, LLC, Sparrows Offshore, LLC, and The Sparrows Group, LLC, Third-Party Defendants,

Of which Mohed Altrad and Altrad Investment Authority S.A.S. are the Appellants.

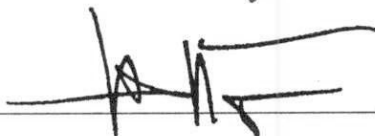
Appellate Case No. 2023-002006

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.

 J.

 J.

Columbia, South Carolina

FILED
Jul 01 2024

cc:

Matthew Todd Carroll, Esquire
Kevin A. Hall, Esquire
Mary Elizabeth O'Neill, Esquire
Shanon N. Peake, Esquire
G. Murrell Smith, Jr., Esquire
John Thomas Lay, Jr., Esquire
Gray Thomas Culbreath, Esquire
Lindsay Anne Joyner, Esquire
Laura Watkins Jordan, Esquire
Eleanor Lasseigne Jones, Esquire
Jonathan M. Robinson, Esquire
Peter Demos Protopapas, Esquire
John Kenneth Chandler, Esquire
Brian Montgomery Barnwell, Esquire