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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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. 2025-002120 and 2025-002121

John A. Tibbs and Margaret B. Tibbs,

Plaintiffs / Respondents

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.; Lowserve 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,

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

Of which Mohed Altrad, Altrad Investment Authority SAS, Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. are the

Petitioners.

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

JOHN A. TIBBS and MARGARET B. TIBBS,
Plaintiffs,

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

v.
3M COMPANY *et al.*,

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

Defendants.

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

**ORDER GRANTING THE RECEIVER'S
MOTIONS TO COMPEL DISCOVERY
RESPONSES OF THIRD-PARTY
DEFENDANTS AND 30(B)(6)
DEPOSITIONS OF ARRANCO US, LLC
AND CENTRAL MINING &
INVESTMENT CORPORATION LTD.**

Third-Party Plaintiff,

v.

ANGLO AMERICAN PLC, individually and as
successor in interest to ANGLO AMERICAN
CORPORATION OF SOUTH AFRICA LTD.;
DE BEERS PLC, individually and as successor
in interest to DE BEERS S.A.; DE BEERS
CENTENARY AG; DE BEERS
CONSOLIDATED MINES LTD., n/k/a DE
BEERS CONSOLIDATED MINES
PROPRIETARY LTD.; DE BEERS UK LTD.;
DE BEERS JEWELLERS LTD.; DE BEERS
JEWELLERS US, INC.; ANGLO AMERICAN
US HOLDINGS INC.; ELEMENT SIX US
CORP.; ELEMENT SIX TECHNOLOGIES US
CORP.; ELEMENT SIX TECHNOLOGIES
(OR) CORP.; FIRST MODE HOLDINGS, INC.;
PLATINUM GUILD INTERNATIONAL
(U.S.A.) JEWELRY INC.; LIGHTBOX
JEWELRY INC.; FOREVERMARK US INC.;
ANGLO AMERICAN CROP NUTRIENTS
(U.S.A.), LLC; CHARTER CONSOLIDATED
LTD.; ESAB CORPORATION; CENTRAL
MINING & INVESTMENT CORPORATION
LTD.; CAPE HOLDCO LTD.; THE LAW
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 following six Motions to Compel filed on January 12, 2024 by Third-Party Plaintiff Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, n/k/a Cape Intermediate Holdings Ltd. (“Cape”), by and through its duly appointed Receiver Peter D. Protopapas (the “Receiver”):

1. Motion to Compel Discovery Responses of Anglo American PLC, De Beers PLC, De Beers UK Ltd., De Beers Centenary AG, and De Beers Consolidated Mines Proprietary Ltd. (together, “Oppenheimer Third-Party Defendants”);
2. Motion to Compel Discovery Responses of Mohed Altrad and Altrad Investment Authority S.A.S. (together, “Altrad Owners Third-Party Defendants”);
3. Motion to Compel Discovery Responses of Arranco US LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC (together, “Altrad Sparrows Third-Party Defendants”);
4. Motion to Compel Discovery Responses of Central Mining & Investment Corporation Ltd., Charter Consolidated Ltd., and ESAB Corporation (together, “Charter Third-Party Defendants”);
5. Motion to Compel 30(b)(6) Deposition of Central Mining & Investment Corporation Ltd. (“Central Mining”); and
6. Motion to Compel 30(b)(6) Deposition of Arranco US, LLC (“Arranco”)

(together, the “Motions to Compel”). On February 16, 2024, the Third-Party Defendants filed materials opposing the Motions to Compel.¹ Accordingly, the Motions to Compel have been fully briefed and are ready for decision.

Discussion

The Third-Party Defendants argue the Court cannot entertain or grant the relief sought by the Motions to Compel for multiple reasons: (1) the South Carolina Court of Appeals possesses exclusive jurisdiction over this entire action following the Third-Party Defendants’ December 18, 2023 appeals of one of the Court’s orders, which they claim prevents both the Court and the Receiver from taking any additional action, including engaging in discovery or ruling on discovery motions, during the pendency of those appeals; (2) discovery cannot proceed during the “pendency” of Third-Party Defendants’ motions for protective order and/or to stay discovery (collectively, the “Protective Order Motions”), motions which were filed prior to any appeals in this case and prior to the Court’s October 25, 2023 hearing, during which the Court effectively granted the primary relief sought by those motions; and (3) the Court now cannot rule on those “pending” Protective Order Motions because it cannot act while the appeals are pending.

As outlined below, the Court finds that the procedural history of this case and recent orders issued by the Court of Appeals in similar circumstances undermine the arguments presented by Third-Party Defendants, and the Court will grant the Motions to Compel.

¹ The Court notes that although Third-Party Defendants included in these February 16 filings what they have termed to be “cross-motions” for “injunctive relief,” the Court advised the parties by email on February 21, 2024, that those requests for injunctive relief will remain under the Court’s advisement to be addressed at another time.

A. Procedural History.

1. *The Receiver's Third-Party Complaint (June 2023).*

On June 30, 2023, the Receiver filed a Third-Party Complaint against numerous third-party defendants 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. In doing so, the Receiver categorized 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).² Following appearances by the Altrad Third-Party Defendants, the Receiver sub-divided that category into two groups: the Altrad Owners Third-Party Defendants (Mohed Altrad and Altrad Investment Authority) and the Altrad Sparrows Third-Party Defendants (Arranco US LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC).

2. *The Receiver's Discovery Requests and Deposition Notices (July-September 2023).*

Beginning July 20, 2023, the Receiver served First Sets of Interrogatories and Requests for Production on each of the Third-Party Defendants ("Discovery Requests").³ In addition, the

² Since filing this third-party action, the Receiver has voluntarily dismissed without prejudice 12 Third-Party Defendants; default judgments have been entered against 7 others, including based on intentional failures to respond; and the remaining 13 Third-Party Defendants have been found subject to the proper exercise of personal jurisdiction by this Court.

³ The materials before the Court indicate the Receiver served his Discovery Requests on the following dates:

- As to the Oppenheimer Third-Party Defendants, Receiver served his First Set of Interrogatories and Requests for Production on: (1) Anglo American PLC, De Beers PLC, and De Beers UK Ltd. on August 15, 2023; (2) De Beers Consolidated Mines Proprietary Ltd. on September 26, 2023; and (3) De Beers Centenary AG on December 19, 2023.

Receiver noticed depositions of various Third-Party Defendants pursuant to Rule 30(b)(6), SCRCF, including serving Arranco on August 30, 2023 and Central Mining on September 6, 2023, with both depositions scheduled for October 2023.

The Receiver has indicated that following those notices and in light of the Court's late-October 2023 hearing on the Receiver's motions for default judgment, as well as on the Third-Party Defendants' Protective Order Motions, motions to dissolve the Receivership, and motions to dismiss, the Receiver voluntarily postponed those depositions to allow the Court to resolve the pending motions.

3. Third-Party Defendants' Protective Order Motions (Filed Prior to the October 25, 2023 Hearing and Included on the Agenda for Oral Argument).

Third-Party Defendants filed various iterations of the Protective Order Motions—in stand-alone motions and combined with or embedded within other motions—all of which were included on the Court's agenda for oral argument at the October 25, 2023 hearing. In September and October 2023, the Oppenheimer Third-Party Defendants (five of the six⁴) filed the only stand-alone Protective Order Motions:

-
- As to the Charter Third-Party Defendants, Receiver served his First Set of Interrogatories and Requests for Production on ESAB Corporation on July 20, 2023, and on Central Mining and Charter Consolidated Ltd. on September 6, 2023.
 - As to the Altrad Sparrows Third-Party Defendants, Receiver served his First Set of Interrogatories and Requests for Production on July 20, 2023.
 - As to the Altrad Owners Third-Party Defendants, Receiver served his First Set of Interrogatories and Requests for Production on September 6, 2023.

⁴ The Oppenheimer Defendants explain that De Beers Centenary AG did not file a motion for protective order because the Receiver's Discovery Requests were not served on De Beers Centenary AG until December 19, 2023.

- On September 15, 2023, three of the Oppenheimer Defendants (Anglo American PLC, De Beers PLC, and De Beers UK Ltd.) filed a Motion for Stay of Discovery and Protective Order.
- On October 13, 2023, De Beers Consolidated Mines Proprietary Ltd. filed a Motion for Stay of Discovery and Protective Order.

These motions sought “a stay of discovery pending resolution of the motions to dissolve the receivership filed by other Third-Party Defendants and any appeals stemming therefrom.” In footnote 2 of those motions, the Oppenheimer Third-Party Defendants argued as follows:

The Court of Appeals’ one-paragraph order in a separate case confirms the appealability of a denial of a motion to dissolve a receivership **and that a stay during such an appeal is not automatic.** See *Childers v. Davis Mechanical Contractors, Inc., et al.*, No. 2023-000727, at *3 (S.C. Ct. App. Sept. 8, 2023). Here, De Beers plc is asking the Court to exercise its discretion to stay discovery while it considers the validity of the purported Receiver’s authority to pursue such discovery and whether this Court has personal jurisdiction over the target of such discovery.

(emphasis added).

The remaining Third-Party Defendants filed their Protective Order Motions as requests combined with or embedded within other motions:

The Charter Defendants: (1) filed on September 1, 2023, motions to dismiss that informally requested an order staying discovery pending resolution of that motion to dismiss; and (2) filed on October 6, 2023, combined motions to dissolve the Receivership and for protective order, the latter of which sought an order the Charter Defendants have “no obligation to respond to the Discovery Requests or to the 30(b)(6) Notice” until the motions to dissolve are “fully resolved.”

The Altrad Owners: (1) filed on September 1, 2023, combined motions to dismiss and to stay discovery; and (2) filed on September 20, 2023, combined motions to dissolve the Receivership and for protective order for discovery and depositions.

The Altrad Sparrows: (1) filed on August 21, 2023 combined motions to dismiss and to stay discovery; and (2) filed on September 5, 2023, combined motions to dissolve the Receivership and for protective order for discovery and depositions.

4. Order Granting, in part, Protective Order Motions (October 25, 2023).

On October 25, 2023, the Court held a hearing on the pending motions to dissolve the receivership, motions to dismiss, and Protective Order Motions. At the hearing, the Court ruled on the Protective Order Motions by granting a discovery stay “until we deal with the motions to dismiss and motions for entry of default.” (10/25/23 Hrg. Tr. pp. 174:21–175:23 (emphasis added)). The Court later said it would file “a short order to that effect” if the “parties feel in the interim that I need to do something by way of a protective order” but made it clear “I say from the bench now as an order of the Court that I am pausing discovery –further discovery in this matter until we resolve the issue of who ought to be in this matter, if anybody.” (*Id.* at p. 178:9–21).

Following that ruling from the bench giving Third-Party Defendants the primary relief sought in their Protective Order Motions, and following the Court’s invitation to enter a written order “to that effect” upon request of any party, no party requested a written order as to the Protective Order Motions.

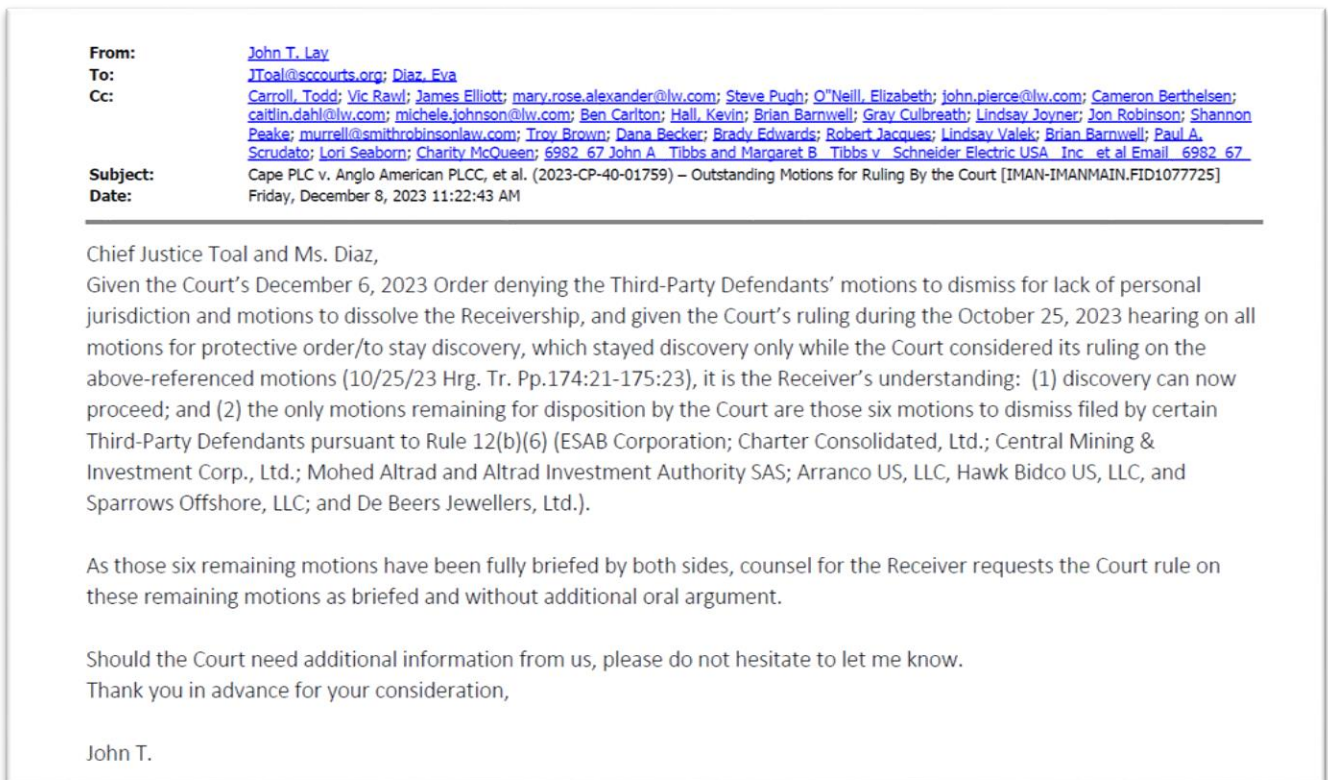
5. The Dissolution Order and the Default Order (December 6, 2023).

Thereafter, after receiving proposed orders from both the Receiver and Third-Party Defendants, the Court entered two written orders on December 6, 2023. The Court denied all of the Third-Party Defendants’ motions to dissolve the Receivership and to dismiss for lack of personal jurisdiction (the “Dissolution Order”), and the Court granted seven motions for entry of default and entered default as to Altrad Services Ltd, Altrad UK Ltd, Cape Holdco Ltd, Cape

Industrial Services Group Ltd, Cape UK Holdings Newco Ltd, The Sparrows Group LLC, and Sparrows Offshore Group Ltd (the “Default Order”).

6. *The Receiver’s Communication Confirming What Motions Remained Pending (December 8, 2023).*

On December 8, 2023, following entry of the Court’s Dissolution Order and the Default Order, the Receiver communicated with the Court and all Third-Party Defendants to confirm (1) the Court had ruled on all Protective Order Motions; (2) discovery could proceed; and (3) the only motions remaining for disposition by the Court were additional motions to dismiss on grounds other than personal jurisdiction:



None of the Third-Party Defendants responded to the Receiver’s December 8 communication or otherwise indicated to the Court that Third-Party Defendants believed their Protective Order Motions remained pending.

7. *The Court's Order Denying the Remaining Motions to Dismiss (December 15, 2023).*

Having received no response from Third-Party Defendants disputing the Receiver's December 8 characterization of what motions remained for decision by the Court, the Court denied, by Form 4 Order entered on December 15, 2023, all other motions to dismiss (the "Order on Remaining Motions to Dismiss"). On that same day, the Receiver served Amended Notices of Deposition pursuant to Rule 30(b)(6), SCRCP on Arranco and Central Mining for depositions to begin on January 10 and 12, 2024, respectively.

8. *Third-Party Defendants' Notices of Appeal (December 18, 2023).*

Beginning December 18, 2023, Third-Party Defendants filed notices of appeal with respect to the Court's Dissolution Order and filed the next day in this Court notices of filing notices of appeal. Third-Party Defendants raised to this Court no other objections or concerns at that time about engaging in discovery during the pendency of those appeals.

9. *Additional Motions to Dismiss Filed by Oppenheimer Defendants (December 21, 2023).*

The Oppenheimer Defendants, who previously acknowledged in their Protective Order Motions "that a stay during such an appeal [of a denial of a motion to dissolve a receivership] is not automatic," invoked the Court's jurisdiction on December 21, 2023—just three days after filing their notices of appeal—by filing additional motions to dismiss echoing the grounds of the motions to dismiss that were denied by the Court one week earlier in the "Order on Remaining Motions to Dismiss."⁵

10. *Communications Between Third-Party Defendants and the Receiver Regarding Discovery Requests and Scheduled Depositions (January 2024).*

⁵ On February 2, 2024, the Court heard oral argument on the Oppenheimer's December 21, 2023 motions to dismiss, and on February 23, 2024, the Court entered an order denying these motions.

On January 5, 2024, the extended deadline set by the Receiver for Third-Party Defendants to respond to the outstanding discovery requests, each set of Third-Party Defendants served Objections to the Discovery Requests refusing to provide substantive responses and indicating their intention not to participate in any discovery in this case during the pendency of their appeals of the Dissolution Order.

By letter dated January 8, 2024, pursuant to Rule 11, SCRCP (“Rule 11 Letter”), counsel for the Receiver attempted to consult with all counsel for the Third-Party Defendants regarding the deficient responses they served late on January 5 (a Friday), as well as their anticipated failure to participate in the two depositions noticed the next week, and the Receiver advised the Third-Party Defendants he intended to proceed with the depositions of Arranco on January 10 and Central Mining on January 12.

The Receiver has indicated that the only direct responses to the Rule 11 Letter he received came from Arranco (stating on January 9, in response to the Receiver’s circulation of a “zoom” link for the deposition set to begin the following day, that it refused to designate or produce any witness); Central Mining (stating on January 10 that it would not produce any deposition witness); and the Oppenheimer Third-Party Defendants (contending on January 12 that the appeal precluded progress in this matter).

B. Current Status and Recent Court of Appeals Orders.

As the procedural history makes clear, there is no active stay of discovery in this proceeding, nor do Third-Party Defendants have any pending Protective Order Motions that require resolution by the Court. At the October 25, 2023 hearing, the Court verbally granted all Third-Party Defendants’ Protective Order Motions for a limited duration and with a self-executing

termination upon the Court's resolution of the remaining pending motions.⁶ The Court invited the parties to request a written order memorializing that bench ruling if a written order was desired, but no party accepted that invitation.

To the extent any Third-Party Defendant claims that it believed the Protective Order Motions remained pending following the October 25 hearing, that claim was waived when Third-Party Defendants failed (1) to correct the Receiver's December 8 communication to the Court confirming the Protective Order Motions were ruled on at the October 25 hearing; or (2) otherwise advise the Court it believed some, all, or even part of the Protective Order Motions were still pending. Instead, Third-Party Defendants said nothing, allowing the Court to enter its December 15 Order intended to dispose of all remaining motions filed before, and on the agenda for, the October 25, 2023 hearing. Third-Party Defendants cannot use their appeals as a shield to defend this lack of response, as those appeals were not filed until December 18.

Nor have Third-Party Defendants sought a separate stay from either this Court or the Court of Appeals. Although the Oppenheimer Defendants recognized in their Protective Order Motions that the appeal of a receivership dissolution order did not automatically stay the case below, they never requested a stay from this Court following their December 18 notices of appeal. Instead, the Oppenheimer Defendants filed new motions to dismiss after noticing the appeal, requesting that the Court act on their behalf. For the Oppenheimer Defendants to now suggest that this Court's

⁶ Third-Party Defendants apparently take the position their Protective Order Motions remained pending because some of them requested a continued stay of all discovery throughout any hypothetical appeal of any order the Court might issue should such an appeal be filed at some point in the future. There were no appeals pending at the time the Court ruled on the Protective Order Motions, and any ruling addressing this hypothetical ground would have been inappropriately advisory. No additional Protective Order Motions have been filed by Third-Party Defendants following their appeals, nor have they filed any other motions following their appeals requesting such a stay.

ability to act was automatically stayed upon the filing of their Notice of Appeal is entirely inconsistent with their prior arguments and actions.

The Court of Appeals has already addressed—and rejected—Third-Party Defendants’ argument that discovery in this case is automatically stayed following the appeal of an order denying a motion to dissolve a receivership; indeed, the Court of Appeals expressly found that the appeal of a dissolution order does **not** stay the Receiver’s ability to carry out his duties in the case below. *See* Order, *Childers v. Davis Mech. Contractors, Inc. et al.*, No. 2023-000727 (S.C. Ct. App. Sept. 8, 2023) (ruling that the “receivership shall proceed” and the “order is not stayed during pendency of this appeal,” such that “the receivership action and the receiver’s ability to carry out his duties are not stayed”); *see also* Order, *Childers v. Davis Mech. Contractors, Inc. et al.*, No. 2023-000727 (S.C. Ct. App. Nov. 23, 2023).

Once the Court resolved all pending motions to dismiss and the default-judgment motions, which it did by December 15, 2024, there was no further need for a stay: Discovery was to continue. In multiple communications to the Third-Party Defendants, the Receiver communicated that understanding as well as his proper expectation the Third-Party Defendants would provide “fulsome responses to [discovery] requests . . . on or before January 5, 2024, with depositions to start soon after.” No Third-Party Defendant contested that understanding or otherwise indicated they believed Protective Order Motions were outstanding; indeed, no Third-Party Defendant responded at all.

Although the Third-Party Defendants could have addressed (in a timely manner) any concerns about engaging in discovery immediately following the filing of their December 18 notices of appeal, no such objections were raised. Rather, the Third-Party Defendants waited until January 5—*i.e.*, the day that proper discovery responses were due, and less than a week before the

re-noticed depositions were set to begin—to assert they were taking the position they had no obligation to participate in the case during the pendency of their appeals. Simply put, there is no sound legal basis for the Third-Party Defendants’ assertion that discovery in this proceeding has been stayed, and the Court **GRANTS** each of the Receiver’s Motions to Compel.

* * * * *

For the reasons set forth herein, the Court **GRANTS** the Receiver’s Motions to Compel and **ORDERS** 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 Receivers’ Requests for Production the same day. The Court also **ORDERS** Arranco and Central Mining to designate witnesses for the Rule 30(b)(6) depositions noticed by Receiver within 7 days of entry of this Order and produce those witnesses within 21 days of entry of this Order.

IT IS SO ORDERED

SIGNED this _____ day of _____, 2024

HON. JEAN H. TOAL, CHIEF JUSTICE (Ret.)

[JUDGE’S E-SIGNATURE FOLLOWS]



Richland Common Pleas

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

Case Number: 2023CP4001759

Type: Order/Compel

So Ordered

Jean H. Toal

Electronically signed on 2024-03-12 08:51:49 page 14 of 14

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
JOHN A. TIBBS and MARGARET B. TIBBS,

Plaintiffs,

v.

3M COMPANY *et al.*,

Defendants.

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

Third-Party Plaintiff,

v.

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

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

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

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

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.

**THE RECEIVER FOR CAPE PLC'S
MOTION TO PREADMIT EXHIBITS**

Third-Party Plaintiff Peter D. Protopapas, as duly appointed receiver for Cape PLC, individually and as successor in interest to Cape Asbestos Company Ltd., n/k/a Cape Intermediate Holdings Ltd. (the “Receiver” or “Receivership”), by and through undersigned counsel, hereby requests that this Court preadmit its trial exhibits in advance of the trial in this case.

BACKGROUND

This case is set for a bench trial in the trial block beginning April 15, 2024, and involves claims sounding in equity and law. The Receiver filed this third-party action on June 30, 2023. In the intervening nine months, the third-party defendants have refused to participate in discovery, despite the Receiver’s repeated requests and orders of this Court. Most recently, on March 12, 2024, this Court entered an order requiring third-party defendants “(i) to provide responsive, substantive, and complete answers to the Receiver’s Discovery Requests with 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.” Order at 13. The order also required Arranco and Central Mining to produce 30(b)(6) witnesses for deposition within 21 days of the Order. *Id.* None of the defendants have meaningfully complied with this Order.

Because the third-party defendants have refused to participate in discovery,¹ the Receiver is unable to rely on information adduced in discovery to authenticate its exhibits. Given their complete refusal to participate in discovery despite the Receiver's requests and this Court's orders, the Receiver respectfully requests that the Court find that Rule 901's authentication requirements have been met as to all the Receiver's exhibits as a discovery sanction for the third-party defendants' conduct. The Receiver submits its list of exhibits attached hereto as Exhibit A, and requests that they be pre-admitted into evidence for use at trial.

LAW & ARGUMENT

- 1. Because this case is set for a bench trial, this Court has the latitude to admit all the Receiver's exhibits and make evidentiary determinations based on the Court's own evaluation of their content.**

It is well established in South Carolina that judges sitting without a jury have wide latitude "to admit all evidence" and then "evaluate the evidence and ascertain the truth." *Brown v. Allstate Ins. Co.*, 344 S.C. 21, 27, 542 S.E.2d 723, 726 (2001). As the Supreme Court stated in *Brown* when it reversed the majority opinion of the Court of Appeals:

The majority essentially adopts a new rule for trial judges sitting without a jury. According to the majority, if incompetent evidence is admitted on the ultimate issue of the trial, the trial judge must affirmatively reject this evidence, even if it is clear he is making a judgment based on competent evidence in the record. We reject this rule because it would require trial judges to rule on all admitted evidence in a bench trial. A trial judge's role in a bench trial is to

¹ Like the other third-party defendants, Anglo American PLC, De Beers PLC, De Beers Centenary AG, De Beers UK Ltd., and De Beers Consolidated Mines Proprietary Ltd. refused to provide **any** discovery for many months. Although they have recently communicated willingness to participate in discovery, their discovery provided to date has been wholly deficient, or otherwise subject to numerous improper objections and limitations, including (i) producing on or about March 26, 2024, a limited, non-sensitive set of publicly available materials created after 1986, and (ii) refusing to admit to the genuineness of documents referenced in the Receiver's Third-Party Complaint, including copies of their own annual reports and other corporate filings.

admit all evidence and then evaluate it in a non-jury setting. The majority's rule is, therefore, unnecessarily burdensome and would inhibit the trial judge's ability to evaluate the evidence and ascertain the truth.

Id. “[I]n the context of a bench trial[,] a judge is presumed to disregard prejudicial or inadmissible evidence.” *State v. Inman*, 395 S.C. 539, 565–66, 720 S.E.2d 31, 45 (2011). This is because “[a] judge, unlike a juror, is uniquely suited by training, experience[,] and judicial discipline to disregard potentially prejudicial comments and to separate, during the mental process of adjudication, the admissible from the inadmissible, even though he has heard both.” *Id.* (quoting *Cole v. Commonwealth*, 428 S.E.2d 303, 305 (Va. Ct. App. 1993)).

Judicial economy is best served by allowing judges the ability to use their training, skill, and experience to make these evidentiary determinations while considering the legal issues in a case. As discussed above, unlike in a jury trial—where it might be imperative to keep jurors from hearing inadmissible evidence due to the possibility of prejudice—the Court, as fact finder and judge in a bench trial, is the one who makes the ultimate determination on the admissibility of evidence and the legal issues in the case. These determinations can and should occur at the same time. Here, there is no need to keep inadmissible evidence from the fact finder to prevent prejudice because the Court determines whether the evidence is admissible and then evaluates it as the fact finder. See *Lucas v. Vanover*, No. 2006-UP-233, 2006 WL 7286027, at *4 (S.C. Ct. App. Apr. 27, 2006) (“[T]he role of the circuit court in this matter was to admit all evidence, admissible or inadmissible, and then evaluate it as the fact finder. The *Brown v. Allstate* rule does not require the circuit court to make an affirmative statement that it did not rely on the incompetent evidence in rendering its decision . . . only [to] reference the competent evidence . . . in its order.”).

This Court has the inherent power to manage its docket in the most efficient manner to avoid unnecessary costs or use of the Court's time. *Landis v. North Am. Co.*, 299 U.S. 248, 254

(1936). Pre-Admitting evidence will save this Court and the parties the time and burden of lawyers arguing about exhibits during the trial day. Therefore, pursuant to the South Carolina Rules of Evidence, the Receiver seeks to admit the exhibits set forth on the attached Exhibit A for the trial of this matter.

2. The should find all the Receiver’s Exhibits authentic as a sanction for the Third-Party defendants’ discovery conduct.

When a party fails to meaningfully participate in discovery or to appear for a deposition, South Carolina Rule of Civil Procedure 37(d) permits the Court to “make such orders in regard to the failure as are just.” “Whatever sanction is imposed should serve to protect the rights of discovery provided by the rules.” *Kershaw County Bd. Of Educ. v. U.S. Gypsum Co.*, 302 S.C. 390, 395, 396 S.E.2d 369, 372 (1990). “The court is allowed to make such orders as it deems just under the circumstances and the selection of a sanction is discretionary with the court.” *Pioneer Electronics (USA), Inc. v. Cook*, 294 S.C. 135, 137, 363 S.E.2d 112, 113 (Ct. App. 1987).

Because the third-party defendants have not meaningfully responded to written discovery and have failed to produce witnesses for deposition, the Receiver has been unable to authenticate documents that otherwise would have been authenticated under Rule 901 during the normal course of discovery. Given the third-party defendants’ discovery conduct, a finding that all the Receiver’s Trial Exhibits are authentic is an appropriate sanction under the circumstances.

CONCLUSION

For the foregoing reasons, the Receiver respectfully requests that this Court pre-admit all its Exhibits and find that each of the exhibits is authentic.

In accordance with Rule 11, SCRCP, the undersigned counsel certifies that consultation on this matter would serve no useful purpose given the third-party defendants’ positions on discovery participation.

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April 3, 2024
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
JOHN A. TIBBS and MARGARET B. TIBBS,

Plaintiffs,

v.

3M COMPANY *et al.*,

Defendants.

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

Third-Party Plaintiff,

v.

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

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

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

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

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.

**THE RECEIVER'S
MOTION FOR SANCTIONS**

Third-Party Plaintiff Peter D. Protopapas, as duly appointed receiver for Cape PLC, individually and as successor in interest to Cape Asbestos Company Ltd., n/k/a Cape Intermediate Holdings Ltd. (the “Receiver” or “Receivership”), by and through undersigned counsel, hereby moves this Court for an Order sanctioning Third-Party Defendants Mohed Altrad, Altrad Investment Authority S.A.S., ArranCo US LLC (“Arranco”), Hawk Bidco (US) Inc., Sparrows Offshore, LLC, Central Mining & Investment Corporation Ltd. (“Central Mining”), Charter Consolidated Ltd., and ESAB Corporation (collectively “these Third-Party Defendants”)¹ pursuant to Rule 37(d), SCRCP, given their continued refusal to participate in discovery *despite* the Court’s March 12, 2024 order compelling their discovery participation and *despite* the Court’s repeated rejection of their claim that the Receiver cannot proceed with discovery during the pendency of their appeals. This Motion amends, supplements, and streamlines the Receiver’s prior Motion for Adverse Inference (filed on April 5, 2024) and Motion to Preadmit Exhibits (filed on April 3, 2024).

¹ This Motion excludes the five Third-Party Defendants: Anglo American PLC, De Beers PLC (individually and as successor in interest to Anglo American Corporation of South Africa Ltd.), De Beers Centenary AG, De Beers UK Ltd., and De Beers Consolidated Mines Proprietary Ltd.

This case was set for a bench trial in the trial block set to commence on April 15, 2024, but it was forced to be continued during the April 10 pretrial hearing as a result of these Third-Party Defendants' rejection of any efforts by the Receiver to conduct discovery and prepare this case for trial. In fact, during the intervening nine months since the filing of the Receiver's Third-Party Complaint on June 30, 2023, these Third-Party Defendants have not substantively participated in *any* form of discovery—whether in writing or by deposition—continually rebuffing the Receiver's attempts to conduct discovery and the orders of this Court compelling discovery. Most recently, on March 12, 2024, this Court entered an order requiring third-party defendants “(i) to provide responsive, substantive, and complete answers to the Receiver's Discovery Requests with 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.” (Order at 13). The order also required Arranco and Central Mining to produce 30(b)(6) witnesses for deposition within 21 days of the Order. *Id.* Those deadlines have long since expired, yet these Third-Party Defendants still reject all attempts by the Receiver to engage in discovery—completely preventing the Receiver from fulfilling his Court-ordered tasks. Indeed, these Third-Party Defendants' refusal to provide any information to the Receiver has stymied the Receiver from preparing this case for trial, prompting the continuance from the April 15 trial setting.

The Receiver therefore requests, as a sanction for these Third-Party Defendants' ongoing refusal to participate in discovery, that this Court:

- (1) find that the authentication requirements of Rule 901, SCRE, have been met as to all the Receiver's exhibits related to these Third-Party Defendants (as previously identified in Exhibit A to the Receiver's Motion to Preadmit Exhibits filed on April 3,

- 2024) and find that those exhibits therefore are admissible at trial against these Third-Party Defendants;
- (2) infer as to Mohed Altrad, Altrad Investment Authority S.A.S., ArranCo US LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC., that each is the alter ego of Cape, or otherwise liable as a matter of veil piercing, including with respect to Cape's ongoing liability-avoidance scheme, and have been unjustly enriched due to Cape's liability-avoidance scheme;
 - (3) infer as to Central Mining & Investment Corporation Ltd., Charter Consolidated Ltd., and ESAB Corporation, that each was at relevant times, including with respect to the implementation of a liability-avoidance scheme in the 1980s and before, the alter ego of Cape, or otherwise liable as a matter of veil piercing, and have been unjustly enriched due to Cape's liability-avoidance scheme, with ESAB Corporation acting as the corporate successor with respect to the liability of Charter Consolidated Ltd. and Central Mining & Investment Corporation Ltd.; and
 - (4) award him all fees and costs associated with bringing this Motion and all associated motions.

Pursuant to Rule 11, SCRCPP, the undersigned counsel certifies that consultation on this matter would serve no useful purpose given these Third-Party Defendants' continued refusal to participate in discovery, which they again reiterated during the pretrial hearing on April 10, 2024.

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April 12, 2024
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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

JOHN A. TIBBS AND MARGARET B. TIBBS,

In Re: Asbestos Personal Injury Litigation Coordinated Docket

Plaintiff,

Civil Action No. 2023-CP-40-01759

Vs.

ORDER GRANTING MOTION TO APPROVE CONFIDENTIAL SETTLEMENT AGREEMENT BETWEEN AND AMONG THE RECEIVER FOR CAPE PLC, **SOUTH CAROLINA ASBESTOS VICTIMS COMPENSATION QSF LLC**, AND ANGLO AMERICAN US HOLDINGS INC. FOR ITSELF AND ITS AFFILIATES

3M COMPANY, et al.,

Defendants.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

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

In Re: Asbestos Personal Injury Litigation Coordinated Docket

Plaintiff,

Civil Action No. 2021-CP-40-02727

Vs.

ORDER GRANTING MOTION TO APPROVE CONFIDENTIAL SETTLEMENT AGREEMENT BETWEEN AND AMONG THE RECEIVER FOR CAPE PLC, **SOUTH CAROLINA ASBESTOS VICTIMS COMPENSATION QSF LLC**, AND ANGLO AMERICAN US HOLDINGS INC. FOR ITSELF AND ITS AFFILIATES

ARMSTRONG INTERNATIONAL, INC.,

Defendants.

This matter comes before the Court on the motion of Peter D. Protopapas, as the court-appointed Receiver for Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) (the “Receiver”) to establish a Qualified Settlement Fund under Section 468B of the Internal Revenue Code of 1986, as amended (“I.R.C.”), to approve the settlement between the Receiver and Anglo American US Holdings Inc. for itself and its affiliates and to keep continuing

jurisdiction over the Qualified Settlement Fund (“QSF”). Having considered the motion, together with the exhibits submitted with the motion, the Court hereby decides these matters on the filings and rules as follows:

ASBESTOS DOCKET MANAGEMENT

The establishment of the South Carolina Asbestos Victims Compensation QSF, LLC and the approval of the settlement and the Court’s continuing jurisdiction over the South Carolina Asbestos Victims Compensation QSF, LLC , as provided for by I.R.C. Section 468B, and over the receivership estate, made the basis of this motion and all directly relate to this Court’s responsibility to manage South Carolina’s statewide asbestos litigation docket. Asbestos litigation is often repetitive, serial litigation, and many similar issues present themselves repeatedly for routine adjudication by this Court. To the extent that this Court can use its experience in managing the South Carolina asbestos litigation to establish efficient procedures to address a variety of these recurring and repetitive issues, the Court intends to do so as a way to streamline future asbestos proceedings and to minimize the burden on this Court and the litigants of these prospective filings. Throughout this order, the establishing mechanism for treatment of future claims related to asbestos issues in South Carolina, the Court exercises its inherent authority to manage its docket so as to maximize the efficiency of its procedures. South Carolina receivership law recognizes the Court’s discretion to direct disposition of receivership property or claims and to ratify compromises brought to the Court, consistent with its supervisory role over the receivership estate.

PROCEDURAL HISTORY

On March 17, 2023, this Court, in the matter captioned *Keith W. Park, individually and as personal representative of the Estate of Isabella Park v. Armstrong International, Inc., et al.*, C/A No. 2021-CP-40-02727, issued an order appointing Third-Party Plaintiff as South Carolina receiver “for Cape PLC as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)”. On June 30, 2023, the Receiver, as a Third-Party Plaintiff, initiated in this Circuit Court a third-party action against, among others, Anglo American plc, De Beers plc, De Beers UK Ltd, De Beers Consolidated Mines (Pty) Ltd, De Beers Centenary AG, Anglo American US Holdings Inc., Anglo American Crop Nutrients (USA), LLC, De Beers Jewellers Limited, De Beers Jewellers (US), Inc., Element Six US Corporation, Element Six Technologies US Corporation, Forevermark US, Inc., Platinum Guild International (U.S.A.) Jewelry, Inc., and Lightbox Jewelry Inc. (collectively, the “Anglo American-De Beers Third-Party Defendants”), in the matter captioned *John A. Tibbs and Margaret B. Tibbs v. 3M Company, et al.*, C/A No. 2023-CP-40-01759.

The Receiver’s third-party pleading seeks equitable and declaratory relief addressing alleged “liability-avoidance” conduct and group-enterprise relationships among Cape and various third-party defendants, including the Anglo American-De Beers Third-Party Defendants. The Receiver asserts claims including unjust enrichment, alter-ego/veil-piercing, amalgamation of interests/single business enterprise, constructive trust, and accounting, and seeks declarations concerning responsibility for historic asbestos liabilities associated with Cape.

ANALYSIS AND TREATMENT OF CONFIDENTIAL SETTLEMENT AGREEMENTS

The Receiver for Cape has entered into a Master Settlement Agreement (the “Confidential Settlement Agreement”) with Anglo American US Holdings Inc. for itself and its affiliates. The Receiver has moved this Court to authorize the establishment of South Carolina Asbestos Victims Compensation Fund QSF, LLC for the defense and payment of claims filed in South Carolina arising out of, or relating to, injuries arising from alleged exposure to Cape asbestos products. The Confidential Settlement Agreement provides that the funds paid by Anglo American US Holdings Inc., for itself and its affiliates, as part of the settlement agreement will be deposited into the South Carolina Asbestos Victims Compensation QSF, LLC. The Court has thoroughly reviewed the Confidential Settlement Agreement. The Receiver, with the consent of Anglo American US Holdings Inc. (for itself and its affiliates) has asked that the Confidential Settlement Agreement remains sealed.

In weighing the factors outlined in Rule 41.1(c) of the South Carolina Rules of Civil Procedure, the Court, while mindful of our state’s public policy favoring the transparency of court proceedings, has reviewed the Confidential Settlement Agreement in detail *in camera* and all submissions related to this Motion and finds the Receiver has met his burden to show sealing the Confidential Settlement Agreement is proper and necessary under Rule 41(c) of the South Carolina Rules of Civil Procedure. Specifically, the Court finds that, although the litigation of asbestos suits is of great public importance, the specific terms of the liquidation of Receivership assets arising from a settlement between the Receiver and Anglo American US Holdings Inc. (for itself and its affiliates) does not have great public significance.

The Court agrees with the Receiver that the Confidential Settlement Agreement does not attempt to hide important or damaging information from the public and is only related to liquidating Receivership assets from Anglo American US Holdings Inc. (for itself and its affiliates), who have voluntarily agreed to the liquidation of claims. The Court holds that sealing the Confidential Settlement Agreements is necessary and beneficial to the public to ensure the longevity of the QSF and allow for the fair and just compensation of injured parties in South Carolina who may have legitimate future claims against Cape due to asbestos-related injuries. This Court

will retain continuing jurisdiction over the QSF and will be able to adjudicate any matter brought before the Court concerning these settlements and their transfer of funds to South Carolina Asbestos Victims Compensation QSF, LLC.

The Court acknowledges that the Confidential Settlement Agreement provides that the South Carolina Asbestos Victims Compensation QSF, LLC shall defend and indemnify Anglo American US Holdings and its affiliates against certain claims identified in the agreement itself. In any South Carolina Claim for which Anglo American US Holdings Inc. for itself or its affiliates seek defense and indemnification under the Confidential Settlement Agreement, the Receiver and the QSF, through its own counsel, shall use their reasonable best efforts to obtain the dismissal of Anglo American US Holdings Inc. and/or its affiliates and the substitution of the QSF in their place on the basis that the QSF is the real-party-in-interest and that Anglo American US Holdings Inc. (for itself or its affiliates') obligations with respect to such Indemnified Claim (as defined in the Confidential Settlement Agreement) were finally resolved and exhausted by a reasonable, good faith settlement. The Court will direct the parties to any such litigation to complete this substitution in a reasonable timeframe from being notified of this substitution provision.

Although this Confidential Settlement Agreement fully resolves the disputes the Receiver has with Anglo American US Holdings Inc. and its affiliates, the Receiver is still deeply involved in disputes over other Receivership assets. The premature disclosure of the specific details of this Confidential Settlement Agreement could be misappropriated and could chill the Receiver's ability to equitably liquidate other Receivership assets. Furthermore, the underlying asbestos litigation is still ongoing, and sealing the Confidential Settlement Agreement will allow these asbestos cases to continue forward in the same manner in which other cases move forward. The Court further finds sealing the Confidential Settlement Agreement is the best way to balance the potential harm to the settling parties with the public interest. And there are no other alternatives in this case to protect the private interests of the settling parties.

LIQUIDATION OF RECEIVERSHIP ASSETS AND APPROVAL OF SETTLEMENT

A Receiver is an officer of the court, appointed to marshal and collect—to receive—the assets of the corporation. In that sense, the Receiver stands in the corporation's shoes. *In re Am. Slicing Mach. Co.*, 125 S.C. 214, 218, 118 S.E. 303, 304 (1923). The effect of appointing a Receiver means that the Receiver, as a “hand of the court,” exercises power and control over the defendant's assets and property specified in the appointment order and administers them at the court's discretion for the benefit of creditors and the debtor's estate. *Allen v. Cooley*, 53 S.C. 414, 446, 31 S.E. 634, 646 (1898). Title, though, remains in the defendant's name. A Receiver must administer the estate in compliance with the appointing order and “in accordance with the laws of this State.” Rule 66(a), SCRCP. *See also* Rule 66(b), SCRCP (stating a Receiver “shall ... have general power and authority to sue for and collect the debts, demands and rent belonging to the debtor ...”).

“A sale of receivership property by the receiver, under an order of court, is a judicial sale.” *Hannon v. Mechanics Bldg. & Loan Ass’n of Spartanburg*, 177 S.C. 153, 180 S.E. 873, 876 (1935). “The courts of this state have uniformly exercised the power to order that a receiver, duly appointed, shall sell the real estate and other property of the person or corporation whose assets are in the hands of receivers, in order to distribute the proceeds among creditors, stockholders, and other parties interested, and to liquidate and wind up the affairs of such insolvent person or corporation.” *Id.* at 876. Moreover, “it is often of great importance that such assets should be disposed of by a receiver, duly appointed, because of his special knowledge of such assets and because the receiver takes manual possession and custody of the property for the purpose of disposing of it and distributing the proceeds.” *Id.* Thus, when the Court deems it appropriate, it “may make an order to the receivers to sell at private sale, or the court may accept an offer made directly to the court, or it may ratify a sale already made.” *Id.*

This Court has jurisdiction over the assets and claims asserted in South Carolina of Cape through its Order Appointing Receiver dated March 17, 2023, and subsequent orders of South Carolina courts. Furthermore, South Carolina law vests this Court with discretion to dispose of the Receivership’s assets and direct disposition of those assets and to approve voluntary settlements by and between parties to this action. This Court will retain

continuing jurisdiction over the QSF and all of its assets, and it will be able to adjudicate any matter brought before the Court concerning these settlements and their transfer of funds to South Carolina Asbestos Victims Compensation QSF, LLC .¹

THE PRESENT SETTLEMENT AND REQUESTED RELIEF

The Receiver now seeks approval of a confidential settlement with Anglo American US Holdings Inc. for itself and its affiliates, namely, the Anglo-American De Beers Third-Party Defendants. The Confidential Settlement Agreement was submitted to the Court *in camera* and under seal for review. The Receiver requests authorization to execute all documents necessary to effectuate the settlement and an order approving the settlement as fair, reasonable, and in the best interests of the South Carolina Asbestos Victims Compensation QSF, LLC .

FINDINGS OF FACT

A. Approval of the Confidential Settlement Agreement with Anglo American US Holdings Inc. for itself and its affiliates

1.1 The Receiver and Anglo American US Holdings Inc., for itself and its affiliates, have entered into a settlement agreement titled “Master Settlement Agreement”. The Confidential Settlement Agreement resolves all disputes between the Receiver and the Anglo American-De Beers Third-Party Defendants relating to any claims filed in South

¹ It is clear that this Court’s jurisdiction extends over Cape’s assets. *See Buist v. Merchant’s & Planter’s Bank*, 65 S.C. 487, 489, 43 S.E. 958, 959 (S.C. 1903) (Receiver can liquidate property under Court supervision); *Clyburn v. Reynolds*, 31 S.C. 91, 105, 9 S.E. 973, 975 (1889) (Court can empower receivers to sell the assets of the receivership); *Montgomery & Crawford v Arcadia Mills*, 173 S.C. 464, 490, 176 S.E. 589, 599 (1934) (Receivership Court has the power to liquidate the rights of creditors pursuant to their priorities); *In re State ex rel Hutchinson*, 182 S.C. 369, 375, 189 S.E. 475, 477-78 (1937) (holding the power to appoint a receiver is vested in every circuit court of the State, and nowhere in the body of the law is there any limitation upon this authority); *Truesdell v. Johnson*, 144 S.C. 188, 142 S.E. 343, 345 (1928) (holding the effect of the appointment of the receiver is to take property and place it in the hands of a third party pending litigation); S.C. Code Ann. § 15-65-10.

Carolina arising out of, or relating to, injuries arising from alleged exposure to Cape asbestos products, including the *Tibbs* Action.

1.2 The Confidential Settlement Agreement provides that Anglo American US Holdings Inc. for itself and its affiliates shall transfer funds to the South Carolina Asbestos Victims Compensation QSF, LLC .

1.3 The purposes of the South Carolina Asbestos Victims Compensation QSF, LLC are to provide funds to resolve and defend South Carolina claims arising out of, or relating to, injuries arising from alleged exposure to Cape asbestos products, including providing funds to pay for the costs and legal fees incurred by the parties in connection with the claims, to pay for administrative and management costs, and to do all things necessary or appropriate in connection with the South Carolina Asbestos Victims Compensation QSF, LLC. Confidentiality is warranted on the present record; *in camera* review of the Confidential Settlement Agreement is sufficient for the Court to evaluate its terms without compromising settlement confidentiality. The Court's approval does not require the public filing of confidential settlement consideration or terms.

1.4 The Court is convinced the terms of the Confidential Settlement Agreement are the result of substantial arm's-length, good-faith negotiations between the settling parties in connection with a mediation conducted pursuant to the Absolute Mediation Privilege. The Confidential Settlement Agreement provides for compensation that is fair and reasonable, particularly in view of the nature of the release of rights against Anglo American US Holdings Inc. for itself and its affiliates that it grants. The legal disputes between Anglo American US Holdings Inc. (for itself and its affiliates) and the Receiver have been vigorously contested, and, this settlement will avoid what would otherwise be years of contentious and expensive litigation between the Anglo American-De Beers Third-Party Defendants and the Receiver.

1.5 The Receiver and South Carolina Asbestos Victims Compensation QSF, LLC agree, and the only other parties affected by this Confidential Settlement Agreement, namely, Anglo American US Holdings Inc. itself and other Anglo American-De Beers Third-Party Defendants, and the Tibbs, do not oppose this settlement. Neither the Tibbs nor Anglo American US Holdings Inc. for itself or its affiliates oppose this Court's order that

any and all claims against the Anglo American-De Beers Third-Party Defendants arising out of or related to the *Tibbs* Action and all other South Carolina claims arising out of, or relating to, injuries arising from alleged exposure to Cape asbestos products shall be directed to the South Carolina Asbestos Victims Compensation QSF, LLC. This Court is not making any ultimate determination on such claims if ever made.

B. Approval of Qualified Settlement Fund

2.1 Treasury Regulation § 1.468B-1 authorizes the establishment of a Qualified Settlement Fund if the requirements of paragraph (c) of the section are met.

2.2 The requirements of Treasury Regulation § 1.468B-1(c)(2) have been satisfied, as the Confidential Settlement Agreement provides for the transfer of funds, claims and other things of value to the South Carolina Asbestos Victims Compensation QSF, LLC and will resolve the Receiver's claims against Anglo American US Holdings Inc. and its affiliates.

2.3 The limited liability company referenced above as "South Carolina Asbestos Victims Compensation QSF, LLC" will be constituted and will operate as the South Carolina Asbestos Victims Compensation QSF, LLC. This Court will keep continuing jurisdiction over South Carolina Asbestos Victims Compensation QSF, LLC.

2.4 The assets of the South Carolina Asbestos Victims Compensation QSF, LLC are segregated from the assets of the Receiver and Anglo American US Holdings Inc. and its affiliates, satisfying the requirements of Treasury Regulation § 1.468B-1(c)(3).

2.5 The Confidential Settlement Agreement, the establishment of the South Carolina Asbestos Victims Compensation QSF, LLC , and the transfer of the funds to the South Carolina Asbestos Victims Compensation QSF, LLC pursuant to the terms of the Confidential Settlement Agreement comply with law as set forth herein.

CONTRACTS WITH ATTORNEYS

The Court is guided by the six-factor *Glasscock* analysis.² See *Glasscock v. Glasscock*, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991). Additionally, this Court has the discretion to award attorney fees and costs. See *Taylor v. Taylor*, 333 S.C. 209, 215, 508 S.E.2d 50, 54 (Ct. App. 1998). The *Glasscock* factors weigh heavily in favor of approving the requested amount of attorney’s fees and costs.

In its capacity as the Receivership Court, this Court has directed the Receiver to marshal the assets of Cape to make such assets available to meet the costs and expenses of claims filed in South Carolina arising out of, or relating to, injuries arising from alleged exposure to Cape asbestos products. Further, in the order appointing the Receiver, this Court authorized the Receiver to “hire any person or company necessary to accomplish any right or power under this Order.” The Court finds that the Receiver has been diligent in carrying out these duties. Immediately following his appointment as the Receiver for Cape, Mr. Protopapas retained a team of well-regarded law firms to locate and secure the assets of Cape to pay these lawsuits. Given the receivership’s lack of financial resources, each of these law firms agreed to assume the significant risk of undertaking this extremely complex representation fraught with significant risk on the basis of contingent fee contracts.

The Court has reviewed the Receiver’s Report on Attorneys’ Contingency Fee Request, which details the significant time and resources the Receiver and his attorneys have devoted to this action. The requested attorneys’ fees and costs properly reflect these efforts. The Receiver’s efforts undertaken at his own expense and at the expense of the three firms he hired to represent him on a contingent fee basis, were significant. The Receiver hired extremely capable local South Carolina counsel at two law firms, Smith Robinson and Gallivan White & Boyd, to represent him in the litigation and also hired a highly regarded international law firm to

² The Court considers: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services.

support the Receiver's efforts. These efforts were in addition to and supported by highly capable lawyers and professional staff at the Receiver's law firm.

The Receiver entered into contingent fee contracts with the following highly qualified law firms: Morgan Lewis Bockius, LLP ("Morgan Lewis"), Smith Robinson LLP, Gallivan White & Boyd LLP, and Rikard & Protopapas, LLC.

Morgan Lewis is a global law firm and is highly skilled and experienced in asbestos litigation and in complex commercial litigation. The Receiver also engaged lawyers with Gallivan White & Boyd LLP, Smith Robinson LLP, and his own firm, Rikard & Protopapas, LLC, who are experienced in engaging in complex commercial litigation.

Each of the law firms has fully performed its services under the contingency fee contracts, and the Receiver seeks the Court's approval of the attorneys' contingency fee of forty percent (40%) of the gross settlement amount between the Receiver and Anglo American US Holdings Inc. (for itself and its affiliates) and approval of reimbursement of costs incurred by the law firms to date. The extreme difficulty of tracing and marshalling the assets which will be used to create the Qualified Settlement Fund would fully justify the Receiver's request for approval of attorney's fees of 40% of the gross settlement amount plus the significant costs incurred in this global effort. This percentage is now common in contingency attorney fee contracts in tort claims. Nevertheless, it is this Court's judgment that in light of the significant amount of this settlement, attorney fees of 33% plus costs is appropriate and fair. Therefore, the Court approves the attorneys' fee contracts and the attorneys' fees in the amount of thirty-three percent (33%) of the gross settlement amount between the Receiver and Anglo American US Holdings Inc. (for itself and its affiliates) , in addition to approval of reimbursement for costs incurred to date. In light of the attorneys' fee awarded, in part, to the Receiver's law firm, the attorneys' fee will be in lieu of any Receiver fee for the Receiver's work to date.

IT IS THEREFORE ORDERED THAT:

(1) The Court is convinced the terms of the Confidential Settlement Agreement are the result of substantial arm's-length, good faith negotiations between the settling parties conducted under the Absolute Mediation Privilege. The legal disputes between the Receiver and Anglo American US Holdings Inc. and its affiliates have been vigorously contested, and this settlement will avoid what would otherwise be years of contentious and expensive litigation;

(2) The South Carolina Asbestos Victims Compensation QSF, LLC, which is the limited liability company with Peter D. Protopapas, the duly ordered Receiver of Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) as its sole Member and Manager, is hereby established as a Qualified Settlement Fund in compliance with § 468B of the Internal Revenue Code of 1986, as amended, and Treasury Regulations §§ 1.468B, et seq., in order to receive settlement proceeds and claims from the Settlement Agreement, as well as any future transfers of funds, claims or things of value relating to Cape or its assets;

(3) The Receiver and Anglo American US Holdings Inc. (for itself and its affiliates) agree that any and all claims, actions, suits, losses, rights, damages, costs, fees, expenses, obligations, liabilities, and causes of action of every character, nature (whether sounding in tort, contract, warranty, or any other theory of law, or equity), kind or description whatsoever (whether based on contribution, indemnification, subrogation, spoliation, alter ego, veil piercing, corporate successorship, amalgamation of interest, single business enterprise, bodily injury or other claims), known or unknown, past, present, or future, foreseen or unforeseen, and suspected or unsuspected, arising out of, or relating to, injuries arising from alleged exposure to Cape asbestos products, that are brought in South Carolina by any person or entity (whether it is a Party, an asbestos claimant, an asbestos trust, or others), against or in any way relating to, arising out of, connected with, and/or involving the Anglo American-De Beers Third-Party Defendants in a South Carolina action shall be barred from filing in South Carolina and must be directed to the South Carolina Asbestos Victims Compensation QSF, LLC. The Receiver and Anglo American US Holdings Inc. (for itself and its affiliates) agree that the Confidential Settlement

Agreement is intended to release only Anglo American US Holdings Inc. and its affiliates and Anglo American-De Beers Third-Party Defendants and is not intended to release or benefit in any way other defendants or third-party defendants in this action or any persons or entities not released in the Confidential Settlement Agreement. The South Carolina underlying asbestos plaintiffs do not object to this relief, and as such the Court approves and ratifies this agreement in connection with future South Carolina asbestos filings, including the party substitution provisions as noted above. Further, this Court is not making any determination on such claims if ever made;

(4) The Receiver and Anglo American US Holdings Inc. for itself and its affiliates agree that upon completion and funding of the settlement to the South Carolina Asbestos Victims Compensation QSF, LLC , that Anglo American US Holdings Inc. and its affiliates are forever relieved of any and all obligations it may owe in South Carolina in connection with Cape. The underlying asbestos plaintiffs do not object to this relief, and as such the Court approves and ratifies this agreement in connection with future South Carolina asbestos filings, as noted above;

(5) The Receiver and Anglo American US Holdings Inc. (for itself and its affiliates) agree that any and all claims against Anglo American US Holdings Inc. or its affiliates filed in in South Carolina relating to obligations arising out of, or relating to, injuries arising from alleged exposure to Cape asbestos products are forever ended, including any claims asserting that any of the Anglo American-De Beers Third-Party Defendants were/are alter egos of or part of a single business enterprise with Cape. The South Carolina underlying asbestos plaintiffs do not object to this relief, and as such the Court approves and ratifies this agreement in connection with streamlining future South Carolina asbestos filings, as noted above;

(6) The Receiver's Contracts with his lawyers are approved as set forth above; and

(7) The Court retains continuing jurisdiction in accordance with Income Tax Regulation §

1.468B-1(c)(1) of all matters related to this Order.

IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Richland Common Pleas

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

Case Number: 2023CP4001759

Type: Order/Approval Of Settlement

So Ordered

Jean H. Toal

Electronically signed on 2025-10-30 13:54:41 page 15 of 15

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 John A. Tibbs and Margaret B. Tibbs,)
)
 Plaintiffs,)
)
 vs.)
)
 3M Company, et. al.,)
)
 Defendants.)
)
 *****)
)
 CAPE PLC, individually and as successor)
 in interest to CAPE ASBESTOS)
 COMPANY LIMITED, by and through)
 its duly appointed Receiver Peter D.)
 Protopapas,)
)
 Third-Party Plaintiff,)
)
 v.)
)
 ANGLO AMERICAN PLC, etc., et al.)
)
 Third-Party Defendants)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT
 C/A NO.: 2023-CP-40-01759
 In Re:
 Asbestos Personal Injury Litigation
 Coordinated Docket

**NOTICE OF FILING
 POST STATUS
 CONFERENCE REPORT**

RICHLAND COUNTY
 FILED
 2025 JUL 29 PM 1:32
 JEANETTE W. MCBRIDE
 C.C.P., G.S., & E.C.

On July 22, 2025, the Court held a status conference following the Supreme Court’s order disposing of numerous petitions for a writ of certiorari and remanding this case with further directions to the Court. *See* June 26, 2025 Order, Appellate Case Nos. 2024-001423, 2024-001499, 2024-000916, 2024-002114, 2024-002116, 2024-002117, and 2025-000052. At the hearing, the Court heard from the parties regarding the pending motions in this case and the impact of the remand order and the Supreme Court’s decision in *Welch v. Atlas Turner, Inc*, Op. No. 28284 (S.C. Sup. Ct. filed May 21, 2025) (Howard Adv. Sh. No. 19 at 12) on the asbestos docket and receiverships in South Carolina, many of which have been collaterally attacked following the

issuance of the *Welch* decision and *Tibbs* remand order. A copy of the transcript from the July 22, 2025 status conference is attached for the Court's record.

At the status conference, the Altrad defendants appeared through counsel. These defendants did not advise the Court that they were pursuing a hearing in front of the High Court of England and Wales on July 25, 2025. Attached is a copy of the transcript from that hearing, which was served on the Receiver on July 28, 2025. The Receiver also encloses the following documents served on him following this Court's status conference: (1) the Order issued by Justice Trower granting the Altrad defendants' request for an expedited final hearing; (2) the Altrad defendants' skeleton argument; and (3) the Altrad defendants' authorities bundle (index only due to size of attachments).¹

SMITH ROBINSON, LLC

s/Jonathan M. Robinson

Jonathan M. Robinson

Shanon N. Peake

3200 Devine Street

Columbia, SC 29205

803-254-5445

Attorneys for Receiver for Cape PLC

July 29, 2025

¹ While the UK filings assert the purported release has not been disclosed to the South Carolina court, the purported release was filed with this Court on July 11, 2025 by the Receiver. The purported release is discussed on page 20 of the Report of the Receiver Relating to the Factual Predicate Underlying the Cape Appointment Order and was attached as exhibit 32 to that report. It was also filed by the Altrad defendants on June 4, 2025, in a filing entitled "Notice of Release of Claims."

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,

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

Plaintiffs,

In Re:

vs.

Asbestos Personal Injury Litigation
Coordinated Docket

3M COMPANY, *et al.*,

**THIRD-PARTY DEFENDANTS
ANGLO AMERICAN PLC,
DE BEERS PLC, DE BEERS
CONSOLIDATED MINES
PROPRIETARY LIMITED, DE BEERS
UK LIMITED, AND DE BEERS
CENTENARY AG'S MOTION TO
DISSOLVE THE CAPE RECEIVERSHIP
AND TO DISMISS THIRD-PARTY
PLAINTIFF'S CLAIMS FOR LACK OF
SUBJECT MATTER JURISDICTION**

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,

vs.

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
CONSOLIDATED MINES LTD.; DE BEERS
S.A.; 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.

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Third-Party Defendants Anglo American plc, De Beers plc, De Beers Consolidated Mines Proprietary Limited, De Beers UK Limited, and De Beers Centenary AG (collectively, the “Anglo American-De Beers Defendants”) respectfully submit this motion to dissolve the receivership over Cape Intermediate Holdings Limited (“Cape”) (the “Cape Receivership”), and to dismiss the third-party claims filed by Peter D. Protopapas in his capacity as Receiver for Cape (“Third-Party Plaintiff”) for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure (“SCRCP”).¹

PRELIMINARY STATEMENT

In *Welch v. Advance Auto Parts, Inc., et al.*, opinion no. 28284 (May 21, 2025) (attached hereto as **Exhibit A**), the South Carolina Supreme Court confirmed that the scope of a prejudgment receiver’s powers under South Carolina law is extremely narrow. The Court held that “while equity allows the appointment of a Receiver before judgment,” it is an “extraordinary remedy reserved for the most extraordinary cases,” namely, “where a defendant’s conduct demonstrates it is fraudulently concealing or disposing of assets that may be responsive to a later judgment.” *Welch* at 24, 31. “It is not to be used in the typical default case.” *Id.* at 31. Even in those extraordinary cases where the appointment of a prejudgment receiver is warranted, the receiver’s powers are not unlimited. *See id.* at 30. The receiver does not gain “entry into the [company’s] boardroom or some vague right to ‘take over’ operation of the company,” nor does he have the right to pursue “every claim relating to [the company’s] assets and business activities.” *Id.* To the contrary, in an asbestos personal injury action such as this, the Receiver’s power to bring claims

¹ By filing this motion, the Anglo American-De Beers Defendants do not waive, and specifically preserve, all defenses, including the defense of lack of personal jurisdiction.

on behalf of the company is limited to exercising rights under “insurance policies that have the potential to cover [the claimant’s] injuries.” *Id.*

Welch requires dissolution of the Cape Receivership and dismissal of Third-Party Plaintiff’s claims against the Anglo American-De Beers Defendants.

The Cape Receivership must be dissolved because it was formed as the result of what was, at most, a “typical default case.” Cape, the entity placed into receivership, was not even alleged to have been dissipating its assets and had not engaged in any “extraordinary” litigation misconduct. It merely failed to answer the Plaintiffs’ complaint.

The appointment order also granted Third-Party Plaintiff authority far exceeding what was required to marshal insurance policies providing coverage for the South Carolina claimants’ injuries, and instead authorized him to administer all assets of Cape, accept service of lawsuits on behalf of Cape, engage counsel on behalf of Cape, and take “any and all steps necessary” to protect the interests of the company. *Welch* confirms, consistent with decades of South Carolina Supreme Court precedent recognizing the limits on state courts’ receivership powers under South Carolina law, that the appointment order was void *ab initio*.

Independent of the defects in the appointment order, Third-Party Plaintiff’s actions in this litigation are *ultra vires* and therefore deprive Third-Party Plaintiff of standing to bring suit, which, in turn, deprives this Court of subject matter jurisdiction over this case. Contrary to the limits on a prejudgment receiver’s powers recognized in *Welch*, Third-Party Plaintiff’s claims do not seek recovery from any insurance policies providing coverage for the Tibbs’ injuries, and indeed, Third-Party Plaintiff has conceded that none of the Third-Party Defendants is an insurance company and “there may very well be no insurance” at issue in this case. (Interim Status Report of the Cape Receiver and Request for a Trial Date filed May 27, 2025 (“Interim Status Report”) at 14).

The actions Third-Party Plaintiff has taken in this lawsuit instead amount to a full-blown attempt “to ‘take over’ operation of the company” and assume authority to act on Cape’s behalf. *See Welch* at 30. These actions include (1) accepting service of lawsuits filed against Cape, (2) filing an answer on behalf of Cape, (3) waiving Cape’s jurisdictional and merits defenses, (4) asserting third-party claims against the Anglo American-De Beers Defendants and the other Third-Party Defendants on behalf of Cape, (5) seeking to pierce Cape’s corporate veil, (6) confessing on behalf of Cape that it was involved in an alleged fraud on U.S. consumers and a “liability avoidance scheme,” (7) deprivileging Cape’s confidential communications with its counsel, (8) taking the remarkable position that Cape is in a common interest relationship with the same asbestos plaintiffs who sued Cape for personal injuries (the Tibbs), (9) purporting to enter into a tolling agreement with those adversaries on Cape’s behalf, (10) instructing counsel to act on Cape’s behalf to help design and execute the above litigation strategies and positions, and (11) seeking the removal of and sanctions against Cape’s own, duly retained counsel—all in contravention of the express will of Cape’s board of directors. It is hard to imagine a litigation strategy more hostile to Cape’s interests than the one Third-Party Plaintiff has pursued here.

The above-described, critical litigation decisions—about what claims to bring or not bring, what litigation defenses to pursue or not pursue, what claims to admit or settle and what claims to fight, what counsel to instruct, and whether to maintain or waive privilege—are all the exclusive province of a solvent company’s own board of directors. A South Carolina receiver is prohibited from making these decisions under South Carolina law (as confirmed by *Welch*), as well as under

the U.S. Constitution, the presumption against extraterritorial assertions of power by state courts, and principles of comity.²

For the reasons set forth above and further below, the Cape Receivership must be dissolved, and Third-Party Plaintiff's claims against the Anglo American-De Beers Defendants must be dismissed for lack of subject matter jurisdiction pursuant to Rule 12(b)(1), SCRCP.

RELEVANT PROCEDURAL HISTORY

The Cape Receivership originated from an order of this Court in *Park v. Armstrong International, Inc.*, Case No. 2021-CP-40-02727 (the "Cape Appointment Order," attached hereto as **Exhibit B**). In *Park*, as in this case, the plaintiffs alleged injuries from exposure to asbestos. The *Park* plaintiffs named as defendants Cape plc and Cape Intermediate Holdings Limited, the latter of which is alleged to have mined and sold asbestos fiber. Neither entity responded to the Complaint. On March 6, 2023, the *Park* plaintiffs moved for the appointment of a receiver over Cape plc, which motion was granted on March 16, 2023, by entry of the Cape Appointment Order. That order purported to give Third-Party Plaintiff 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," including but

² While the Anglo American-De Beers Defendants appreciate the comity concerns that this Court and the South Carolina Supreme Court have raised regarding the decision of the High Court of Justice of England and Wales in *Cape v. Protopoulos* [2024] EWHC 2999 (Ch) enjoining Third-Party Plaintiff from further action on Cape's behalf in South Carolina on the basis that he lacked authority to act for Cape (the "UK Judgment"), it is not surprising that a solvent company in the United Kingdom (Cape) whose board is opposed to Third-Party Plaintiff's acting on Cape's behalf in South Carolina sought judicial relief in the courts of its home jurisdiction. Nor is it surprising that the High Court concluded that Third-Party Plaintiff was infringing on the board's authority under English law. Indeed, the principal holding of the UK Judgment is entirely consistent with the South Carolina Supreme Court's holding in *Welch* that South Carolina receivers have no power to take over the affairs of solvent companies, which is exactly what Third-Party Plaintiff has purported to do through this litigation.

not limited to the power “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.” (Cape Appointment Order at 1).

On April 5, 2023, the first-party Plaintiffs in this action, the Tibbs, filed asbestos personal injury claims naming as a Defendant, among other entities, Cape plc. On June 12, 2023, Third-Party Plaintiff, purporting to act on behalf of Cape plc, executed a tolling agreement with the Tibbs’ counsel agreeing to resolve the Tibbs’ claims against Cape plc outside the tort system. Then, on June 29, 2023, Third-Party Plaintiff filed an Answer to the Tibbs’ first-party Complaint on behalf of Cape plc, and on June 30, 2023, filed an expansive Third-Party Complaint alleging that Cape plc had fraudulently concealed from the public the dangers of asbestos exposure and devised a “liability avoidance scheme” pursuant to which it diverted profits from U.S. sales of asbestos out of the country and beyond the reach of U.S. personal injury plaintiffs. Third-Party Plaintiff further alleged that each of dozens of third-party Defendants, including but not limited to the Anglo American-De Beers Defendants, are Cape plc’s alter egos, and have been unjustly enriched because they received from Cape plc “funds that have been wrongfully diverted from meeting obligations and responsibilities in the United States.” (Third-Party Compl. ¶ 130).

On December 6, 2023, the Court entered an Order denying certain Third-Party Defendants’ motions to dissolve the Cape Receivership and declaring *nunc pro tunc* that Third-Party Plaintiff was Receiver for Cape Intermediate Holdings Limited in this case. (See December 6, 2023 Order at 19, 22–23).

On May 21, 2025, the South Carolina Supreme Court issued its decision in *Welch*. In that case, this Court appointed a prejudgment receiver over a different asbestos company, Atlas Turner, as a sanction for that company’s “strident and outspoken refusal to comply with” the Court’s jurisdictional discovery orders, *Welch* at 24, and out of concern that Atlas Turner was actively

dissipating insurance assets that might provide coverage for the South Carolina claimant's injuries, *see id.* at 25 ("Atlas Turner represented to the trial court that it had no Insurance Assets relevant to these cases," but there was evidence that the company in fact "was involved in a transaction that may have compromised some of its potential insurance coverage," and that Atlas Turner had "refused to tender its policies to certain insurers for defense and indemnity"). The appointment order granted the receiver power to marshal any insurance policy of Atlas Turner, as well as "any other assets which are related to, touch or are otherwise relevant to such insurance." *Id.* at 30.

On appeal, the Supreme Court affirmed in part and reversed in part the appointment order. The Court reasoned that a prejudgment receivership "is an extraordinary remedy" reserved for cases where the entity is at risk of dissipating its assets and is "not to be used in the typical default case." *Id.* at 31. Given the evidence of Atlas Turner's flagrant litigation misconduct and attempts to dissipate its assets, the Supreme Court found that the appointment of a prejudgment receiver was warranted on the facts of that case, but also found it necessary to "shrink the scope of the Receivership order." *Id.* at 30. The Court held that the receiver's powers did not "properly extend to reach every claim relating to Atlas Turner's assets and business activities," and instead were limited to claims seeking recovery from "insurance policies that have the potential to cover [the claimant's] injuries." *Id.* The Court further held that the appointment order did not "grant the Receiver entry into the [company's] boardroom or some vague right to 'take over' operation of the company." *Id.* This motion follows.³

³ On June 20, 2025, Third-Party Plaintiff filed an Amended Notice of Motion and Motion for Leave to Amend Third-Party Complaint ("Mot.") in which he argues that *Welch* is "inapposite" because it addressed the limits on the scope of an "**insurance-only** receivership order," in contrast with the Cape Appointment Order, which he asserts "allow[s] the Receiver to administer the full assets of Cape, including all insurance coverage for these amalgamated entities." (Mot. at 4, 4 n.2 (emphasis original)). Third-Party Plaintiff is wrong, for at least three reasons. *First*, *Welch* sets

ARGUMENT

I. The Cape Receivership Must Be Dissolved.

A. The *Park* Action Was, at Most, a “Typical Default Case” That Did Not Warrant Entry of a Prejudgment Receivership Over Cape.

The Cape Receivership must be dissolved because the underlying *Park* action was, at most, a “typical default case” that did not permit the Court to impose a prejudgment receivership.

In *Welch*, the Supreme Court held that prejudgment receiverships are “not to be used in the typical default case”—*i.e.*, a case where the defendant is not participating in the litigation, or remedial measures have been taken (such as striking of the answer) that leave the defendant in default—and instead require a showing of “danger that the [company’s] property will be materially injured before the case can be determined,” *id.* at 23, 31, or that the company’s “conduct demonstrates it is fraudulently concealing or disposing of assets that may be responsive to a later judgment,” *id.* at 24. This limitation on the equitable powers of the trial court is only logical and is rooted in bedrock principles of due process, because in a “typical default case,” the defendant will not have an opportunity to be heard and oppose the appointment order. *See, e.g., Dixie-Land*

limits, not only on the scope of “insurance-only” receiverships, but also on the scope of prejudgment receiverships in asbestos cases generally: on the very first page of the opinion, the Court held that while the appointment of a receiver over Atlas Turner was warranted given that company’s “conspicuous misconduct,” this Court “erred in giving the Receiver authority **beyond that necessary to investigate and collect Atlas Turner’s Insurance Assets.**” *Welch* at 14 (emphasis added). *Second*, Third-Party Plaintiff’s interpretation of *Welch* is completely illogical: if an appointment order giving the receiver power to marshal only the insurance assets of Atlas Turner was overbroad, and had to be “shrunk” further so that it reached only insurance assets providing coverage for the claimant’s injuries, how can it possibly be that an even broader appointment order, giving Third-Party Plaintiff power to “administer the **full assets of Cape**, including **all** insurance coverage,” is permissible? (*See* Mot. at 4 (emphasis added)). *Third*, Third-Party Plaintiff makes no attempt to square the actions he has taken on behalf of Cape in this case, including litigation decisions that are the exclusive province of Cape’s board of directors, with *Welch*’s admonition that a receivership does not permit the receiver to invade the company’s board room or take over operation of the company. *See Welch* at 30; *infra* section II(A) at 13–14.

Iron & Metal Co., Inc. v. Piedmont Iron & Metal Co., 233 Ga. 970, 971, 213 S.E.2d 897, 898 (1975) (holding that absent a showing of “extraordinary circumstances,” the appointment of a receiver without notice and hearing “denie[s] [the subject party] due process”).

In *Welch*, the Supreme Court found that this Court’s appointment of a prejudgment receiver over Atlas Turner was proper, not merely because Atlas Turner had been held in default (through the striking of its answer), but because there was evidence Atlas Turner was actively working to dispose of or otherwise frustrate the claimant’s access to coverage provided under its insurance policies, *Welch* at 25, as well as evidence of Atlas Turner’s “strident and outspoken refusal to comply with [this Court’s] orders,” which gave rise to a presumption that Atlas Turner would “continue to act in bad faith as the case against it progresse[d],” *id.* at 24–25.

No such findings were made in *Park* with respect to Cape. Indeed, *Park* cannot even be considered a true default case, because the plaintiffs never moved for entry of default or otherwise sought sanctions or other penalties against Cape for Cape’s failure to answer the complaint, nor did the Court ever enter a default judgment against Cape. Within the meaning of *Welch*, the *Park* action was a “typical default case” because the only purported basis for the Court’s granting a prejudgment receivership was that Cape had “failed to answer” the complaint (Cape Appointment Order at 1).⁴ This Court therefore erred when it granted the “extraordinary remedy” of a prejudgment receivership over Cape in *Park*.

⁴ The other purported bases for imposing the Cape Receivership—that Cape plc had “dissolved” and “forfeited its charter”—were not true, as the Court later acknowledged in the December 6, 2023 Order denying the motions to dissolve the Receivership. *See* December 6, 2023 Order at 25 n.16 (“[T]he Order appointing the Receiver incorrectly described Cape as “dissolved,” even though Cape is still a going concern in the United Kingdom . . .”). Cape was and still is a solvent company in the United Kingdom.

There likewise was no basis for the Court’s expansion of the Cape Receivership to the *Tibbs* case. According to Third-Party Plaintiff’s own pleading, Cape’s purported diversion and concealment of assets by way of the “liability avoidance scheme” occurred *decades ago*. (See, e.g., Third-Party Compl. at 10). Third-Party Plaintiff has never alleged, and there has never been any evidence, that Cape, e.g., is “involved in a transaction that may . . . compromise[] some of its potential insurance coverage” or has “refused to tender its policies to certain insurers for defense and indemnity.” *Welch* at 25. Indeed, less than a month ago, Third-Party Plaintiff admitted that any potentially applicable insurance coverage “*appears to have been exhausted . . . in 1978.*” (Interim Status Report at 14 (emphasis added)). The Supreme Court was explicit that “[a] Receiver may only be appointed before judgment” if there is “danger that the property *will be* materially injured *before the case can be determined,*” *Welch* at 23 (emphasis added)—not as a form of “reckoning” for the company’s alleged diversion of assets some fifty years in the past (see, Third-Party Compl. at 10).

In short, *Welch* makes clear there was never any lawful basis for the appointment of a receiver over Cape in the *Park* action or the *Tibbs* action. The proper course in both cases would have been for the plaintiffs to move for entry of default against Cape, and the Court then could have entered a default judgment. It would then have been the duty of the plaintiffs to seek enforcement of the judgment against Cape’s assets—whether in South Carolina, in other U.S. states, or abroad. If Cape had assets in South Carolina at risk of being dissipated, including, consistent with *Welch*, insurance policies providing coverage for the claimants’ injuries, it might then have been appropriate for the Court to appoint a receiver to protect those assets post-judgment. But those are not the facts here, and that hypothetical scenario is a far cry from the instant litigation

that Third-Party Plaintiff is pursuing against the Anglo American-De Beers Defendants. Accordingly, the Cape Receivership must be dissolved.

B. The Expansive Authority Granted to Third-Party Plaintiff in the Cape Appointment Order Is Void Pursuant to *Welch*.

The Cape Receivership should be dissolved for the additional and related reason that the Cape Appointment Order purports to give Third-Party Plaintiff far more power than is permissible under *Welch*.

Specifically, the order here authorizes Third-Party Plaintiff 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.” (Cape Appointment Order at 1). This broad-sweeping grant of authority cannot be reconciled with *Welch*’s admonition that a receiver’s power “does not properly extend to reach every claim relating to [the company’s] assets and business activities” or “grant the Receiver entry into the [company’s] boardroom or some vague right to ‘take over’ operation of the company.” *Welch* at 30. All the above-referenced powers in the Cape Appointment Order—(1) administering “all assets of Cape” (not just insurance policies), (2) accepting service on behalf of Cape, (3) retaining counsel for Cape, and (4) taking “any and all steps necessary” to protect Cape’s interests—are powers that courts in South Carolina and around the country have long recognized belong exclusively to a company’s board of directors. *See, e.g., Carolina First Corp. v. Whittle*, 343 S.C. 176, 187, 539 S.E.2d 402, 408 (Ct. App. 2000) (a corporation’s “directors are, under the laws of every state, responsible for the conduct of the corporation’s business, including the decision to litigate” (citation omitted)); *Muzek v. Eagle Mfg. of N. Am., Inc.*, 2019 WL 13168879, at *2 (E.D. Ky. Oct. 23, 2019) (“[A] decision whether to bring a lawsuit, refrain from litigation on behalf of a corporation, or the appointment of an examiner is a decision concerning the management of a corporation. Such decisions are part of

the responsibility of a board of directors” (citation omitted)); *Freedman v. Redstone*, 753 F.3d 416, 424 (3d Cir. 2014) (“The decision whether to bring a lawsuit is ‘a decision concerning the management of the corporation and consequently is the responsibility of the directors.’” (citation omitted)); *In re Universal Health Servs., Inc., Derivative Litig.*, 2019 WL 3886838, at *30 (E.D. Pa. Aug. 19, 2019) (same); *Hirschfeld v. Beckerle*, 405 F. Supp. 3d 601, 605 (D.N.J. 2019) (same).

Indeed, the authority provided to Third-Party Plaintiff in the Cape Appointment Order is even broader than the authority the Supreme Court struck down in *Welch*. The Atlas Turner appointment order gave the receiver the power to marshal any “assets which are related to, touch or are otherwise relevant to” **insurance policies** of Atlas Turner. *Welch* at 30. The Supreme Court found it necessary to “shrink the scope of” that order to insurance policies “that have the potential to cover Mr. Welch’s injuries.” *Id.* If, under *Welch*, Third-Party Plaintiff does not even have the power to administer all insurance policies of Atlas Turner, and instead is restricted to policies providing coverage for the claimants’ injuries, then he cannot possibly have the power to administer “all assets of Cape” (Cape Appointment Order at 1)—including purported claims for unjust enrichment and alter ego liability that, by Third-Party Plaintiff’s own admission, have no connection whatsoever to any insurance policies of Cape or even the Tibbs’ alleged injuries. (See Third-Party Compl. at 10 (asserting lawsuit seeks “**billions of dollars**” in damages for alleged “sale and use of asbestos or asbestos-containing products **throughout the United States**”), ¶¶ 125–130 (seeking “return funds that have been wrongfully diverted from meeting obligations and responsibilities **in the United States**”) (emphasis added)).

Because the powers granted to Third-Party Plaintiff in the Cape Appointment Order grossly exceed the limits on the scope of South Carolina receiverships, as confirmed by *Welch*, the Cape Appointment Order must be vacated and the Cape Receivership dissolved.

II. Third-Party Plaintiff's Lawsuit Must Be Dismissed for Lack of Subject Matter Jurisdiction.

A. Third-Party Plaintiff's Lawsuit Violates South Carolina Law, as Confirmed by *Welch*.

Welch, in addition to requiring the dissolution of the Cape Receivership, requires dismissal of Third-Party Plaintiff's claims for lack of subject matter jurisdiction. Subject matter jurisdiction requires that there be a live case or controversy between the parties, which, in turn, requires the plaintiff to have standing to sue. *Lennon v. South Carolina Coastal Council*, 330 S.C. 414, 417, 498 S.E.2d 906, 907–908 (Ct. App. 1998). In a receivership action, the standing of the receiver derives from the appointment order and the powers lawfully granted to him under that order. *See, e.g., Protopapas v. Wall, Templeton, & Haldrup, P.A.*, 442 S.C. 217, 226–227, 898 S.E.2d 150, 154–155 (Ct. App. 2023) (holding that receiver's standing derives from his duty to “fulfill the requirements of the Appointment Order”). Accordingly, if a receiver is not acting pursuant to a valid appointment order, the receiver has no standing to sue, and the Court lacks subject matter jurisdiction over the receiver's claims.

Welch makes clear that no appointment order can authorize a South Carolina receiver to take the actions that Third-Party Plaintiff has taken on behalf of Cape in this case.

As an initial matter, Third-Party Plaintiff's claims do not seek to recover from “insurance policies that have the potential to cover [the Tibbs'] injuries.” *Welch* at 30. It is undisputed that none of the Third-Party Defendants is an insurance company, and Third-Party Plaintiff in fact states on the first page of the Third-Party Complaint that he is suing the Third-Party Defendants because they allegedly left “*an absence of insurance coverage* to account for their massive liability exposure” in the United States. (Third-Party Compl. at 10 (emphasis added)). Third-Party Plaintiff made this concession again in his recently filed Interim Status Report, in which he

stated that the “distinguishing feature” of this third-party action is that “there may very well be *no insurance* and at this point *no insurance companies* have been named as third-party defendants”; that allegedly, “Cape deliberately set up [its subsidiary] NAAC to be woefully *underinsured*”; and, as noted above, that any applicable insurance “*appears to have been exhausted* soon after NAAC dissolved in 1978.” (Interim Status Report at 14 (emphasis added)). Third-Party Plaintiff instead seeks to recover against the Third-Party Defendants on a novel theory of unjust enrichment, not tethered to any insurance policy, and indeed, not even tethered to the Tibbs’ injuries. (See Third-Party Compl. at 10, ¶¶ 125–130).

Moreover, through this lawsuit, Third-Party Plaintiff has purported to “ent[er] into the [Cape] boardroom” and “‘take over’ operation of the company.” *Welch* at 30. Specifically, Third-Party Plaintiff (1) accepted service of lawsuits filed against Cape, (2) filed an Answer on behalf of Cape, (3) waived Cape’s litigation defenses, including but not limited to the potentially dispositive threshold defenses of improper service and lack of personal jurisdiction, (4) filed a Third-Party Complaint asserting equitable claims against the Anglo American-De Beers Defendants and the other Third-Party Defendants, (5) in that Third-Party Complaint, engaged in “self-veil-piercing” as between Cape and dozens of other companies, (6) implicated Cape in a decades-long “liability avoidance scheme” pursuant to which Cape allegedly fraudulently misrepresented the dangers of asbestos exposure to U.S. consumers while diverting profits generated from sales of Cape asbestos to overseas affiliates, (7) deprived confidential communications between Cape and its attorneys, (8) withheld the production of communications between Third-Party Plaintiff’s counsel and counsel for the Tibbs on the remarkable basis that Third-Party Plaintiff shares a *common legal interest* with the Tibbs plaintiffs, *i.e.*, the parties seeking recovery *against* Cape in this litigation, (9) purported to enter into a tolling agreement with those adversaries on Cape’s behalf, (10)

appointed counsel on behalf of Cape, who has engaged in a course of litigation conduct diametrically opposed to Cape’s interests and the wishes of its board of directors, and (11) sought the removal of and sanctions against Cape’s own, duly appointed counsel.

The authority to make these major litigation decisions on behalf of Cape—including but not limited to making the above-described, sweeping admissions of alleged liability—belongs to Cape’s board of directors alone and not to a state court-appointed receiver, as made clear by decades of U.S. case law, including case law from South Carolina, holding that “[w]hether a corporation should bring a lawsuit is a business decision, and the directors are, under the laws of every state, responsible for the conduct of the corporation’s business, including the decision to litigate.” *Carolina First*, 343 S.C. at 187, 539 S.E.2d at 408 (quoting *RCM Sec. Fund, Inc. v. Stanton*, 928 F.2d 1318, 1326 (2d Cir. 1991)); *see also* cases cited *supra* at 10–11.⁵

Because Third-Party Plaintiff’s claims do not seek recovery from insurance policies covering the Tibbs’ injuries, and because his actions usurp the powers of Cape’s board of directors and amount to a takeover of the operations of the company, Third-Party Plaintiff’s lawsuit necessarily goes beyond the limits of any authority that can lawfully be granted to a South Carolina receiver under *Welch*, which deprives Third-Party Plaintiff of standing to bring this lawsuit. Accordingly, Third-Party Plaintiff’s claims must be dismissed for lack of subject matter jurisdiction pursuant to Rule 12(b)(1), SCRCF.

⁵ This also is made clear by the UK Judgment, which held as a matter of English law that “the management and affairs of [Cape] ought to be exclusively in the hands of the English board,” and that Third-Party Plaintiff’s actions in this case, including but not limited to “[making] admissions in relation to asbestos claims, and advanc[ing] a positive case” against the Third-Party Defendants, “are capable of causing serious and unjustified disruption to the affairs of [Cape]” and “are positively damaging to the interests of [Cape].” UK Judgment ¶ 115(a)–(c). In short, no amendment to the Cape Appointment Order consistent with *Welch* could give Third-Party Plaintiff the power to do what he has done and seeks to continue doing on behalf of Cape in this litigation.

B. Third-Party Plaintiff’s Lawsuit Violates the United States Constitution, the Presumption Against Extraterritoriality, and Principles of Comity.

Third-Party Plaintiff’s lawsuit violates not only South Carolina law, but also the U.S. Constitution, the presumption against extraterritoriality, and principles of comity (issues that were not addressed in *Welch*). These arguments are set out in detail in the motions for summary judgment filed by the Anglo American-De Beers Defendants on January 6, 2025, which remain pending and which will be supplemented at the close of discovery. Briefly summarized:

Third-Party Plaintiff’s Lawsuit Violates the Commerce Clause. “Congress’s authority to regulate commerce pursuant to the Constitution inherently carries with it a prohibition to the states to refrain from enacting laws which impede the flow of interstate commerce,” known as the dormant Commerce Clause. *Atl. Mach. & Equip., Inc. v. Tigercat Indus., Inc.*, 427 F. Supp. 2d 657, 664 (E.D. Va. 2006); *see* U.S. Const. art. I, § 8, cl. 3. This prohibition applies with equal force to state interference with foreign commerce. *Atl. Mach.*, 427 F. Supp. at 663–664. Third-Party Plaintiff’s lawsuit violates the dormant Commerce Clause because Third-Party Plaintiff, an arm of a South Carolina court, is purporting to act on behalf of a solvent foreign company (Cape), without that company’s authorization and contrary to the will of its board of directors, and asserting claims against other foreign companies to recover assets located outside the United States, that do not provide coverage for the Tibbs’ injuries, and that have no nexus with South Carolina.

Third-Party Plaintiff’s Lawsuit Violates the Presumption Against Extraterritoriality. The presumption is a “longstanding principle of American law that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.” *Morrison v. Nat’l Austl. Bank Ltd.*, 561 U.S. 247, 255 (2010) (citation and internal quotation marks omitted). Accordingly, “[w]hen a statute gives no clear indication of an

extraterritorial application, it has none.” *Id.* South Carolina courts, including the South Carolina Supreme Court, have long recognized the presumption against extraterritorial application of state law, including with respect to state court appointed receivers. *See, e.g., Pollock v. Carolina Interstate B. & L. Ass’n*, 48 S.C. 65, 74, 25 S.E. 977, 980 (1896) (observing that “the power of a receiver only extends to the boundaries of the territorial jurisdiction of the court appointing him” and that “courts of equity cannot acquire extraterritorial jurisdiction over property by appointing receivers” (citations omitted)). Indeed, the South Carolina Supreme Court reaffirmed these longstanding principles in *Welch* when it held that a prejudgment receiver’s powers are limited to marshalling insurance policies providing coverage for liabilities incurred in South Carolina.

Here, for the reasons set forth above, Third-Party Plaintiff’s lawsuit violates the principle against extraterritorial application of U.S. law because the South Carolina receivership statute does not provide for extraterritorial exercises of power by a Receiver (and cannot provide that power within the limits of the United States Constitution), and Third-Party Plaintiff’s claims against the Anglo American-De Beers Defendants seek recovery of assets located outside the United States, that do not provide coverage for the Tibbs’ injuries, and that have no nexus with South Carolina.

Third-Party Plaintiff’s Lawsuit Violates Principles of Comity. Comity “is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.” *BAE Syst. Tech. Sol. & Servs., Inc. v. Republic of Korea’s Defense Acquisition Program Admin.*, 195 F. Supp. 3d 776, 796–97 (D. Md. 2016) (quoting *Hilton v. Guyot*, 159 U.S. 113, 163–64 (1895)). Comity is not a matter “of mere courtesy and good will” and “may carry significant weight” where the acts of a U.S. court risk encroaching on the sovereignty of a foreign nation and its legal system. *Id.* at 797.

Here, Third-Party Plaintiff's claims and other action taken on behalf of Cape in this action violate principles of comity because Cape is incorporated under the laws of England and Wales, and those laws, not the laws of South Carolina, determine who has authority to manage the company's affairs. *See, Pertuis v. Front Roe Rests, Inc.*, 423 S.C. 640, 650, 817 S.E.2d 273, 278 (2018) (states "look to the State of a business' incorporation for the law that provides the relevant corporate governance general standard of care" because "only one State should have the authority to regulate a corporation's internal affairs" (citation omitted)). The UK Judgment illustrates the international discord that can result when a South Carolina receiver unlawfully seeks to take over operation of a solvent, foreign company, against the will of its board of directors, by making litigation decisions and bringing claims against third parties in that company's name in the United States.

Because no order of a South Carolina court can derogate these fundamental restrictions on state court exercises of power over foreign companies and assets, Third-Party Plaintiff's conduct in this litigation necessarily is *ultra vires*, and therefore deprives Third-Party Plaintiff of standing to pursue his claims against the Anglo American-De Beers Defendants. Accordingly, those claims must be dismissed for lack of subject matter jurisdiction pursuant to Rule 12(b)(1), SCRCF.

CONCLUSION

For the reasons set forth above, the Anglo American-De Beers Defendants respectfully request an order dissolving the Cape Receivership and dismissing Third-Party Plaintiff's claims for lack of subject matter jurisdiction pursuant to Rule 12(b)(1), SCRCF.

SIGNATURE PAGE FOLLOWING

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June 24, 2025

Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

JOHN A. TIBBS and MARGARET B. TIBBS,
Plaintiffs,

v.
3M COMPANY *et al.*,

Defendants.

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

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

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

Third-Party Plaintiff,

v.

ANGLO AMERICAN PLC, et al.,

Third-Party Defendants.

**RECEIVER’S OPPOSITION TO THIRD-
PARTY DEFENDANTS ANGLO
AMERICAN PLC, DE BEERS PLC,
DEBEERS CONSOLIDATED MINES
PROPRIETARY LIMITED, DE BEERS UK
LIMITED, AND DE BEERS CENTENARY
AG’S MOTION TO DISSOLVE THE CAPE
RECEIVERSHIP AND TO DISMISS
THIRD-PARTY PLAINTIFF’S CLAIM
FOR LACK OF SUBJECT MATTER
JURISDICTION**

Peter D. Protopapas, as Receiver (the “Receiver”) for Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) (“Cape”) responds to Third Party Defendants Anglo American plc, De Beers plc, De Beers Consolidated Mines Proprietary Limited, De Beers UK Limited, and De Beers Centenary AG’s (collectively “Anglo American and De Beers” or “Third Party Defendants”) Motion to Dissolve the Cape Receivership and to Dismiss Third-Party Plaintiff’s Claim for Lack of Subject Matter Jurisdiction. Anglo American and De Beers seek to dismiss the Receiver’s Third-Party Complaint and dissolve the Receivership based on inaccurate readings of the South Carolina Supreme Court’s recent orders and misunderstanding of the law. Because this Court properly

appointed the Receiver under a valid appointment order that complies with *Welch v. Advance Auto Parts, Inc. et al*, and because the Receiver acted under the authority of this Court’s order in filing the Third Party Complaint, Anglo American and De Beers’ motion must be denied.

I. Procedural Background

As this Court is already aware, on March 6, 2023, Plaintiffs in the Park Action moved for an Order Appointing a Receiver over Cape. *See* Motion to Appoint Receiver, *Park et al. v. Armstrong Int’l, Inc. et al.*, No. 2021-CP-4002727 (Mar. 6, 2023) (“Park Appointment Motion”), at 1. The Park Appointment Motion was made under S.C. Code Ann. Sec. 15-65-10(4) and (5)¹. *Id.* at 1. The Park Appointment Motion described Cape’s longstanding litigation-avoidance strategy – starting nearly half a 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 and ultimately flee the [United States], knowing that nearly all [its] assets were in jurisdictions . . . where judgments in those lawsuits could not be enforced.” *Id.* at 2. On March 17, 2023, this Court issued an Order appointing Peter D. Protopapas as Receiver for Cape pursuant to S.C. Code Ann §§ 15-65-10(4) and (5). *See* Order, *Park et al. v. Armstrong Int’l, Inc. et al.*, No. 2021-CP-4002727 (March 17, 2023) (“Park Appointment Order”). The Park Appointment Order set forth, in detail, the Receiver’s powers and rights in this role. *See id.*

On June 30, 2023, in the fulfillment of his duties under the Park Appointment Order, the Receiver filed a Third-Party Complaint in the Tibbs Action asserting claims against Third-Party Defendants, alleging that they facilitated, caused, or directed Cape’s U.S.-based asbestos sales and

¹ Section 15-65-10(4) and (5) authorize the appointment of a receiver where (4) a corporation has been dissolved, is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights; and (5) “[i]n such other cases as are provided by law or may be in accordance with the existing practice,” respectively.

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.

On November 1, 2024, the Receiver moved to clarify the Park Appointment Order, seeking confirmation that the Receiver’s litigation activity to date, including in the Tibbs Action, had been conducted within the scope of this Court’s Park Appointment Order. By Order dated November 5, 2024 (the “Clarification Order”), the Court granted the Receiver’s Motion, clarifying that the Park Appointment Order “extend[ed] to the right and obligation to administer any claims related to the actions or failure to act of any entity related to or responsible for Cape,” and further confirming “that the Receiver’s litigation activity to date has been conducted within the scope of this Court’s [Park] Appointment Order.” *See* Clarification Order, at 3.

On June 26, 2025, the Supreme Court directed this Court to (1) “[e]nsure the receiver has been authorized to conduct its work by an order filed in the specific case as to which the work is to take place,” and (2) “[e]nsure that such an order is based on findings of fact sufficient under *Welch* to justify the order, and that the receiver's scope of authority is limited as set forth in *Welch*.”² In *Welch*, the Supreme Court addressed (1) the propriety of appointing a pre-judgment receiver over non-defunct companies under S.C. Code § 15-65-10(5); (2) the required factual basis for an appointment order in those circumstances; and (3) limitations on the scope of the receiver's authority based on the specific language in the appointment order at issue.³ Anglo American and De Beers misinterpret the Supreme Court’s Order of June 26, 2025 in this case, and the Order of

² *Tibbs v 3M Company, et al.*, Nos. 2024-001423, 2024-001499, 2024-00916, 2024-002114, 2024-002116, 2024-002117 and 2025-000052 (S.C. Order dated June 26, 2025) (hereinafter “June 26 Order”)

³ 916 S.E.2d 320 (S.C. 2025).

May 21, 2025 in *Welch* to require dissolution of the Cape receivership and dismissal of the Third-Party Complaint in this case. No holding in either order can be properly interpreted to require either result in this case.⁴

II. Law & Argument

A. The Cape Receivership should not be dissolved.

The South Carolina Supreme Court held in *Welch* that appointment of a Receiver before judgment is an “extraordinary remedy reserved for the most extraordinary cases,” and also clarified certain language in the Appointment Order for the receivership in Atlas Turner – one which was designed only to marshal the insurance assets of the company – to narrow a particular cause that could be read as more broad than this Court intended. Neither of these holdings are reasons to dissolve the Cape Receivership. Instead, they confirm that the Cape Receiver was properly appointed, and the receivership order is properly tailored to the facts of the entity in receivership.

1. *Welch supports appointing a receiver over Cape under S.C. Code § 15-65-10(4) and (5)*

a. *Welch upholds the appointment of this Court’s pre-judgment appointment of a Receiver over Atlas Turner’s insurance assets.*

Welch involved the appointment of a receiver pre-judgment to marshal insurance assets of Atlas Turner, Inc. ("Atlas Turner"), a non-defunct, foreign corporation. Atlas Turner sold asbestos containing spray and pipe insulation to a Greenville, South Carolina installer of asbestos insulation and to a North Carolina "wholesaler installer" that supplied South Carolina companies with these

⁴ In an effort to avoid overwhelming the e-filing system and duplicating many exhibits that are already in the record, the documents referred to herein reflect the respective exhibit numbers in the Report of the Receiver Relating to the Factual Predicate Underlying the Cape Appointment Order, filed with this Court on July 11, 2025.

products.⁵ The *Welch* plaintiff was allegedly exposed to these types of Atlas Turner products at a facility in South Carolina and died from mesothelioma caused by his asbestos exposure.⁶

First, in *Welch*, the Supreme Court rejected Atlas Turner's claim that South Carolina had no jurisdiction over it because, as Atlas argued, Atlas never registered to do business in South Carolina, never had offices, employees, or agents in the state, and never had bank accounts or real property in the state.⁷ The Court determined that jurisdiction was proper because "[a]nyone entering and profiting from a business market in South Carolina that our laws and courts helped foster has fair warning that any wrongs he commits here will be subject to the remedies of those same courts."⁸ Based on Atlas' direct sales of its asbestos products to a South Carolina company, and also to a North Carolina company for use in South Carolina, the Court rejected Atlas' jurisdictional objection.⁹

Second, as for the appointment of a pre-judgment receiver over a viable company under S.C. Code § 15-65-10(5), the Supreme Court said that this "extreme" remedy should be employed in the "rarest" of cases – namely, cases reflecting "moral fraud – a conscious intent to defeat, delay, or hinder" creditors.¹⁰ The Court characterized this "moral fraud" requirement in varied but consistent language:

where a defendant's conduct demonstrates it is fraudulently concealing or disposing of assets that may be responsive to a later judgment;

where the plaintiff has made a prima facie showing that the defendant intends to fraudulently avoid or defeat [a plaintiff's recovery];

⁵ *Welch*, 916 S.E.2d 320, 329.

⁶ *Id.* at 324.

⁷ *Id.* at 329.

⁸ *Id.*

⁹ *Id.*

¹⁰ *See id.* at 330-31; *Virginia-Carolina Chem. Co. v. Hunter*, 66 S.E. 177, 179 (S.C. 1909).

[where a] manufacturer . . . disposes of large resources . . . and leaves his debts unpaid, and sets creditors at arm's length by refusing to give any account of his property or to take any interest in the satisfaction of their claims, the court is warranted in drawing the inference that there has been a fraudulent disposition of the property.¹¹

Each characterization suggests that the sort of “moral fraud” that can justify appointing a pre-judgment receiver under S.C. Code § 15-65-10(5) involves willful efforts to avoid being called to account for a “later judgment.”¹²

The Supreme Court found that Atlas Turner's conduct satisfied the “moral fraud” standard because: (1) Atlas sought to evade its responsibilities as a civil litigant by disregarding the court’s discovery orders and employed a “corporate policy” of minimal defense and then incurring default judgments, and (2) Atlas represented to the court that it had no insurance assets relevant to the *Welch* plaintiff, yet sought to compromise certain insurance assets by removing them from the plaintiff's reach.¹³ The Supreme Court declined to “upset the trial court's discretionary decision” in appointing a pre-judgment receiver given that Atlas Turner engaged in moral fraud against the trial court, the state of South Carolina, and the *Welch* plaintiff.¹⁴

b. *Cape easily meets the “moral fraud” standard set in Welch – the facts demonstrate Cape’s conduct was far more damaging and more morally culpable than Atlas Turner.*

Cape mined and distributed the most dangerous forms of asbestos in a manner far outstripping the damage done by Atlas Turner. Asbestos is a mineral that is mined from the ground.¹⁵ There are three commercial types of asbestos: chrysotile, amosite and crocidolite.¹⁶

¹¹ *Id.* at 331 (citation omitted).

¹² *Id.* at 330.

¹³ *Id.* at 332-35.

¹⁴ *Id.* at 331.

¹⁵ Ex. 1, Robert L. Virta, *Asbestos: Geology, Mineralogy, Mining, and Uses*, U.S. Geological Survey Open-File Rep. 02-149, at 5 (2002).

¹⁶ *See Id.*

Amosite and crocidolite—which are by far the most harmful to humans—were mined by Cape in South Africa.¹⁷ Asbestos fiber is typically processed at the mines and then sold to manufacturers of asbestos-containing products, such as pipe insulation and brake linings.¹⁸

Cape had a near monopoly on the global supply of amosite and crocidolite.¹⁹ There were fewer than five principal asbestos mining companies world-wide, such as Cape.²⁰ Unlike the small group of miners, the defendant in *Welch*—Atlas Turner—was one product manufacturer of many hundreds.²¹ Most of the manufacturers of asbestos-containing thermal insulation products in the United States filed for bankruptcy, and more than 60 of these companies established trusts to compensate asbestos victims.²²

Two points underlying this brief history are important to understanding a critical factual difference between Cape and Atlas Turner as asbestos companies. **First**, certain asbestos mining companies, like Cape, were the source of all the amosite and crocidolite asbestos fibers used in South Carolina and the rest of the United States.²³ Cape was the spigot through which hundreds of

¹⁷ Ex. 2, Jock McCulloch, *Surviving Blue Asbestos: Mining and Occupational Disease in South Africa* 115 (2002).

¹⁸ Ex. 1, *supra*, at 13.

¹⁹ Ex. 2.1, Jock McCulloch, *Asbestos Blues: Labour, Capital, Physicians & the State in South Africa* 27 (James Currey 2002).

²⁰ *Id.* at 30.

²¹ See, e.g., Ex. 3, “Asbestos Manufacturers,” The Mesothelioma Center (Nov. 14, 2024), <https://www.asbestos.com/companies/>.

²² Ex. 4, U.S. Gov’t Accountability Off., GAO-11-819, *Asbestos Injury Compensation: The Role and Administration of Asbestos Trusts Highlights* (2011) (report noting that “about 100 companies have declared bankruptcy at least partially due to asbestos-related liability” and that “since 1988, 60 trusts have been established to pay claims”).

²³ Ex. 5, J.S. Harington & N.D. McGlashan, *South African Asbestos: Production, Exports, and Destinations, 1959–1993*, 33 AM. J. INDUS. MED. 321, 323 (1998) (reporting that in the early-1960s North America was a major recipient of South-African amosite and crocidolite exports). Ex. 71, Karen Selby, *Mesothelioma in South Africa*, ASBESTOS.COM (Apr. 17, 2025), <https://www.asbestos.com/mesothelioma/south-africa/> (noting South Africa supplied 97 % of the world’s crocidolite and “practically all” amosite and that the mines were owned by companies including Cape Asbestos); See also, e.g., Ex. 7, North American Asbestos Corporation, *States*

thousands of tons of asbestos flowed from its mines to almost 40 states, over 500 individual customers such as Johns-Manville Corp. and Pittsburgh Corning, and to 750 manufacturing plants.²⁴ Cape sold asbestos direct to customers in South Carolina, as well.²⁵ Cape was aware that its asbestos could ultimately expose people in any of the 50 states, regardless of where the products were manufactured.²⁶ Cape is therefore fundamentally different from Atlas Turner, which manufactured a product, spray limpet insulation, from the asbestos fiber it mined and sold that product to customers in the United States, including in South Carolina. **Second**, the conduct of Atlas Turner touched people who used or worked around its products. Cape is different—its conduct touched every person who used or worked around **any asbestos-containing product** made by a multitude of manufacturers containing Cape asbestos—*the evidence in this case will be that there are thousands of job sites in South Carolina where Cape asbestos was used in all manner of products made by scores of companies.*²⁷

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

Where Suits Have Been Filed and States We Shipped Asbestos To; Ex. 8, North Am. Asbestos Corp., Customer List (Oct. 6, 1976).

²⁴ See *supra* note 24.

²⁵ Ex. 7; Ex. 8, NAAC Customer Lists; Ex. 9, NAAC Sales List.

²⁶ Ex. 10, Deposition of Richard Gaze at 26, *Yandle v. PPG Indus., Inc.*, No. TY-74-3-CA (E.D. Tex. June 4–5, 1975).

²⁷ Receiver for Cape PLC’s Proposed Amended Third-Party Complaint, *Tibbs v. 3M Co.*, No. 2023-CP-40-01759 (S.C. Ct. Com. Pl. June 20, 2025).

Specifically, Cape's moral fraud was the product of company policy—as was the case with Atlas Turner—but far more ruthless and deliberate in terms of concealing assets that could be answerable to asbestos claimants to whom Cape deemed it has no "moral responsibility," and more egregious than Atlas Turner's conduct in terms of its current and past disrespect for the South Carolina judicial system.²⁸ In short, Cape's conduct disrespecting the South Carolina judicial system exceeds that of Atlas Turner's.

- c. *Both Cape and Atlas Turner continued to sell asbestos products after they were aware of the health hazards of asbestos, but Cape knew more, and Cape went to greater lengths to hide its further sales.*

The *Welch* decision recognized that Atlas Turner continued to sell "pernicious products . . . for profit even after the lethal risk these products posed was known," and that when it was later sued by American workers, Atlas Turner claimed it would offend "traditional notions of fair play" and due process guarantees if the court were to exercise jurisdiction over the company.²⁹ Atlas Turner's knowledge of the dangers of asbestos exposure illuminated the scope of Atlas Turner's moral fraud, and is directly applicable to Cape, as well.³⁰

Here, the evidence shows that Cape (1) knew very early that even small doses of asbestos could cause mesothelioma, and covered up that knowledge for decades; (2) affirmatively lied about the amosite's propensity to cause mesothelioma (it knew that it did, but said publicly and to its customers it did not); (3) threatened to economically ruin a South African village doctor who was caring for ten mesothelioma patients who worked at Cape asbestos mines if he did not remain quiet about the dangers of asbestos exposure, and (4) when faced with liability for flooding the market

²⁸ Ex. 11, Telex from A. Penna to S. Milwild (July 4, 1977).

²⁹ *Welch*, 916 S.E.2d 320, 331.

³⁰ *Id.*

with its asbestos, closed its U.S. subsidiary and absconded back to England.³¹ And then, in a truly remarkably act of defiance and fraud on U.S. workers and the U.S. judicial system itself, Cape—which supposedly exited the U.S. domestic market for asbestos when it closed its Chicago sales subsidiary—hatched a scheme to continue to sell asbestos to customers in the United States through what it described as a camouflaged shell entity in Lichtenstein designed to disguise from "plaintiffs in future US asbestos litigation" (Cape's words) the fact that the company was still selling asbestos in this country.³²

Plaintiffs' counsel described Cape's moral fraud in the *Park* case in its Motion to Appoint a Receiver citing publicly available documents from litigation against Cape in the 1970s and other Cape-associated entities.³³ These documents outline the moral fraud allegations against Cape:

1. Cape established in 1953 a "one-man" subsidiary in the United States—North American Asbestos Corporation ("NAAC")—to coordinate deliveries of Cape asbestos to US purchasers.
2. Cape dominated NAAC's decision making in all respects such that NAAC had no independent personality and was a mere division of Cape.
3. NAAC and Cape coordinated efforts to rebut publicly emerging information about the health dangers of asbestos exposure.
4. Cape, and later NAAC, refused to participate in litigation involving US asbestos plaintiffs because, according to Cape executives, Cape had no "moral responsibility" to US workers.

³¹ See, e.g., Ex. 12, Memo from Gaze to Mendelle (July 24, 1964) (warning Cape personnel about asbestos hazards); Ex. 13, Letter from R. Cryor to R. Gaze (Nov. 20, 1969) (Cape controlling NAAC's customer relationships—showing Cape's domination of NAAC); Ex. 14, Memo to NAAC File re Liquidation of NAAC (April 7, 1978) (detailing Cape's liability-avoidance scheme post-dissolution of NAAC).

³² See, e.g., Ex. 15, Memo from A. Sarabia to Meyer (Jan. 23, 1978) (detailing Cape's liability-avoidance scheme post-dissolution of NAAC); Ex. 14.

³³ See generally, Motion to Appoint Receiver, *Park v. Armstrong Int'l, Inc.*, No. 2021-CP-40-02727 (S.C. Ct. Com. Pl. Mar. 6, 2023).

5. Cape's litigation avoidance strategy was based in part on legal advice from UK counsel and US counsel (Lord Bissell and Brooke, a Chicago firm, now Trout Pepperman Locke).
6. Cape's strategy was to sell asbestos to U.S. customers, despite its private knowledge of the dangers of asbestos exposure, and then retreat to England where U.S. default judgments would not be enforced.
7. Cape set up a phantom company in Liechtenstein designed to camouflage its connection to Cape, but was in fact Cape, to continue to sell asbestos in the US after Cape closed NAAC and retreated to England.³⁴

d. *Atlas Turner refused to meaningfully respond to U.S. litigation, but Cape fully walked away from the United States – a moral fraud it continues to carry on in obstructing the Receiver in this case.*

Cape and Atlas Turner followed the same playbook.³⁵ **First, Atlas Turner:** As the court explained in *Welch*, Atlas Turner participated in U.S. litigation, but only to a degree.³⁶ Atlas had "long experience" as a defendant in asbestos litigation in the United States—and indeed, is still "participating" in cases such as *Welch*.³⁷ As further outlined in *Welch*, Atlas Turner first asserted that it was not subject to jurisdiction in U.S. courts.³⁸ When that strategy failed, Atlas objected to producing documents based on a Quebec "blocking statute" even after U.S. courts—including the United States Supreme Court—had uniformly ruled that the blocking statute lacked effect.³⁹ Then—still under the guise of “participating” in the *Welch* case—Atlas refused to produce a corporate witness because, it claimed, there was no such witness available.⁴⁰ This Court and South Carolina Supreme Court rejected that strategy, too.⁴¹ Finally, when "that ploy fail[ed]," as the

³⁴ *See generally id.*

³⁵ *See Welch*, 916 S.E.2d 320, 331.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 329-32.

³⁹ *Id.* at 327.

⁴⁰ *Id.* 327-30.

⁴¹ *Id.*

Welch court noted, Atlas Turner simply refused to abide by lawful court orders.⁴² Atlas had other options, as the Supreme Court noted—it could have complied with the court's orders and raised disputed issues again at trial but it instead “acted as if a ruling against them granted it license to ignore its responsibilities. Such conduct has its consequences.”⁴³

After Cape settled an early Texas asbestos products liability case in 1977, Cape decided to refuse to participate *at all* in cases filed by U.S. plaintiffs and instead took default judgments based on its bet that U.K. courts were unlikely to enforce an American default judgment.⁴⁴ While Atlas Turner went through the motions to suggest that it was participating in cases filed by U.S. plaintiffs, Cape walked off the litigation playing field altogether.⁴⁵ Cape first removed itself from U.S. litigation, and then soon after ordered the dissolution of its U.S. agent NAAC, thus removing NAAC from litigation, as well.⁴⁶

Importantly, Cape did *not* stop selling asbestos in the United States. Instead, it concocted a scheme to conceal its identity to U.S. litigants and continued selling the same South African asbestos fibers with the use of a Lichtenstein pass-through entity, Associated Minerals Corporation (“AMC”), to the same list of customers in the U.S. market. Anthony Penna, in-house counsel for Cape, referred to this scheme, which also included re-branding the entire NAAC operation as an

⁴² *Id.*

⁴³ *Welch, Welch*, 916 S.E.2d 320, 334-35.

⁴⁴ *See, e.g.*, Ex. 15.1, Letter from A. Penna to M. Meyer (July 10, 1978) (detailing Cape’s default strategy).

⁴⁵ *See id.*

⁴⁶ The decision to liquidate NAAC occurred notwithstanding consistent years of record profits from Cape’s sale of asbestos fiber in the United States. *See, e.g.* Ex. 16, Charter, Annual Report (1976), at Cape_Receiver_00075720, Cape_Receiver_00075751-52 (reporting £10.2 million of operating profit “in spite of difficult trading conditions, with the “greatest increase” in improved profit “arising in the mining division, which raised total tonnage both mined and sold,” even despite “substantial price increases”); Ex. 17, Charter, Annual Report (1977), at Cape_Receiver_00075769,-75773 (reporting another “record year” from Cape with pre-tax profit of £14.2 million, with the “mining division again perform[ing] exceptionally well”).

independent entity under a new name, Continental Products Company (“CPC”), as only “a difference in form.”⁴⁷

Cape disguised this scheme even from NAAC’s then-president, Charles Morgan, when Penna asked Morgan to consider opening CPC. While Cape averred that Morgan was well aware of the connection to Cape,⁴⁸ in reality, the true scheme was on a need-to-know basis, and Morgan did not need to know anything. He was simply Cape’s U.S. puppet. Morgan testified that Penna “said he was the attorney representing Associated Minerals Corporation.”⁴⁹ Morgan testified that he did not know that Penna was contacting him on behalf of Cape.⁵⁰ He did not know who owned AMC, and no one had suggested to him that there was a relationship between Cape and it.⁵¹

⁴⁷ Ex. 18, Testimony of A. Penna, Mar. 14, 1988, at Cape_Receiver_00132247 (“It was a difference in form; and, as I have said, the Morgan company, new company, CPC, did carry on very much the same role that NAAC had carried on in trading terms.”); *id.* at Cape_Receiver_00132236 (“Our mining companies wished to continue selling asbestos in the United States, yes. . . . There needed to be an organization which could liaise with the customers.”), *id.* at Cape_Receiver_00132247 (“Certainly, Howard Tanner, the Sales Director of the South African mining companies was extremely keen to ensure that sales to America, that is there could be some continuation of sales to American customers.”).

⁴⁸ *Id.* at Cape_Receiver_00132215 (“Q. And also the reason why you did not wish the new arrangements [related to Cape’s involvement in setting up CPC] to become publicly known? A. Yes, I did. I think that it probably omitted one additional reason – that certainly Mr. Morgan in his new entity would not have wanted it to be disclosed that he was dealing with a company that was still related to Cape.”).

⁴⁹ Ex. 19, Deposition of C. Morgan, Feb. 20, 1981, at Cape_Receiver_00096003.

⁵⁰ *Id.* at Cape_Receiver_00096063-4 (“Q. When Tony Penna contacted you on behalf of the Lichtenstein corporation you knew, did you not, in fact he was actually contacting you on behalf of Cape Asbestos? A. No, Sir, I did not know that.”).

⁵¹ *Id.* at Cape_Receiver_00096064 (“Q. Do you know who owns the Lichtenstein corporation? A. No, Sir. Q. Has anyone ever suggested to you that Cape Asbestos has some ownership in the Lichtenstein corporation, Associated Minerals Corp.? A. Definitely not. Q. Has anyone ever suggested to you that any of the principals of Cape Asbestos had some interest in that Liechtenstein corporation? A. No, Sir.”).

Once Morgan agreed to establish CPC, Cape's lawyers at the Lord Bissell firm in Chicago drew up the incorporation documents.⁵² Rather than establishing a direct connection between the newly formed CPC and a Cape-named company, Penna spearheaded the creation of a Liechtenstein company, AMC, a seemingly unrelated entity, which was in truth an Oppenheimer subsidiary. As Penna described, "everyone was concerned whether they were mining companies or Cape Industries or any company that was a party to these sales should not by its actions put either the mining companies or Cape at risk."⁵³ "The Lichtenstein company was a separately constituted company but it certainly had no direct employees of its own. . . . It was primarily an invoicing company."⁵⁴ Cape's fingerprints were all over the deal. Confronted with evidence, Penna was forced to admit, "Yes, it seems to be contemplated that Cape Asbestos Fibres would subscribe the initial capital."⁵⁵

Even before NAAC closed, Morgan reached out to customers to let them know of the formation of CPC, thereby ensuring a seamless sales transition between the companies.⁵⁶ To

⁵² *Id.* Cape_Receiver_00095988 ("Q. Who drew the Articles of Incorporation? A. Mr. Max Meyer. At least I asked him to do this work for me. Who actually did the work I couldn't say.").

⁵³ Ex. 18 at Cape_Receiver_00132246.

⁵⁴ *Id.* at Cape_Receiver_00132239-40.

⁵⁵ *Id.*

⁵⁶ Ex. 19 at Cape_Receiver_00096022. ("I advised them that North American Asbestos was being liquidated, it was no longer to be in the position to supply them with fiber, I had made a connection where I thought I could supply them with fiber, I would like their consideration very much."); *id.* at Cape_Receiver_00096003, Cape_Receiver_00096063-4 ("Q. When Tony Penna contacted you on behalf of the Lichtenstein corporation you knew, did you not, in fact he was actually contacting you on behalf of Cape Asbestos? A. No, Sir, I did not know that."); *id.* at Cape_Receiver_00096064 ("Q. Do you know who owns the Lichtenstein corporation? A. No, Sir. Q. Has anyone ever suggested to you that Cape Asbestos has some ownership in the Lichtenstein corporation, Associated Minerals Corp.? A. Definitely not. Q. has anyone ever suggested to you that any of the principals of Cape Asbestos had some interest in that Liechtenstein corporation? A. No, Sir.").

ensure the success of the new venture, Morgan testified that CPC received a \$12,000 check “[c]are from North American Asbestos” to start the company.⁵⁷

CPC’s offices were in the same building as NAAC had previously had its offices: “North American Asbestos was on the 29th floor and Continental Products Corporation took a lease on the 12th floor.”⁵⁸ All of the NAAC filing cabinets that had been on the 29th floor were moved to the 12th floor, and all of the NAAC employees—Joan Holtze, Jean Canzoneri, and Sue Purrington—moved with Morgan to CPC.⁵⁹ CPC also took over the NAAC employees’ pension plan.⁶⁰ Joan Holtze testified that she sat at the same physical desk at CPC as she had when she worked for NAAC.⁶¹ In this way, Cape hoped to escape liability, but continued selling asbestos fibers to virtually the same contact list using a shell game and companies in Liechtenstein and South Africa to conceal any connection between it and the United States.

If Atlas Turner's conduct in refusing to “follow the rules like any other litigant” while acting as a litigant having actually appeared in a South Carolina court was sufficiently offensive to the South Carolina Supreme Court to satisfy the “moral fraud” requirement to appoint a prejudgment receiver, then certainly Cape's conduct does as well. Cape makes no pretense at following the rules—it refuses to show up—to defend its scheme of selling asbestos fiber into South Carolina and other states through a shell offshore company.⁶²

⁵⁷ *Id.* at Cape_Receiver_000 96000.

⁵⁸ *Id.* at Cape_Receiver_00095991.

⁵⁹ *Id.* at Cape_Receiver_00095992-3.

⁶⁰ *Id.* at Cape_Receiver_00096066.

⁶¹ Ex. 20, Deposition of J. Holtze, Apr. 12, 1979, at Cape_Receiver_00097838-9.

⁶² *See supra* notes 46-55.

Cape's plan has worked to date. U.S. plaintiffs pursued their default judgments in England and were rebuffed. The English court concluded, based on English law, that Cape had no “presence” in the United States, and therefore the defaults were not enforceable in England.⁶³

Cape's defiance of South Carolina courts continues to this day. The successor corporation to Cape is a third-party defendant in the above-captioned matter—Altrad Investment Authority S.A.S (“Altrad”), which purchased Cape in 2017—and Altrad has, as this court knows, absolutely refused to participate in discovery in this case.⁶⁴ Altrad has not produced a single document to the Receiver, and as a result, this court entered an order against Altrad for sanctions and other relief on May 23, 2024.⁶⁵ On November 22, 2024, Altrad subsidiaries Cape plc and Cape Intermediate Holdings Limited obtained an injunction against this Receiver individually and in his personal capacity in the High Court of England and Wales.⁶⁶ The order purportedly enjoined the receiver from acting as receiver for Cape worldwide, including before this court.⁶⁷ This was done in direct violation of the *Barton* Doctrine and the explicit language in the receivership order that the receiver “may not be sued outside this court without obtaining the receiver's consent or an order of this court prior to doing so.”⁶⁸

The South Carolina Supreme Court characterized the U.K. Order as “shocking and indefensible.”⁶⁹ Altrad has repeatedly threatened the Receiver with personal financial penalties

⁶³ See generally *Adams v Cape Industries plc*, (1990) 1 Ch 433 (CA).

⁶⁴ See Order Granting the Receiver for Cape PLC’s Motion for Sanctions and Motion for Adverse Inference as to the Altrad and Charter Third-Party Defendants, *Tibbs v. 3M Co.*, No. 2023-CP-40-01759 (S.C. Ct. Com. Pl. May 23, 2024).

⁶⁵ See generally *id.*

⁶⁶ See *Cape Intermediate Holdings Ltd. v. Protopapas*, [2024] EWHC 2999 (Ch) (Eng.).

⁶⁷ See *id.*

⁶⁸ Order Appointing Receiver at 3, *Park v. Armstrong Int’l, Inc.*, No. 2021-CP-40-02727 (S.C. Ct. Com. Pl. Mar. 17, 2023).

⁶⁹ *Welch*, 916 S.E.2d 320, 333-35.

and criminal sanctions with one objective in mind—to stymie the judicial process *here in South Carolina* that exists to serve South Carolina claimants. Altrad's conduct is merely a continuation of Cape's refusing to participate in U.S. litigation despite knowing that is in fact subject to U.S. law. Altrad's conduct goes far beyond not participating in U.S. litigation to include leveling threats against the Receiver and anyone else who furthers the work of the receivership – including South Carolina courts – for fulfilling his court-appointed obligations.⁷⁰

Having benefitted from a decades-long litigation avoidance scheme, Altrad's aggressive conduct to avoid potential U.S. liability in this case is no surprise. Altrad most recently demonstrated its zealous commitment to litigation avoidance above all else when its lawyers wrote to the Receiver threatening him against “taking any steps in respect of” a lawsuit that the Pittsburgh Corning Bankruptcy Trust filed against Cape in this Court, and alluding to potential criminal and monetary judgments against the receiver personally.⁷¹ Altrad's ability to continue to profit off of Cape's 1978 decision to leave the United States hangs in the balance in this litigation.

Further, Ran Oren, the sole director of Cape Intermediate Holdings Limited and the CEO of defendant Altrad Investment Authority S.A.S., threatened at least four insurance companies on Altrad letterhead against responding to a subpoena for insurance information issued *from this court*

⁷⁰ Altrad, through Cape Intermediate Holdings Limited, obtained an injunction against the Receiver in the High Court of England and Wales on November 22, 2024. The order includes a Penal Notice threatening criminal prosecution and imprisonment for anyone who knows of the order and fails to comply with it. Ex. 86, Penal Notice & Sealed Order (Nov. 22, 2024) (“IF YOU THE DEFENDANT DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED. ANY PERSON WHO KNOWS OF THIS ORDER AND DISOBEYS THIS ORDER OR DOES ANYTHING WHICH HELPS OR PERMITS ANY PERSON TO WHOM THIS ORDER APPLIES TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.”) (all capitals in original) .

⁷¹ See Ex. 21, Letter from Signature Litigation to P. Protopapas (May 19, 2025).

and in these proceedings.⁷² Mr. Oren is even today participating directly in what the court in *Welch* characterized as a "conscious intent to defeat, delay, or hinder" creditors of Cape, albeit by threats and intimidation against both the receiver and other U.S. entities to whom discovery requests have been served as a routine practice of the South Carolina judicial process.⁷³

- e. *Welch* did not limit the ability of a court to appoint a receiver over a non-defunct entity in danger of insolvency under S.C. Code § 15-65-10(4)

This Court appointed the Receiver over Cape under both S.C. Code § 15-65-10(4) and (5). Section (4) provides in relevant part that a receiver may be appointed when a corporation is “in imminent danger of insolvency.” The publicly available information regarding Cape suggests that Cape Intermediate Holdings Limited (“CIHL”) – the historical entity that mined raw asbestos fibers in South Africa and sold those fibers directly to U.S. customers and through their U.S. company, NAAC – is in danger of insolvency for two reasons.

First, CIHL is in imminent danger of insolvency because it is a non-operating shell company in a corporate structure subject to the full control of an ultimate parent – Altrad Investment Authority S.A.S. – that could eliminate, shift, or move the company at any time. This means that even though CIHL appears to declare an annual dividend each year, those are the profits

⁷² See, e.g., Ex. 22, Letter from R. Oren to Lloyd’s (May 7, 2025).

⁷³ See *id.*; see also *Welch*, 2025 WL 1450573, at *7. Altrad does not limit its use of threats and intimidation to U.S. parties. Just a week ago, a report was issued by the U.K. All-Party Parliamentary Group (APPG) on Occupational Safety and Health relating to a request by an asbestos victims support group for mesothelioma research funding by Altrad. The APPG was composed of Peers and Members of Parliament. The report notes that "Altrad is the ultimate parent company of Cape. It purchased Cape in 2017 and has benefitted substantially from the transaction." Ex. 23, APPG Report (2025) at 7. The report noted that, on numerous occasions, Altrad lawyers (representing the parent in claims against Cape) "threatened to report" claimants' attorneys to the Solicitors Regulations Authority for requesting or disclosing certain documents relating to Cape. See generally *id.* Mr. Oren's unfavorable conduct in dealing with the victims support group features prominently in the APPG Report. See *id.* at 10.

of another company that are being funneled up the corporate chain to Altrad, and those profits easily could be shielded from plaintiffs. This is how the system was designed.

CIHL is a UK-registered holding company with no employees, physical assets, customer contracts, or operational footprint.⁷⁴ It exists solely as a corporate shell.⁷⁵ Ran Oren, Altrad Investment Authority S.A.S.’s CEO, is the sole officer and director of CIHL.⁷⁶ CIHL acts as a pass-through entity for profits of four entities it wholly owns: Cape Insulation Ltd., Cape Industries Ltd., Cape Building Products Ltd., and Altrad Services Ltd.⁷⁷ Importantly, though, the three Cape entities – Cape Insulation Ltd., Cape Industries Ltd., and Cape Building Products Ltd. – are legacy Cape companies that generate no revenue.⁷⁸

Altrad Services Ltd., which became a CIHL subsidiary *after* Altrad purchased Cape in 2017, is the only operational entity in the CIHL structure. In 2024, for example, Altrad Services Ltd. declared a £ 24,769,000 dividend based on its operating profits for that year.⁷⁹ Because CIHL wholly owns Altrad Services Ltd., that full dividend went to CIHL. CIHL, in turn, did not hold any portion of the dividend itself, but instead declared the full £ 24,769,000 as a dividend to its shareholder.⁸⁰ Because of this, it is unclear whether CIHL holds any funds at all at any given moment – let alone sufficient funds to pay a judgment in the *Park* claim.

⁷⁴ Ex. 24, CIHL Annual Report 3, 12, 14 (2025) (“Cape Intermediate Holdings had no employees in the current or prior year.”); *id.* at 3 (“The Company is a non-trading holding company”).

⁷⁵ *See id.* at 13 (“the director was not remunerated for his services to the Company during the year. No director accrued retirement benefits . . . during the current or previous year. [CIHL] had no employees during the current or prior year.”).

⁷⁶ *Id.* at 8.

⁷⁷ *See id.* at 13; Ex. 25, Altrad Services Ltd. Annual Report 33 (2025); Ex. 26, Cape Insulation Ltd. Annual Report 9 (2025); Ex. 27, Cape Industries Ltd. Annual Report 9 (2025); Ex. 28, Cape Building Products Ltd. Annual Report 9 (2025).

⁷⁸ Ex. 26 at 3; Ex. 27 at 3; Ex. 28 at 3.

⁷⁹ *See* Ex. 25 at 9.

⁸⁰ *See* Ex. 24 at 7 (declaring 24,769,000 as dividends received for 2024).

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

As previously mentioned, Altrad purchased Cape in 2017. Altrad publishes financial results are part of a “Group” filing of all entities related to Altrad. According to Altrad’s Interim Consolidated Financial Statements dated February 28, 2025, CIHL does not appear to maintain funds to pay any asbestos claims. Instead, Altrad reports only that “Management believes that, assuming no significant deterioration in business performance and no material change in legal precedence or judgments, the Group will be able to fund its subsidiary Cape Claims Services Limited to meet all claims to be settled under the Scheme of Arrangement settlement plan and the Group has sufficient funds to satisfy all other *UK claims* settled outside the Scheme of Arrangement.”⁸¹

The Scheme of Arrangement to which Altrad refers is a 2006 court-ordered scheme for the payment of asbestos disease claims from former UK employees of certain Cape subsidiaries.⁸² According to a 2022 annual report, Altrad Group had set aside £118 million to address certain *non-U.S.* historical claims relating to asbestos exposure, but also disclosed AIA’s letter of support of it as a going concern.⁸³ However, according to an April 2025 news article, “Altrad’s spokesperson

⁸¹ Ex. 29, Altrad Grp., Interim Consolidated Financial Statements at 32 (Feb. 28, 2025) (emphasis added).

⁸² *See id.*

⁸³ Ex. 30, Altrad Services Limited Annual Report (2022), at Cape_Receiver_00248438 (“The Group continues to receive claims, from both individuals and insurance companies, in connection with historical alleged exposure to asbestos. Where claims are determined to have merit, the costs are provided for and claims are settled in the ordinary course, otherwise claims are defended.”).

told *The Times* it had never manufactured or sold asbestos but continues to support Cape's compensation scheme, which has paid over £60m to former employees who developed cancer following asbestos exposure, with a further £70m set aside."⁸⁴ This would mean Altrad only has £70m left to pay asbestos claims under the Scheme of Arrangement, and again, that is a restricted fund designed to pay certain UK claimants. A complete lack of clarity exists as to the actual amount of funds available to pay Cape claims as well as whether CIHL actually can access those funds. What is clear, though, is *none* of those funds are intended for U.S. plaintiffs.

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

Second, since 1978, Cape has avoided liability to U.S. litigants by refusing to appear in U.S. courts. As demonstrated above, Cape has gone to great lengths to protect itself against these liabilities, including creating a fake offshore company. Faced with the possibility that U.S. litigants may now be able to access funds to pay future claims, and given that Cape is not a stand-alone company, but instead is a holding company within a large corporate structure, one should expect that Altrad will do anything to avoid its historical liabilities, including rendering the company fully

⁸⁴ Ex. 31, *Former asbestos firm offers victims 3 m under gag clause*, Health & Safety Int'l, <https://www.healthandsafetyinternational.com/article/1913269/former-asbestos-firm-offers-victims-3m-gag-clause>

insolvent. Indeed, Altrad already has informed the Receiver that it has entered into a “settlement agreement” with itself (between two Altrad entities) to release Mohed Altrad from any liabilities not only in *Park* and *Tibbs* but also in every other future U.S. personal injury action against any Cape entity.⁸⁵

2. ***Welch does not limit the scope of this Court’s appointment of the Receiver over Cape***

a) *The Cape Receivership Order does not contain the same limitations as the Atlas Turner Receivership Order*

The Atlas Turner appointment order was confined to appointing a Receiver to marshal Atlas Turner’s insurance assets, and the *Welch* opinion recognized that limitation on the Atlas receiver’s powers to marshal such assets.⁸⁶ The receivership court appointed the Receiver “with the power and authority [to] fully administer **all insurance assets** of Atlas Turner, Inc.,” and specified that the order “includes the right and obligation to **administer any insurance or indemnification assets of Atlas** as well as any claims related to the actions or failure to act of Atlas insurance carriers or other entities, including, but not limited to the officers, directors and/or shareholders of Atlas against which [] Atlas may have claims.”⁸⁷

The Cape Appointment Order includes no such limitation.⁸⁸ The receivership court appointed the Receiver “with the power and authority [to] fully administer **all assets of Cape**,” and specifying that the order included, but was “**not limited to**” “the right and obligation to

⁸⁵ Ex. 32, Cape, Altrad, and Sparrows, Agreement for Full and Final Settlement and Release of Claims (2025).

⁸⁶ See Order on Plaintiffs’ Motion to Appoint A Receiver, *Welch v. 3M Co.*, No. 2022-CP-40-03834 at 6 (S.C. Ct. Com. Pl. Jun. 21, 2023).

⁸⁷ *Id.* (emphasis added).

⁸⁸ See Cape Appointment Order, *Park v. Armstrong Int’l, Inc.*, No. 2021-CP-40-02727 at 1 (S.C. Ct. Com. Pl. Mar. 16, 2023).

administer any insurance assets of Cape as well as any claims related to the actions or failure to act of Cape’s insurance carriers.”⁸⁹

This difference stems, in part, from the relative participation of these entities in U.S. asbestos litigation: because Atlas appeared in U.S. litigation, this Court found that it needed a receiver to determine the scope of insurance resources available to pay claims when Atlas was not forthcoming with such information. Cape, on the other hand, refused to participate whole cloth, which necessitated a broader appointment in light of facts known from the motion to appoint a receiver as to Cape’s decades-old scheme of liability avoidance.

b) *The South Carolina Supreme Court did not require all receiverships to be limited to recovery of insurance assets.*

In the context of the Atlas Turner insurance assets receivership order, the South Carolina Supreme Court questioned the court’s definition of Insurance Assets – a definition *not* present in the Cape receivership order because, again, the Cape receivership is more broadly defined. The definition included the following: “other information which is reasonably calculated to lead to the discovery of admissible evidence about those insurance policies or any other assets which are related to, touch or are otherwise relevant to such insurance.”⁹⁰

The Court found that definition too broad in the context of an insurance assets receivership: “We find equity only allows insurance policies that have the potential to cover Mr. Welch’s injuries to be included in this definition, and we reverse and vacate the portion of this definition that allows the Receiver to have power over ‘any other assets which are related to, touch or are otherwise relevant to such insurance.’”⁹¹

⁸⁹ *Id.* (emphasis added).

⁹⁰ *Welch*, 916 S.E.2d 320, 334.

⁹¹ *Id.*

Nothing in the *Welch* order requires application of this holding to South Carolina receiverships generally. Indeed, the Court found that the “trial court properly gave the Receiver power to pursue claims in South Carolina’s jurisdiction to bring the Insurance Assets to bear covering Mr. Welch’s injuries.”⁹² The narrowed definition merely insured that the insurance-only receivership remained a receivership only over the insurance assets contemplated in the Receivership Order – not “every claim relating to Atlas Turner’s assets and business activities.”⁹³

Because the scope of the Cape receivership is different than that of Atlas Turner, and because the Cape Receivership Order does not contain the language the Supreme Court narrowed in the Atlas Turner Order, this narrowing language does not have any effect on the Cape receivership order.

B. The Third-Party Action is a declaratory judgment action falling within the scope of the Receivership Appointment Order

1. Welch has no impact on the Receiver’s ability to assert its declaratory judgment against Anglo American and De Beers in this case.

As this Court knows, the Receiver’s litigation in South Carolina ordinarily involves insurance companies, as the receiver is marshaling dormant insurance assets to respond to asbestos cases. Here, part of Cape’s plan was to set up NAAC to be intentionally underinsured, as its insurance appears to have been exhausted about the time NAAC was dissolved in 1978.⁹⁴ Cape Asbestos—the entity that owned NAAC—did not provide for *any* insurance for claims by injured U.S. workers exposed to their asbestos, but it did purchase coverage for U.K. claimants exposed

⁹² *Id.*

⁹³ *Id.*

⁹⁴ See Ex. 33, Letter from Meyer to Gaze (June 29, 1977); see also Ex. 18.1, Opening Statement of North Am. Asbestos Corp., *Pacello v. Johns-Manville Sales Corp.*, No. 80-CV-0080-2 (Colo. Dist. Ct. Boulder Cnty. Nov. 24, 1982).

to its asbestos-containing products Cape sold in England.⁹⁵ Consistent with the appointment order,⁹⁶ the Receiver's litigation here does not involve insurance companies. Rather, the litigation involves other entities that hold the legacy liabilities for Cape, either companies that were directly involved in directing the sale of asbestos in the United States, or entities that are legal successors to those entities. If the successor entities ever participate in discovery, the Receiver anticipates exploring whether these companies may hold such insurance or other relevant assets to pay viable asbestos claims.

The Receiver's Third-Party Complaint does not seek monetary damages. It is a declaratory judgment action seeking declarations that certain entities, including Anglo American and De Beers, were the alter egos of, or amalgamated with, Cape in its animation of NAAC to flood the U.S. market with raw asbestos fibers; close its U.S. subsidiary and abscond back to England when faced with liability for flooding the market with its asbestos; and hatch a scheme to continue to sell asbestos to customers in the United States through what it described as a camouflaged shell entity in Lichtenstein designed to disguise from "plaintiffs in future US asbestos litigation" (Cape's words) the fact that the company was still selling asbestos in this country.

These claims against the named third-party defendants, including Anglo American and De Beers, are Cape's assets directly relevant to South Carolina asbestos claims filed against Cape.

2. *The Receiver has not entered Cape's boardroom – nor does the Receiver seek to do so.*

The *Welch* case correctly notes that the Receivership order for the insurance assets of Atlas Turner "does not give the Receiver entry into the Atlas Turner boardroom or some vague right to

⁹⁵ Ex. 34, Deposition of Geoffrey Arthur Higham at 64-67, *Yandle v. PPG Indus., Inc.*, Nos. TY-74-3-CA & TY-74-13-CA (E.D. Tex. June 4, 1975).

⁹⁶ *See, e.g.*, Cape Appointment Order at 1 (appointing the Receiver "with the power and authority [to] fully administer all assets of Cape.") (emphasis added).

‘take over’ operation of the company.”⁹⁷ Nor does the receivership order in Cape.⁹⁸ The Receiver has no such intention (as his course of conduct has reflected), nor is any boardroom “take over” necessary for the Receiver to fulfill his court-appointed obligations.⁹⁹

Cape Intermediate Holdings Ltd (“CIHL”) is the receivership entity.¹⁰⁰ CIHL is a U.K.-registered holding company with no employees, no physical assets, no customer contracts, and no operational footprint.¹⁰¹ Ran Oren is the sole officer and director of CIHL.¹⁰² The English High Court issued a worldwide injunction after Altrad's lawyers misled the court to believe that CIHL operates a live business in danger of being taken over by the receiver.¹⁰³ Any CIHL revenue-generating operations, staff, and contractual obligations reside in different concerns and, since the Receiver’s appointment have, and will continue to, function without disruption (or any action by the receiver affecting their operations).

Further, the Cape Appointment Order allows the Receiver only the powers 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.”¹⁰⁴ The order included, but was not limited to “the right and obligation to administer any insurance assets of Cape as well as any claims related to the actions or failure to act of Cape’s insurance carriers.”¹⁰⁵

⁹⁷ *Id.* at 12.

⁹⁸ *Id.*; see also Cape Appointment Order, *Park v. Armstrong Int’l, Inc.*, No. 2021-CP-40-02727 at 1 (S.C. Ct. Com. Pl. Mar. 16, 2023).

⁹⁹ See *id.*

¹⁰⁰ See Clarification Order, *Park v. Armstrong Int’l, Inc.*, No. 2021-CP-40-02727 (S.C. Ct. Com. Pl. Nov. 5, 2024).

¹⁰¹ Ex. 24 at 3, 12, 14.

¹⁰² *Id.* at 8.

¹⁰³ See generally *Cape Intermediate Holdings Ltd. v. Protopapas*, [2024] EWHC 2999 (Ch) (Eng.).

¹⁰⁴ See Cape Appointment Order.

¹⁰⁵ *Id.*

These powers all relate directly to the Receiver’s ability to marshal Cape’s assets to pay valid asbestos claims filed against Cape – an ability that this Court deemed necessary because of Cape’s conscious choice not to participate in U.S. asbestos litigation. As this Court confirmed in its November 5, 2024 Order, “the Receiver’s litigation activity to date has been conducted within the scope of this Court’s [Park] Appointment Order.”¹⁰⁶

The Receivership Order grants the Receiver the authority to “engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape” to allow the Receiver to pursue litigation on behalf of Cape to protect its interests, including this Third-Party Action. Nothing in *Welch* disallows South Carolina receivers the ability to institute litigation on behalf of the entity in receivership. To the contrary, the South Carolina Supreme Court has

3. The Third-Party Action does not violate the Constitution

This Court already held that it has personal jurisdiction over Cape. *See* Order Denying Certain Third-Party Defendants’ Motions to Dismiss for Lack of Personal Jurisdiction at 73 (Dec. 6, 2023). It also explained that it has personal jurisdiction over the Third-Party Defendants under theories of veil-piercing and amalgamation under well-settled South Carolina law. *Id.* at 28-36. Movants offer no argument or reason for this Court to revisit that well-reasoned opinion.

Nor do their other constitutional arguments (which this Court has also already rejected) even purport to argue that a South Carolina court cannot exercise jurisdiction over a foreign corporation that it otherwise has personal jurisdiction over. Foreign companies are not immune from suit in this State under the dormant Commerce Clause, comity principles, or otherwise—as the South Carolina Supreme Court just made clear in *Welch* by approving the receivership over a

¹⁰⁶ Clarification Order, *Park et al. v. Armstrong Int’l, Inc. et al.*, No. 2021-CP-4002727 (Nov. 5, 2024).

foreign corporation and explaining that jurisdiction includes power to order that corporation to bring property (like causes of action and other intangible property) within the state. *See Welch*.

III. Conclusion

For the foregoing reasons, the Receiver respectfully requests that this Court deny Anglo American and De Beers' motion.

Respectfully submitted,

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July 18, 2025
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

JOHN A. TIBBS and MARGARET B. TIBBS,
Plaintiffs,

v.

3M COMPANY *et al.*,

Defendants.

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

In Re:

Asbestos Personal Injury Litigation
Coordinated Docket

**NOTICE OF AND MOTION TO CONFIRM
APPOINTMENT OF RECEIVER**

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

Third-Party Plaintiff,

v.

ANGLO AMERICAN PLC, individually and as
successor in interest to ANGLO AMERICAN
CORPORATION OF SOUTH AFRICA LTD.;
DE BEERS PLC, individually and as successor
in interest to DE BEERS S.A.; DE BEERS
CENTENARY AG; DE BEERS
CONSOLIDATED MINES LTD., n/k/a DE
BEERS CONSOLIDATED MINES
PROPRIETARY LTD.; DE BEERS UK LTD.;
DE BEERS JEWELLERS LTD.; DE BEERS
JEWELLERS US, INC.; ANGLO AMERICAN
US HOLDINGS INC.; Element Six US Corp.;
ELEMENT SIX TECHNOLOGIES US CORP.;
Element Six Technologies (OR) Corp.; First
Mode Holdings, Inc.; PLATINUM GUILD
INTERNATIONAL (U.S.A.) Jewelry Inc.;
Lightbox Jewelry Inc.; FOREVERMARK US
INC.; ANGLO AMERICAN CROP
NUTRIENTS (U.S.A.), LLC; CHARTER
CONSOLIDATED LTD.; ESAB
CORPORATION; CENTRAL MINING &
INVESTMENT CORPORATION LTD.; CAPE
HOLDCO LTD.; The Law 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.

Third-Party Plaintiff Peter D. Protopapas, in his capacity as the Court-appointed Receiver (the “Receiver”) for Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) (“Cape”), by and through undersigned counsel, hereby respectfully files this Motion to Confirm his Appointment as Receiver for Cape in the above-captioned action (the “Tibbs Action”) pursuant to S.C. Code Ann. Sec. 15-65-10(4) and (5) and Rule 66 of the South Carolina Rules of Civil Procedure.¹

INTRODUCTION

The Receiver believes and maintains that the Receiver’s litigation activity in the Tibbs Action, which initiated a third-party action to adjudicate the parties responsible for Cape’s historical liabilities and the duties owed by those entities to Cape, has been conducted within the scope of this Court’s March 17, 2023 Appointment Order in *Park v. Armstrong Int’l, Inc. et al.*,

¹ As more fully discussed in the Receiver’s Comprehensive Overview of Receiverships under the Jurisdiction of the Chief Judge of the Asbestos Docket filed on July 11, 2025, Rule 66, SCRCF, addresses how receivers are to proceed once appointed. Rule 66(a), SCRCF, prevents the dismissal of the action where the receiver was appointed except by order of the court and notes “The practice in the administration of estates by receivers . . . shall be in accordance with the laws of this State. In all other respects the action in which the appointment of the receiver is sought *or which is brought by or against a receiver is governed by these rules.*” (Emphasis added). Further, Rule 66(b), SCRCF, 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 to compromise and settle such as are of a doubtful value. He may also sue and defend in the name of the debtor where it is necessary or proper for him to do so.”

No. 2021-CP-4002727 (the “Park Action”), as was clarified and confirmed by this Court in its November 5, 2024 Order. However, in response to the Supreme Court of South Carolina’s recent Order dated June 26, 2025,² and out of an abundance of caution, the Receiver files this Motion seeking to confirm his appointment as Receiver for Cape specifically in the Tibbs Action to pursue activities that are necessary to address the liabilities for injured South Carolinians.

PROCEDURAL BACKGROUND

As this Court is already aware, on March 6, 2023, Plaintiffs in the Park Action moved for an Order Appointing a Receiver over Cape. *See* Motion to Appoint Receiver, *Park et al. v. Armstrong Int’l, Inc. et al.*, No. 2021-CP-4002727 (Mar. 6, 2023) (“Park Appointment Motion”), at 1. The Park Appointment Motion was made under S.C. Code Ann. Sec. 15-65-10(4) and (5)³. *Id.* at 1. The Park Appointment Motion described Cape’s longstanding litigation-avoidance strategy – starting nearly half a 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 and ultimately flee the [United States], knowing that nearly all [its] assets were in jurisdictions . . . where judgments in those lawsuits could not be enforced.” *Id.* at 2. On March 17, 2023, this Court issued an Order appointing Peter D. Protopapas as Receiver for Cape pursuant to S.C. Code Ann §§ 15-65-10(4) and (5). *See* Order, *Park et al. v. Armstrong Int’l, Inc. et al.*, No. 2021-CP-4002727 (March 17, 2023) (“Park Appointment Order”). The Park Appointment Order set forth, in detail, the Receiver’s powers and rights in this role. *See id.*

² *Tibbs v 3M Company*, et al. Nos. 2024-001423, 2024-001499, 2024-00916, 2024-002114, 2024-002116, 2024-002117 and 2025-000052 (S.C. Order dated June 26, 2025) (hereinafter “June 26 Order”).

³ Section 15-65-10(4) and (5) authorize the appointment of a receiver where (4) a corporation has been dissolved, is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights; and (5) “[i]n such other cases as are provided by law or may be in accordance with the existing practice,” respectively.

On June 30, 2023, in the fulfillment of his duties under the Park Appointment Order, the Receiver filed a Third-Party Complaint in the Tibbs Action asserting claims against Third-Party Defendants, alleging that they 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.

On November 1, 2024, the Receiver moved to clarify the Park Appointment Order, seeking confirmation that the Receiver’s litigation activity to date, including in the Tibbs Action, had been conducted within the scope of this Court’s Park Appointment Order. By Order dated November 5, 2024 (the “Clarification Order”), the Court granted the Receiver’s Motion, clarifying that the Park Appointment Order “extend[ed] to the right and obligation to administer any claims related to the actions or failure to act of any entity related to or responsible for Cape,” and further confirming “that the Receiver’s litigation activity to date has been conducted within the scope of this Court’s [Park] Appointment Order.” *See* Clarification Order, at 3.

On June 26, 2025, the Supreme Court directed this Court to (1) “[e]nsure the receiver has been authorized to conduct its work by an order filed in the specific case as to which the work is to take place,” and (2) “[e]nsure that such an order is based on findings of fact sufficient under *Welch* to justify the order, and that the receiver's scope of authority is limited as set forth in *Welch*.”⁴ In *Welch v. Advance Auto Parts, Inc.*, the Supreme Court addressed (1) the propriety of appointing a pre-judgment receiver over non-defunct companies under S.C. Code § 15-65-10(5); (2) the required factual basis for an appointment order in those circumstances; and (3) limitations on the scope of the receiver's authority based on the specific language in the appointment order at

⁴ *Id.*

issue.⁵ Given the Supreme Court’s recent Order, and out of an abundance of caution, the Receiver respectfully moves this Court for an Order confirming his appointment as Receiver in the Tibbs Action and granting the Receiver authority to pursue activities that are necessary to address the liabilities for injured South Carolinians.

FACTUAL BACKGROUND⁶

A. The Foundation of Cape’s Moral Fraud

The Park Appointment Motion included over 30 exhibits from Cape, NAAC, and their legal counsel that address the factual allegations relating to Cape's premeditated liability avoidance scheme, including (1) its domination of the U.S. market for amosite, (2) its strategy to accept default judgments and then abscond to England, (3) its knowledge of, but rejection of, U.S. laws involving liability for sale of defective products, and (4) its scheme to continue to profit from the U.S. market for asbestos via a fake entity in Lichtenstein. Since appointment in 2023, the Receiver has amassed a far broader collection of Cape documents from various sources here in the United States as well as from England and Australia that further illustrate the fraud.

By way of context for Cape’s position in the asbestos industry, asbestos is a mineral that is mined from the ground.⁷ There are three commercial types of asbestos: chrysotile, amosite and crocidolite.⁸ Amosite and crocidolite—which are by far the most harmful to humans—were mined

⁵ No. 2023-001096, 2025 WL 1450573, at *9-12 (S.C. May 21, 2025)

⁶ In an effort to avoid overwhelming the e-filing system and duplicating many exhibits that are already in the record, the documents referred to herein reflect the respective exhibit numbers in the Report of the Receiver Relating to the Factual Predicate Underlying the Cape Appointment Order, filed with this Court on July 11, 2025.

⁷ Ex. 1, Robert L. Virta, *Asbestos: Geology, Mineralogy, Mining, and Uses*, U.S. Geological Survey Open-File Rep. 02-149, at 5 (2002).

⁸ *See Id.*

by Cape in South Africa.⁹ Asbestos fiber is processed at the mines and then sold to manufacturers of asbestos-containing products, such as pipe insulation and brake linings.¹⁰

Cape had a near monopoly on the global supply of amosite and crocidolite.¹¹ There were fewer than five principal asbestos mining companies world-wide, such as Cape.¹² Unlike the small group of miners, the defendant in *Welch*—Atlas Turner—was one product manufacturer of many hundreds.¹³ Most of the manufacturers of asbestos-containing thermal insulation products in the United States filed for bankruptcy, and more than 60 of these companies established trusts to compensate asbestos victims.¹⁴

Two points underlying this brief history are important to understanding a critical factual difference between Cape and Atlas Turner, Inc. (“Atlas Turner”), the defendant in *Welch*, as asbestos companies. **First**, certain asbestos mining companies, like Cape, were the source of all the amosite and crocidolite asbestos fibers used in South Carolina and the rest of the United States.¹⁵ Cape in particular was the spigot through which hundreds of thousands of tons of asbestos

⁹ Ex. 2, Jock McCulloch, *Surviving Blue Asbestos: Mining and Occupational Disease in South Africa* 115 (2002).

¹⁰ Ex. 1 at 13.

¹¹ Ex. 2.1, Jock McCulloch, *Asbestos Blues: Labour, Capital, Physicians & the State in South Africa* 27 (James Currey 2002).

¹² *Id.* at 30.

¹³ See, e.g., Ex. 3, “Asbestos Manufacturers,” The Mesothelioma Center (Nov. 14, 2024), <https://www.asbestos.com/companies/>.

¹⁴ Ex. 4, U.S. Gov’t Accountability Off., GAO-11-819, *Asbestos Injury Compensation: The Role and Administration of Asbestos Trusts Highlights* (2011) (report noting that “about 100 companies have declared bankruptcy at least partially due to asbestos-related liability” and that “since 1988, 60 trusts have been established to pay claims”).

¹⁵ Ex. 5, J.S. Harington & N.D. McGlashan, *South African Asbestos: Production, Exports, and Destinations, 1959–1993*, 33 AM. J. INDUS. MED. 321, 323 (1998) (reporting that in the early-1960s North America was a major recipient of South-African amosite and crocidolite exports); Karen Selby, *Mesothelioma in South Africa*, ASBESTOS.COM (Apr. 17, 2025), <https://www.asbestos.com/mesothelioma/south-africa/> (noting South Africa supplied ≈97 % of the world’s crocidolite and “practically all” amosite and that the mines were owned by companies including Cape Asbestos); See also, e.g., North American Asbestos Corporation, “States Where

flowed from its mines to almost 40 states, over 500 individual customers such as Johns-Manville Corp. and Pittsburgh Corning as well as to 750 manufacturing plants.¹⁶ Cape sold asbestos direct to customers in South Carolina.¹⁷ Cape was aware that its asbestos could ultimately expose people in any of the 50 states, regardless of where the products were manufactured.¹⁸ This is fundamentally different from Atlas Turner, which manufactured a product, spray limpet insulation, from the asbestos fiber it mined and sold that product to customers in the United States, including in South Carolina.

Second, the conduct of Atlas Turner touched people who used or worked around **its** products. Cape is different—its conduct touched every person who used or worked around **any product** made by a multitude of manufacturers containing Cape asbestos—the evidence in this case will be that there are thousands of job sites in South Carolina where Cape asbestos was used in all manner of products made by scores of companies.¹⁹

Cape's moral fraud was the product of company policy as Cape deemed it has no "moral responsibility" to U.S. citizens or its judicial system.²⁰ The scale of Cape's asbestos fiber sales into the U.S. market, the scope of its unique knowledge of the health hazards of asbestos as a result of its large-scale mining operations in Africa and manufacturing operations in England, and the ruthlessness of its campaign to avoid U.S. liability from the raw asbestos fibers it sold to be used

Suits Have Been Filed and States We Shipped Asbestos To," at Cape_Receiver_00138819–21; North Am. Asbestos Corp., Customer List (Plaintiff's Ex. WEY 5050, Cape_Receiver_00138265–282) (Oct. 6, 1976).

¹⁶ See *supra* note 15.

¹⁷ Ex. 7; Ex. 8, NAAC Customer Lists; Ex. 9, NAAC Sales List.

¹⁸ Ex. 10, Deposition of Richard Gaze at 26, *Yandle v. PPG Indus., Inc.*, No. TY-74-3-CA (E.D. Tex. June 4–5, 1975).

¹⁹ Receiver for Cape PLC's Proposed Amended Third-Party Complaint, *Tibbs v. 3M Co.*, No. 2023-CP-40-01759 (S.C. Ct. Com. Pl. June 20, 2025).

²⁰ Ex. 11, Telex from A. Penna to S. Milwild (July 4, 1977).

in every state in this country—a campaign that continues to this day—provides the foundation for Cape’s unparalleled moral fraud.

Here, the evidence shows that Cape (1) knew that even small doses of asbestos could cause mesothelioma, and covered up that knowledge for decades; (2) affirmatively lied about the amosite’s propensity to cause mesothelioma (it knew that it did, but said publicly and to its customers it did not); (3) threatened to economically ruin a South African village doctor who was caring for ten mesothelioma patients who worked at Cape asbestos mines if he did not remain quiet about the dangers of asbestos exposure, and (4) admitted that the law in the United States attached liability to suppliers of hazardous products. But since Cape disagreed with that law and wanted to continue taking advantage of the market for asbestos in states like South Carolina, it continued to reap profits from flooding the market with its asbestos, then closed its U.S. subsidiary when litigation was threatened and absconded back to England when asbestos claims began to materialize.²¹ And then, in a truly remarkably act of defiance and fraud on U.S. workers and the U.S. judicial system itself, Cape—which supposedly exited the U.S. domestic market for asbestos when it closed its Chicago sales subsidiary—hatched a scheme to continue to sell asbestos to customers in the United States through what it described as a camouflaged shell entity in Lichtenstein so as to disguise from "plaintiffs in future US asbestos litigation" (Cape’s words) the fact that the company was still selling asbestos in this country.²²

²¹ See, e.g., Ex. 12, Memo from Gaze to Mendelle (July 24, 1964) (warning Cape personnel about asbestos hazards); Ex. 13, Letter from R. Cryor to R. Gaze (Nov. 20, 1969) (Cape controlling NAAC’s customer relationships—showing Cape’s domination of NAAC); Ex. 14, Memo to NAAC File re Liquidation of NAAC (Apr. 7, 1978) (detailing Cape’s liability-avoidance scheme post-dissolution of NAAC).

²² See, e.g., Ex. 15, Memo from A. Sarabia to Meyer (Jan. 23, 1978) (detailing Cape’s liability-avoidance scheme post-dissolution of NAAC); Ex. 14.

Plaintiffs' counsel also described Cape's moral fraud in the Park Appointment Motion.²³ The successor corporation to Cape is a third-party defendant in the above-captioned matter—Altrad Investment Authority S.A.S ("Altrad"), which purchased Cape in 2017—and Altrad has, as this court knows, absolutely refused to participate in discovery in this case.²⁴ Altrad has not produced a single document to the Receiver, and as a result, this court entered an order against Altrad for sanctions and other relief on May 23, 2024.²⁵ The Park Appointment Motion was based on publicly available documents from litigation against Cape in the 1970s and against Cape-associated entities.²⁶ These documents outline the moral fraud allegations against Cape:

1. Cape established in 1953 a "one-man" subsidiary in the United States—North American Asbestos Corporation" (NAAC)—to coordinate deliveries of Cape asbestos to US purchasers.
2. Cape dominated NAAC's decision making in all respects such that NAAC had no independent personality and was a mere division of Cape.
3. NAAC and Cape coordinated efforts to rebut publicly emerging information about the health dangers of asbestos exposure.
4. Cape, and later NAAC, refused to participate in litigation involving US asbestos plaintiffs because, according to Cape executives, Cape had no "moral responsibility" to US workers.
5. Cape's litigation avoidance strategy was based in part on legal advice from UK counsel and US counsel (Lord Bissell and Brooke, a Chicago firm, now Trout Pepperman Locke).

²³ See generally Motion to Appoint Receiver, *Park v. Armstrong Int'l, Inc.*, No. 2021-CP-40-02727 (S.C. Ct. Com. Pl. Mar. 6, 2023).

²⁴ See Order Granting the Receiver for Cape PLC's Motion for Sanctions and Motion for Adverse Inference as to the Altrad and Charter Third-Party Defendants, *Tibbs v. 3M Co.*, No. 2023-CP-40-01759 (S.C. Ct. Com. Pl. May 23, 2024).

²⁵ See generally *id.*

²⁶ See, e.g., Motion to Appoint Receiver, *Park v. Armstrong Int'l, Inc.*, No. 2021-CP-40-02727.

6. Cape's strategy was to sell asbestos to US customers, despite its private knowledge of the dangers of asbestos exposure and then retreat to England where US default judgments would not be enforced.
7. Cape set up a phantom company in Liechtenstein designed to camouflage its connection to Cape, but was in fact Cape, to continue to sell asbestos in the US after Cape closed NAAC and retreated to England.²⁷

B. Cape's Continuing Moral Fraud

After settling an early Texas asbestos products liability case in 1977, Cape refused to participate at all in cases filed by U.S. plaintiffs and instead took default judgments based on its bet that U.K. courts were unlikely to enforce an American default judgment. First, Cape removed itself from U.S. litigation; then soon after, it ordered the dissolution of NAAC, removing it from litigation as well. Further, U.S. plaintiffs who previously pursued their default judgments in England were rebuffed. The English court concluded, based on English law, that Cape had no “presence” in the United States, and therefore the defaults were not enforceable in England.²⁸ At the time of appointment of the Receiver as part of the Park Action, Cape had not responded to the Complaint for more than a year after service.

Importantly, Cape did *not* stop selling asbestos in the United States. Instead, it concocted a scheme to conceal its identity to U.S. litigants and continued selling the same South African asbestos fibers with the use of a Liechtenstein pass-through entity, Associated Minerals Corporation (“AMC”), to the same list of customers in the U.S. market. Anthony Penna, in-house counsel for Cape, referred to this scheme, which also included re-branding the entire NAAC operation as an

²⁷ See generally *id.*

²⁸ See generally *Adams v Cape Industries plc*, (1990) 1 Ch 433 (CA).

independent entity under a new name, Continental Products Company (“CPC”), as only “a difference in form.”²⁹

Cape disguised this scheme even from NAAC’s then-president, Charles Morgan, when Penna asked Morgan to consider opening CPC. While Cape averred that Morgan was well aware of the connection to Cape,³⁰ in reality, the true scheme was on a need-to-know basis, and Morgan did not need to know anything. He was simply Cape’s U.S. puppet. Morgan testified that Penna “said he was the attorney representing Associated Minerals Corporation.”³¹ Morgan testified that he did not know that Penna was contacting him on behalf of Cape.³² He did not know who owned AMC, and no one had suggested to him that there was a relationship between Cape and it.³³

²⁹ Ex. 18, Testimony of A. Penna, Mar. 14, 1988, at Cape_Receiver_00132247 (“It was a difference in form; and, as I have said, the Morgan company, new company, CPC, did carry on very much the same role that NAAC had carried on in trading terms.”); *id.* at Cape_Receiver_00132236 (“Our mining companies wished to continue selling asbestos in the United States, yes. . . . There needed to be an organization which could liaise with the customers.”), *id.* at Cape_Receiver_00132247 (“Certainly, Howard Tanner, the Sales Director of the South African mining companies was extremely keen to ensure that sales to America, that is there could be some continuation of sales to American customers.”).

³⁰ *Id.* at Cape_Receiver_00132215 (“Q. And also the reason why you did not wish the new arrangements [related to Cape’s involvement in setting up CPC] to become publicly known? A. Yes, I did. I think that it probably omitted one additional reason – that certainly Mr. Morgan in his new entity would not have wanted it to be disclosed that he was dealing with a company that was still related to Cape.”).

³¹ Ex. 19, Deposition of C. Morgan, Feb. 20, 1981, at Cape_Receiver_00096003.

³² *Id.* at Cape_Receiver_00096063-4 (“Q. When Tony Penna contacted you on behalf of the Lichtenstein corporation you knew, did you not, in fact he was actually contacting you on behalf of Cape Asbestos? A. No, Sir, I did not know that.”).

³³ *Id.* at Cape_Receiver_00096064 (“Q. Do you know who owns the Lichtenstein corporation? A. No, Sir. Q. Has anyone ever suggested to you that Cape Asbestos has some ownership in the Lichtenstein corporation, Associated Minerals Corp.? A. Definitely not. Q. Has anyone ever suggested to you that any of the principals of Cape Asbestos had some interest in that Liechtenstein corporation? A. No, Sir.”).

Once Morgan agreed to establish CPC, Cape's lawyers at the Lord Bissell firm in Chicago drew up the incorporation documents.³⁴ Rather than establishing a direct connection between the newly formed CPC and a Cape-named company, Penna spearheaded the creation of a Liechtenstein company, AMC, a seemingly unrelated entity, which was in truth an Oppenheimer subsidiary. As Penna described, "everyone was concerned whether they were mining companies or Cape Industries or any company that was a party to these sales should not by its actions put either the mining companies or Cape at risk."³⁵ "The Lichtenstein company was a separately constituted company but it certainly had no direct employees of its own. . . . It was primarily an invoicing company."³⁶ Cape's fingerprints were all over the deal. Confronted with evidence, Penna was forced to admit, "Yes, it seems to be contemplated that Cape Asbestos Fibres would subscribe the initial capital."³⁷

Even before NAAC closed, Morgan reached out to customers to let them know of the formation of CPC, thereby ensuring a seamless sales transition between the companies.³⁸ To

³⁴ *Id.* Cape_Receiver_00095988 ("Q. Who drew the Articles of Incorporation? A. Mr. Max Meyer. At least I asked him to do this work for me. Who actually did the work I couldn't say.").

³⁵ Ex. 18, Testimony of A. Penna, Mar. 14, 1988, at Cape_Receiver_00132246.

³⁶ *Id.* at Cape_Receiver_00132239-40.

³⁷ *Id.*

³⁸ Ex. 19, Deposition of C. Morgan, Feb. 20, 1981, at Cape_Receiver_00096022. ("I advised them that North American Asbestos was being liquidated, it was no longer to be in the position to supply them with fiber, I had made a connection where I thought I could supply them with fiber, I would like their consideration very much."); *id.* at Cape_Receiver_00096003, Cape_Receiver_00096063-4 ("Q. When Tony Penna contacted you on behalf of the Lichtenstein corporation you knew, did you not, in fact he was actually contacting you on behalf of Cape Asbestos? A. No, Sir, I did not know that."); *id.* at Cape_Receiver_00096064 ("Q. Do you know who owns the Lichtenstein corporation? A. No, Sir. Q. Has anyone ever suggested to you that Cape Asbestos has some ownership in the Lichtenstein corporation, Associated Minerals Corp.? A. Definitely not. Q. has anyone ever suggested to you that any of the principals of Cape Asbestos had some interest in that Liechtenstein corporation? A. No, Sir.").

ensure the success of the new venture, Morgan testified that CPC received a \$12,000 check “[c]are from North American Asbestos” to start the company.³⁹

CPC’s offices were in the same building as NAAC had previously had its offices: “North American Asbestos was on the 29th floor and Continental Products Corporation took a lease on the 12th floor.”⁴⁰ All of the NAAC filing cabinets that had been on the 29th floor were moved to the 12th floor, and all of the NAAC employees—Joan Holtze, Jean Canzoneri, and Sue Purrington—moved with Morgan to CPC.⁴¹ CPC also took over the NAAC employees’ pension plan.⁴² Joan Holtze testified that she sat at the same physical desk at CPC as she had when she worked for NAAC.⁴³ In this way, Cape hoped to escape liability, but continued selling asbestos fibers to virtually the same contact list using a shell game and companies in Liechtenstein and South Africa to conceal any connection between it and the United States.

Cape’s conduct has continued after the appointment of the Receiver, as well. Altrad purchased Cape in 2017. On November 22, 2024, Altrad subsidiaries, Cape plc and Cape Intermediate Holdings Limited, obtained an injunction against the Receiver individually and in his personal capacity in the High Court of England and Wales.⁴⁴ The order purportedly enjoined the receiver from acting as receiver for Cape worldwide, including before this court.⁴⁵ This was done in direct violation of the *Barton* Doctrine and the explicit language in the Park Appointment Order

³⁹ *Id.* at Cape_Receiver_00096000.

⁴⁰ *Id.* at Cape_Receiver_00095991.

⁴¹ *Id.* at Cape_Receiver_00095992-3.

⁴² *Id.* at Cape_Receiver_00096066.

⁴³ Ex. 20, Deposition of J. Holtze, Apr. 12, 1979, at Cape_Receiver_00097838-9.

⁴⁴ *See Cape Intermediate Holdings Ltd. v. Protopapas*, [2024] EWHC 2999 (Ch) (Eng.).

⁴⁵ *See id.*

that the Receiver “may not be sued outside this court without obtaining the receiver's consent or an order of this court prior to doing so.”⁴⁶

The South Carolina Supreme Court characterized the U.K. Order as “shocking and indefensible.”⁴⁷ Altrad has repeatedly threatened the Receiver with personal financial penalties and criminal sanctions with one objective in mind—to stymie the judicial process here in South Carolina that exists to serve South Carolina claimants. Altrad's conduct is merely a continuation of Cape refusing to participate in U.S. litigation despite knowing that is in fact subject to U.S. law. Altrad's conduct includes both not participating in U.S. litigation and leveling threats against the Receiver and anyone else who furthers the work of the receivership – including South Carolina courts – for fulfilling his court-appointed obligations.⁴⁸

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

⁴⁶ Order Appointing Receiver at 3, *Park v. Armstrong Int’l, Inc.*, No. 2021-CP-40-02727 (S.C. Ct. Com. Pl. Mar. 17, 2023).

⁴⁷ *Welch*, 2025 WL 1450573, at *10-12.

⁴⁸ Altrad, through Cape Intermediate Holdings Limited, obtained an injunction against the Receiver in the High Court of England and Wales on November 22, 2024. The order includes a Penal Notice threatening criminal prosecution and imprisonment for anyone who knows of the order and fails to comply with it. [cite] (“IF YOU THE DEFENDANT DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED. ANY PERSON WHO KNOWS OF THIS ORDER AND DISOBEYS THIS ORDER OR DOES ANYTHING WHICH HELPS OR PERMITS ANY PERSON TO WHOM THIS ORDER APPLIES TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.”) (all capitals in original) .

judgments against the receiver personally.⁴⁹ Altrad's ability to continue to profit off of Cape's 1978 decision to leave the United States hangs in the balance here.

Further, Ran Oren, the sole director of Cape Intermediate Holdings Limited and the CEO of defendant Altrad Investment Authority S.A.S., threatened at least four insurance companies on Altrad letterhead against responding to a subpoena for insurance information issued *from this court and in these proceedings*.⁵⁰ Mr. Oren is even today participating directly in what the court in *Welch* characterized as a "conscious intent to defeat, delay, or hinder" creditors of Cape, albeit by threats and intimidation against both the receiver and other U.S. entities to whom discovery requests have been served as routine practice of the South Carolina judicial process.⁵¹

C. Key Evidence Supporting Appointment of a Receiver over Cape

Following the Park Appointment Order, the Receiver has discovered additional evidence supporting Cape's moral fraud. While this is not an exhaustive list or explanation of the documents uncovered, and it is not necessary to justify the receivership given all the evidence discussed above, it does further support the appointment of the Receiver.

1. Cape holds early knowledge of asbestos dangers from its own manufacturing plants

⁴⁹ See Ex. 21, Letter from Signature Litigation to P. Protopapas (May 19, 2025).

⁵⁰ See, e.g., Ex. 22, Letter from R. Oren to Lloyd's (May 7, 2025).

⁵¹ See *id.*; see also *Welch*, 2025 WL 1450573, at *7. Altrad does not limit its use of threats and intimidation to U.S. parties. Just a week ago, a report was issued by the U.K. All-Party Parliamentary Group (APPG) on Occupational Safety and Health relating to a request by an asbestos victims' support group for mesothelioma research funding by Altrad. The APPG was composed of Peers and Members of Parliament. The report notes that "Altrad is the ultimate parent company of Cape. It purchased Cape in 2017 and has benefitted substantially from the transaction." APPG Report (2025) at 7. The report noted that, on numerous occasions, Altrad lawyers (representing the parent in claims against Cape) "threatened to report" claimants' attorneys to the Solicitors Regulations Authority for requesting or disclosing certain documents relating to Cape. See *generally id.* Mr. Oren's unfavorable conduct in dealing with the victims' support group features prominently in the APPG Report. See *id.* at 10.

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

In 1953, immediately before Cape opened its NAAC sales operation in Chicago,⁵² Cape published an 85-page brochure describing the company's origin, organization and operations.⁵³ Cape diagrammed its operations in the brochure.⁵⁴ Cape had four principal groups under its head London office: branch selling offices (NAAC joined this branch when Cape formed it later the same year), UK product manufacturing factories, miscellaneous "English subsidiary companies," and overseas subsidiary companies.⁵⁵ Every one of these operations involved the exploitation of asbestos as a commercial raw material, from mining, to processing into finished products, to the sale of the fiber overseas.⁵⁶ The "overseas" companies, according to the diagram, were the asbestos mining operations in South Africa.⁵⁷ Cape noted that it would dispatch executives from London to "control [] the whole of Cape's operations in that country," meaning, South Africa.⁵⁸

Cape Asbestos Company began advertising its asbestos for sale in the United States in 1920. It advertised mainly in *Asbestos Magazine*, which was a monthly trade journal published in

⁵² Prior to 1953, Cape used an "agent" in New York City to assist in marketing to U.S. buyers. *See* Ex. 35, Letter from R. Dent to Lord Bissell, Sept. 18, 1953 ("We have recently discontinued our representation in America, which has hitherto been carried on in New York by Mr. A.W. Koehler, who runs a small selling agency, in which we were by far the largest of his principals.").

⁵³ Ex. 36, *Cape asbestos, the story of the Cape Asbestos Company Limited, 1893-1953* (hereinafter "Cape Story").

⁵⁴ *Id.* at 50.

⁵⁵ *See id.*

⁵⁶ *See generally id.*

⁵⁷ *See generally id.*

⁵⁸ *Id.* at 56.

Philadelphia, Pennsylvania, and circulated nationally from 1919 to 1983. Cape advertised in virtually every issue until 1978—almost 600 issues. Soon after Cape began selling asbestos to U.S. customers, it developed first-hand knowledge about the dangers of asbestos exposure. In the early 1900s, workers at its Barking Plant in London began developing asbestosis, a noncancerous but often fatal lung condition.⁵⁹

Among other products, Barking manufactured a pre-formed pipe and block insulation named “Caposite.”⁶⁰ Anthony Mendelle (who was deposed in 1984) was the Plant Manager at Barking from 1960 to 1968, following his work as the Production Manager at the same plant from 1956 to 1960.⁶¹ Mendelle saw first-hand the effects of asbestos exposure on plant workers—the plant had a “running total” of about 60 asbestosis cases a year, and more ominously, workers were also contracting mesothelioma, an incurable cancer of the lining of the lung that is usually fatal within a year of diagnosis.⁶² Mendelle was instrumental in the closure of the Barking Plant because of the number of workers dying from exposures at the Plant.⁶³ Mendelle testified that Caposite was a “major department” at Barking.⁶⁴ Caposite was made with 100% amosite asbestos.⁶⁵ Other operations used the two other types of asbestos, crocidolite and chrysotile.⁶⁶

It is here that two principal antagonists enter the Cape story—Richard Gaze and Walter Smithers. Smithers was the Barking Plant doctor starting in 1956 and was still working for Cape

⁵⁹ Cape Story at 50, 62; Ex. 37.1, Cape Inquests (1929-1938) (summaries of coroner inquests revealing early recognition of asbestos-related worker deaths at Cape’s U.K. facilities.).

⁶⁰ Ex. 36 at 62.

⁶¹ Ex. 37, Deposition of Anthony Mendelle at 3, *Smith v. Pittsburgh Corning Corp.*, Nos. GD81-20383 & GD81-20381 (Pa. Ct. Com. Pl. Allegheny Cnty. Nov. 13, 1984).

⁶² *Id.* at 11.

⁶³ *Id.* at 48-49.

⁶⁴ *Id.* at 40.

⁶⁵ *Id.* at 37.

⁶⁶ *Id.* at 41-42.

as of 1984, when Mendelle was deposed.⁶⁷ Richard Gaze worked at Barking from 1943 to 1963.⁶⁸ Gaze rose to become the "Chief Scientist" at Cape and held senior management roles across the entire Cape asbestos operation.⁶⁹ These included membership on the Board of Directors of numerous Cape asbestos subsidiaries.⁷⁰ The minutes of a "special meeting of the board of directors of the North American Asbestos Corporation" held on April 7, 1970, note that "[t]he chairman reported that Dr. Richard Gaze of Cape Asbestos, Ltd will have direct responsibility on behalf of the parent company for the operations of North American Asbestos Corporation."⁷¹

Mendelle testified that Cape knew about asbestos and mesothelioma at Barking—because workers were dying of both diseases.⁷² Mendelle, Gaze and Smithers discussed mesothelioma and asbestosis at Barking, and that low exposures could cause mesothelioma.⁷³ Mendelle testified that "we knew there was an association" between amosite and mesothelioma well before a seminal article on asbestos disease was published in 1965 by Dr. Muriel Newhouse.⁷⁴ Newhouse spent time at Barking, and much of her data for the article came from her time investigating disease at the plant.⁷⁵ Mendelle said that he and Newhouse had numerous conversations about amosite as a cause of mesothelioma at Barking.⁷⁶ Mendelle was asked if workers in the Caposite operation—which used only amosite, as noted above—had developed mesothelioma, and he said "yes,

⁶⁷ *Id.* at 5.

⁶⁸ *Id.* at 7. The evidence in this case will place Gaze and Smithers squarely at the center of Cape's efforts to exploit asbestos for profit, to mislead others about the dangers of asbestos, and to hide what Cape actually knew about effects of asbestos exposure.

⁶⁹ *Id.* at 6.

⁷⁰ *Id.*

⁷¹ Ex. 38, NAAC Special Meeting Minutes (April 7, 1970).

⁷² Ex. 37 at 11-12.

⁷³ *Id.* at 11-12, 69.

⁷⁴ *Id.* at 56-57; Ex. 39, Muriel L. Newhouse, *Asbestos in the Workplace and the Community*, 16 *Ann. Occup. Hyg.* 97 (1973).

⁷⁵ Ex. 37 at 58.

⁷⁶ *Id.* at 56-57.

many.”⁷⁷ Mendelle acknowledged that all three types of asbestos were used at Barking, and that the workers may have worked in departments other than the main Caposite operation.⁷⁸

Despite this knowledge, the evidence shows that Dr. Gaze repeatedly told Cape's customers that "it is a fact that not one authenticated case of mesothelioma has been associated with amosite anywhere in the world.”⁷⁹ This letter was passed on to the President of one of Cape's major amosite customers in the United States—Robert Buckley, of Pittsburgh Corning Corporation—and in his reply to Dr. Gaze, Mr. Buckley wrote: “from your letter, I am assured that no customer's worker need be concerned about mesothelioma.”⁸⁰ In a memorandum to over twenty managers and sales personnel at Cape along with Dr. Gaze, the Cape Sales Director gave advice to the addressees of the memorandum “who are faced with questions on the possible dangers of to health involved in the use of asbestos based materials.”⁸¹ The Sales Director mimicked exactly what Dr. Gaze wrote to Mr. Buckley at Pittsburgh Corning, noting first that Cape's Caposite line of products made solely with amosite “are now our principal asbestos products,” the Sales Director then stated that “not one case of mesothelioma [has been] associated with amosite asbestos.”⁸² Dr. Gaze later died from mesothelioma.

2. Cape Suppressed a Report Involving its Mining Operations in South Africa that shows mesothelioma risk from mining asbestos or living near asbestos mines.

Cape had been mining asbestos in South Africa for over 50 years when it created NAAC. Scientists began seeing sporadic cases of the disease “mesothelioma” (also called “endothelioma” or “pleural sclerosis”) in the late 1940s and early 1950s. But a young pathologist from South Africa

⁷⁷ *Id.* at 66.

⁷⁸ *Id.* at 68.

⁷⁹ Ex. 40, Letter from Gaze to Cryor (March 22, 1966) (emphasis in original).

⁸⁰ Ex. 41, Letter from Buckley to Gaze (March 30, 1966).

⁸¹ Ex. 42, Letter from Galloway (Aug 19, 1966).

⁸² *Id.*

first recognized the relationship between asbestos exposure and mesothelioma. Dr. Chris Wagner was appointed by the South African Government in 1954 as a research fellow to the Pneumoconiosis Research Unit (PRU) in Johannesburg. He took an interest in mesothelioma, the Cape asbestos mines in South Africa, and then meeting with management officials at Cape and another asbestos mining company (Turner and Newell) in London where he was “assured . . . that I was following a line of research which seemed to them to be of little value, and that I would be advised to follow other lines of investigation.”⁸³

Dr. Wagner reported a series of 33 mesothelioma cases in South African mine workers, and in people living near the mines, at the 1959 Pneumoconiosis Conference in Johannesburg. The formal scientific paper was published in 1960.⁸⁴ Wagner's investigation triggered the PRU to investigate mesothelioma at the South African asbestos mines.⁸⁵ Cape and other mining companies partially financed the study, which meant the mining companies were copied on all reports and had input on establishing study parameters.⁸⁶

The investigators saw troubling indications soon after the study began.⁸⁷ An October 6, 1961 memorandum of the PRU noted that it discussed early results with the "asbestos industry"—Cape, and others—and that the results showed that the incidence of asbestosis amongst miners and the ordinary population was "alarmingly high," and further that the incidence of mesothelioma, “although perhaps not large in terms of actual numbers—is very high from an epidemiological

⁸³ Ex. 43, Letter from Christopher Wagner to Cape (November 30, 1994).

⁸⁴ *Id.*; Ex. 44, Wagner, J.C., Sleggs, C.A., and Marchand, P, *Diffuse Pleural Mesothelioma and Asbestos Exposure in the North West Cape Province*, Br. J. Ind. Med. 17:260-65 (1960).

⁸⁵ Ex. 45, Memo from Gear re: Proposed Study of Mesothelioma in South Africa (Nov. 29, 1960).

⁸⁶ *Id.*

⁸⁷ Ex. 46, Letter from Naude to Diederichs (Oct. 6, 1961).

point of view.”⁸⁸ On April 30, 1962, the PRU memorialized its findings, recording mesothelioma numbers that startled researchers: “[a]n alarmingly high number of cases with mesothelioma of the pleura has been discovered in people who live or have lived in the North Western Cape and that there is evidence to suggest that this condition is associated with an exposure to asbestos dust inhalation which again need not be industrial.”⁸⁹ In other words, mesothelioma occurred not only in miners, but also in the general population that lived near the asbestos mines.⁹⁰ The investigators revealed that they were aware of 90 cases of mesothelioma, but they theorized that more cases existed that the study failed to capture due to its methodology.⁹¹

The preliminary results were equally alarming to Cape. Soon after Cape saw the October 1961 PRU results, it dispatched Dr. Smither to South Africa for an "investigation" even before the more detailed April 1962 report was circulated. The Receiver has located the 48-page report that Dr. Smither prepared for the company on his return from South Africa.⁹² The report opens:

[a]s a result of a decision taken at a meeting between Dr. R Gaze, Dr. J McKeurtan and myself at Park Street, London, on 31st October 1961, I was sent by the company to South Africa. My terms of reference were to study all aspects of mesothelioma and asbestosis reported in South Africa on medical matters, and generally to learn as much as possible about conditions in the industry in that country.⁹³

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

[m]y recommendation would be that the company should not support any future wide ranging survey of the industry with a view

⁸⁸ *Id.*

⁸⁹ Ex. 47, PRU Preliminary Report (April 30, 1962).

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Ex. 48, Smither, *Visit to South Africa* (August 1962) (hereinafter “Smither Report”).

⁹³ *Id.* at 2.

to discovering either asbestosis or mesothelioma. The reason for this is that the company is well aware of the problem and has some idea of its extent.⁹⁴

At that point, Cape's support for the PRU ended.⁹⁵ Smither aligned with Dr. McKeurtan—the top executive over Cape's mining subsidiaries in South Africa—who was "vigorously attacking" the conclusions of the PRU researchers.⁹⁶

However, in a letter from L.G Walters, the Director of the PRU, to M. F. Baxter at the South Africa Council for Scientific and Industrial Research, Walters addresses a memorandum of the "asbestos producers committee."⁹⁷ Cape was a member of that committee.⁹⁸ Walters quotes from the "committee memorandum"⁹⁹ in which it critiques the PRU investigation: "The whole survey appears to have been undertaken with the underlying object of implicating crocidolite asbestos as being directly responsible for the comparatively rare tumor known as mesothelioma of the pleura."¹⁰⁰

Walters noted that Smither identified 10 additional cases of mesothelioma during his visit to the Cape Prieska mine during his visit.¹⁰¹ Smither's 48-page report notes that a local doctor named "Van Rooyen" was caring for "10 cases among colored people of what he now calls the

⁹⁴ *Id.* at 34.

⁹⁵ *See, e.g., id.*

⁹⁶ *Id.* at 35.

⁹⁷ Ex. 49, Letter from Walters to Baxter (July 19, 1962).

⁹⁸ *Id.* at 2 (the letter reveals Cape's membership by noting that the committee "recently brought their London Branch Medical Office (Dr. Smither) to this country to investigate the problem on their behalf.").

⁹⁹ The Receiver has been unable to locate this memorandum but hopes that it will become available if the Third-Party Defendants comply with their discovery obligations at some point in the future.

¹⁰⁰ *Id.* at 2.

¹⁰¹ *Id.*

‘Prieska picture.’”¹⁰² Smither advocated for removing the patients to Johannesburg for “investigation.”¹⁰³ Dr. Smither's recommendation was not altruistic. He wrote in his Report that:

the advantage from the standpoint of the company is that these cases will be treated as a group, will be removed from the area of the conflict, if one may call it that, and will be taken some hundreds of miles away.¹⁰⁴

Dr. Smither went on to note that this move would bring “less attention from the politicians.”¹⁰⁵ Dr. Smither was covering up asbestos’s health hazards by hiding Cape’s victims.

Dr. Matthys van Rooyen—the local Prieska doctor caring for 10 mesothelioma patients—was deposed in 1996.¹⁰⁶ He testified that Cape periodically dispatched “executives” and doctors (presumably, Smither) from London to visit asbestos mines in South Africa.¹⁰⁷ Dr. Van Rooyen testified that he tried to warn Cape about the dangers of asbestos exposure, but met a chilly response: “I experienced opposition[] . . . whenever we talked about asbestos as a danger, people saw us as dangers . . . we had a lot of opposition from these people. But very definitely, from the chief executives of Cape Blue Mines.”¹⁰⁸

Dr. Van Rooyen's interest in mesothelioma began in 1957 then he wrote an article discussing two mesothelioma cases for the South African Medical Journal, explicitly attributing them to Prieska’s blue-asbestos dust.¹⁰⁹ He then screened the community—miners and civilians alike—by taking thousands of chest X-rays and even persuaded the Pneumoconiosis Bureau to

¹⁰² Ex. 48 at 11-12.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 13.

¹⁰⁵ *Id.*

¹⁰⁶ Ex. 50, Deposition of Dr. Matthys van Rooyen, *In re Asbestos Personal Injury Cases, Arrington Lead*, No. 93-9-114 (Ms. Cir. Ct. Jones County, 1996).

¹⁰⁷ *Id.* at 135.

¹⁰⁸ *Id.* at 116.

¹⁰⁹ *Id.* at 24.

dispatch a mobile radiography unit to Cape's Prieska mine.¹¹⁰ Determined to force action, he armed South African parliamentary member A.H. Stander with data and a speech describing Cape's mill as "spraying asbestos fiber" over the town, thus placing the issue before Parliament.¹¹¹ These uncompromising interventions—and the frank discussions he had with Cape managers—made him a "pest," as Dr. Van Rooyen described the situation, in Cape's eyes.¹¹²

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

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

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

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

A: Yes. . . . I remember distinctly that this was treated in a very superficial way. And the chap . . . he said that with our directors in London earning a million a year, do you think they would listen to you?¹¹³

The final PRU report was published 1964, but it was not circulated outside of the PRU and the mining companies.¹¹⁴ For reasons unknown, but perhaps to protect powerful industrial mining

¹¹⁰ *Id.* at 38, 63.

¹¹¹ *Id.* at 11-12, 30.

¹¹² *Id.* at 40, 57.

¹¹³ *Id.* at 41.

¹¹⁴ Ex. 49

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

Dr. Smither returned from South Africa on June 30, 1962.¹¹⁵ Less than two weeks later, on July 12, 1962, Drs. Smither and Gaze attended a meeting in London of the Asbestosis Research Council (ARC).¹¹⁶ The ARC was an industry group founded by Cape and another mining and asbestos products company, Turner & Newell.¹¹⁷ The ARC sponsored research into asbestos disease and had a hand in shaping final reports given its funding of the studies.¹¹⁸ Scientists and physicians from Queen's College in Cambridge, Reading University, and Cambridge University, and some industry representatives attended the July 12 meeting.¹¹⁹ The Receiver has located the 6-page detailed memorandum reporting the detailed minutes of the meeting.¹²⁰ Dr. Smither and Dr. Gaze remained silent and reported nothing about the PRU study, nor even that Dr. Smither just returned from a three-week trip to South Africa to investigate mesothelioma in the mines.¹²¹

¹¹⁵ Ex. 48 at 42.

¹¹⁶ Ex. 51, ARC-19th meeting (July 12, 1962).

¹¹⁷ See generally Ex. 52, Geoffrey Tweedale, *Science or Public Relations? The Inside Story of the Asbestosis Research Council, 1957–1990*, 38 AM. J. INDUS. MED. (2000).

¹¹⁸ *Id.* at 723-29.

¹¹⁹ Ex. 51.

¹²⁰ *Id.*

¹²¹ See generally *id.*

3. Cape orchestrates its exit plan from the U.S. Judicial System with the cooperation of Lord Bissell & Kadyk, a Chicago-based Law firm¹²²

In 1953, Cape approached Lord Bissell & Kadyk, a Chicago law firm, to form a U.S. subsidiary named North American Asbestos Corporation (“NAAC,” as noted above) in Chicago.¹²³ Max Meyer, a young partner at Lord Bissell, agreed to the representation.¹²⁴ Max Meyer represented Cape until after NAAC dissolved in 1978.¹²⁵ He was on the Board of Directors from 1953—1978 and served as the trustee in NAAC's dissolution.¹²⁶ Meyer attended virtually every Board meeting and was the principal point of contact between the parent company Cape Asbestos in London, and NAAC.¹²⁷

Meyer drafted all of the NAAC board minutes, according to Joan Holtze, the Corporate Secretary who joined NAAC in 1953 (and remained there until NAAC dissolved).¹²⁸ Meyer's board minutes recorded Holtze as attending meetings in person as “Assistant Company Secretary,”¹²⁹ but in 1980, Ms. Holtze testified she *never* attended any Board Meeting.¹³⁰ The Receiver has searched the NAAC documents for some explanation as to why Meyer falsified NAAC board minutes, but has found none. If the third-party defendants participate in discovery, this question may be answered.

¹²² Although the successor entities have refused to participate in discovery in this case, the Receiver was able to obtain the historical materials used in the following section from an archive at the University of Strathclyde in Glasgow, Scotland.

¹²³ Ex. 52.1, Letter from R. Dent to Lord Bissell & Kadyk (Sept. 18, 1953).

¹²⁴ Ex. 53, Letter from Lord Bissell & Kadyk to Cape (Sept. 29, 1953).

¹²⁵ See, e.g., Ex. 54, NAAC Meeting Minutes (1971-77); Ex. 55, NAAC Meeting Minutes (Nov. 1971); Ex. 56 NAAC Meeting Minutes (1972); Ex. 57, NAAC Meeting Minutes (1973); Ex. 58, NAAC Meeting Minutes (1974); Ex. 59, NAAC Meeting Minutes (1975); Ex. 60, NAAC Meeting Minutes (1976); Ex. 61, NAAC Meeting Minutes (1977).

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Ex. 62, Deposition of Joan Holtze at 15:12–16:8, *Barber v. Pittsburgh Corning Corp.*, No. GD 79-21544 (Pa. Ct. Com. Pl. Nov. 7, 1980).

¹²⁹ See Exs. 54-61.

¹³⁰ *Id.*

NAAC was a small operation staffed by the President, who was the client liaison, and a few secretaries. Cape consistently described NAAC as a “one-man” operation.¹³¹ Meyer, from his office at Lord Bissell, was involved in all decisions both small¹³² and large.¹³³ Gerry Morgan, the President of NAAC from 1970—1978, testified that his influence on the Board or as a company decision-maker was “certainly nil” and that the Cape member of the Board (Richard Gaze) and Meyer would meet beforehand to “have their discussions.”¹³⁴

Meyer was also involved in the early efforts by Cape to change the identity of NAAC to avoid exposure to asbestos litigation. On June 25, 1976, the General Counsel of Cape wrote Meyer, “[a]s briefly discussed in Chicago[,] . . . it may be advisable to change the identity of NAAC to limit its and Cape's exposure to future U.S. litigation.”¹³⁵ A month later, Meyer received a memorandum from a Lord Bissell associate examining the use of an entity in Canada to sell asbestos into the United States, and the extent to which that entity would be immune to lawsuits from U.S. asbestos plaintiffs.¹³⁶ In October, Lord Bissell (presumably Meyer, as he was the point of contact) sent Cape a lengthy letter on options for liquidating NAAC but continuing to serve the U.S. asbestos market from another location outside of the United States.¹³⁷

¹³¹ Ex. 63, Deposition of Charles G. Morgan at 33, *Johnson v. North American Asbestos Corporation*, No. 75-L-1006 (May 27, 1975).

¹³² Ex. 64, Letter from R. Gaze to M. Meyer (July 20, 1971) (correspondence regarding NAAC computerizing their systems).

¹³³ Ex. 65, Deposition of Charles G. Morgan at 227, *Johnson v. North American Asbestos Corporation*, No. 75-L-1006 (May 20, 1975) (Meyer unilaterally dictated the dividend NAAC declared to Cape, without the NAAC president’s input).

¹³⁴ *Id.*

¹³⁵ Ex. 66, Letter from A. Penna to M. Meyer (June 25, 1975).

¹³⁶ Ex. 67, Memo from A. Sarabia to M. Meyer (July 25, 1975).

¹³⁷ Ex. 68, Letter to A. Penna re Limiting NAAC and Cape's Exposure to US Litigation (Oct. 3, 1975).

On June 3, 1977, Cape's General Counsel (Anthony Penna) sent a telex to Meyer at Lord Bissell asking Meyer to confirm that, "in the opinion of the company's American legal advisors: the amounts claimed [in U.S. asbestos cases against Cape] are highly speculative and conjectural and have only a tenuous basis in law and fact," referring to an insert in the parent company annual report.¹³⁸ Penna asked Meyer to confirm that this language, used in a prior report, was still Lord Bissell's position.¹³⁹ Then, on July 5, 1977, Penna sent Lord Bissell a telex that, given Texas awards in asbestos cases, Cape should withdraw from the Texas litigation because:

we cannot foresee any court . . . enforcing a judgment which would have enormous financial . . . repercussions, when we really cannot be said to have a moral responsibility and are simply victims of the US product liability cult.¹⁴⁰

This marked the end of Cape's participation in all U.S. lawsuits, including this one.¹⁴¹

On October 26, 1977, Meyer's Lord Bissell law partner Steve Milwid wrote Penna and identified all the pending cases against Cape, including numerous cases in South Carolina.¹⁴² Milwid sent another letter to Penna the same day identifying NAAC's limited products liability insurance coverage.¹⁴³ A few days later, on November 1, 1977, Cape's Board of Directors

¹³⁸ Ex. 69, Letter from A. Penna to M. Meyer (June 3, 1977).

¹³⁹ *Id.*

¹⁴⁰ Ex. 70, Telex from A. Penna to S. Milwid (July 4, 1977).

¹⁴¹ *See id.*; *See also* Ex. 71, Letter from A. Penna to S. Milwid (Feb. 24, 1978) ("As you know our policy now is not to defend any asbestosis proceedings brought against us in the United States and in view of the fact that there is a likelihood that this will result in large default judgments being awarded against us . . . it would be extremely unwise for Cape to contemplate any further substantial acquisition in the United States . . .).

¹⁴² Ex. 72, Letter from S. Milwid to A. Penna re: Pending Cases (Oct. 26, 1977).

¹⁴³ Ex. 73, Letter from S. Milwid to A. Penna re: NAAC Products Liability Coverage (Oct. 26, 1977).

authorized Cape's "withdrawal" from U.S. litigation on the bet that no U.K. court would enforce a U.S. default judgment in England.¹⁴⁴

On January 23, 1978, a Lord Bissell lawyer sent Meyer a memorandum outlining Cape's scheme to continue selling asbestos into the United States through a Liechtenstein entity—owned by Cape – and through a reconstituted NAAC (but now renamed "Continental Products Corporation (CPC)").¹⁴⁵ CPC was in the same building as NAAC, used the same office furniture, and had the same employees including the then-president of NAAC, Gerry Morgan.¹⁴⁶ Cape financed the entire scheme.¹⁴⁷

A.R. Sarabia wrote a memorandum contained in the Lord Bissell client file to memorialize the new sales arrangements for the sale of Cape asbestos to the United States from Lichtenstein through CPC.¹⁴⁸ On June 26, 1978, Meyer wrote Penna advising that the Cape Mines would be protected from default judgments with the Lichtenstein "between them and any operations in the United States."¹⁴⁹ Penna described the Liechtenstein company—which had no employees and was just an invoicing entity, as being camouflaged to disguise from "plaintiffs in future U.S. asbestos litigation" (Cape's words) the fact that the company was still selling asbestos in this country. On July 29, 1980, Mr Meyer wrote Richard Gaze at Cape advising on a variety of issues, but in closing Meyer wrote on Lord Bissell letterhead: "My deposition was taken last Thursday in the four

¹⁴⁴ Ex. 74, Cape's Board Meeting Minutes (Nov. 1, 1977).

¹⁴⁵ Ex. 15, Memo from A. Sarabia to M. Meyer (Jan. 1, 1978).

¹⁴⁶ *Id.*

¹⁴⁷ *See id.*

¹⁴⁸ Ex. 75, Memo to NAAC File re Liquidation of NAAC (April 7, 1978).

¹⁴⁹ Ex. 76, Letter from M. Meyer to A. Penna (June 26, 1978). Meyer was in the thick of the plan to create CPC and in fact formed the corporation, according to Gerry Morgan, the President of NAAC at the time. Morgan May 19, 1982 depo, pdf 39. In a memo dated Dec 19, 1983, a Lord Bissell Partner inquired of Meyer about his formation of CPC in 1978 but noted that there were no billing records at LBB relating to this work; Ex. 77, Letter from Ingersoll to Meyer (Dec. 19, 1983).

Bloomington cases. I guess the main thing that came out was that I know nothing or that I can't remember anything."¹⁵⁰

Cape understood that the law in the United States attached liability to manufacturers and sellers of dangerous products. Geoffrey Higham, Managing Director of Cape, testified in 1996 that "we didn't like the rules, we didn't think it was a reasonable burden to place upon a supplier of material [like Cape] that he should control how the material was used."¹⁵¹ And in a Press Release relating to a U.S. documentary about Cape's unflattering conduct involving its sales of asbestos to the Unarco Company in Bloomington Illinois, Cape noted that, in contrast to the law in the United States:

[the] generally accepted legal principles throughout the world [are that] the direct employer, which in this instance would have been Unarco, should carry the immediate responsibility for the safety of its workforce. **Cape does not, however, accept responsibility towards employees of an independent organization over whose working conditions it had no control**¹⁵²

The Lord Bissell lawyers also knew what the law was in the United States, yet it enabled Cape in in all of its schemes to sell asbestos in the United States, and they specifically designed and implemented its plan to create phantom entities to continue selling asbestos in the United States after Cape fled the jurisdiction.¹⁵³

LAW AND ARGUMENT

The equitable right to have a receiver appointed is an ancient one." *Pelzer v. Hughes*, 27 S.C. 408, 3 S.E. 781, 785 (1887). Courts sitting in equity appoint receivers to ensure a fair result.

¹⁵⁰ Ex. 78, Letter from M. Meyer to R. Gaze (July 29, 1980).

¹⁵¹ Ex. 79, Deposition of Geoffrey Higham at 142, *In re Asbestos Pers. Injury Cases, Arrington Lead*, No. 93-9-114 (Miss. Cir. Ct. Jones Cnty., 2d Jud. Dist. Oct. 24, 1996).

¹⁵² Ex. 80, Cape Statement to Granada TV (July 6, 1982) (emphasis added).

¹⁵³ *See, e.g.*, Ex. 81, Telex from A. Penna to S. Milwid (Aug. 7, 1984).

See *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 and collect—to receive—the assets of the corporation” for the purposes of satisfying creditors. *Welch v. Advance Auto Parts, Inc.*, No. 2023-001096, 2025 WL 1450573, at *7 (S.C. May 21, 2025). “[T]he Receiver, as a ‘hand of the court,’ exercises power and control over the defendant’s assets and property specified in the appointment order and administers them at the court’s discretion for the benefit of creditors and the debtor’s estate.” *Id.* (quoting *Allen v. Cooley*, 53 S.C. 414, 446, 31 S.E. 634, 646 (1898)).

Creditors for whose benefit a receiver is authorized to marshal assets can include 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). Rule 66, SCRCP, which concerns the “Powers of Receiver,” also 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.”

South Carolina law allows appointment of a receiver in several circumstances. Pursuant to S.C. Code § 15-65-10(4), a receiver may be appointed, in relevant part, when a corporation is “in imminent danger of insolvency.” 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). Section 15-65-10(5) reflects an “old practice” of equity and an “important principle of law” to correct injustice, particularly “when a debtor is trying to defeat his

creditors by an act or course of conduct which indicates *moral fraud*—a conscious intent to defeat, delay, or hinder his creditors in the collection of their debts.” *Virginia-Carolina Chem. Co. v. Hunter*, 84 S.C. 214, 66 S.E. 177, 179 (1909) (emphasis added) (citing *Miller v. Hughes*, 33 S.C. 530, 12 S.E. 419 (1890)). Under this rule, if a corporation “disposes of large resources” but “leaves . . . debts unpaid”—while “set[ting] creditors at arm’s length by refusing . . . to take any interest in the satisfaction of their claims”—then there is a “prima facie case” of fraud “warranting the appointment of a receiver.” *Id.* at 180.

As to subsection (4), the publicly available information regarding Cape suggests that Cape Intermediate Holdings Limited (“CIHL”) – the historical entity that mined raw asbestos fibers in South Africa and sold those fibers directly to U.S. customers and through their U.S. company, NAAC, is in danger of insolvency.

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

CIHL is a UK-registered holding company with no employees, physical assets, customer contracts, or operational footprint.¹⁵⁴ It exists solely as a corporate shell.¹⁵⁵ Ran Oren, Altrad

¹⁵⁴ Ex. 24, CIHL Annual Report 3, 12, 14 (2025) (“Cape Intermediate Holdings had no employees in the current or prior year.”); *id.* at 3 (“The Company is a non-trading holding company”).

¹⁵⁵ *See id.* at 13 (“the director was not remunerated for his services to the Company during the year. No director accrued retirement benefits . . . during the current or previous year. [CIHL] had no employees during the current or prior year.”).

Investment Authority S.A.S.’s CEO, is the sole officer and director of CIHL.¹⁵⁶ CIHL acts as a pass-through entity for profits of four entities it wholly owns: Cape Insulation Ltd., Cape Industries Ltd., Cape Building Products Ltd., and Altrad Services Ltd.¹⁵⁷ Importantly, though, the three Cape entities – Cape Insulation Ltd., Cape Industries Ltd., and Cape Building Products Ltd. – are legacy Cape companies that generate no revenue.¹⁵⁸

Altrad Services Ltd., which became a CIHL subsidiary *after* Altrad purchased Cape in 2017, is the only operational entity in the CIHL structure. In 2024, for example, Altrad Services Ltd. declared a £ 24,769,000 dividend based on its operating profits for that year.¹⁵⁹ Because CIHL wholly owns Altrad Services Ltd., that full dividend went to CIHL. CIHL, in turn, did not hold any portion of the dividend itself, but instead declared the full £ 24,769,000 as a dividend to its shareholder.¹⁶⁰ Because of this, it is unclear whether CIHL holds any funds at all at any given moment – let alone sufficient funds to pay a judgment in the Park Action.

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

As previously mentioned, Altrad purchased Cape in 2017. Altrad publishes financial results are part of a “Group” filing of all entities related to Altrad. According to Altrad’s Interim Consolidated Financial Statements dated February 28, 2025, CIHL does not appear to maintain

¹⁵⁶ *Id.* at 8.

¹⁵⁷ See *id.* at 13; Ex. 25, Altrad Services Ltd. Annual Report 33 (2025); Ex. 26, Cape Insulation Ltd. Annual Report 9 (2025); Ex. 27, Cape Industries Ltd. Annual Report 9 (2025); Ex. 28, Cape Building Products Ltd. Annual Report 9 (2025).

¹⁵⁸ Ex. 26 at 3; Ex. 27 at 3; Ex. 28 at 3.

¹⁵⁹ See Ex. 25 at 9.

¹⁶⁰ See Ex. 24 at 7 (declaring 24,769,000 as dividends received for 2024).

funds to pay any asbestos claims. Instead, Altrad reports only that “Management believes that, assuming no significant deterioration in business performance and no material change in legal precedence or judgments, the Group will be able to fund its subsidiary Cape Claims Services Limited to meet all claims to be settled under the Scheme of Arrangement settlement plan and the Group has sufficient funds to satisfy all other *UK claims* settled outside the Scheme of Arrangement.”¹⁶¹

The Scheme of Arrangement to which Altrad refers is a 2006 court-ordered scheme for the payment of asbestos disease claims from former UK employees of certain Cape subsidiaries.¹⁶² According to a 2022 annual report, Altrad Group had set aside £118 million to address certain *non-U.S.* historical claims relating to asbestos exposure, but also disclosed AIA’s letter of support of it as a going concern.¹⁶³ However, according to an April 2025 news article, “Altrad’s spokesperson told *The Times* it had never manufactured or sold asbestos but continues to support Cape’s compensation scheme, which has paid over £60m to former employees who developed cancer following asbestos exposure, with a further £70m set aside.”¹⁶⁴ This would mean Altrad only has £70m left to pay asbestos claims under the Scheme of Arrangement, and again, that is a restricted fund designed to pay certain UK claimants. A complete lack of clarity exists as to the actual amount

¹⁶¹ Ex. 29, Altrad Grp., Interim Consolidated Financial Statements at 32 (Feb. 28, 2025) (emphasis added).

¹⁶² *See id.*

¹⁶³ Ex. 30, Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022, at Cape_Receiver_00248438 (“The Group continues to receive claims, from both individuals and insurance companies, in connection with historical alleged exposure to asbestos. Where claims are determined to have merit, the costs are provided for and claims are settled in the ordinary course, otherwise claims are defended.”).

¹⁶⁴ Ex. 31, *Former asbestos firm offers victims 3 m under gag clause*, Health & Safety Int’l, <https://www.healthandsafetyinternational.com/article/1913269/former-asbestos-firm-offers-victims-3m-gag-clause>

of funds available to pay Cape claims as well as whether CIHL actually can access those funds. What is clear, though, is *none* of those funds are intended for U.S. plaintiffs.

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

Moreover, given Cape’s historical litigation avoidance scheme and given that it is not a stand-alone company, but instead is a holding company within a large corporate structure, one should expect that Altrad will do anything to avoid its historical liabilities, including rendering the company fully insolvent. Indeed, Altrad already has informed the Receiver that it has entered into a “settlement agreement” with itself (between two Altrad entities) to release Mohed Altrad from any liabilities not only in the Park Action and Tibbs Action but also in every other future U.S. personal injury action against any Cape entity.¹⁶⁵

The risk of imminent insolvency here is great, and S.C. Code § 15-65-10(4) thus squarely justifies the receivership over Cape.

Second, the Cape receivership is also warranted under S.C. Code § 15-65-10(5) given Cape’s extreme and ongoing moral fraud. After years of reaping profit by sending material that it knew to be dangerous into South Carolina and other U.S. states, Cape hatched a scheme to avoid

¹⁶⁵ Ex. 32, Cape, Altrad, and Sparrows, Agreement for Full and Final Settlement and Release of Claims (2025).

liability to U.S. litigants, which includes the refusal to appear in U.S. courts. Cape's fraudulent effort to escape liability does not stop with serial and knowing default judgment, however. And it extends to creating a fake company to hide assets and presence in the United States. *See* Factual Background, Section B, *supra*.

The South Carolina Supreme Court recently reaffirmed an equity court's common law "inherent power to appoint a Receiver *before judgment*," even in a subsection (5) case where the company is not insolvent or at risk of insolvency. *Welch*, 2025 WL 1450573, at *7 (emphasis added). Our Supreme Court emphasized that the power to appoint a receiver before judgment in subsection (5) cases is an "extreme power," clarifying that it may only be used rarely, such as "where a defendant's conduct demonstrates it is *fraudulently concealing* or disposing of assets that may be responsive to a later judgment." *Id.* (emphasis added). To illustrate the circumstances where pre-judgment receivers are warranted, the South Carolina Supreme Court recognized that it "upheld the appointment of a Receiver before judgment where the plaintiff has made a prima facie showing that the defendant intends to *fraudulently avoid* or defeat the plaintiff's recovery." *Id.* (citing *Virginia-Carolina Chem. Co.*, 84 S.C. 214, 66 S.E. at 179).

Our Supreme Court found that the facts in *Welch* amounted to "that rare instance when equity's aid may be called upon before the legal claims have been reduced to judgment." *Welch*, 2025 WL 1450573, at *8. The court found that Atlas Turner "engaged in moral fraud against the trial court, the state of South Carolina, and Respondent." *Id.* at *9. This moral fraud justifying the appointment of a Receiver before judgment included "Atlas Turner's strident and outspoken refusal to comply with the trial court's orders," and "Atlas Turner's contemptuous disregard of the court's discovery orders." *Id.* at *8. This conduct convinced our Supreme Court that Atlas Turner would "continue to act in bad faith as the case against it progresse[d]" in "seeking to evade its

responsibilities as a civil litigant.” *Id.* The Supreme Court, however, also recognized Atlas Turner’s overarching and long-standing tactic to “evade its responsibilities” when “faced with lawsuits” in the United States for its conduct of making profit from products that seriously injured American citizens. *Id.* at *8. The South Carolina Supreme Court explained as follows:

It is not lost upon us that Atlas Turner has long experience as a defendant in asbestos cases. We note too that when faced with lawsuits—for allegedly causing serious injury and death to American workers and citizens related to the pernicious products it sold for profit even after the lethal risk these products posed was known—its tactic has been to claim that, if the courts exerted jurisdiction over them, it would offend the “traditional notions of fair play and substantial justice” due process guarantees. When that ploy fails, Atlas Turner’s version of due process is to refuse to abide by court orders requiring it to answer basic information. It is alleged Atlas Turner has come into our state, turned profits by selling its hazardous wares in our state, and inflicted grievous harm on citizens in our state. Then, when the shadow of the courthouse door falls upon it, it insists it was never here, and if a court asks anything else about it, it responds: we have nobody who knows anything.

Id. Our Supreme Court emphasized that “Atlas Turner’s corporate policy for responding to asbestos lawsuits [was] to adopt a ‘minimum defense posture’ and incur default judgments.” *Id.*

With respect to Cape and as discussed herein, its historical fraudulent conduct is even more egregious than that of Atlas Turner. Cape’s long-running, intentional scheme to defraud its tort creditors by refusing to appear in the United States, including in South Carolina, is clear evidence of moral fraud warranting the appointment of a receiver before judgment under S.C. Code § 15-65-10(5). In the Park Action, Cape failed to respond after proper service and, instead, chose to completely disregard the lawsuit. This brazen conduct is consistent with Cape’s decades-long practice of ignoring asbestos lawsuits filed against it in the United States for the wrongful death allegedly caused by the company’s historical asbestos business, from which it reaped substantial profits—accepting defaults because it believes defaults entered by this Court cannot be enforced.

Moreover, the Altrad and Charter Third-Party Defendants¹⁶⁶ in the Tibbs Action, who were, among other entities, responsible for and/or benefited from Cape’s litigation-avoidance strategy, have refused to participate in discovery on the basis that they could not be forced to participate in discovery during the pendency of a series of improper interlocutory appeals. This Court entered adverse inferences against those parties on May 23, 2024. The Third-Party Defendants have instituted a series of delay tactics to avoid a trial in this case, including non-participation in discovery, institution of proceedings in London that have led to a judgment against Mr. Protopapas personally, and a frivolous removal of the case to federal court, to name a few. Refusing to participate in litigation in the United States, but suing the Receiver personally in London and threatening criminal liability, is the height of moral fraud. The entities related to and/or responsible for Cape have continued to assist in the perpetration of Cape’s moral fraud and litigation-avoidance scheme by “seeking to evade its responsibilities as a civil litigant,” just like Atlas Turner did in *Welch*. 2025 WL 1450573, at *8.

With respect to the scope of a receiver’s authority pursuant to subsection (5), the *Welch* opinion placed certain limitations on the Atlas Turner receivership order. Because the Supreme Court upheld the specific, insurance-only receivership in *Welch*, it amended certain language absent from the Park Appointment Order to make clear that the Atlas Turner receivership remained as this Court designed—for *insurance assets* only. *See Welch*, 2025 WL 1450573 at *11-12. The limiting language the Supreme Court amended in the Atlas Turner receivership order to clarify the limited receivership appropriate in that case is inapposite here.

¹⁶⁶ The Altrad Third-Party Defendants are Mohed Altrad and Altrad Investment Authority S.A.S. (“Altrad Owners Third-Party Defendants”). The Charter Third-Party Defendants are Central Mining & Investment Corporation Ltd., Charter Consolidated Ltd., and ESAB Corporation.

Indeed, limiting the Cape receivership to insurance assets only would defeat the very purpose of bringing Cape and other entities related to and/or responsible for Cape to justice for injuring South Carolinas and then implementing its decades-old litigation-avoidance scheme and moral fraud. Cape set up NAAC to be intentionally underinsured, and its insurance appears to have been exhausted soon after NAAC dissolved in 1978.¹⁶⁷ While the Receiver continues to try to uncover any available insurance assets, it is important to recognize that Cape's underinsurance was part of the moral fraud scheme itself. As a result, and in order to achieve an equitable result, this receivership in the Tibbs Action could not be limited to Cape's insurance assets alone. Instead, the Receiver had to be able to pursue the assets – insurance, property, or otherwise – of other entities who are responsible for and/or benefited from Cape's litigation-avoidance scheme and moral fraud, to the extent the Receiver is able to establish such liability through the alter ego, veil piercing, and/or amalgamation/single business enterprise theories asserted in the third-party suit against Third-Party Defendants in the Tibbs Action. That explains the scope of this Court's Cape Receivership Order, which is perfectly consistent with the *Welch* decision.

Indeed, the Supreme Court in *Welch* clearly stated that receiverships can access assets outside of South Carolina. 2025 WL 1450573, at *9 (“Equity can compel one over whom it has personal jurisdiction to do an act even though that act may affect property outside the court's territorial jurisdiction. That equity may force just such a thing has been a basic principle recognized for centuries.”). *Welch* reflects that the location or nature of the assets does not impact a receiver's ability to recover them. The Supreme Court has made clear that a receiver “stands in the companies' shoes” and “may do whatever the corporation could do in relation to the property, for

¹⁶⁷ See Ex. 33, Letter from Meyer to Gaze (June 29, 1977); see also Ex. 18.1, Opening Statement of North Am. Asbestos Corp., *Pacello v. Johns-Manville Sales Corp.*, No. 80-CV-0080-2 (Colo. Dist. Ct. Boulder Cnty. Nov. 24, 1982).

it is in his possession subject to the control of the court.” *Id.* at *10 (“In one well-known case, a Receiver appointed by a New York court for a California defendant, over whom it had personal jurisdiction, was authorized to retrieve a thoroughbred racehorse from California and ship it to Kentucky.” (citing *Madden v. Rosseter*, 114 Misc. 416, 187 N.Y.S. 462, 462-63 (N.Y. 1921)). The court in *Welch* also recognized that “courts have required defendants over whom they have jurisdiction to transfer foreign stock the defendant owns to a Receiver.” *Id.*

Here, the Receiver does not seek to reach every asset or business activity of Cape and other entities responsible for and/or related to Cape. The Receiver does not seek the power to take over boardrooms or business operations of such entities. Instead, the Receiver requests that this Court confirm that the Receiver’s appointment under S.C. Code § 15-65-10(4) and (5) has full force in the Tibbs Action. The Court should also confirm that the Receiver is empowered to marshal Cape’s assets, including but not limited to insurance coverage and assets outside of South Carolina, to satisfy claims brought in South Carolina. In doing so, the Court should clarify that the Receiver’s authority is limited to the pursuit of activities that are necessary to address the liabilities for injured South Carolinians, to include third-party actions like that against Third-Party Defendants in the Tibbs Action.

CONCLUSION

Pursuant to Rule 11, SCRCF, counsel for the Receiver respectfully submits that consultation with the Third-Party Defendants would serve no useful purpose in light of the positions they have taken in this litigation. As this Court’s appointment over Cape fits squarely within *Welch* and given the Supreme Court’s Order in the Tibbs Action, the Receiver respectfully requests this Court Confirm his appointment in the Tibbs Action.

Respectfully submitted,

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July 11, 2025
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

JOHN A. TIBBS and
MARGARET B. TIBBS

Plaintiffs,

v.

3M COMPANY, et al.

Defendants.

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

Third-Party Plaintiff,

v.

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

Third-Party Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
)

) C/A NO. 2023-CP-40-01759
)

) *In Re:*
) Asbestos Personal Injury Litigation
) Coordinated Docket
)

**PLAINTIFFS' JOINDER TO
RECEIVER'S MOTION TO CONFIRM
APPOINTMENT OF RECEIVER**

Plaintiffs in the above captioned action hereby join in the Receiver's Motion to Confirm
Appointment of Receiver.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS

July 18, 2025,
Dallas, Texas.

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,

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

Plaintiffs,

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

v.

3M COMPANY, et al.,

Defendants.

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

Third-Party Plaintiff,

v.

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

Third-Party Defendants.

**THIRD-PARTY DEFENDANTS CHARTER CONSOLIDATED LTD., ESAB
CORPORATION, AND CENTRAL MINING AND INVESTMENT CORPORATION
LTD.’S OBJECTION AND OPPOSITION TO RECEIVER’S JULY 11, 2025
SUBMISSIONS**

Third-Party Defendants Charter Consolidated Ltd. (“Charter”), ESAB Corporation (“ESAB”), and Central Mining and Investment Corporation Ltd. (“Central Mining” and, collectively, “Charter Third-Party Defendants”), by and through their undersigned counsel, submit this opposition/objection (“the Opposition”) to the Receiver’s Report (“Report”) and Notice of and

Motion to Confirm Appointment of Receiver (“Motion”) filed by the purported receiver for Cape PLC (“Receiver”) on July 11, 2025.¹

OBJECTION AND OPPOSITION²

The Charter Third-Party Defendants respectfully object to the Motion as both procedurally and substantively defective. As a procedural matter, the Motion is improper because the South Carolina Supreme Court’s June 26, 2025 Order (“June 26 Order”) explicitly prohibits the Receiver from taking action in matters such as *Tibbs* in which a case-specific receivership appointment has not been made.

The South Carolina Supreme Court’s June 26 Order

In the June 26 Order, the South Carolina Supreme Court converted the Charter Third-Party Defendants’ petition for writ of certiorari in case 2024-001423 (seeking, *inter alia*, review of whether the Receiver has authority to act) to a common law writ of certiorari and granted it pursuant to article V, section 5 of the South Carolina Constitution and section 14-3-310 of the

¹ By filing this Opposition, the Charter Third-Party Defendants do not waive, but instead specifically preserve, their objections to personal jurisdiction in South Carolina, for the reasons explained in the Motions to Dismiss for Lack of Personal Jurisdiction filed on September 1, 2023 and Memorandums in Support filed on October 23, 2023, as well as the Responses and Objections to Third-Party Plaintiff’s Proposed Order Denying Third-Party Defendants’ Motions to Dismiss for Lack of Personal Jurisdiction filed on December 4, 2023. The Charter Third-Party Defendants maintain their objections to personal jurisdiction in South Carolina, notwithstanding the Court’s denial of their Motion to Dismiss on December 6, 2023. Moreover, the Charter Third-Party Defendants do not waive, but instead specifically preserve, all other objections previously made regarding these proceedings through their written motions, oral arguments, and in responsive pleadings, including that the Court lacks subject matter jurisdiction, that the purported Receiver was unlawfully appointed, that the purported Receiver lacks standing, and that all third-party claims against the Charter Third-Party Defendants should be dismissed for failure to state a claim.

² The Charter Third-Party Defendants incorporate by reference and adopt the arguments set forth in their Opposition To Third-Party Plaintiff’s Motion For Leave To Amend Third-Party Complaint (filed November 15, 2024), Memorandum In Opposition To Motion For Summary Judgment (filed on November 22, 2024), and Objection and Opposition to Receiver’s Request for Trial Date (filed on June 4, 2025). The Charter Third-Party Defendants also incorporate by reference and adopt the arguments advanced by any other party opposing or objecting to the Receiver’s Motion to Confirm Appointment of Receiver, the continuation of the receivership over any Cape entity, and/or the continuation of this case.

South Carolina Code (2017). June 26 Order at pp. 1-2. Rather than request briefing, the South Carolina Supreme Court remanded the case and directed the Court how to proceed. *Id.* at p. 2.

First, the South Carolina Supreme Court cited to its recent opinion in *Welch v. Advance Auto Parts, et al.*, Opinion No. 28284 (“Welch Decision”), in which it “analyzed the circuit court’s jurisdiction to appoint a receiver, discussed the factual basis on which such an order must be based, and set forth limitations on the receiver’s scope of authority.” *Id.* at Section A. In describing the Welch Decision, the June 26 Order reiterates the South Carolina Supreme Court’s caution that a prejudgment receiver may only be appointed in the most drastic of circumstances: “appointing a receiver before judgment is permissible only in the ‘rarest’ and ‘most extraordinary’ cases.” *Id.*

The June 26 Order then directs this Court to complete three tasks to determine and demonstrate whether the Receiver has authority to act in *Tibbs*: (1) ensure that the Receiver has been authorized to conduct his work by a receiver appointment order filed in *Tibbs*; (2) ensure that the receiver appointment order issued in *Tibbs* is based on findings of fact that meet the Welch Decision’s standards and the Receiver’s scope of authority is limited as required by the Welch Decision; and (3) to the extent the Court wishes to proceed with appointing a Receiver in *Tibbs* whose mandate differs from the Receiver’s mandate in the Welch Decision (to identify and marshal insurance assets), the Court must make specific findings of fact and conclusions of law that it believes justifies its actions. *Id.*

As to the first task, the June 26 Order is crystal clear that orders from other lawsuits, a blanket order across lawsuits, or an order in *Tibbs* that is not a receiver appointment order will not suffice. Instead, only a receiver appointment order specifically issued in *Tibbs* will satisfy the South Carolina Supreme Court’s directive: “[t]he receiver is not to be authorized to conduct work

as to a case in which no *receiver appointment order* has been filed.” June 26 Order at Section A.1 (emphasis added).

No Receivership Order Has Been Issued In Tibbs, So the Receiver Has No Authority To Act

A receiver appointment order has never been issued in *Tibbs*. As the Receiver himself admits, his purported appointment as receiver for “Cape”³ was made in the *Park* case⁴ – but no such appointment has been made in *Tibbs*. Motion at p. 3 (indicating that the Cape receivership order was issued in *Park*). Certainly, the Motion does not argue that such an appointment has been made, and how could it when the appointment order was issued in *Park*? To the contrary, the Motion does not even address or reference that aspect of the June 26 Order.

Instead, in the Receiver’s own words, everything he has done in *Tibbs* has been in purported “fulfillment of his duties under the Park Appointment Order,” as opposed to pursuant to any receiver appointment filed in *Tibbs*. *Id.* at p. 4. Additionally, although the Motion appears to suggest that a November 5, 2024 “Clarification Order” legitimizes the Receiver’s actions in *Tibbs*, *see* Motion at p. 4, this too is simply an order issued in *Park*, as opposed to a receivership appointment order issued in *Tibbs*.

³ The Receiver and the *Tibbs* plaintiffs have applied a shifting definition of “Cape,” sometimes to mean Cape PLC, at other times to refer to Cape Intermediate Holdings Ltd. (“CIHL”), and sometimes to refer to both entities collectively. When using the term “Cape” herein, the Charter Third-Party Defendants have attempted to use the term in the same way used by the Receiver or the *Tibbs* plaintiffs, but in doing so do not waive any objections to the improper continuation and modification of the Cape PLC receivership.

⁴ Even if the *Park* appointment could extend to *Tibbs* (which *Welch* holds it cannot), the *Park* appointment itself is defective. In addition to the deficiencies raised in prior submissions, the *Park* appointment does not pass muster under the *Welch* Decision’s requirement of a factual finding supporting the extraordinary remedy of a prejudgment receivership. No such factual finding is set forth in the *Park* appointment order, which instead simply states that “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.” March 17, 2023 Order in *Park v. Armstrong International, Inc.* at p. 1. The *Park* plaintiffs have never demonstrated that Cape had dissolved, forfeited its charter, and been served but failed to answer – but even if they had, this would not suffice under *Welch*. Additionally, it appears that the personal representative of the *Park* estate had been relieved months before the receivership motion in *Park*, further indicating significant deficiencies in the *Park* appointment.

No receiver has been appointed over Cape in *Tibbs*. For such a prejudgment appointment to have been made, Cape would have had to have been served with the *Tibbs* complaint and the first-party plaintiffs would have had to move for the Receiver's appointment by making the requisite showing under S.C. Code § 15-65-10(4) or (5), and the Court, upon determining that the requirements for the drastic and rare remedy of receivership had been met, would have had to issue an order appointing a receiver over Cape in *Tibbs* and setting out the precise mandate of the Receiver in *Tibbs* in a way that comports with the Welch Decision. None of that has happened.⁵ Instead, the Receiver improperly accepted service of the *Tibbs* complaint on behalf of Cape based on his appointment as Receiver in *Park* (which itself was procedurally defective, as discussed above), answered, and then filed a Third-Party Complaint admitting massive liability on the part of Cape (without Cape's consent to do so) and asserting third-party claims wholly premised on the admissions made by the Receiver.

Nor can a court confirm in a particular case, as the Receiver asks this Court to do for his own supposed appointment, a receivership that was never created in that case. Motion at p. 40 (requesting that "this Court Confirm [sic] [the Receiver's] appointment in the *Tibbs* Action"); *id.* at pp. 3-4 (indicating there is only a receivership appointment order in *Park*, not *Tibbs*). A receiver cannot move to appoint himself, and this is not an application for the Receiver to make for himself after years of purporting to act on Cape's behalf in *Tibbs*, as he attempts to do here. Indeed, because a receiver "has no personal interest in the property in his official character, except that which arises out of his responsibility in the faithful and correct discharge of his duties" and is merely "the medium through which the court acts in the execution of its orders and decrees," a putative receiver

⁵ In fact, the Receiver has affirmatively argued in appellate submissions that no such appointment has occurred in *Tibbs*. See, e.g., Reply in Support of Motion to Dismiss Interlocutory Appeals, Appellate Case No. 2023-002008, at p. 5 (urging the Court of Appeals to reject the argument that the *Tibbs* court had created a Cape receivership as part of a third-party defendant's 'gotcha' game").

has no standing to move for his own appointment. *Peurifoy v. Gamble*, 145 S.C. 1, 142 S.E. 788, 790 (1928).

Accordingly, The Charter Third-Party Defendants object to the Receiver filing submissions seeking his own appointment. This is an application to be made by a plaintiff in an active case in the limited and rare circumstances when the appointment of a Receiver is supported under South Carolina law. Such an application was never made in *Tibbs* by the Tibbs family, nor has any receivership appointment order been issued in *Tibbs*. Accordingly, the Motion must be denied. The first task of the June 26 Order's directive is to ensure that the Receiver has been authorized to conduct his work by a receiver appointment order filed in *Tibbs* – and the June 26 Order makes clear that without such an order, the Receiver has no authority to act. This is the threshold inquiry mandated by the South Carolina Supreme Court here, and because there is no receiver appointment order in *Tibbs*, the Court's inquiry under the June 26 Order need go no further.

Moreover, pursuant to the South Carolina Supreme Court's directive in the June 26 Order, each and every one of the Receiver's actions in Cape's name in *Tibbs* – from his initial acceptance of the Complaint to his filing of the Third-Party Complaint to the filing of the Motion and countless other motions through the course of two years of this litigation – has been unauthorized. The Receiver has never had power to act for Cape in this case because he was never appointed in this case. He cannot bring this Motion, nor has he ever had the standing or authority to act on Cape's behalf in *Tibbs*. As a result, the Receiver's would-be third-party claims against the Charter Third-Party Defendants and others are void *ab initio*, necessitating the dismissal of the Third-Party Complaint and rendering the Motion and all other pending motions and proceedings arising out of the Receiver's alleged third-party claims in *Tibbs* moot.

The Other Requirements for Receivership Have Not Been Met

Even absent these fatal procedural defects, the Motion would nevertheless fail as substantively defective because it does not set forth valid findings of fact to support placing Cape into receivership in *Tibbs* (or in any other case, for that matter). For instance, although the Motion suggests that receivership is warranted under S.C. Code § 15-65-10(4) because the Receiver believes Cape is in danger of insolvency, the proffered “evidence” of such danger amounts to nothing more than conjecture. The Motion speculates that because CIHL is a non-operating holding company, it could hide profits from plaintiffs (but provides no evidence that CIHL is in fact doing this) and because Cape-related entities pay out asbestos-related claims to United Kingdom-based plaintiffs but the Receiver is unsure about how much money CIHL itself has, *see* Motion at pp. 32-34, this must mean there is “danger of imminent insolvency for CIHL.” *Id.* at 35. None of this constitutes evidence that Cape is in immediate danger of becoming insolvent such that the drastic remedy of receivership should be implemented.

The Motion’s assertions regarding Cape’s “moral fraud” are likewise without merit. Although the Receiver argues that receivership is also warranted under S.C. Code § 15-65-10(5) because the Welch Decision identified moral fraud as grounds for receivership, the Motion does not identify any moral fraud committed by Cape in the *Tibbs* case that could support the extraordinary remedy of appointing a prejudgment receivership over an active foreign entity.

More specifically, the Motion is largely premised on a lengthy recitation of alleged historic machinations by Cape and other entities that the Receiver has essentially “admitted” on Cape’s behalf without authority to do so. According to the Motion, these unproven allegations of wrongdoing, largely based on hearsay such as assorted books and articles, are no different from

the evidence of moral fraud that the South Carolina Supreme Court determined warranted appointing a receiver over Atlas Turner in *Welch*.

But the Motion's position overlooks a critical distinction: in *Welch*, the requisite moral fraud supporting the Atlas Turner receivership consisted of proven evidence of misconduct by Atlas Turner that occurred in *Welch*, including but not limited to making misrepresentations to the trial court and disregarding its orders. *Welch* Decision at pp. 13-14 (enumerating Atlas Turner's improper actions in *Welch*, which constituted "evidence support[ing] the finding that Atlas Turner engaged in moral fraud against the trial court, the state of South Carolina, and Respondent"). In contrast, the alleged "moral fraud" identified in the Motion is simply a narrative description of the Receiver's allegations of historic wrongdoing by Cape based on hearsay, as opposed to evidence of any actual wrongdoing by Cape in the *Tibbs* action itself, as well as Cape's lack of answer in the *Park* case (in which it is unclear whether the proper Cape entity was ever even served or if personal jurisdiction exists, both of which must have been established before a receiver could be appointed in that action). Cape has not engaged in any misconduct in *Tibbs*; it has not even been served with process in the case. There has been no showing of "moral fraud" by Cape in the *Tibbs* case that could support appointment of a receiver over it in that action.

No Receiver Could Assert the Tibbs Third-Party Claims – Only Cape's Board Could Do So

Finally, the Motion's position that the *Welch* Decision's limitations on receivership (allowing their use in some circumstances to identify and marshal certain insurance assets to cover the plaintiff's damages) nevertheless permit a receiver to "confess" decades of wrongdoing and fraud by the entity over which it has been appointed, over the explicit objections of the entity and its management, is wholly unsupported. No matter what the Motion may argue, the *Welch* Decision directs that a receiver's power cannot include entry into an entity's boardroom or the ability to take

over operation of the entity but rather is limited to collecting insurance and other assets to cover the injuries of the plaintiff in the case in which the receiver was appointed. Welch Decision at p. 18. Even if the Receiver had been properly appointed in *Tibbs* – which he has not been and cannot be – he would not have the power to make stunning admissions of liability on Cape’s behalf and then bring third-party claims based solely on those admissions to cover all asbestos-related injuries alleged by all South Carolinians, past and present. This goes far beyond the limited plaintiff-specific, insurance-specific scope of receivership delineated by *Welch*. Indeed, the Welch Decision makes clear that no South Carolina receivership order can take that decision-making power from Cape’s board and give it to a receiver.

CONCLUSION

The Motion has been brought by a party without power to act in this case, essentially seeking his own receivership appointment and asking the Court to overlook the requirements of the Welch Decision and South Carolina receivership law in doing so. Even if the Receiver had standing to bring the Motion and had demonstrated entitlement to the requested relief – which he has not – granting the Motion would violate the requirements of the June 26 Order. The South Carolina Supreme Court’s directive was clear: the Court may not authorize the Receiver to conduct work in *Tibbs* unless and until a receiver appointment order has been filed in this case. There is no receiver appointment order in place, nor has anyone with standing to do so made an application for such an order. This alone, without more, requires immediate denial of the Motion. Moreover, even if there were a receiver appointment order in *Tibbs*, the June 26 Order and the Welch Decision still mandate dismissal of the Motion, as the Receiver has not demonstrated findings of fact that support the rarest, most extraordinary remedy of prejudgment receivership. Accordingly, the

Charter Third-Party Defendants respectfully submit that the numerous procedural and substantive points described herein require denial of the Motion.

Dated: July 18, 2025

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Ltd.*

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

JOHN A. TIBBS AND MARGARET B.
TIBBS,

Plaintiffs,

vs.

3M COMPANY, *et al.*,

Defendants.

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

Third-Party Plaintiff,

vs.

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
CONSOLIDATED MINES LTD.; DE BEERS
S.A.; 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.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

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

In Re:

Asbestos Personal Injury Litigation
Coordinated Docket

**THIRD-PARTY DEFENDANTS
ANGLO AMERICAN PLC,
DE BEERS PLC, DE BEERS UK
LIMITED, DE BEERS CONSOLIDATED
MINES PROPRIETARY LIMITED,
AND DE BEERS CENTENARY AG'S
OPPOSITION TO THIRD-PARTY
PLAINTIFF'S "MOTION TO CONFIRM
APPOINTMENT OF RECEIVER"**

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.

Third-Party Defendants Anglo American plc, De Beers plc, De Beers Consolidated Mines Proprietary Limited, De Beers UK Limited, and De Beers Centenary AG (collectively, the “Anglo American-De Beers Defendants”) respectfully submit this response to the “Motion to Confirm Appointment of Receiver” (“Mot.”) filed by Peter D. Protopapas in his purported capacity as receiver for Cape Intermediate Holdings Limited (“Cape”) (“Third-Party Plaintiff”).¹

ARGUMENT

I. Third-Party Plaintiff Lacks Standing to Bring this Motion Because He Was Never Appointed Receiver for Cape in the *Tibbs* Action.

Third-Party Plaintiff’s motion must be denied for lack of standing because he is not receiver for Cape in this case. As set forth in the Supplemental Memorandum of Law in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction filed by the Anglo American-De Beers Defendants on July 1, 2025 (attached hereto with its exhibits as **Exhibit 1**), on June 26, 2025, the South Carolina Supreme Court entered an order (the “June 26 Order”) holding that “[t]he receiver is not to be authorized to conduct work as to a case in which no receiver appointment order has been filed.” June 26 Order ¶ (A)(1).

No receiver appointment order has ever been entered in this case. Third-Party Plaintiff over the course of the last two years has been purporting to act as Receiver for Cape pursuant to an appointment order entered in a separate and unrelated action, *Park v. Armstrong International, Inc.*, Case No. 2021-CP-40-02727.² Third-Party Plaintiff cannot, through a self-styled motion to

¹ By filing this opposition, the Anglo American-De Beers Defendants do not waive, and specifically preserve, all defenses, including the defense of lack of personal jurisdiction.

² Just hours ago, Third-Party Plaintiff filed an Opposition to the Anglo American-De Beers Defendants’ Motion to Dissolve the Cape Receivership and to Dismiss Third-Party Plaintiff’s Claim[s] for Lack of Subject Matter Jurisdiction in which he asserts that on June 30, 2023, “in the fulfillment of his duties under the Park Appointment Order, the Receiver filed a Third-Party Complaint in the Tibbs Action asserting claims against Third-Party Defendants” The June 26

“confirm” his appointment, circumvent the threshold requirement mandated by the South Carolina Supreme Court in its June 26 Order that this Court enter an appointment order authorizing the receiver to act “in the specific case as to which the work is to take place,” *i.e.*, in *Tibbs. Id.*³

Third-Party Plaintiff asks the Court to “confirm” his appointment in *Tibbs* but does not identify an underlying appointment order that can be confirmed—because there is none. Indeed, Third-Party Plaintiff himself has admitted numerous times in this litigation, and as recently as several hours ago, that he has been acting solely pursuant to the appointment order entered in the *Park* action. (*See supra* at 2 n.2; *see also, e.g.*, Third-Party Complaint ¶¶ 1, 36 (referring to the *Park* appointment order as the source of Third-Party Plaintiff’s authority to act in the *Tibbs* action); Motion to Enforce the Appointment Order filed October 11, 2024 ¶¶ 1, 9, 12 (same)). Third-Party Plaintiff also has taken the position in prior briefing that the Court’s December 6, 2023 order refusing to dissolve the receivership was not an order granting, modifying, or continuing a receivership in the *Tibbs* action. (*See Receiver’s Reply in Support of Motion to Dismiss Interlocutory Appeals* filed May 3, 2024, at 5–7). Third-Party Plaintiff is bound by these admissions and judicially estopped from taking a contrary position now in the same litigation. *See, e.g., Elrod v. All*, 243 S.C. 425, 436–37, 134 S.E.2d 410, 416 (1964) (parties are “judicially concluded and bound by [the pleadings],” which are “conclusive as against the pleader”); *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997) (“Judicial estoppel

Order makes clear that a receiver’s authority is case-specific, and a litigant cannot file a third-party complaint in one lawsuit “in fulfillment of his duties” as receiver in a different lawsuit.

³ In his Motion, Third-Party Plaintiff says his duty as purported receiver for Cape is to “pursue activities that are necessary to address the liabilities for injured South Carolinians.” (Mot. at 3). That is not the function of a prejudgment receiver under South Carolina law. As confirmed in *Welch* and in the June 26 Order, a prejudgment receiver is authorized to act in *one case*, for the limited purpose of identifying and safeguarding assets at risk of dissipation prior to judgment *in that case*. *See infra* at 5–6. A prejudgment receiver is not a statewide representative for South Carolina asbestos plaintiffs and does not have carte blanche to pursue recovery on their behalf.

precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation.”).

Moreover, the Court cannot remedy *nunc pro tunc* the fatal defects in this third-party lawsuit that flow from Third-Party Plaintiff never having been appointed receiver over Cape in the *Tibbs* action. These defects include the fact that Third-Party Plaintiff never had authority to accept service of the Tibbs’ first-party complaint on behalf of Cape, as made clear by the South Carolina Supreme Court’s June 26 Order. Because Third-Party Plaintiff had no authority to accept service of the first-party complaint, let alone to commence a derivative, third-party action on behalf of Cape, Third-Party Plaintiff lacks standing with respect to his claims against the Anglo American-De Beers Defendants and the other Third-Party Defendants in this case, and those claims must be dismissed for lack of subject matter jurisdiction. *See, e.g., Protopapas v. Wall, Templeton, & Haldrup, P.A.*, 442 S.C. 217, 226–227, 898 S.E.2d 150, 154–55 (Ct. App. 2023) (holding that receiver’s standing derives from his duty to “fulfill the requirements of the Appointment Order”).

No appointment order can be entered in *Tibbs* unless Cape is served with the complaint and the first-party plaintiffs establish entitlement as a matter of fact and law to a prejudgment receivership over Cape based on Cape’s response or non-response to service of the complaint, consistent with *Welch* and the June 26 Order. None of those things has happened in this case. Third-Party Plaintiff—who, as it stands, is a private litigant with no standing to pursue third-party claims in *Tibbs* on behalf of Cape or any other entity—cannot accept service on behalf of Cape in *Tibbs* and now seek to secure his own appointment and ratify his improper course of conduct over the last two years retroactively through a self-styled “motion to confirm.” This would bypass the threshold requirements for receiver appointments under South Carolina law, as well as Cape’s own Constitutional due process rights to notice and an opportunity to be heard with respect to the Tibbs’

claims against it through proper service of the complaint. Third-Party Plaintiff's "motion to confirm" is a procedural nullity.

Because there has been no appointment of a receiver over Cape in the *Tibbs* action, all other pending motions, including but not limited to discovery motions, should be denied as moot due to Third-Party Plaintiff's lack of standing. There is no receiver in this case and there never has been, as made clear by the South Carolina Supreme Court's June 26 Order. For the same reasons, there is no receiver appointment to "confirm," as no appointment order has ever been entered in *Tibbs*. Without a valid, case-specific appointment order, Third-Party Plaintiff has no standing to bring suit on Cape's behalf and has lacked standing since the very outset of this third-party action to do anything. The Anglo American-De Beers Defendants' motion to dismiss for lack of subject matter jurisdiction should therefore be granted.

II. *Welch* Forecloses Third-Party Plaintiff's Appointment as Receiver over Cape.

Even if Third-Party Plaintiff could act on behalf of Cape in this case pursuant to the *Park* appointment order or some sort of reverse-engineered importation of the *Park* appointment order to this case—which he cannot—that appointment order is itself void under the South Carolina Supreme Court's decision in *Welch v. Advance Auto Parts, Inc. et al.*, Op. No. 28284 (May 21, 2025), as well as under the U.S. Constitution, principles of comity, and the presumption against extraterritorial application of state law.

A. The Appointment of a Receiver over Cape in *Park* Was Improper.

As set forth in the Anglo American-De Beers Defendants' Motion to Dissolve the Cape Receivership and to Dismiss Third-Party Plaintiff's Claims for Lack of Subject Matter Jurisdiction filed June 24, 2025 (attached hereto with its exhibits as **Exhibit 2** ("Opening Br.")), and as the South Carolina Supreme Court reiterated in its June 26 Order, *Welch* forecloses the

appointment of a receiver before judgment except in the “rarest” and “most extraordinary cases,” June 26 Order ¶ (A), namely, when “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.” *Welch* at 23 (quoting *Richland County v. S.C. Dep’t of Revenue*, 422 S.C. 292, 313, 811 S.E.2d 758, 769 (2018)).

No such findings were made with respect to Cape in the *Park* action. *Park* represented a “typical default case” because the only purported basis for the Court’s placing Cape into receivership was that Cape had “failed to answer” the complaint. (*See* Opening Br. at 8). Therefore, there was no basis for the Court to grant the “extraordinary remedy” of a prejudgment receivership over Cape in *Park*.

Further, the South Carolina Supreme Court made clear that, in asbestos personal injury actions such as the present case, the receiver’s authority is limited to “that necessary to investigate and collect [the receivership entity]’s Insurance Assets.” *Welch* at 30. Yet, Third-Party Plaintiff has never alleged, and there has never been any evidence, that Cape is “involved in a transaction that may . . . compromise[] some of its potential insurance coverage” or has “refused to tender its policies to certain insurers for defense and indemnity.” *Id.* at 25. Just a month ago, Third-Party Plaintiff admitted that any potentially applicable insurance coverage “appears to have been exhausted . . . **in 1978.**” (Interim Status Report of the Cape Receiver and Request for a Trial Date filed May 27, 2025, at 14 (emphasis added)). As stressed by the South Carolina Supreme Court in *Welch*, a prejudgment receiver may only be appointed if there is “danger that the property **will be materially injured** before the case can be determined” (emphasis added), *i.e.*, prospectively, and prior to entry of judgment in the action—not as a form of “reckoning,” as Third-Party Plaintiff

describes it in his pleading, for Cape’s alleged failure to procure adequate insurance or diversion of assets to avoid liabilities some fifty years in the past. (*See* Opening Br. at 9).

B. The *Park* Appointment Order Is Grossly Overbroad, in Violation of South Carolina Law, the U.S. Constitution, Principles of Comity, and the Presumption Against Extraterritoriality.

The *Park* appointment order, to the extent relevant to this proceeding at all, is void for an additional and related reason that the expansive powers this order gave Third-Party Plaintiff—including the power 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”—exceeds the limitations on receiverships under South Carolina law (as confirmed in *Welch*), as well as limitations on state-court exercises of power under the U.S. Constitution, principles of comity, and the presumption against extraterritorial application of state law. (*See* Opening Br. at 10–11).

Beyond the *Park* appointment order being overbroad on its face, the actions Third-Party Plaintiff has taken in the *Tibbs* action under color of authority as receiver for Cape far exceed any power that can lawfully be granted to a South Carolina receiver under South Carolina and federal law. Those actions include (1) accepting service of the *Tibbs*’ lawsuit against Cape (denying Cape notice of that lawsuit and an opportunity to respond), (2) filing an answer on behalf of Cape, (3) waiving Cape’s jurisdictional and merits defenses, (4) confessing Cape’s liability for an alleged “liability avoidance scheme” exposing Cape to billions of dollars in damages, (5) seeking to pierce Cape’s corporate veil, (6) asserting third-party claims against the Anglo American-De Beers Defendants and the other Third-Party Defendants based on novel theories of unjust enrichment and alter ego liability, (7) deprivileging Cape’s confidential and privileged communications with its counsel, (8) taking the remarkable position that Cape is in a common

interest relationship with the same asbestos plaintiffs who sued Cape for personal injuries (the Tibbs), (9) purporting to enter into a tolling agreement with those adversaries on Cape's behalf in an effort to try to "resolve" their dispute "outside of the tort system," (10) appointing counsel to act on Cape's behalf to help design and execute the above litigation strategies and positions diametrically opposed to Cape's best interests as determined by Cape's own board of directors, and (11) seeking the removal of and sanctions against Cape's own, duly retained counsel. As stated in the Anglo American-De Beers Defendants' prior briefing, it is hard to imagine a litigation course more hostile to Cape's own interests and the business judgments of its own board of directors.

The power to make these types of litigation decisions on behalf of a solvent company has long been recognized by the courts of this state and across the country as belonging exclusively to a company's board of directors. *See, e.g., Carolina First Corp. v. Whittle*, 343 S.C. 176, 187, 539 S.E.2d 402, 408 (Ct. App. 2000) (a corporation's "directors are, under the laws of every state, responsible for the conduct of the corporation's business, including the decision to litigate" (citation omitted)); *Muzek v. Eagle Mfg. of N. Am., Inc.*, 2019 WL 13168879, at *2 (E.D. Ky. Oct. 23, 2019) ("[A] decision whether to bring a lawsuit, refrain from litigation on behalf of a corporation, or the appointment of an examiner is a decision concerning the management of a corporation. Such decisions are part of the responsibility of a board of directors" (citation omitted)); *Freedman v. Redstone*, 753 F.3d 416, 424 (3d Cir. 2014) (same); *In re Universal Health Servs., Inc., Derivative Litig.*, 2019 WL 3886838, at *30 (E.D. Pa. Aug. 19, 2019) (same); *Hirschfeld v. Beckerle*, 405 F. Supp. 3d 601, 605 (D.N.J. 2019) (same).

By making the above litigation decisions on behalf of Cape in this third-party lawsuit—in express violation of the will of Cape's board of directors—Third-Party Plaintiff has attempted

nothing short of a full-blown takeover of the operations of the company, and those actions are void pursuant to *Welch*. See *Welch* at 30 (the Court cannot “grant the Receiver entry into the [company’s] boardroom or some vague right to ‘take over’ operation of the company”); see also Opening Br. at 12–14.

In short, Third-Party Plaintiff is not acting pursuant to *any* appointment order in the *Tibbs* action, nor can he act pursuant to the invalid appointment order in the *Park* action. Accordingly, Third-Party Plaintiff has no standing to bring his third-party claims in this lawsuit, and those claims must be dismissed for lack of subject matter jurisdiction.

CONCLUSION

For the reasons set forth herein and in the Anglo American-De Beers Defendants’ attached briefing, Third-Party Plaintiff has no standing to bring the instant “motion to confirm” or to bring third-party claims on behalf of Cape in this case. The Anglo American-De Beers Defendants therefore respectfully request an Order denying Third-Party Plaintiff’s motion and granting their pending Motion to Dismiss for Lack of Subject Matter Jurisdiction.

Signature Page Follows

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*Attorneys for the
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July 18, 2025

Mount Pleasant, South Carolina

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

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

Plaintiffs,)
)

vs.)
)

3M Company, *et al.*,)
)

Defendants.)

ALTRAD DEFENDANTS’ NOTICE OF
 RECENT SUPREME COURT
 AUTHORITY VOIDING THIRD-
 PARTY LITIGATION, RENEWED
 MOTION TO DISMISS, AND
 MOTION TO STRIKE ALL FILINGS
 AND ORDERS IN THE THIRD-
 PARTY CASE

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

Third-Party Plaintiff,)
)

vs.)
)

Anglo American PLC, *et al.*,)
)

Third-Party Defendants.)
)

The Altrad Defendants submit this notice of new, controlling authority to the Court and request that the Court promptly dismiss the “third-party complaint” in the above-captioned action. As the South Carolina Supreme Court recently made clear, this Court lacks jurisdiction and the third-party case must be dismissed.

Twice in the last 60 days, the Supreme Court has stated unequivocally that a receiver cannot operate—or “conduct work,” as stated in the *Tibbs* order—outside of the case in which he or she has been appointed. Because that is exactly what purports to be happening here, these third-party proceedings are a nullity. This third-party case should be dismissed, and everything the Receiver has filed and that the Court has ordered from the outset should be withdrawn or stricken.

RECENT AUTHORITY FROM THE SOUTH CAROLINA SUPREME COURT

In *Welch v. Advance Auto Parts, Inc.* Op. No. 28284 (S.C.Sup.Ct. filed May 21, 2025) (Howard Adv.Sh. No. 19 at 12), the South Carolina Supreme Court reversed in part a receivership appointment from this Court because it exceeded the scope of what a receiver can lawfully do. The Supreme Court held that: (1) a receiver can only be authorized to marshal assets needed to pay debts owed to the party responsible for the receiver’s appointment; (2) as a natural corollary, a receiver’s activity is limited to the case in which he or she was appointed; and (3) a receiver must stay out of the “boardroom” and “business activities” of the entity whose assets he or she is charged with marshaling. (*Id.* at 30.)

Barely one month later, the South Carolina Supreme Court issued an order in this case that reiterates these same points. In *Tibbs v. 3M Co.*, Appellate Case No. 2024-001423, the Supreme Court heavily quoted its *Welch* opinion to reinforce that a receiver is only permitted “in the ‘rarest’ and ‘most extraordinary’ cases,” and it then stated without condition or exception: “The receiver is not to be authorized to conduct work as to a case in which no receiver appointment order has been filed.”

THE RECEIVER HAS NO STANDING, VOIDING THESE PROCEEDINGS

There is no appointment order in this case.

Without an appointment order authorizing the Receiver to do anything on behalf of the Tibbs plaintiffs, the Receiver does not exist as a jural entity in this case and therefore lacks standing to do or say anything in this matter—including (1) purporting to accept service on behalf of Cape PLC; (2) purporting to file an answer on behalf of Cape PLC; (3) purporting to file a third-party complaint on behalf of Cape PLC; (4) seeking discovery from or sanctions against the third-party defendants; (5) purporting to enter into “tolling agreements” with plaintiffs’ counsel on behalf of

Cape PLC; (6) holding himself out “as attorney for” Cape PLC in Case No. 2024-CP-40-06639; (7) suing Winston & Strawn and several individual attorneys simply because that law firm also represents Cape PLC and CIHL in Case No. 2024-CP-40-05397; and (8) most recently, seeking to have himself appointed (since he has never been in *this* case) as a receiver following the Supreme Court’s rulings in *Welch* and *Tibbs*. See, e.g., *Glenn v. E.I. DuPont de Nemours & Co.*, 254 S.C. 128, 134, 174 S.E.2d 155, 158 (1970) (“A complaint brought in the name of a plaintiff which is not a legal entity is a nullity and there is no foundation upon which to base an amendment.”); *Porter v. Brown*, 149 S.C. 151, 158, 146 S.E. 810, 812–13 (1929) (finding that an order appointing a receiver mis-identified the entity to be placed in receivership and, therefore, all proceedings initiated by the receiver “must fall” because “F.S. Porter is not the legally appointed receiver in this case”); see also *Berg v. Kingdom of the Netherlands*, Case No. 2:18-cv-3123-BHH, 2020 U.S. Dist. LEXIS 102042, at *4–6 (D.S.C. June 11, 2020) (denying motion to reconsider the dismissal of a case due to lack of standing because the plaintiff “was not actually appointed personal representative” at the time he brought suit, and rejecting the plaintiff’s arguments that his subsequent appointment could cure that defect because “standing generally must exist *at the inception* of a lawsuit and not based on later developments during litigation”) (emphasis in original), *aff’d* 24 F.4th 987 (4th Cir. 2022); *Johnston Mem. Hosp. v. Bazemore*, 672 S.E.2d 858, 861–62 (Va. 2009) (“Since Wanda Bazemore had not qualified as the personal representative of her husband’s estate when this wrongful death action was filed, the named plaintiff, which was not a legal entity at that time, lacked standing to file the action. ***The action is therefore a nullity*** and cannot be nonsuited. Thus, we will reverse the circuit court’s judgment granting a nonsuit and denying the defendants’ motions to abate, and dismiss the action with prejudice.”) (emphasis added).

Because the Receiver has no standing, everything he has filed and every order the circuit court has issued in this third-party case are void as a matter of law. *See, e.g., Bailey v. Bailey*, 312 S.C. 454, 458–59, 441 S.E.2d 325, 327–28 (1994) (holding that “respondents lack standing to intervene in appellants’ lawsuit” because they did not “have a personal stake in the subject matter” of the case, and concluding that because “the respondents were without standing to intervene, the resulting restraining order [issued by the circuit court] is rendered void”); *Glenn*, 254 S.C. at 136, 174 S.E.2d at 159 (holding that litigation filed by a putative administratrix without an appointment order from the probate court “was a nullity”); *Porter*, 149 S.C. at 158, 146 S.E. at 812–13 (holding that “all proceedings” involving a not-properly-appointed receiver “must fall”); *see also Porter*, 149 S.C. at 162 n.1, 146 S.E. at 814 n.1 (“If 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.” (quoting 34 Cyc. at 168)) (Cothran, J., concurring).

The Altrad Defendants respectfully notify the Court of the *Welch* and *Tibbs* decisions so that it can acknowledge that the third-party proceedings here are void and put an end to them.

THE DEFECTS IN THESE PROCEEDINGS ARE INCURABLE

Nor is the Receiver’s lack of standing and this third-party case’s status as a “nullity” something that can be fixed. This is so for several independent reasons:

1. *Standing is required at inception.* Standing must exist at the outset of a case, which the Receiver indisputably did not have here when filing the third-party complaint. *See Youngblood v. S.C. DSS*, 402 S.C. 311, 317, 741 S.E.2d 515, 518 (2013) (explaining that standing is “a fundamental prerequisite to instituting an action”). And the fact the Receiver is seeking an appointment *in this case* makes it clear that the Receiver himself recognizes he has had no standing since the inception of this case.

2. *A receiver cannot seek his or her own appointment.* The Receiver cannot seek his own appointment, as he lacks standing to file anything in this matter or any other because there is no appointment order for this case, and his appointment order in *Park* is in any event void on its face, as discussed below. Nor would it make sense for any receiver to ever seek his or her own appointment. A receiver exists only to collect assets to pay specific, identifiable debts owed to the person who actually seeks the appointment; *Welch* and *Tibbs* both reinforce this exact point. By definition, a receiver cannot have any independent or personal interest in the litigation. *Va.-Carolina Chem. Co. v. Hunter*, 84 S.C. 214, 224, 66 S.E. 177, 180 (1909). Because no “Cape” entity owes any debt to the Receiver in this case or any other, he has no standing to seek the appointment of a receiver, including an appointment for himself.

Moreover, the Receiver concedes that, if appointed here, he wouldn’t act for the Tibbs plaintiffs. Instead, he states on Page 3 of his “Notice of and Motion to Confirm Appointment of Receiver” that he views his hoped-for job to be to “pursue activities that are necessary to address the liabilities for injured South Carolinians” at large. *Welch* and *Tibbs*, among other authorities, make clear that this can never be the job of a receiver.

3. *Only a “party” can seek appointment of a receiver.* Similar to Point 2 above, the South Carolina Code only allows an actual “party” to seek the appointment of a receiver, and the Code imposes on a movant the risk of significant adverse consequences if the appointment proves to be “improper”:

Whenever a receiver shall have been appointed of any property against the opposition of any party to the cause and shall have taken possession of the property and thereafter by final adjudication such receiver shall be held to have been improperly appointed, the costs, charges and expenses of such receivership shall not be charges upon the property as a whole but only upon the interests therein of ***the party procuring the appointment.*** And any party to the cause having opposed such receivership may apply to the court after

final adjudication, as aforesaid, and have it referred to a master, referee or jury, as the practice in the case presented may be proper, and to have his actual damages by reason of such receivership ascertained and assessed and for judgment therefor against *the party or parties having procured such receiver*.

S.C. Code Ann. § 15-65-90 (emphasis added). The Tibbs plaintiffs have never asked the Court to appoint a receiver to do anything at all, much less agreed to pay all “costs,” “charges,” “expenses,” and “actual damages” if the appointment ends up being improper.

Without an order authorizing him to “conduct work” in this case, the Receiver is not and cannot be a “party” here, and the law does not authorize him, as a non-party, to seek his own appointment to try to collect assets on behalf of the Tibbs plaintiffs (much less on behalf of all South Carolinians)—actual parties who have never requested a receiver’s involvement in this case, and have never assumed the risk of paying all “costs,” “charges,” “expenses,” and “actual damages” associated with an improper appointment.¹

4. *Neither Cape entity has been served in Tibbs.* Like the Receiver, neither Cape PLC (Jersey) nor Cape Intermediate Holdings Limited (England) are actual parties to this case. The Tibbs plaintiffs named Cape PLC (but not CIHL) in the complaint, but they alleged that it is a defendant only by way of “its court appointed Receiver maintaining its principal place of business in South Carolina.” (Compl. ¶ 41 (Apr. 5, 2023); Am. Compl. ¶ 48 (May 3, 2023).) There is no proof of service of any summons or any complaint on Cape PLC itself (or on CIHL itself, for that matter) anywhere in the *Tibbs* docket, as required by Rules 4(g) and 4.1(c), SCRCP. Without

¹ This statutory limitation that only a “party” may seek the appointment of a receiver is consistent with the norm that an entity who is not a “party” has no standing to file anything with a court. *See, e.g., Ex parte S.C. DMV v. State*, 390 S.C. 457, 458, 702 S.E.2d 568, 568 (2010) (dismissing an appeal filed by the South Carolina Department of Motor Vehicles where the agency “attempted to portray itself as a party” but never actually intervened “as a party,” and thus lacked the ability to notice an appeal).

proper service, there can be no personal jurisdiction. *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006).

Instead, the Receiver—without an order authorizing him to do anything on behalf of the Tibbs plaintiffs—appears to have “accepted” service and then answered the complaint on behalf of Cape PLC without asserting a single affirmative defense, such as the absence of service of process and the absence of personal jurisdiction, among innumerable others. (Receiver’s Answer for Cape PLC (June 29, 2023).) This in no way comports with a receiver’s role, Due Process, or any South Carolina procedure.

Unless and until (1) the Tibbs plaintiffs file a motion, are granted leave, and then actually amend their pleadings to name Cape PLC or CIHL as defendants without incorrectly tethering either to a void receivership; (2) the Tibbs plaintiffs serve the Cape entities with process according to the law; (3) personal jurisdiction somehow attaches (neither Cape PLC nor CIHL has any contacts with South Carolina); and (4) Cape PLC and CIHL are given notice of any receivership request, the Court lacks authority to appoint a receiver over either of these European companies. *See Porter*, 149 S.C. at 161–62, 146 S.E. at 813–14 (finding that because the “proceeding for the appointment of a Receiver was instituted without the institution of an action against the [correct] Opera Company, the Court was without authority to appoint a receiver, and all proceedings connected therewith are *coram non judice*”).²

² This holding is reported in two concurring opinions in *Porter*, but four of the five justices deciding the case signed on to the above-quoted passage. “*Coram non judice*” means “‘before a person, not a judge’—meaning, in effect, that the proceeding in question was not a **judicial** proceeding because lawful judicial authority was not present,” and therefore anything involved in the proceeding is “void and, ‘is, in legal effect, nothing.’” *Innovative Waste Mgmt. Inc. v. Crest Energy Partners GP, LLC*, 423 S.C. 611, 614–15, 815 S.E.2d 780, 782 (Ct. App. 2018) (quoting *Burnham v. Superior Court of Cal.*, 495 U.S. 604, 609 (1990), and *Turner v. Malone*, 24 S.C. 398, 401 (1886)) (emphasis in original).

5. No statutory “receivership” notice has been served on either Cape entity. Even if Cape PLC or CIHL is ever named as a defendant in a *Tibbs* pleading, is served with process, and personal jurisdiction is established, a receivership still cannot be created unless and until the targeted company is given notice of such a motion. S.C. Code Ann. § 15-65-20. No such motion and no such notice exist here.

6. There is no South Carolina property at stake. If a receiver were to be appointed, the appointment would be void because neither Cape PLC nor CIHL has any property in this state that a receiver could marshal. *Welch* reasons that a party subject to the court’s personal jurisdiction may be required to turn over assets located outside of the state, but it does not hold that a receiver’s power to marshal assets extends beyond the territorial jurisdiction of the court. And while *Welch* involved insurance assets believed to have had a South Carolina nexus, the assets of Cape PLC and CIHL are not tethered to any insurance—the Receiver admits no insurance is involved here—and have no “in-South Carolina” characteristics. Accordingly, basic federalism and constitutional limitations, including the Commerce Clause, prohibit a receivership over either Cape entity that attempts to marshal any of not-in-South Carolina assets. *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, as here, “there [wa]s a total failure of any proof that it ha[d] property in this state”); *Frink v. Nat’l Mut. Fire Ins. Co.*, 90 S.C. 544, 549, 74 S.E. 33, 35 (1912) (“That a receiver has no extra territorial authority is too well settled to require the citation of authority.”).

7. The Cape entities and the Altrad entities have exchanged mutual releases, mooting this dispute. As the Court is aware, Cape PLC and CIHL have executed mutual releases of all claims (including of the type the Receiver purported to assert here) with the Altrad Defendants. The Altrad Defendants filed a copy of those mutual releases on June 4, 2025, with the Court.

Accordingly, everything that was supposedly at issue in the third-party complaint is now moot vis-à-vis the Altrad Defendants and their other direct and indirect subsidiaries, including Altrad UK. *See Morgan v. S.C. DOR*, Case No. 2012-CP-40-07331, 2013 S.C. C.P. LEXIS 2, at *10 (S.C. C.P. Feb. 27, 2013) (“A keystone of any court’s subject matter jurisdiction is that there must be an ongoing controversy between the parties, as courts are forbidden from ruling on ‘academic questions’ or from ‘making an adjudication where there remains no actual controversy.’” (quoting *Fabian’s Uptown Charleston, Inc. v. S.C. Tax Comm’n*, 247 S.C. 164, 166, 146 S.E.2d 608, 608 (1966))) (cleaned up).

8. *Courts elsewhere have already nullified this receivership.* As the Court is aware, two European courts have already recognized the invalidity of this receivership: the High Court of Justice in the Business and Property Courts of England and Wales in *Cape Intermediate Holdings Limited v. Protopapas* [2024] EWHC 2999 (Nov. 22, 2024); and the Montpellier Civil Court in *Cape PLC v. Protopapas*, Case DBYB-W-B7J-PM3N (Apr. 8, 2025). Copies of each court’s rejection of this receivership as being without jurisdiction and void have been filed with the South Carolina Supreme Court in this case and are incorporated by reference.

While the South Carolina Supreme Court expressed disappointment in the scope of the English Court’s ruling cited above, the English decision is undoubtedly consistent with South Carolina law, particularly in light of *Welch* and *Tibbs*. The English Court identified considerable problems with the Receiver’s behavior that was detrimental to CIHL and that was flatly contrary to the wishes of the company’s directors. Acknowledging ***precisely the same concerns*** expressed by the English Court, the South Carolina Supreme Court in *Welch* reaffirmed longstanding law regarding receiverships and imposed the limitation on receivers that requires them to stay out of the “boardroom” and out of “business activities” of the entity over whose assets they have been

appointed. Given that these English and French rulings align with the South Carolina Supreme Court's recent decisions, they provide further confirmation that this receivership is and always has been a nullity.

PARK CANNOT SAVE THE RECEIVERSHIP

The Receiver regularly points to his appointment order from *Park v. Armstrong International, Inc.*, Case No. 2021-CP-40-02727, as being an elixir for the incurable problems cited above. But *Park* only further undercuts the Receiver's position, and it does so in several respects:

1. *Park was only about the Park family.* Like the receivership statute itself, *Welch* and *Tibbs* make clear that an appointment is not portable among different cases and among different plaintiffs/alleged creditors. Instead, each appointment must be specific to the case and the creditor seeking the appointment; and, once appointed, the activities of a receiver are limited to marshaling assets only to the extent necessary in relation to the claim and damages of the alleged creditor in that specific case. As such, and as the Supreme Court just reiterated, an order issued to and at the request of the Park family is irrelevant to the Tibbs family, who are strangers to the *Park* case.³

2. *The appointment order in Park is itself void.* The original plaintiff in *Park* was Isabella Park, who passed away during the pendency of that case. Her son, Keith Park, was substituted in as the personal representative of her estate. On June 3, 2022, counsel for the Park family represented to the Court that the case was "fully resolved." Three days later, on June 6,

³ At various points, the Receiver appears to argue this Court should ignore the South Carolina Supreme Court's limitations in *Welch* and *Tibbs* and allow him to be a receiver unbounded by any case because of Rule 66(b), SCRCF. The Court should decline this invitation to ignore the Supreme Court's direct instructions. For one, Rule 66(b) specifically applies only to "debtors," meaning that, by definition, it cannot apply to a prejudgment receivership. What's more, the rule also says it is subservient to "restrict[ions] by order of the court"; *Welch* and *Tibbs* provide precisely that.

2022, Mr. Park represented to the Spartanburg County Probate Court the estate was now fully settled and moved to terminate his appointment as personal representative. On August 26, 2022, Judge Caldwell granted that motion, terminated Mr. Park’s appointment as personal representative, and closed the estate.

Remarkably, the motion to appoint a receiver over Cape PLC, purportedly filed on behalf of Mr. Park as the personal representative of Ms. Park’s estate, was not filed until March 6, 2023—*more than six months after the Probate Court terminated his appointment as personal representative and closed the estate.*⁴

Without an active appointment as personal representative for Ms. Park’s estate, Mr. Park had no standing to seek such appointment, and the appointment order in *Park* has been “void” and a “nullity” from the outset. *E.g., Berg*, 2020 U.S. Dist. LEXIS 102042, at *4–6; *Glenn*, 254 S.C. at 134–37, 174 S.E.2d at 158–59; *Porter*, 149 S.C. at 158, 146 S.E. at 812–13; *Bazemore*, 672 S.E.2d 858, 861–62.

3. *The Park family is barred from pursuing any claims against either Cape entity.* As a matter of law, the Park family is now prohibited from seeking a receivership over Cape PLC (or CIHL) because Mr. Park represented to the Probate Court that the estate had been fully administered, and the Probate Court closed Ms. Park’s estate without leaving any provision for ongoing or future claims against either of these Cape entities. In fact, nothing that Mr. Park filed with the Probate Court suggested in any way that the Park family was still pursuing any kind of

⁴ Documents confirming this timeline are attached as Exhibit A. It is unclear if Mr. Park recognized that he was assuming the risk of paying all “costs,” “charges,” “expenses,” and “actual damages” associated with an improper appointment of a receiver over Cape PLC when his counsel filed the motion seeking such an appointment. S.C. Code Ann. § 15-65-90.

claim against any defendant at all—which is presumably why the Parks’ lawyers represented to this Court that the case was “fully resolved.”

The South Carolina Supreme Court has held that the “highest considerations of public policy and morality” prohibit a personal representative from adding in a previously-omitted asset when he or she stands to benefit from the belated disclosure. *Williams v. Mower*, 29 S.C. 332, 341, 7 S.E. 505, 509 (1888). And courts nationally bar claims from being asserted in a case after they were not disclosed in asset schedules filed before another court, citing judicial estoppel, res judicata, or both. *See generally First Union Commercial Corp. v. Nelson, Mullins, Riley & Scarborough*, 81 F.3d 1310, 1317 (4th Cir. 1996) (“Once a plan is confirmed, neither a debtor nor a creditor can assert rights that are inconsistent with its provisions.”); *Sprowl v. Pfizer, Inc.*, Case No. 8:08-cv-3316-RBH, 2010 U.S. Dist. LEXIS 30939, at *15 (D.S.C. Mar. 30, 2010) (“[U]pon review, it appears to the court that Plaintiff may actually be judicially estopped from bringing this suit based on Plaintiff’s failure to amend his bankruptcy petition to disclose his potential legal claims.”). Accordingly, there can never be a basis for an appointment order in *Park*, as any claims by the estate against either Cape entity are barred as a matter of law.

4. *There was no service, no default, no judgment, and no personal jurisdiction over either Cape entity.* There remains no proof at all that either Cape PLC or CIHL was ever served with process, including a summons and any actual complaint, in *Park*. Notably, the Park family has never even argued that service was proper; only the Receiver, who lacks standing to even be heard and was not involved in the putative service of either of these entities, has argued that service was proper. But without service, there can be no personal jurisdiction. And, as the Court knows, there was never any entry of default, nor was a default judgment entered or even sought against

either of these two entities in *Park*. There is nothing proper or legitimate about how the *Park* receivership order came to be.

5. *A bond is required for a receivership appointment, yet is absent from the Park order.* Even if everything about the *Park* receivership order was proper—which it clearly and incurably isn’t—that order is still invalid as a matter of law because it lacks the bonding provision required by South Carolina Code §§ 15-65-50 and -60, as emphasized in *Welch* (Howard Adv.Sh. No. 19 at 30).

* * * * *

With no service, no personal jurisdiction, no appointment as personal representative, no estate, no bond, and no claims against Cape PLC or CIHL, *Park* cannot provide any aid to the Receiver here.

WELCH PROHIBITS THE RECEIVER’S DESIRED OUTCOME

The Receiver’s efforts to have himself appointed in this case are all aimed at the goal of continuing to pursue his third-party complaint, in the name of Cape PLC (or CIHL). He concedes this exact point on Page 40 of his “Notice of and Motion to Confirm Appointment of Receiver.” But *Welch* specifically prohibits the entire notion that underlies the Receiver’s filings: a receiver is, by definition, limited only to seeking assets to pay the debts owed to the person responsible for his or her appointment and “that power does not properly extend to reach every claim” that could exist against the targeted company. (Howard Adv.Sh. No. 19 at 30.) So when the Receiver tells this Court that he views his mission as “address[ing] the liabilities for injured South Carolinians” (Mot. to Confirm Appt. at 3, 40), he is directly defying one of the exact points on which *Welch* reversed a prior receivership appointment from this Court involving this Receiver.

Moreover, *Welch* specifically prohibits a receiver from “boardroom” decisions, like whether to bring litigation against other companies, to accept service, or assert affirmative defenses. Even if the receivership could be recreated from scratch and could overcome all of the hurdles identified above—it cannot—there is no way the Receiver could assert what are self-piercing claims on behalf of any “Cape” entity. *Welch* was clear: a receiver must stay out of the “boardroom” and may not involve him- or herself in the “business activities” of the company whose assets he is charged with marshaling to pay a specific debt. (Howard Adv.Sh. No. 19 at 30.)

Litigation decisions are quintessential “boardroom” decisions and “business activities”—which is why the directors of Cape PLC, CIHL, Altrad Investment Authority, and the various subsidiaries had the authority to and did agree to mutually release claims against one another. *See, e.g., Freedman v. Redstone*, 753 F.3d 416, 424 (3d Cir. 2014) (“The decision whether to bring a lawsuit is a ‘decision concerning the management of the corporation and consequently is the responsibility of the directors.’” (quoting *Blasband v. Rales*, 971 F.2d 1034, 1048 (3d Cir. 1992))), *rev’d in unrelated part by In re Cognizant Tech. Sols. Corp. Deriv. Litig.*, 101 F.4th 250 (3d Cir. 2024); *Muzek v. Eagle Mfg. of N. Am., Inc.*, Case No. 6:18-cv-199-REW-EBA, 2019 U.S. Dist. LEXIS 244216, at *5 (E.D. Ky. Oct. 23, 2019) (“Thus, directors rather than shareholders [or receivers] manage the business and affairs of a corporation. In other words, a decision whether to bring a lawsuit, refrain from litigation on behalf of a corporation, or the appointment of an examiner is a decision concerning the management of a corporation.”).

Other courts have already applied this same principle to this same Receiver. *See Protopapas v. Whittaker, Clark & Daniels, Inc.*, Case No. 23-4151 (ZNQ), 2024 U.S. Dist. LEXIS 97270, at *22 (D.N.J. May 31, 2024) (“The Court affirms the Bankruptcy Court’s opinion that under New Jersey state law, the text of the Receivership Order did not change the fact that WCD’s

Board of Directors [and not the Receiver] held the power to file for bankruptcy and properly did so.”), *further appeal pending at* Case No. 24-2210 (3d Cir.).

And even the South Carolina General Assembly recognizes that only a business operating through its actual directors can make the decision to file suit. *See generally* S.C. Code Ann. § 33-2-102(1) (providing “sue and be sued, complain, and defend in its corporate name” as the very first “general power” of a South Carolina corporation); *id.* § 33-8-101 (providing that, with limited irrelevant exceptions, “all corporate powers must be exercised by or under the authority of, and the business and affairs of a corporation must be managed under the direction of, a board of directors”).

There is simply no way to reconcile the power the Receiver seeks to seize here with *Welch*’s unambiguous limitations.⁵

THE RECEIVER IS PUSHING A FALSE NARRATIVE

Not only is the Receiver seeking authority that *Welch* (and the courts in England and France) specifically prohibit, he is doing so through “factual predicates” to tell a story of “moral fraud” that were fully vetted and categorically rejected in **1988 and 1990** in a 34-day trial and a subsequent 17-day appeal in English courts in *Adams v. Cape Industries plc* (1990) 1 Ch 433 (CA).⁶ Nor is *Adams* some obscure ruling, lost to history and unknown to these litigants. Rather,

⁵ In his various post-*Welch* filings to this Court and others, the Receiver has argued that *Welch* is only concerned with “Section 5” receivership appointments. There is no basis for such an argument. *Welch* itself makes no distinction among the five categories of receiverships allowed by South Carolina Code § 15-65-10 with respect to the unambiguous limitations *Welch* placed on receiverships. And if there was any doubt on the point, the *Tibbs* order—which arises from a putative “Section 4 and Section 5” appointment in this case—fully embraces *Welch* and applies its “limitations on the receiver’s scope of authority” to this very case.

⁶ A full copy of *Adams*—including the appellate court’s ruling, the appendix accompanying the appellate court’s ruling, and the trial court’s ruling—is also filed with the South Carolina Supreme

the very rulings in *Adams* were unequivocally affirmed in the November 22, 2024 Judgment of the High Court of Justice of England and Wales in a case involving both CIHL and this Receiver. *Cape Intermediate Holdings Limited v. Protopapas* [2024] EWHC 2999. Despite this, the Receiver continues to push a story on this Court that he knows has been repeatedly debunked.

The supposed “factual predicate” underlying the Receiver’s story, of course, predates the 1990 *Adams* ruling. Among other things, *Adams* addressed with finality that CIHL is not the alter ego of NAAC; there was no basis to pierce CIHL’s corporate veil or impose vicarious liability on it; and CIHL could not be held responsible in the United States for any alleged conduct of NAAC.⁷ And *Adams* did so on the basis of extensive testimony and documentary presentations by witnesses who had contemporaneous knowledge of the facts and issues in dispute—51 days of trials and appeals in total. *Adams* is not the product of whim or political favor; it is a deep and thorough examination of the facts and law that completely debunk the story the Receiver is telling this Court.

But rather than provide *Adams* to this Court at the earliest possible opportunity, which would have required the Receiver to acknowledge the falsity of his “factual predicate,” the Receiver continues to simply ignore this valid and binding ruling from the court in the jurisdiction that properly governs the affairs of CIHL. Accordingly, the English Court took care to reaffirm these long-settled points of *Adams* in litigation involving the Receiver himself:

1. NAAC and CIHL were separate legal entities.

Court in this case and is incorporated by reference herein. What’s more, the “moral fraud” discussed in *Welch* involves Atlas Turner’s litigation conduct; neither Cape PLC nor CIHL have any comparable litigation conduct in this case because neither has even been named as a defendant, much less served with any process that could possibly even begin the litigation process with respect to those two foreign companies.

⁷ Those findings and rulings are more fully set forth in Third-Party Defendants Mohed Altrad & Altrad Investment Authority SAS’s Legal and Procedural Opposition to the Purported Receiver’s Motion for Summary Judgment, filed on November 22, 2024, and incorporated fully herein.

2. NAAC had no authority to behave or act on behalf of CIHL or any of its related entities.
3. NAAC carried on its own business.
4. NAAC was the direct purchaser of asbestos fibers, not from CIHL, but instead from Egnep Pty. Ltd (“Egnep”) and Cape Asbestos South Africa (Pty.) Ltd. (“Casap”)—entities that were sold to a South African entity, Transvaal Consolidated Exploration Co. Ltd in 1979.
5. All NAAC did was assist in sale of asbestos. That was not enough to find action on behalf of CIHL.
6. There was no evidence of any control by CIHL over NAAC’s commercial activities.
7. The corporate form and formalities of the “Cape Group,” including as to NAAC, were observed. Each member of the group had its own commercial functions which were well-defined and provided no basis for veil-piercing.

Cape Intermediate Holdings Limited v. Protopapas [2024] EWHC 2999 (J. Mann).

The *Adams* judgment in 1990, the English High Court’s affirmation of the same in 2024, and the principles of law relied upon in those rulings—a part of the common law of England—are already “in full force and effect” in South Carolina by virtue of the “Reception Statute.” *See* S.C. Code Ann. § 14-1-50 (“All, and every part, of the common law of England, where it is not altered by the Code or inconsistent with the Constitution or laws of this State, is hereby continued in full force and effect in the same manner as before the adoption of this section.”); *see also* *S.C. Nat’l Bank v. Westpac Banking Corp.*, 678 F. Supp. 596, 598 (D.S.C. 1987) (explaining that courts in the United States apply principles of comity to determine the effect of foreign judgments (quoting *Hilton v. Guyot*, 159 U.S. 113, 202–03 (1895))); *Collins v. Collins*, 219 S.C. 1, 16, 63 S.E.2d 811, 817 (1951) (noting South Carolina courts observe principles of comity).

Even more pressing than the comity issues at play, the Receiver seeks to represent CIHL—the *prevailing party* in *Adams*—while taking positions wholly inconsistent with that ruling. The Court should reject out of hand such an effort at sabotaging CIHL, an English company with no connection to South Carolina. Likewise, basic principles of estoppel prevent the Receiver from contravening decades-old case law developed on a full record that addresses and rejects—head on—the Receiver’s “factual” allegations to this Court. *See, e.g., Hayne Fed. Credit Union. v. Bailey*, 327 S.C. 242, 251–52, 489 S.E.2d 472, 476–77 (1997) (adopting and applying judicial estoppel in order “to protect the integrity of the judicial process or the integrity of the courts”).

Indeed, it is unconscionable that the Receiver would claim to speak for CIHL while ignoring (and actively telling a contrary story about) *Adams* and its rulings—all in an apparent effort to create liability for CIHL. This provides all the more reason for the Court to strike from the record each and every one of the Receiver’s filings here. These filings are already void under *Welch* and *Tibbs*, and there is no reason for them to remain in the record when they simply tell a false story designed to harm an English company that has nothing to do with South Carolina.

CONCLUSION

The Receiver’s request to “confirm” his own appointment is fatally circular: a receiver who was never duly appointed cannot now seek to retroactively confirm an appointment that never existed in the first place. And *Welch* and *Tibbs* unequivocally bar the Receiver from porting into *Tibbs* a different appointment order from *Park* involving a different plaintiff—especially when the *Park* order was a legal nullity because the Probate Court, *six months earlier*, had terminated that plaintiff’s authority to seek a receivership or do anything else on behalf of the closed estate.

The Receiver’s purported appointment in *Park* is void *ab initio*, and everything he has filed in this case is a nullity, too. The Receiver has no standing to undertake any of the actions, to make

any of the filings, or to present any of the arguments he is trying to assert here. His activity has been enjoined by international courts, and *Welch* and *Tibbs* confirm that those rulings were entirely correct and are consistent with the law of South Carolina. Accordingly, the Court should strike all of the Receiver's prior filings, it should vacate all of its prior rulings in this third-party case, and it should dismiss the putative third-party action as a nullity.⁸

⁸ In making this filing, the Altrad Defendants do not waive, and specifically preserve and incorporate herein, all defenses asserted and objections previously made regarding these proceedings through their written motions, oral arguments, memoranda and briefs, responsive pleadings, served responses, and appellate filings, as well as such publicly available documents as to which the Court may take judicial notice, including, *inter alia*: (i) the Court lacks personal jurisdiction over each of the Altrad Defendants; (ii) the Court lacks subject matter jurisdiction; (iii) the Receiver lacks standing; (iv) the Receiver was improperly appointed in a separate case, *Park*, which had been "fully resolved" months before a receivership was sought to be created on behalf of a plaintiff whose personal representative status had been likewise terminated months before; (v) the *Park* case and the purported receivership appointment were and remain beset by a host of uncurable, fatal deficiencies, including defective service, lack of statutorily required notice, failure to satisfy other statutory mandates such as inclusion of the required clause in the appointment order fixing the value for which bond may be given following a purported appointment, and the lack of judgment *and* creditors; (vi) the Cape PLC receivership was improperly continued and modified in this case without meeting any of the mandatory statutory predicates on at least two separate occasions, including this Court's Orders dated December 6, 2023 and November 5, 2024; (vii) the Receiver's claims are improperly pled and fail under Rules 12(b) and 14, SCRCP; (viii) these proceedings and the claims asserted and relief sought against the Altrad Defendants violate their fundamental procedural and substantive constitutional rights and protections, including but not limited to those rights and protections afforded by the Due Process, Equal Protection, Commerce (including Dormant Commerce), Takings, Excessive Fines, and Supremacy Clauses of the United States Constitution and, where applicable, their counterparts in the South Carolina Constitution; (ix) these proceedings are illusory and should be confirmed dismissed by virtue of the prior "tolling agreement"—in reality an agreement of dismissal—allegedly entered into by and between counsel for the *Tibbs* Plaintiffs and the Receiver; (x) all possible claims asserted by the Receiver have been fully and finally released by the parties he purports to represent and the Altrad entities he targets; and (xi) the very basis of the Receiver's claims against the companies he purports to represent are the subject of a final decision affirmed on appeal of foreign courts in 1990 and again reaffirmed as recently as 2024, which the Receiver is estopped from challenging. Moreover, to the extent not inconsistent with anything herein, the Altrad Defendants join all other filings by any other third-party defendant that challenges the propriety of these proceedings and the activity of the Receiver.

Respectfully submitted,

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Authority SAS*

July 18, 2025

Exhibit A

Documents Demonstrating:

Park is “Fully Resolved” (June 3, 2022)

Park Moves to Close Estate/Terminate Personal
Representative Appointment (June 6, 2022)

Probate Court Terminates Personal Representative
Appointment (August 26, 2022)

Motion to Appoint a Receiver in *Park* (March 6, 2023)

From: Theile McVey <tmcvey@kassellaw.com>
Sent: Friday, June 3, 2022 8:24 AM
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Subject: RE: June Pretrial Hearing
Attachments: Proposed Agenda for Motions Hearing for June 2022 Block.docx

Chief Justice Toal: This morning we are delivering to you and Maya notebooks for the hearing on Monday, June 6th. The notebooks contain the motions for summary judgment and responses, the Plaintiffs' External (tmcvey@kassellaw.com<mailto:tmcvey@kassellaw.com>)

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Chief Justice Toal:

This morning we are delivering to you and Maya notebooks for the hearing on Monday, June 6th. The notebooks contain the motions for summary judgment and responses, the Plaintiffs' motions in limine and the Nash motion. By way of update, the Park and Garren cases have both fully resolved. The remaining Defendants in Wannamaker and Wilson are listed below. I am also attaching a proposed agenda. Please let me know if you have any questions or concerns. Best, Theile

1. Wannamaker

- * Ethyl
- * Santee Cooper (South Carolina Public Service Authority)

1. Wilson

- * Research Cottrell
- * Whittaker, Clark & Daniel

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 Rutkoski <jrutkoski@kassellaw.com>; mwilliams@dobslegal.com
 Subject: June Pretrial Hearing

Hi All:

The pretrial hearing for the June trial block, including Wannamaker v. 3M Company et. al., will be held on June 6th, 2022 at the Richland County courthouse. An agenda will be sent out prior to the hearing that will confirm time and courtroom.

Please send a copy of all motions to Chief Justice Toal and I. Chief Justice Toal prefers that motions binders be sent to her home address (please reach out to me individually for her home address if needed) and motions can be sent to me at the Senate Street address below my signature.

The court is providing a court reporter for this hearing.

Thank you,

Maya J. Weeks, M.A., J.D.
 Circuit Court Law Clerk- Floater
 South Carolina Judicial Branch

1220 Senate Street, Suite 221

Columbia, SC 29201

(803) 734-0833

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21-1296

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )  
 )  
IN THE MATTER OF: )  
ISABELLA F.D.R. PARK )  
(Decedent) )

IN THE PROBATE COURT

APPLICATION FOR SETTLEMENT

CASE NUMBER: 2021ES42 01296

- The undersigned as the Personal Representative(s) has/have collected and managed the assets of the Estate; has/have paid all lawful claims against the Estate; either has/have distributed assets or propose(s) to distribute as designated on the Proposal for Distribution; and has/have performed all other required acts pertaining to Estate of Decedent.
- The Personal Representative(s) has/have filed:
  - Proof of Publication  No Publication required
  - Inventory and Appraisalment(s)
  - Proposal for Distribution for assets not yet distributed
  - Final Accounting  Accounting waived by all required parties
  - \*  Proof of Delivery that all required documents have been sent to interested persons as required by law
  - All required tax returns (including final income tax return, fiduciary income tax return, Estate tax return) and any taxes due have been paid. If not, please explain:
    - Documents with IRS electing portability
- The time period for submission of claims has expired.
- I request that the Court issue Orders as appropriate together with such other Orders as the law may require and as the Court may deem applicable and proper.
- I request that the Court (check all that apply)
  - A. Consider or approve the Personal Representative's Accounting and, if applicable, the Proposal for Distribution for assets not yet distributed.
  - B. Approve the distributions previously made and authorize the Personal Representative(s) to transfer title to the assets and distribute them to the distributees in the amount and manner set forth in the Proposal for Distribution (FORM 410ES).
  - C. Discharge, or set forth the conditions of the termination of the appointment of the Personal Representative, and the release of the Personal Representative's bond, if any.
  - D. (Other :) \_\_\_\_\_ \* Proof should have been checked

Executed this 6 day of June, 2022.

SWORN to before me this 6 day of JUNE, 2022  
*[Signature]*  
Notary Public for South Carolina  
My Commission Expires: 11 21 26

Personal Representative  
Signature: *[Signature]*  
Print Name: Keith W. Park  
Address: 109 S. Spring Street  
Central, SC 29630  
Telephone (Work): \_\_\_\_\_  
(Home): \_\_\_\_\_  
(Cell): (864) 710-8970  
Email: \_\_\_\_\_

SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022  
\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
My commission expires: \_\_\_\_\_

Co-Personal Representative  
Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone (Work): \_\_\_\_\_  
(Home): \_\_\_\_\_  
(Cell): \_\_\_\_\_  
Email: \_\_\_\_\_



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF: SPARTANBURG )  
 )  
IN THE MATTER OF: )  
ISABELLA F.D.R. PARK )  
(Decedent) )  
 )  
MR. KEITH W. PARK )  
Personal Representative(s)

IN THE PROBATE COURT  
ORDER CLOSING ESTATE

21-1296

CASE NUMBER: 2021ES4201296

ELECTRONICALLY FILED - 2025 Jul 18 4:41 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4001759

Upon consideration of the Application for Settlement, it appears to the court that the allegations in the Application are true. All required notices have been given/waived. The asset(s) has/have been administered according to the laws of South Carolina.

The final closing documents have been considered and/or waived.

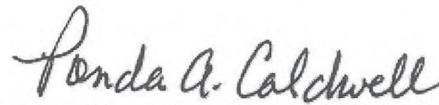
The Personal Representative(s) in the above estate appear(s) to have completed the administration, and the appointment is hereby terminated.

It is appropriate that the sureties on the bond, if any, in this estate be released. If applicable, the security instrument recorded in the Office of the Clerk of Court (or ROD) in Book N/A, at Page N/A, shall be and is hereby released, and cancellation of said instrument is authorized.

Therefore, the estate is closed.

**IT IS SO ORDERED.**

Executed this 26th day of August, 2022.



\_\_\_\_\_  
Ponda A. Caldwell, Probate Court Judge



# Probate Court County of Spartanburg

21-1294

ELECTRONICALLY FILED - 2025 Jul 18 4:41 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4001759

*Spartanburg County Judicial Center*

180 Magnolia Street  
Spartanburg, South Carolina 29306-2392

Telephone: (864) 596-2556 • Fax: (864) 596-2011

**ESTATE DIVISION:**

**KATE KENDALL**  
ASSOCIATE PROBATE JUDGE

**DARLETT M. OWENS**  
COURT SUPERVISOR

**COMMITMENT DIVISION:**

**DAVID F. ANDERSON**  
ASSOCIATE PROBATE JUDGE

**GEORGIA J. BENNETT**  
COURT SUPERVISOR

**PONDA A. CALDWELL**  
PROBATE JUDGE  
August 26, 2022

Mr. Keith W. Park  
109 S. Spring St  
Central, SC 29630

Re: Estate of Isabella F.D.R. Park, Deceased  
Probate Court File No. 2021ES4201296

Dear Mr. Park:

Enclosed is your copy of Termination of Appointment (Form 414ES) in regard to the above estate.

There are numerous laws which must be complied with in order to insure proper and complete administration in every estate. It is our desire to assist those whom we aid in compliance with these laws, and I hope your task has been made easier by the help of this office.

Please let me know if we can be of assistance to you. I welcome your comments and suggestions so that this office may serve the public better and more efficiently.

Sincerely yours,

Ponda A. Caldwell  
Judge, Probate Court

PAC:sce

Enclosure

cc: Heather G. Hunter  
P.O. Box 891  
Spartanburg, SC 29304

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF: SPARTANBURG )  
 )  
IN THE MATTER OF: )  
ISABELLA F.D.R. PARK )  
(Decedent) )

IN THE PROBATE COURT 21-1296  
TERMINATION OF APPOINTMENT  
CASE NUMBER: 2021ES4201296

ELECTRONICALLY FILED - 2025 Jul 18 4:41 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4001759

The appointment of Mr. Keith W. Park, Personal Representative(s) for the above estate, is hereby terminated for the following reason(s):

- Satisfactory Completion of Assigned Duties
- Death
- Disability
- Voluntary Resignation
- Removal
- Change of Testacy Status
- Special Administrator
- Other (specify): \_\_\_\_\_

Termination does not discharge a Personal Representative from liability for transactions or omissions occurring before termination or relieve him/her of the duty to preserve assets subject to his/her control, to account therefore, and to deliver the assets.

Executed this 26th day of August, 2022.

*Ponda A. Caldwell*

\_\_\_\_\_  
Ponda A. Caldwell, Probate Court Judge

|                                                |   |                                     |
|------------------------------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA                        | ) | IN THE COURT OF COMMON PLEAS        |
|                                                | ) |                                     |
| COUNTY OF RICHLAND                             | ) | FOR THE FIFTH JUDICIAL CIRCUIT      |
|                                                | ) |                                     |
| <b>KEITH W. PARK</b> , individually and as the | ) | <b>C/A NO. 2021-CP-40-02727</b>     |
| Personal Representative of the Estate of       | ) |                                     |
| <b>ISABELLA PARK</b> ,                         | ) | <i>In Re:</i>                       |
|                                                | ) | Asbestos Personal Injury Litigation |
| Plaintiffs,                                    | ) | Coordinated Docket                  |
|                                                | ) |                                     |
| v.                                             | ) |                                     |
|                                                | ) |                                     |
| <b>ARMSTRONG INTERNATIONAL, INC.</b> ,         | ) |                                     |
| et al.                                         | ) |                                     |
|                                                | ) |                                     |
| Defendants.                                    | ) |                                     |

**MOTION TO APPOINT RECEIVER**

Plaintiffs, pursuant to S.C. Code §§ 15-65-10(4) and (5), move this Court to appoint a receiver over Cape PLC and its subsidiaries, affiliates, successors, and assigns. Cape PLC is a defendant in the above-captioned action.

**BACKGROUND**

Cape PLC is the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.<sup>1</sup>) (“Cape Asbestos”) and its subsidiaries and global affiliates (collectively, “Cape” or the “Company”), which were and are private companies organized and existing under the laws of the United Kingdom, with its principal place of business in England. At all times relevant, Cape was involved in all elements of the global asbestos industry, but in particular mining many thousands of tons of raw asbestos fiber in South Africa and then selling it to the most dominant manufacturers of asbestos-containing products in the United States—substantial quantities of

<sup>1</sup> Effective July 1, 1974, Cape Asbestos Company Ltd. changed its name to Cape Industries Ltd. **Ex.1**, CAPE000308 (certificate of incorporation on change of name).

which were used in South Carolina. Cape also concocted a scheme to avoid its legal responsibilities to persons injured from using those end products because, startlingly, Cape deemed itself as having—in its own words—no “moral responsibility” to those end users. Rather than defending its conduct in front of juries in the United States, Cape decided to simply accept default judgments in asbestos lawsuits and ultimately flee the country, knowing that nearly all the Company’s assets were in jurisdictions (namely, the U.K., South Africa, and Lichtenstein) where judgments in those lawsuits could not be enforced. Although Cape stiff-armed its creditors in the United States—namely, workers exposed to asbestos mined by Cape—and absconded to London and South Africa, certain of its insurance assets presumably remain. The appointment of a receiver to marshal Cape’s assets and satisfy claims is therefore the appropriate remedy, as explained below.

#### **A. Cape Establishes American Presence and Operations Through NAAC.**

At its peak, from mines in Apartheid-era South Africa, Cape produced approximately 90%<sup>2</sup> of the world’s supply of amosite asbestos, including asbestos imported and used in South Carolina.

For the “purpose of expediting and facilitating the movement” of asbestos from South African mines, on October 14, 1953, Cape Asbestos Company Ltd. (a U.K. entity) established the North American Asbestos Corporation (“NAAC”), a direct subsidiary that was part of the Company’s “mining division” and domiciled in Illinois.<sup>3</sup> NAAC had both marketing and distribution roles: (i) serving as Cape’s sales agency in the United States, with sole authority to offer Cape products and responsibility for transmitting information about customer needs to Cape mines, and (ii) ensuring proper distribution of asbestos products and that shipments from Africa

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

<sup>3</sup> See **Ex. 2**, CAPE000110–12 (1982 court filing describing NAAC’s history); **Ex. 3**, CAPE000177 (identifying NAAC as the sole U.S.-based entity of the Cape mining division); **Ex. 4**, CAPE000869 (1973 letter describing NAAC as “a division of Cape Asbestos Co. Ltd., with corporate offices in London”).

made it “all the way through to the customer’s plant,” including, on information and belief, to plants in South Carolina or through South Carolina ports.<sup>4</sup> NAAC “effect[ively] . . . put the Mines at every U.S. port” (**Ex. 5**, CAPE000988–89) and by 1970 was the “largest U.S. importer of Amphibole Fibres,” which were “re-distributed from . . . warehouse locations in East Coast, Gulf Coast and West Coast Ports” (**Ex. 6**, CAPE000878–79).

Over its history, NAAC was “essentially a one-man operation” consisting of an operational lead supported by four office clerical personnel (overseen by a board of directors made up of largely of Company lawyers or other Cape executives, until all Cape officials resigned in 1975 as a “sensible precaution” in light of U.S. litigation).<sup>5</sup> In coordination with the global Cape network, however, NAAC sold asbestos to Cape’s numerous American-based clients, including, but not limited to, the U.S. Government, Keene Corporation (f/k/a Baldwin-Ehret-Hill), Carey, Fibreboard, GAF (f/k/a Ruberoid), Owens Corning, Johns-Manville and Pittsburgh Corning. **Ex. 7**, CAPE000994–95. These companies were giants among asbestos product manufacturers, and on information and belief, their products were used extensively in South Carolina. In addition, NAAC tried to influence public and corporate opinion about the safety of asbestos, including, but not limited to, rebutting emerging medical critiques of its safety.<sup>6</sup>

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<sup>4</sup> See **Ex. 8**, CAPE000263–66 (describing intended business of NAAC); **Ex. 9**, CAPE000333 (1975 Cape Asbestos cover letter of NAAC director resignations); **Ex. 10**, CAPE000729 (appointment announcement describing NAAC as “specialize[d] in marketing and distribution of Blue and Amosite asbestos in the United States, Canada, Mexico and the Caribbean”); **Ex. 5**, CAPE000988–89 (1969 NAAC memorandum describing customer services).

<sup>5</sup> See **Ex. 2**, CAPE000110–12 (describing NAAC’s lean staffing); **Ex. 11**, CAPE001514 (“Despite the volume of sales and profits of NAAC, our operation is a very small one, with only a total of 5 employees”); **Ex. 12**, CAPE001528 (six directors in 1970).

<sup>6</sup> See, e.g., **Ex. 13**, CAPE000130 (1977 Cape Asbestos Fibres Limited prioritizing efforts of Asbestos International Association to “organise a body of medical opinion that is prepared to stand up” to critical opinions).

and Bob Hutcheson. This organisation is getting along well in spite of the inevitable difficulty of correlating the views of representatives of so many different countries. It is clear to me that one of our first tasks must be to try to organise a body of medical opinion that is prepared to stand up to Selikoff.

Cape Asbestos, moreover, dominated NAAC's decision-making, with NAAC, for example, unable to "borrow one dollar without [Cape Asbestos's] approval" and routinely forced to withdraw cash from the United States to pay dividends to Cape Asbestos (minimizing the assets on NAAC's balance sheet).<sup>7</sup>

### **B. Cape Accepts Default Judgements and Liquidates NAAC to Evade Claimants.**

After the onset of asbestos-related product liability litigation in the 1970s, Cape became especially concerned with its own liability.<sup>8</sup> Thus, Cape Asbestos went through tortured machinations to make it *appear* it was reducing oversight over NAAC, but in reality, NAAC continued to operate as a mere division or instrumentality under Cape's domination and control.<sup>9</sup>

In addition, Cape began to engage in a campaign of litigation avoidance by refusing to accept process or appear in any proceedings in the United States, including failing to respond to

<sup>7</sup> See, e.g., **Ex. 14**, CAPE001507 (1976 letter noting borrowing limit); **Ex. 15**, CAPE000261–62 (1959 letter suggesting that Cape was "extremely cautious" in picking NAAC personnel who would "fit into [the Company's] scheme of things . . . without causing embarrassment all around"); **Ex. 16**, CAPE000816 (1976 board minutes showing payment of \$250,000 dividend); **Ex. 17**, CAPE000931–32 (NAAC President stating in 1956 that NAAC "think[s] of ourselves as being part of a coordinated group with responsibilities to the whole, even though this may mean subordinating other and more profitable interests of NAAC," and expressing offense at being called "commission agents," which "implies an independent, lack of responsibility, and an emphasis on local self-interest").

<sup>8</sup> See, e.g., **Ex. 18**, CAPE000351–56 (1975 lawyer letter referring to "attempt to limit NAAC's and Cape's exposure to future United States litigation").

<sup>9</sup> See **Ex. 19**, CAPE000123 (NAAC discouraging Cape visits to the U.S. in 1978 or else negate "maneuvers" related to "continued problems with product liability litigation"); **Ex. 20**, CAPE000152 (1975 letter suggesting to "disassociate the Parent Company as fully as possible from the operating companies"); **Ex. 21**, CAPE000154 (1975 letter raising whether to "do something to change the identity of NAAC in order to avoid exposing the company unnecessarily," while doing "everything possible to maintain a successful selling operation in the United States"); **Ex. 22**, CAPE000166–67 (1974 NAAC letter suggesting that "no one from Cape be an officer of NAAC since we want it to be as independent as possible in order to avoid any contention that it is the alter ego of Cape and that Cape is doing business in the United States"); **Ex. 9**, CAPE000333 (1975 Cape Asbestos letter stating "that it would be a sensible precaution against Cape's involvement in any future proceedings for [Cape personnel] to resign from the N.A.A.C. Board," and enclosing resignation letters).

the Second Amended Summons in this action, as properly served pursuant to Article 10 of the Hague Convention on March 8, 2022 *See Exhibit A*.<sup>10</sup> According to Cape executives, this strategy was warranted because they “really cannot be said to have a moral responsibility [to respond to the suits] and are simply victims of [a] US product liability cult.” Piercing the Corporate Veil: Cape Industries and Multinational Corporate Liability for a Toxic Hazard, 1950-2004; Tweedale and Flynn, *Enterprise & Society*, June 2007, Vol.8 No. 2 pp.268-296 (1977 letter from Cape’s counsel) attached as **Ex. 25**.

Ultimately, to avoid paying damages to workers whom were made sick or killed by using its asbestos, Cape resolved to liquidate NAAC, effective January 31, 1978. *See, e.g., Ex. 26*, CAPE001035 (April 1978 letter noting liquidation and requesting Cape Asbestos official to stop sending accounting memoranda to former NAAC officials, “for safety’s sake”). Existing debts of NAAC were paid, with remaining assets transferred upstream to NAAC’s direct parent company at the time, Cape Industries Overseas Ltd. (a U.K. entity wholly owned by Cape Industries Ltd.). *See Ex. 27*, CAPE000593 (noting conveyance of assets). NAAC’s liquidation was central to Cape’s litigation-avoidance strategy, based on legal advice that no British or South African court would enforce a judgment against a Cape entity if it never appeared again in the United States.<sup>11</sup>

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<sup>10</sup> *See Ex. 23*, CAPE000550–51 (NAAC personnel opining in 1978 “that it is most unlikely that any plaintiff would bother to pursue collection of any default judgments against Cape”); **Ex. 24**, CAPE000702 (NAAC counsel in 1979 confirming receipt of correspondence stating that “U.K. and South African lawyers confirm that any resulting judgments will not be enforceable against Cape’s U.K. and South African assets” and that “the potential loss of all NAAC’s outstanding assets is not material in the Cape Group context”).

<sup>11</sup> *See, e.g., Ex. 28*, CAPE000141–43 (1975 legal letter advising Cape on default-judgment risk); **Ex. 29**, CAPE000566 (1978 memorandum agreeing that it would be in the “best interests of Cape companies other than NAAC” to make “no response” to litigation); **Ex. 30**, CAPE000617–19 (summarizing 1984 deposition testimony regarding litigation strategy).

Yet, Cape continued to contemplate schemes to facilitate the sale of asbestos to U.S. customers while minimizing its product-liability risk.<sup>12</sup> For example, Continental Products Corporation (using the same physical address as NAAC in Chicago, Illinois) was formed to “act as a commission agent for the future sales of asbestos from South Africa” in the United States, with South African mines selling to a new Lichtenstein subsidiary called Associated Mines Company, which in turn sold asbestos to the United States under its own invoices. **Ex. 32**, CAPE000386; *see also* **Ex. 33**, CAPE000531 (announcement of Continental Products Corporation as “Agent to handle the North American requirements for Amosite and Crocidolite asbestos fibre”). The express “purpose of this corporate arrangement [was] to eliminate or reduce as much as possible the exposure in the United States of [South African mining companies] to lawsuits brought against it under theories of strict liability concerning products liability on the sale of asbestos in the United States.” **Ex. 34**, CAPE000377–79.

### **C. A Receiver Can Marshal Cape’s Assets to Satisfy Claims.**

Asbestos claimants have been generally unsuccessful in recovering against Cape entities (except for a single instance in which Cape contributed to the settlement of certain asbestos claims brought in Texas). Indeed, due to its complex scheme to liquidate NAAC and not respond to litigation, Cape left its creditors—namely, the thousands of people it exposed to asbestos—without any meaningful entity to proceed against and, apparently, disposed of its United States-based assets without regard to those creditors. Now, apparently, all that potentially remains of Cape in the United States is its historical insurance coverage.

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<sup>12</sup> *See, e.g.*, **Ex. 31**, CAPE000728 (1977 meeting memorandum “to discuss liquidation of NAAC and formation of new off-shore company to service North American market”).

Plaintiffs request that this Court appoint a receiver to marshal Cape’s assets, including insurance coverage, and that the receiver be granted such further and other powers as may be appropriate, including, but not limited to, the acceptance of service of claims, retaining counsel, making claims against insurance policies that may exist, and otherwise wholly administer all of the assets and attendant business of Cape.

### **LAW AND ARGUMENT**

South Carolina Code § 15-65-10(4) states that:

A receiver may be appointed by a judge of the circuit court, either in or out of court:  
 ... (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 ....

It is undisputed that Cape, through its complex scheme and 1978 liquidation of its American subsidiary, NAAC, has intentionally fled the United States to avoid its liabilities and obligations to its creditors and to the extent it ever properly qualified itself to do business in South Carolina has forfeited those rights. *See, e.g.*, Black’s Law Dictionary (11th ed. 2019), *forfeiture* (“loss of a right, privilege, or property because of a crime, breach of obligation, or neglect of duty”) Thus, appointment of a receiver over Cape and its affiliates is appropriate under subsection (4).

South Carolina Code §15-65-10(5), moreover, states that:

A receiver may be appointed by a judge of the circuit court, either in or out of court:  
 ... (5) In such other cases as are provided by law or may be in accordance with the existing practice ....

Section 15-65-10(5) reflects an “old practice” of equity and “important principle of law” to correct injustice, particularly “when a debtor is trying to defeat his creditors by an act or course of conduct which indicates moral fraud—a conscious intent to defeat, delay, or hinder his creditors in the collection of their debts.” *Va.-Carolina Chem. Co. v. Hunter*, 66 S.E. 177, 179 (S.C. 1909). Thus, if a business “disposes of large resources” but “leaves ... debts unpaid”—while “set[ting]

creditors at arm's length by refusing . . . to take any interest in the satisfaction of their claims"—then there is a prima facie case of fraud warranting appointment of a receiver. *Id.* at 180 (citing *Miller v. Hughes*, 12 S.E. 419 (S.C. 1890)). It is respectfully submitted that the appointment of a receiver over Cape and its affiliates is appropriate under subsection (5) because Cape engaged in an intentional scheme to defraud its creditors by refusing to appear or accept service in the United States after being faced with substantial asbestos-related liabilities.

Section 15-65-20 requires that notice of this application be provided to the party to the action whose property is sought to be put in the hands of the receiver. Plaintiffs, concurrently herewith, have provided copies of this motion to Cape PLC.<sup>13</sup>

### CONCLUSION

For the foregoing reasons, the appointment of a receiver for Cape for all purposes, including, but not limited to, marshaling available assets of Cape and its subsidiaries, successors, and assigns, is appropriate. Plaintiffs request that this Court issue an order appointing a receiver as soon as practicably possible and for such other and further relief to which they may be entitled. Plaintiffs respectfully suggest that Peter Protopapas be appointed the receiver over Cape.

Respectfully submitted,

s/ Aaron D. Chapman  
 Aaron D. Chapman (SC Bar No. 104485)  
 Charles W. Branham, III (To be Admitted *PHV*)  
**DEAN OMAR BRANHAM SHIRLEY, LLP**  
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Theile B. McVey (SC Bar No. 16682)  
 Jamie D. Rutkoski (SC Bar No. 103270)

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<sup>13</sup> 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.

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**ATTORNEYS FOR PLAINTIFF**

March 6, 2023,  
Dallas, Texas.

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STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

JOHN A. TIBBS and MARGARET B. TIBBS,  
Plaintiffs,

In Re: Coordinated Asbestos Docket  
C.A. No. 2023-CP-40-01759

v.

3M COMPANY, *et al.*,

Defendants.

**NOTICE OF PRETRIAL HEARING**

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

Third-Party Plaintiff,

v.

ANGLO AMERICAN PLC, *et al.*,

Third-Party Defendants

The pretrial hearing for the above third-party action was previously set for the week of October 6, 2025 with trial following on October 20, 2025. The pretrial hearing will begin on October 6, 2025 at 9:30 AM. at the Richland County Judicial Center in Courtroom 3B. The following motions are scheduled to be heard:

1. Receiver’s 6/20/2025 Amended Motion for Leave to Amend
2. Receiver’s 5/23/2024 Motion for Protective Order
3. Anglo, De Beers, etc 5/24/2024 Motion to Compel Discovery Responses from Receiver

4. Receiver's 11/18/2024 Motion to Compel Production of Corporate Documents
5. De Beers Centenary's 1/6/2025 Motion/Summary Judgment
6. De Beers UK's 1/6/2025 Motion for Summary Judgment
7. De Beers Consolidated Mines's 1/6/2025 Motion for Summary Judgment
8. Anglo American PLC's 1/6/2025 Motion for Summary Judgment
9. De Beers PLC's 1/6/2025 Motion for Summary Judgment
10. Receiver's 5/29/2025 Motion to Compel 30(b)(6) Depositions of Anglo American PLC, De Beers Consolidated Mines Ltd., De Beers PLC, De Beers Centenary AG and De Beers UK Limited
11. Receiver's 5/29/2025 Motion to Compel Discovery Responses from De Beers PLC, De Beers Centenary AG and De Beers UK Limited
12. Mohed Altrad and Altrad Investment Authority SAS's 8/11/2025 Objections to and Motion to Strike the Affidavits of Dr. Steven Press and James T.H. Buxton

**AND IT IS SO ORDERED.**

***[JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]***



Richland Common Pleas

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

**Case Number:** 2023CP4001759

**Type:** Notice/Notice of Hearing

So Ordered

Jean H. Toal

Electronically signed on 2025-09-23 11:08:17 page 3 of 3

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

JOHN A. TIBBS AND MARGARET B. TIBBS,

In Re: Asbestos Personal Injury Litigation  
Coordinated Docket

Plaintiffs,

Civil Action No. 2023-CP-40-01759

Vs.

NOTICE OF FILING

3M COMPANY, et al.,

Defendants

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

Third-Party Plaintiff,

Vs.

Anglo American, PLC, et al.

Third-Party Defendants.

Third Party Plaintiff, Peter D. Protopapas, as Receiver for Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd. (hereinafter “The Receiver”), hereby provides notice to this Honorable Court of the attached correspondence (Exhibit A) sent to the Third Party ANGLO/DE BEERS Defendants in the above referenced matter. As this Court is aware, the Receiver and the Third-Party ANGLO/DE BEERS Defendants reached a settlement which was made in open court and acknowledged by this Court at a hearing on October 6, 2025. A Confidential Settlement Stipulation pursuant to Rule 43(k) SCRCP was also presented to the Court for in-camera review at the hearing on October 6, 2025.

Respectfully submitted,

SMITH ROBINSON, LLC

*s/Jonathan M. Robinson*

Jonathan M. Robinson

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October 8, 2025

# SIGNATURE

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7 October 2025

## By email

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Dear Sirs/Madams

**BL-2024-001337: Cape Intermediate Holdings Limited and Cape Plc v Peter D. Protopapas (the "CIHL Proceedings")**

**BL-2025-000785: Altrad Investment Authority SAS and others v Peter D. Protopapas, Cape Intermediate Holdings Limited and Cape Plc (the "Altrad Proceedings")**

## 1. Introduction

- 1.1 We are instructed by the directors of Cape Intermediate Holdings Limited ("**CIHL**") and Cape plc ("**Cape Jersey**") (together, the "**Cape Parties**"). CIHL is a company incorporated in England and Cape Jersey is, as its name suggests, incorporated in Jersey.
- 1.2 As you are aware, since March 2023, Mr Peter D. Protopapas ("**Mr Protopapas**") has purported to act as a receiver of one or more of our clients in the Court of Common Pleas for the Fifth Judicial Circuit in the County of Richland, in the State of South Carolina USA (the "**South Carolina Court**") pursuant to the "**Receivership Order**" made in "the Park Claim".
- 1.3 Since June 2023, in "the Tibbs Claim" Mr Protopapas has been pursuing proceedings with claim number C/A No. 2023-CP-40-01759 ("the "**Third-Party Complaint**") purportedly in the name of one or more of our clients in the South Carolina Court.

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- 1.4 Whilst there appears to have been some confusion in the South Carolina Court as to the corporate entities over which Mr Protopapas claims he is entitled to act, it is now understood that this is limited to CIHL.
- 1.5 In the Third-Party Complaint, Mr Protopapas makes claims for unjust enrichment, constructive trust, alter ego and corporate veil piercing against your clients (being the entities listed in Schedule 1 to this letter, the “**AADB Parties**”) in the name of CIHL. In short, Mr Protopapas seeks the payment of monies to made by the AADB Parties to CIHL and for the benefit of CIHL.
- 1.6 At yesterday’s hearing before Toal J in the South Carolina Court, it was stated for the first time that the AADB Parties now proposed to enter, or have already entered, into a settlement with Mr Protopapas of the Third-Party Complaint as pursued against them (the “**Proposed Settlement**”) of the Third-Party Complaint brought against your clients by Mr Protopapas, purportedly in the name of one or more of our clients, in the South Carolina Court.
- 1.7 The starting point is that the directors of the Cape Parties have not seen a copy of the Proposed Settlement agreement and until yesterday had no notice that your clients intended to enter into an agreement with Mr Protopapas seeking to settle the claims and allegations made in the name of the Cape Parties (and specifically CIHL) by Mr Protopapas in the Third-Party Complaint.
- 1.8 The Cape Parties therefore have no visibility as to the basis on which the Proposed Settlement is contemplated, the terms of any such agreement and the basis on which it is proposed to enter any such settlement.
- 1.9 We understand that at the hearing before Toal J yesterday, no copy of the Proposed Settlement was provided for or on behalf of the AADB Parties or Mr Protopapas to the South Carolina Court.
- 1.10 However, from what was said, we understand that it is intended on the part of the AADB Parties to enter into the Proposed Settlement with Mr Protopapas imminently and for monies (amount unknown) to be transferred to Mr Protopapas for and on behalf of the Cape Parties.
- 1.11 Hence, this letter is sent on an **URGENT BASIS** requiring your clients to provide an immediate undertaking to the Cape Parties and their lawfully appointed directors **NOT** to enter into any such settlement agreement with Mr Protopapas, purporting to act for and on behalf of the Cape Parties, in the form attached in Schedule 2 (the “**Proposed Undertaking**”). To that end, this letter is being sent to all the AADB Parties, as well as known named advisers of your firm as the legal representatives or advisors of the AADB Parties (the “**AADB Advisors**”).
- 1.12 In summary, as set out and explained below:
  - (a) On 22 November 2024, Mr Justice Mann (“**Mann J**”) handed down a judgment and made an order against Mr Protopapas in the CIHL Proceedings (the “**Mann Judgment**” and the “**Mann Order**”, respectively).
  - (b) The Mann Judgment, among other things, held that as a matter of private international law the directors of CIHL are and remain the sole lawfully authorised officers of CIHL.
  - (c) Further, the Mann Judgment held that Mr Protopapas had, as a matter of private international law, no lawful power or legal authority to act in respect of CIHL and that by purporting to act without authority in relation to CIHL, he was committing and continues to commit actionable torts against CIHL.
  - (d) Furthermore, in the Mann Judgment, the judge made declarations and injunctions against Mr Protopapas restraining him **worldwide** from acting or purporting to act as an agent or otherwise on behalf of CIHL pursuant to the Receivership Order and in relation to the Third-Party Complaint.



- (e) Accordingly, under private international law only the directors of CIHL have the legal power and lawful authority to settle any claims between the AADB Parties and CIHL – and they have not done so.
- (f) Given the above, it follows that Mr Protopapas has no legal authority under private international law to enter into the Proposed Settlement for and on behalf of CIHL, or to receive or hold any monies to their benefit or on their behalf.
- (g) Indeed, entering into the Proposed Settlement on the part of Mr Protopapas would constitute a further tort on his part committed against CIHL. In addition, it would also constitute a contempt of the English Court.
- (h) It further follows that under private international law, any Proposed Settlement without the consent of the directors of CIHL would **NOT** be binding on CIHL and would be of no legal effect under private international law.
- (i) This also means that the Proposed Settlement agreement, even if entered into with Mr Protopapas, would not as a matter of private international law release the AADB Parties from any actual or potential claims that CIHL has, or may have, in respect of the allegations and claims made in the Third-Party Complaint.
- (j) Further, if the AADB Parties have or were to enter into the Proposed Settlement with Mr Protopapas that would in and of itself constitute the aiding and abetting of a contempt of court by Mr Protopapas and would itself be a contempt of court by the AADB Parties.
- (k) Moreover, for the avoidance of doubt, entering into the Proposed Settlement agreement and paying any monies to Mr Protopapas on this basis would also constitute an economic tort on the part of the AADB Parties and it would potentially involve the AADB Parties being parties to an unlawful means conspiracy between the AADB Parties and Mr Protopapas.

2. **Private international law, the two High Court injunctions – the Mann Order and the Smith Order**

2.1 Your clients are aware that our clients have been involved in two sets of proceedings in the High Court of Justice of England and Wales that have been brought against Mr Protopapas.

The Mann Order

2.2 The first of these was the CIHL Proceedings, brought against Mr Protopapas by our clients in September 2024, and determined by the Court (Mann J) in November 2024.

2.3 The Mann Judgment and the Mann Order, among other things, confirmed *inter alia* that (a) the Receivership was not recognised/recognisable under English law (b) that Mr Protopapas had no power and authority to act in respect of CIHL and (c) by purporting to act without authority in relation to CIHL, he was committing and continues to commit a tort against CIHL.

2.4 We enclose and refer you in particular to the Mann Order and would ask that you give it careful attention. Specifically, we draw your attention to the Penal Notice affixed to the front of the Mann Order, which states:

“IF YOU THE DEFENDANT [i.e. Mr Protopapas] DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED. ANY PERSON WHO KNOWS OF THIS ORDER AND DISOBEYS THIS ORDER OR DOES ANYTHING WHICH HELPS OR PERMITS ANY PERSON TO WHOM THIS ORDER APPLIES TO BREACH THE TERMS OF THIS ORDER



MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.”

2.5 You will note that paragraphs 1 to 5 of the Mann Order contain declarations that confirm that Mr Protopapas had and has no power or authority in relation to CIHL at all and which also confirm that the directors of CIHL remain entirely in control of the company. These are the unambiguous legal findings of the English Court as a matter of private international law, under which English law is the relevant law to determine such questions in relation to CIHL (as an English company).

2.6 Further, we draw your specific attention to the injunctions granted against Mr Protopapas at paragraphs 6 to 10 of the Mann Order, as follows:

*“6. Mr Protopapas be restrained in England and Wales and worldwide from acting or purporting to act as agent or otherwise on behalf of CIHL pursuant to the Receivership Order.*

*7. Mr Protopapas be restrained in England and Wales and worldwide from appropriating, interfering with or usurping (in any way whatsoever) the lawful exercise of the rights and duties of the directors of CIHL.*

*8. Mr Protopapas be restrained from acting or purporting to act on behalf of CIHL in the Park Claim and the Tibbs Claim (as defined in Oren 1).*

*9. Mr Protopapas be restrained from continuing to prosecute the 3P Complaint (as defined in Oren 1).*

*10. Mr Protopapas be restrained from purporting to act for CIHL in the claim brought in the South Carolina Court by a summons dated 11 November 2024 and with claim number C/A NO. 2024-CP-40-06639 or in any other legal proceedings issued against CIHL in the South Carolina Court or worldwide.”*

2.7 These injunctions clearly restrain Mr Protopapas **worldwide** from acting or purporting to act as receiver of CIHL.

2.8 Without prejudice to the breach of this injunction, Mr Protopapas is also enjoined from acting as CIHL in the “Park Claim” or in the “Tibbs Claim” and he is enjoined from doing anything to continue with the prosecution of the Third-Party Complaint.

2.9 As Mr Protopapas continues to act in breach of these injunctions, he is in contempt of the English High Court.

#### The Smith Order

2.10 The second set of proceedings arise out of a settlement agreement reached between the Cape Parties and *inter alia* Altrad Investment Authority SAS and others, Altrad UK and Mr Mohed Altrad (the “**Altrad Parties**”) in April 2025, in which the Cape Parties and the Altrad Parties agreed to settle all disputes between them, including the Third-Party Complaint.

2.11 In June 2025, the Altrad Parties issued proceedings in the High Court of Justice of England and Wales against Mr Protopapas and the Cape Parties seeking declaratory/injunctive relief – including declarations that the Settlement Agreement had discharged the Third-Party Complaint; as well as an injunction mandating Mr Protopapas to discontinue the Third-Party Proceedings.

2.12 The Altrad Proceedings were disposed of by Mr Justice Marcus Smith (“**Marcus Smith J**”) by a judgment and order made on 30 September 2025 (the “**Smith Judgment**” and the “**Smith Order**”, respectively).



2.13 As a starting point, you will note that the Smith Judgment reiterated and built upon the conclusions of Mann J in the Mann Judgment, and that further declaratory and injunctive relief was then granted. We enclose and refer you in particular to the Smith Order, which makes further injunctions against Mr Protopapas, and which likewise contains a Penal Notice.

3. **The Proposed Settlement**

3.1 Our clients infer that the Proposed Settlement would involve the AADB Parties paying Mr Protopapas a sum of money in his purported capacity as receiver of our clients in exchange for him discontinuing the Third-Party Complaint – purportedly in the name of our clients – as against the AADB Parties.

3.2 In proposing to enter into – and entering into the Proposed Settlement with the AADB Parties – there can be no doubt that Mr Protopapas is committing a further breach of (at least) paragraphs 6, 7, 8 and 9 of the Mann Order.

4. **Contempt of Court**

4.1 As is apparent from the Penal Notices to which we have drawn your attention, liability for contempt of court does not only attach to an injunction defendant who breaches an injunction – such that it is not only Mr Protopapas who will be in contempt of Court for his breaches of the Mann Order.

4.2 In fact, any person who knows about the Mann Order – and who does anything to aid, abet, assist, help or permit Mr Protopapas to breach the Mann Order – can likewise be held in contempt of Court. As is apparent from the Penal Notices, any such persons who are in contempt of Court may be imprisoned, fined or have their assets seized.

4.3 If the AADB Parties were to enter into the Proposed Settlement with Mr Protopapas, the AADB Parties would be assisting Mr Protopapas in and procuring him to do exactly this – such that, if the Proposed Settlement is entered into, the AADB Parties (and any of the officers or advisors of the AADB Parties who have done anything to assist in or support the Proposed Settlement) would also be in contempt of Court and the Mann Order.

5. **Tort Claims**

5.1 As well as being a contempt of Court committed by the AABD Parties and their relevant officers and advisors, if the AABD Parties continue with the Proposed Settlement our clients would also have tort claims against the AABD Parties and any other persons who supported, advised or procured them to enter into the Proposed Settlement. Such conduct would constitute an economic tort and would involve the AABD Parties entering into an agreement with Mr Protopapas in an unlawful means conspiracy against CIHL.

5.2 In this regard, the relevant AABD Parties would have combined and agreed with Mr Protopapas to do something unlawful (being contempt of court/the breaches of the Mann Order and the committing of tortious acts against our clients), which plainly harms our clients and which the AABD Parties know would obviously harm our clients.

5.3 Given that our clients have only very recently become aware of the Proposed Settlement, and so they have had very little time to formulate their position in this regard, it goes without saying that all of their rights are fully reserved.

5.4 Further, we understand that other affiliated companies of our clients may also seek to bring similar such claims.

6. **Grounds for an Injunction**



- 6.1 Given the above, and that damages are clearly not an adequate remedy in respect of the irreparable harm to them, our clients would be entitled to injunctive relief from the English Court to restrain the AADB Parties from entering into the Proposed Settlement.
- 6.2 Additionally, and on exactly the same legal/factual basis, our clients would also be entitled to injunctions to restrain any agent, officer or advisor of the AADB Parties who might assist in or support the Proposed Settlement in any way.
- 7. **Next Steps**
  - 7.1 We therefore invite you to consider the contents of this letter carefully, and of the enclosed orders of the English High Court.
  - 7.2 Please confirm by **1 pm BST on Wednesday 8 October 2025** that your clients will give the Proposed Undertaking that your clients will not enter into the Proposed Settlement with Mr Protopapas and that your clients will undertake to take no further steps to progress or assist in the entry into the Proposed Settlement, or any such settlement with Mr Protopapas.
  - 7.3 Please also provide a copy of the draft Proposed Settlement and, to the extent that your clients refuse to give the Proposed Undertaking, please set out a full account of their conduct and the basis upon which the above analysis is disputed.
  - 7.4 Absent this confirmation we reserve our clients' rights to take legal action against the AADB Parties without further notice to you – including seeking urgent injunctive relief in the High Court.

We look forward to hearing from you.

Yours faithfully

**Signature Litigation LLP**

encs

cc Michael Schottler: [michael.schottler@angloamerican.com](mailto:michael.schottler@angloamerican.com)  
Kate Wilford: [kate.wilford@angloamerican.com](mailto:kate.wilford@angloamerican.com)



## SCHEDULE 1

1. ANGLO AMERICAN PLC;
2. DE BEERS PLC;
3. DE BEERS CENTENARY AG;
4. DE BEERS CONSOLIDATED MINES LTD.;
5. DE BEERS SA;
6. DE BEERS UK LTD.;
7. DE BEERS JEWELLERS LTD.;
8. DE BEERS JEWELLERS US, INC.;
9. ANGLO AMERICAN US HOLDINGS INC.;
10. ELEMENT SIX US CORP.;
11. ELEMENT SIX TECHNOLOGIES US CORP.;
12. ELEMENT SIX TECHNOLOGIES (OR) CORP.;
13. FIRST MODE HOLDINGS, INC.;
14. PLATINUM GUILD INTERNATIONAL (U.S.A.) JEWELRY INC.;
15. LIGHTBOX JEWELRY INC.;
16. FOREVERMARK US INC.;
17. ANGLO AMERICAN CROP NUTRIENTS (U.S.A.), LLC



### SCHEDULE 2

The AADB Parties<sup>1</sup>, some or all of which have sought to enter into an agreement with Mr Peter Protopapas, purporting to act as Receiver of Cape Intermediate Holdings Limited (“**CIHL**”), to settle certain proceedings before the Court of Common Pleas for the Fifth Judicial Circuit in South Carolina (C/A No. 2023-CP-40-01759) (“**Third Party Complaint**”), undertake **NOT** without the prior consent of the directors of CIHL:

1. to enter into or proceed with any settlement agreement involving on the one hand Mr Protopapas purporting to act for and on behalf of the Cape Parties<sup>2</sup> and on the other hand the relevant AADB Parties in respect of the Third Party Complaint or the allegations and claims made therein;
2. to take any further steps whatsoever (directly or indirectly or howsoever arising) in respect of any actual or proposed settlement in respect of the Third-Party Complaint or in respect of the settlement of the allegations and claims made in the Third-Party Complaint;
3. to transfer any money or provide any consideration whatsoever to Mr Protopapas for and on behalf of CIHL or at all in respect of any actual or proposed settlement in respect of the Third-Party Complaint or the allegations and claims made in the Third-Party Complaint.

Signature .....

Name .....

Date .....

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<sup>1</sup> Being: Anglo American Plc; De Beers Plc; De Beers Centenary AG; De Beers Consolidated Mines Ltd.; De Beers SA; 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.

<sup>2</sup> Being CIHL or Cape Plc.



Claim No.: BL-2025-000785

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

**BEFORE MR JUSTICE TROWER  
25 July 2025**

BL-2025-000785

**BETWEEN:**

- (1) ALTRAD INVESTMENT AUTHORITY SAS**
- (2) ALTRAD UK LIMITED**
- (3) CAPE UK HOLDINGS NEWCO LIMITED**
- (4) CAPE INDUSTRIAL SERVICES GROUP LIMITED**
- (5) CAPE HOLDCO LIMITED**
- (6) ALTRAD SERVICES LIMITED**
- (7) MR MOHED ALTRAD**

**Claimants**

**and**

- (1) PETER D. PROTOPAPAS**
- (2) CAPE INTERMEDIATE HOLDINGS LIMITED**
- (3) CAPE PLC (a company incorporated under the laws of Jersey)**

**Defendants**

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**ORDER**

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**UPON THE CLAIM** brought by the Claimants against Cape Intermediate Holdings Limited, Cape plc, and Peter D Protopapas (“**Mr Protopapas**”) by a Part 8 claim form dated 24 June 2025 with claim number BL-2025-000785 (the “**Claim**”)

**AND UPON** the orders of Master Pester (25 June 2025 and 2 July 2025) giving the Claimants permission to serve Mr Protopapas out of the jurisdiction at his professional address in South Carolina, USA

**AND UPON** the Claimants having served the Claim on Mr Protopapas out of the jurisdiction at his professional address in South Carolina, USA on 2 July 2025

**AND UPON** the Claimants having served the Claim on Cape Intermediate Holdings Limited, Cape plc by service on their instructed solicitors on 10 July 2025

**AND UPON THE APPLICATION** by the Claimants dated 14 July 2025 for an expedited listing of the final hearing of the Claim and for a direction that the final hearing of the Claim be heard and determined by a High Court Judge (the “**Expedition Application**”)

**AND UPON** the Claimants having given notice of the Expedition Application to the Defendants

**AND UPON** reading the evidence, being the Second Witness Statement of James Timothy Forbes Leader dated 14 July 2025

**AND UPON** hearing Counsel for the Claimants, Derrick Dale KC and Angus Groom

**IT IS ORDERED THAT**

1. The Expedition Application be granted as set out below.
2. The final hearing of the Claim shall be listed, on an expedited basis, to be heard in a 5-day window beginning on Monday 22 September 2025, with a time estimate of 2 days (and with a further 1 day set aside for judicial pre-reading).
3. The final hearing of the Claim shall be allocated to a High Court Judge if possible, or to a section 9 Judge if a High Court Judge is not available.
4. The parties have permission to file and serve further evidence by 4pm on Friday 12 September 2025.
5. The Claimants shall file and serve a bundle for the hearing, agreed if possible, by 4pm on Monday 15 September 2025.
6. The parties shall file and serve skeleton arguments by 12pm on Wednesday 17 September 2025.
7. The Claimants shall have permission to apply for further directions if they consider it necessary.
8. The Claimants shall serve this order on the Defendants.
9. The costs of the Expedition Application are in the Claim.

**Service of this order**

The Court has provided a sealed copy of this order to the solicitors for the Claimants, Enyo Law LLP, One Tudor Street, London EC4Y 0AH (reference: JTL/ALT1.1)





Claim no. BL-2025-001269

**(1) CAPE INTERMEDIATE HOLDINGS LIMITED**  
**(2) CAPE PLC**  
**(a company incorporated under the laws of Jersey)**  
**- and -**  
**PETER D. PROTOPAS**

**Claimants/**

**Defendant/**

**(1) ANGLO AMERICAN PLC**  
**(2) DE BEERS UK LTD**  
**(3) DE BEERS PLC**  
**(4) DE BEERS CENTENARY AG**  
**(5) DE BEERS CONSOLIDATED MINES PROPRIETARY LTD.**

**Third party**  
**Applicants**

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**Derek Dale KC, Peter Webster and Angus Groom** (instructed by **Signature Litigation LLP**) for the **Cape Parties**  
**David Joseph KC, Ciaran Keller KC, Stephen Donnelly and Lorraine Aboagy** (instructed by **Addleshaw Goddard LLP**) for the **De Beers Parties**

Hearing date: Friday, 17<sup>th</sup> October 2025

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**APPROVED JUDGMENT**



**Mr Justice Mann:**

**Introduction and the parties**

1. This is my judgment in two applications each of which is essentially the counterpart of the other. The applications flow from an order of mine dated 22nd November 2024 and from the preceding judgment of which the neutral citation number is [2024] EWHC 2999 (Ch). In that judgment I granted declarations as to the status of Mr Protopapas, a receiver appointed over Cape Intermediate Holdings Ltd (“CIHL”) in the courts of South Carolina. Essentially, I declared that in the circumstances, and under English law in relation to an English company, he had no authority to act for or bind CIHL, and I made injunctions preventing from so acting - the terms of that injunction appear below.
2. The underlying facts and reasoning for that order appear in my judgment, and this judgment presupposes that the reader has read it. The urgency with which this judgment is required means that I do not have time to set out again the acts of the receiver which led up to my earlier judgment, and for the same reason this judgment is shorter than it otherwise would have been. I record that I have taken into account all the arguments advanced by the parties before me, whether recorded or dealt with in this judgment or not.
3. Mr Protopapas is pursuing a large number of people and corporations in the third party proceedings described in my earlier judgment, seeking, as receiver, contribution towards what he says is a liability for asbestos-related injuries. He purports to do so as court-appointed receiver over CIHL. One of those groups of defendants is a group of companies including companies with the well-known name of De Beers. I will call that group the De Beers defendants, or just De Beers. That group has decided it wishes to settle with Mr Protopapas. The applications before me raise the question of whether they should be restrained from doing so (CIHL’s application) and whether I should vary the terms of the injunction to ensure that they are not complicit in a breach if they do (De Beers’s application).
4. These applications came on on very short notice for reasons which will appear. Essentially there is a scheduled trial in South Carolina on Monday 20th October (ie the date of this judgment - these applications were heard by me on Friday 17th October). A settlement agreement would avoid the trial, and an answer is needed by the time the trial is scheduled to start at 9.30 local time. They raise quite complex issues. Nonetheless, the able submissions Mr Derek Dale KC for CIHL and Mr David Joseph KC for De Beers meant that argument was completed within a day (as it had to be).



## Relevant history

5. As I have indicated, I will not recount the history of the matter which appears in my previous judgment. I will take up the story from there, dealing with matters shortly.
6. It would appear that my previous judgment and order, and the English law analysis contained in the judgment, have had no effect in South Carolina. Mr Protopapas has carried on his claims regardless, and the South Carolina courts have rejected all challenges to his appointment, status and authority. Those challenges have been mounted by other Cape-associated entities (the Altrad entities) and by De Beers. The considerable amount of activity has been described in the evidence that I have seen. It is unnecessary to set it all out here. It is sufficient to record that all challenges have, so far, been rebuffed, albeit only in interlocutory rulings (I understand that they can be revisited at a final hearing), and Chief Justice Toal has recently confirmed the status and the legitimacy of the acts of Mr Protopapas as receiver.
7. In an attempt to forestall the third party proceedings against the Cape defendants in the third party proceedings, CIHL and other Cape-related entities entered into an agreement which released all claims relating to asbestos injuries inter se. That release, so far as effective, would remove the basis on which the receiver in South Carolina is suing Cape-related entities, qua CIHL, in the third party proceedings. They sought a declaration from the (English) court to the effect that that agreement was valid and effective to release those Cape-related entities, and Marcus Smith J ruled that it was - [2025] EWHC 2470 (Ch) . In an order dated 30th September 2025 he declared that the agreement was lawful, effective and binding in relation to (inter alia) the claims in the third party proceedings, and he granted an injunction restraining Mr Protopapas from taking further steps against those Cape-related entities in behalf of CIHL and requiring him to terminate those proceedings as against those entities. As I understand it, so far that judgment and order have had no visible effect on the activities of Mr Protopapas.
8. The progress of the third party proceedings has led to an imminent three day trial as between Mr Protopapas as receiver, purporting to act on behalf of CIHL, and De Beers, seeking a determination of liability on the contribution claim. It is set down for three days to start on Monday 20th October 2025. Apparently De Beers have been participating in the litigation (and mounting its challenges to jurisdiction) whilst reserving its rights to challenge jurisdiction and authority in a final ruling, which it is apparently entitled to do. However, having resisted so far, De Beers has recently decided that despite its case that Mr Protopapas is not entitled to be doing what he has done (which, as I understand it, is aligned with CIHL's case as referred to in my first judgment), and that they are under no liability whatsoever, and particularly in the third party proceedings, they nonetheless wish to settle with him on a purely commercial view of the matter. As explained in the evidence, De Beers is concerned at the litigation risk in the current proceedings, the foreshadowing of further claims, the possible



creation of a blueprint for future claims and reputational damage (asbestos being a very emotional subject-matter).

9. At a pre-trial conference in South Carolina on 6th October 2025 it was mentioned that De Beers and Mr Protopapas had reached an agreement in principle to settle the third party complaint on confidential terms. Having heard about this the next day (7th October) solicitors for CIHL wrote to De Beers saying that a settlement would amount to a breach of my order. Undertakings were sought which would have prevented the settlement. There then followed further correspondence in which an undertaking not to enter the settlement was sought, given in limited terms and then not extended.
10. That led to the two applications which are now before me. On 13th October De Beers issued an application seeking a variation of the injunctions in my order so that it could not be said that they stood in the way of a third party wishing to enter into a settlement with the receiver. A hearing of that application was arranged for Friday 17th October. On Wednesday 15th October CIHL applied for injunctive relief (in the absence of an undertaking), and that application was stood over to be heard with De Beers' application. Mellor J restrained the settlement pending further order of the court and ordered that both applications be heard together. Thus the matters arrived before me.
11. The trial of the third party proceedings as between the receiver/CIHL and De Beers (as it would be described in South Carolina) remains due to start on Monday 20th October. Mr Oren, the sole director of CIHL, sought to cast doubt on whether that was really going to happen in the absence of a settlement, because he said there had been previous adjournments and there were procedural reasons for supposing that it was not likely that it could take place. However, Chief Justice Toal, before whom the trial will take place, has very recently issued a direction as follows:

“All parties in this matter are hereby notified that this Court has taken no action to continue or delay the trial in this matter which is scheduled to begin Monday, October 20, 2025.”
12. In the light of that and other observations made on procedural matters by De Beers I therefore assume that the trial is likely to happen unless the settlement is signed off before then. That generates an obvious urgency about this matter. I note, however, it was not said that the commencement of the trial would mean that the settlement was off. Nonetheless, it is my intention that this judgment should be delivered before the trial actually starts so that the parties know where they stand by then, taking into account the time difference between here and South Carolina.



## The orders of this court

13. Central to this application are the orders made by this court, and especially my order of November 2024. In that order I declared as follows:

“ 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 CIHL (“the Receivership Order”) is not recognised and has no legal effect in England and Wales and worldwide.

2. Mr Protopapas has and had no power or authority to act on behalf of CIHL in England and Wales or worldwide and has no power to or authority in respect of CIHL in England and Wales or worldwide to carry out the acts referred to in paragraph 6-10 below.

3. The rights and duties of the directors of CIHL remain unaffected by the appointment of Mr Protopapas as receiver of CIHL pursuant to the Receivership Order.

4. Mr Protopapas has and had no power or authority on behalf of CIHL to act for or to bind CIHL in the South Carolina Court in respect of Park Claim and the Tibbs Claim (as defined in Oren 1) and has and had no power or authority on behalf of CIHL to issue or pursue third party claims including in the Tibbs Claim against any of the third party defendants in those proceedings (“the 3P Complaint”), including (i) Mohed Altrad (ii) Altrad Investment Authority SAS (iii) Altrad UK Ltd (iv) Cape UK Holdings Newco Ltd (v) Cape Industrial Services Group Ltd (vi) Cape Holdco Ltd (vii) Altrad Services Ltd.

5. Mr Protopapas has and had no power or authority to accept service on behalf of CIHL in the claim brought in the South Carolina Court by a summons dated 11 November 2024 with claim number C/A NO. 2024-CP-40-06639 or any other legal proceedings issued against CIHL in the South Carolina Court or worldwide.”



14. I further ordered:

“6. Mr Protopapas be restrained in England and Wales and worldwide from acting or purporting to act as agent or otherwise on behalf of CIHL pursuant to the Receivership Order.

7. Mr Protopapas be restrained in England and Wales and worldwide from appropriating, interfering with or usurping (in any way whatsoever) the lawful exercise of the rights and duties of the directors of CIHL.

8. Mr Protopapas be restrained from acting or purporting to act on behalf of CIHL in the Park Claim and the Tibbs Claim (as defined in Oren 1).

9. Mr Protopapas be restrained from continuing to prosecute the 3P Complaint (as defined in Oren 1).

10. Mr Protopapas be restrained from purporting to act for CIHL in the claim brought in the South Carolina Court by a summons dated 11 November 2024 and with claim number C/A NO. 2024-CP-40-06639 or in any other legal proceedings issued against CIHL in the South Carolina Court or worldwide.”

15. It is unnecessary to set out the orders of Marcus Smith J, which are of themselves less relevant to these applications because they concern Cape parties and not De Beers parties.

### **The proposed settlement**

16. The proposed settlement terms are now set out in an as yet unsigned document which has now been produced in redacted form by De Beers - the redaction is simply the amount of money to be paid to the receiver under it. The relevant terms of that agreement are as follows:

(i) The agreement is described as being between “Peter D. Protopapas, in his capacity as the court-appointed South Carolina Receiver for Cape Intermediate



Holdings Limited (f/k/a Cape Asbestos Company Limited, hereinafter referred to as “Cape”) (“Third-Party Plaintiff”), for the Receiver itself, its agents, executors, administrators, heirs, successors, assigns, and all who claim derivatively through the Receiver (hereinafter referred to as the “Releasing Party”),” and De Beers and other companies in group.”

(ii) It provides for a sum of money to be paid into a “Qualifying Settlement Fund” whose terms have been, or are to be, approved by the court. This is apparently an established technique in group-type actions in the US. The terms of the fund (“the QSF”) have not been disclosed. However, it appears that part of the fund will be used to pay Mr Protopapas, for expenses and otherwise, and part will be used to pay claimants. It is also said, and I accept, that it is likely that part of the fund is likely to be deployed in further claims, including pursuing claims against CIHL and its associated companies. This is a particular concern of CIHL, and as a pure matter of fact that view is in my view justified.

(iii) Clause 4 contains “Releases and Discharges”. Under it the Releasing Party releases:

“(i) all claims, demands, and causes of action asserted by Third-Party Plaintiff against the Released Parties in the Lawsuit, recognizing the Receiver’s authority is limited to claims asserted in South Carolina; and

(ii) all claims, actions, suits, losses, rights, damages, costs, fees, expenses, obligations, liabilities, and causes of action of every character, nature (whether sounding in tort, contract, warranty, or any other theory of law, equity, or workers compensation claims), kind or description whatsoever, known or unknown, past, present, or future, foreseen or unforeseen, and suspected or unsuspected, that the Releasing Party has or may have against the Released Parties, arising out of, or relating to injuries arising from alleged exposure to Cape Asbestos Products or any other asbestos products, including, but not limited to, claims arising by reason of, directly or indirectly, bodily or other personal injury, property damages, wrongful death, survival action, and economic loss. In the interest of clarity, the releases and discharges contained in Section 4(a) are limited to claims brought in South Carolina.”

Although the Releasing Party is described as the receiver, it is quite clear that he is purporting to act for, and to bind, CIHL.



### **The claims made in these applications**

17. In their application De Beers seek the following:

“The Mann Order [ie my order of November 2024] be varied by the addition of the following paragraph:

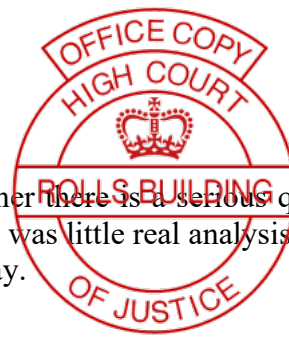
“For the avoidance of any doubt, paragraphs 6 to 10 of the Mann Order do not preclude the Applicants from entering into a settlement of the Third-Party Complaint and any other claims as contemplated in the draft Confidential Settlement Agreement.”

The application is made under CPR 40.9 since De Beers claims to be a non-party affected by an order of the court and entitled to apply under it, and so far as necessary under CPR 3.7(1) (the power of the court to vary its orders). I deal with their locus below.

18. For their part, as mentioned above, CIHL claims an injunction restraining De Beers from entering into the settlement agreement.
19. It will be apparent that each application is the converse of the other and the arguments by each side propounding its case are also relevant to resisting the opposing application. The real question is whether the relief already granted by this court should stand in the way of De Beers settling its claim. If it should not then the injunction will be refused and De Beers’ application should succeed (insofar as it can be said the my injunctions would otherwise pose the risk that they will be in contempt by entering into the settlement). Conversely, if CIHL is entitled to its injunction the De Beers application should fail.

### **The approach on this interlocutory application**

20. The claim to the injunction is a claim to an interim injunction, which invokes *American Cyanamid* considerations. However, the nature and timing of this application, and the proximity of the trial, means that, as both parties agreed, the nature of the consideration required was more akin to a trial of the real issue - should De Beers be restrained from settling a claim brought against them in South Carolina if it wished to do so. That is therefore the issue on which I will focus, though I will have to make some reference to



underlying points which theoretically go to whether there is a serious question to be tried (ie what CIHL's causes of action are). There was little real analysis before me of the question of the adequacy of damages either way.

### **The locus of De Beers**

21. In their own application De Beers invoke CPR 40.9:

“40.9 A person who is not a party but who is directly affected by a judgment or order may apply to have the judgment or order set aside or varied.”

22. There was faint resistance to the application of this from Mr Dale, but in my view De Beers are plainly entitled to invoke it. They propose to enter into a settlement with a receiver who has been restrained from acting as such by an order of this court. They have notice of that order. They are at risk that they would be accused of aiding and abetting a breach of that order and thus in contempt if they entered into the settlement agreement, as CIHL itself avers. They are therefore directly affected by the order and entitled to make their application. I was referred to authority which it was said supported De Beers' right to apply, but it is unnecessary to set it out here. The relief to which De Beers may be entitled as a result is, of course, a different matter.

### **The basis of the claim to an injunction**

23. Mr Dale put his claim to an injunction on the following legal bases. I can deal with them briefly because once one is established the others do not matter so much.

(i) Third party contempt. The principle is summarised in Grant on Civil Fraud, 1st Edn:

“35-045 ...third parties are not directly affected by an order or undertaking. However, such a third party may nonetheless be guilty of a contempt of court if, knowing of the order or undertaking, he takes steps which aid or abet the respondent in breaching the order or otherwise does an act which obstructs or frustrates the object of the order. The classic statement of principle was laid down by *Lord Hope in Attorney General v Punch Ltd.*”



That principle is uncontroversial. I agree that it is strongly arguable that by entering into the settlement agreement De Beers would be aiding and abetting a breach of paragraphs 6 and 8 of my order. (This is one basis of De Beers' application under CPR 40.9). The contrary was not seriously argued by Mr Joseph.

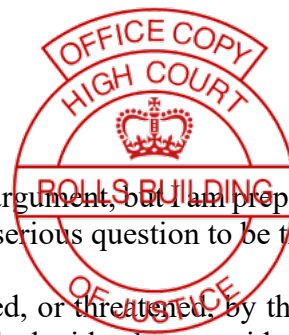
(ii) Aiding the commission of a tort by Mr Protopapas. This is said to flow from my finding in my earlier judgment that Mr Protopapas committed a tort by purporting to act as an agent without authority. Prima facie this wrong is made out, though a proper determination might benefit from further argument if it ever matters.

(iii) The "Marex" tort - see *Marex Financial Ltd v Sevilleja* [2017] 4 WLR 105. The elements are set out by Bryan J in *Lakatamia Shipping Co Ltd v Su* [2021] EWHC 1907:

- "(1) The entry of a judgment in the claimant's favour,
- (2) Breach of the rights existing under that judgment,
- (3) The procurement or inducement of that breach by the defendant,
- (4) Knowledge of the judgment on the part of the defendant, and
- (5) Realisation on the part of the defendant that the conduct being induced or procured would breach the rights owed under the judgment."

It is not clear to me that this adds anything to the claim based on participation in a breach of the injunctions in my earlier order. There might be a nice debate about whether the settlement agreement is somehow a "breach" of the rights flowing from the declaration (as opposed to the injunction). It might be said that a party who voluntarily participates in a settlement of a claim which that party maintains (in line with CIHL) is brought by a person invalidly appointed, which is made without justification, is without merit and is brought via a person with no English-law recognised authority, it not "breaching" the declarations. The declarations, the status of the counterparty and the effect on CIHL is nil. The paying party is effectively making a present to the receiver, so far as English law is concerned. However, there was no debate about that, and it is unnecessary for me to develop it. I would accept this claim as properly arguable (or there is a serious question to be tried) for present purposes so far as necessary.

(iii) Unlawful means conspiracy. The contempt, the tort of purporting to act as agent without authority and the Marx tort are relied on as the unlawful means and the settlement is said to amount to a joinder in those acts for the purposes of



conspiracy. Again, this was not developed in argument, but I am prepared to accept the arguability of this point (or that there is a serious question to be tried).

(iv) In all these cases loss is said to be caused, or threatened, by the conspiracy, arising out of the mechanisms below which I deal with when considering prejudice to CIHL.

(v) Mr Dale claimed a right to an injunction on the footing of protecting against conduct in foreign jurisdictions which represents an attack on the judgments, jurisdiction and policies of this domestic forum. He gave as an instance the grant of anti-suit injunctions when based on conduct that is vexatious or oppressive, and his main authority in support of his case was *Stichting Shell Pensioenfonds v Krys* [2015] AC 616. I am not at all convinced that this ground is available to Mr Dale. *Stichting* was a case in which the court acknowledged that in the area of insolvency, conduct should be restrained in a foreign jurisdiction which offended against the *pari passu* rule in the jurisdiction of the insolvency. That is a very narrow application, and a very long way from the present case. I do not consider it demonstrates a jurisdiction which would cover the present case. However, once again it is unnecessary to say anything more about it, because Mr Dale has other bases for his claim.

### **The adequacy of damages; balance of convenience; and discretion**

24. That brings me to the factors which lie at the heart of this matter - the underlying question of whether it would be right to grant an injunction, or maintain the effect of the present injunction, to restrain a party from settling a case brought in a foreign jurisdiction.

25. Mr Dale relied on a number of matters as justifying the grant/maintenance of the injunction. He said the following matters caused grave prejudice, or had the potential to cause grave prejudice, if his client did not prevail.

(i) Mr Protopapas would be entering into the proposed settlement on the basis that he is authorised to act for CIHL when that is not the case and when it is a wrong (a tort) vis-a-vis CIHL. CIHL's interests in that respect required to be protected by an injunction. De Beers would be aiding him in that tort if they were allowed to settle.

(ii) The proposed settlement would seriously adversely affect CIHL in various ways. First, it would embolden Mr Protopapas in what CIHL say are his illegitimate pursuits. Second, it would provide him with funds with which he can pursue his activities and (as CIHL would put it) persecute CIHL further. Third, success by Mr Protopapas in the form of manoeuvring a substantial group such as the De Beers



group into a settlement in the circumstances of this matter, when De Beers were once clearly aligned with CIHL in challenging his authority and techniques, would be likely to embolden copycat tactics elsewhere, to the detriment of CIHL and principles of private international law.

(iii) Allowing the proposed settlement to go ahead would involve this jurisdiction failing to uphold basic rules of English private international law, which this court has sought to uphold by the grant of the previous declarations and injunctions of Marcus Smith J and myself.

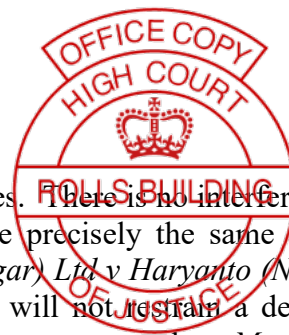
(iv) If the settlement happens then it would give rise to concerns within CIHL's, bankers and shareholders whom CIHL has sought to reassure by obtaining its orders hitherto. Auditors of the Cape group generally might require provisions to be made, suppliers may alter terms to reflect risks of insolvency and staff recruitment and retention may be more difficult. Bankers may be concerned about insolvency and change credit terms. This could have an effect on the Cape Scheme of Arrangement and the credit rating of bonds issued by the parent company (AIA SAS) might be affected.

(v) The ongoing claims of Mr Protopapas cause damage and harm to the reputation of the claimants.

(vi) A settlement agreement might prejudice the position of other companies in the Cape group who have pending appeals as to the receivership, by implicitly endorsing the legitimacy of Mr Protopapas's position. As appears above, is right to say that not all challenges to the receivership and its activities have yet been exhausted.

(vii) This court should be careful not to suggest that it had somehow given up in the differences between this court and the South Carolina court. The orders and judgments that this court has already issued reflect the English position on the governance of an English company; the maintenance of that assertion requires that the settlement agreement be not not allowed to proceed. As Mr Dale put it, at the very moment that it matters, the English court should not give up and say that Mr Protopapas wins, as some people might think it has. It would be wrong to "feed" an impostor.

26. Mr Joseph's case boiled down to this, while accepting in terms that he recognised the receiver had no authority. His clients were, in the familiar metaphor, between a rock and a hard place. They, like CIHL, have sought to resist the receiver, his appointment and his acts, and have so far have failed, though they have not technically reached the end of the road. His clients have decided, no doubt reluctantly, that while they do not accept his legitimacy, matters of pragmatism have driven them to decide to settle - the financial and reputational risks are such that they do not want to risk a trial and a large money judgment, however much they maintain that such claims are bad in law and in fact. It would be quite wrong to prevent a party settling a foreign claim which it no longer wishes to defend, and there is no authority in which this has ever been done (contrast the wealth of anti-suit injunction cases where prosecuting litigation has been restrained). There is nothing vexatious or unconscionable about settling - again,



contrast the basis of some anti-suit injunction cases. There is no interference with the declarations made by this court - they will have precisely the same effect after a settlement as before. He relied on *EDF Man (Sugar) Ltd v Haryanto (No 2)* [1991] 2 Lloyds Rep 429 as demonstrating that the court will not restrain a defendant from defending itself in a local jurisdiction by all proper means, and on *Mamidoil-Jetoil v Oka* [2003] 1 Lloyds Rep 1 as demonstrating that the court will not put a defendant between a rock and a hard place. Mr Joseph asserted that it cannot have been the intention of my order that a defendant should not be able to conduct a defence (in proceedings which it did not invite) in whatever manner it thinks appropriate, including settling. It would be very unfair and unjust to force De Beers to risk the significant financial and reputational risks which they seek to avoid. They were, after all, not a party to the proceedings in which my orders were obtained.

### My decision

27. I have come to the clear decision that I should refuse the injunction and grant relief to De Beers which ensures that if they enter into the settlement agreement then they do not risk a determination of contempt against them, though perhaps not in the terms in which they currently seek that relief.
28. I have already indicated that this is not a case in which there was detailed reliance on the appropriateness of damages for either side. It was treated as a case in which I was being invited to decide in principle and on the facts, in circumstances of some urgency, whether or not a settlement should be permitted which would forestall a trial which is apparently about to start in South Carolina. I would agree that in theory damages might be an adequate remedy, technically speaking, for both sides, but computation of those damages would be extremely difficult. But no-one really argued about that.
29. I will therefore go along with the parties in their approach (which I consider to be correct) and consider the merits of the dispute as it stands. In these highly unusual circumstances I have to bite the bullet of the merits of the dispute so far as I can do so.
30. I consider it would be too strong a thing to refuse this party the right to settle a case in a foreign jurisdiction which it no longer wishes to fight. What would the alternative be? If I granted the injunction the settlement would not happen, and indeed no settlement could happen. On analysis this case was not just about the terms of this settlement; it is about any settlement (or at least any settlement which provided benefits to the receiver). Accordingly, the third party proceedings in South Carolina would presumably proceed to trial. At the moment the trial is of liability only, with remedies to come later if liability is found. But then De Beers would be faced with a further trial of remedies and quantum. If CIHL is right De Beers could not settle that either, so they



would be forced to fight that. That would or could result in a money judgment which, on this hypothesis, would be likely to be substantial.

31. The critical question then is whether they would be entitled to satisfy a judgment notwithstanding the injunction that I granted. Logically speaking, on Mr Dale's case they would not - settling a judgment would contravene the injunction and amount to the wrongs that he averred and he would be entitled to an injunction to restrain it. Mr Dale, after some equivocation, and with obvious reluctance, seemed to accept that that was the case, but he also sought to say that that would be a different situation from the present. I do not see that it would. My present view is that this court would not intervene to prevent De Beers satisfying a judgment of the foreign court even though this court (and De Beers) would take the view that that judgment should never have been available or obtained on the reasoning in my first judgment. The fact is that the foreign court (on this hypothesis) has given a judgment. If De Beers chose to pay for reasons of financial and reputational risk (the reputational risks probably being stronger once a judgment was obtained), and even though it maintained that it was paying a man without authority and on the basis of what it says is flawed procedure (supported by the English court) then it is very difficult to see why it should not be entitled to do so. It would, of itself, not offend against English law and jurisdictional principles for De Beers to fulfil its commercial needs in that way. International private law remains intact. All that has happened is that De Beers have decided that they do not wish to have the benefit of what is established.
32. If that is right then in my view the same applies to a settlement. If De Beers would be entitled to satisfy a judgment if one were obtained, then in my view a settlement into which it would seem to have been bludgeoned is something they would be entitled to do even if the English law position is that the man with the bludgeon should not have had it in the first place. They would be as entitled to mitigate the risks of a judgment, (which on this hypothesis they would have to pay) as to satisfy a judgment itself.
33. I do not think that the *EDF Man* case assists Mr Joseph much in this respect, though it is true that Mann LJ did observe:

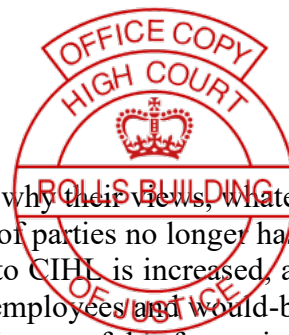
“I do not see how it can be unconscionable for a person to defend himself by any means permissible under local law” (p440)

and it could be said that settling a case is a means of defending against a local claim. Of more assistance to him is the *Mamidoil* case. In that case there was a local interlocutory order made in The Former Yugoslav Republic of Macedonia which prevented Okta from satisfying a judgment. The Court ruled, as a matter of discretion (also considering comity) that it would not restrain Okta from relying on that order in the local court. Aikens J said:



“Furthermore if an injunction were granted it might place Okta and its officers in an impossible position if Jetoil attempted to enforce this judgment in the FYROM Courts. Those Courts have granted an interlocutory injunction preventing Okta from paying damages to Jetoil. To disobey that in the FYROM may well be the equivalent of a contempt and could expose officers of Okta to criminal sanctions.”

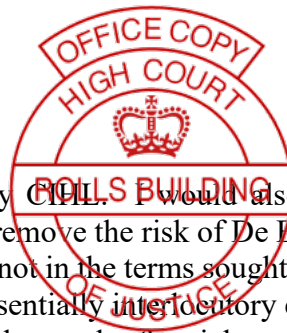
34. That is not the same situation with which De Beers are faced in this case because this case does not involve a possible contempt in South Carolina but it does demonstrate that the court will not lightly put a party between the rock and the hard place that Mr Joseph referred to.
35. In my view an English court would not normally require a party to defend foreign litigation (as opposed to preventing prosecuting it), and short of a contractual obligation it is difficult if not impossible to see how that would ever be justified. But it would be the effect of my granting the injunction sought by CIHL. If I granted the injunction De Beers would be forced to defend an action that it no longer wishes to defend. To bring that about would not seem to me to be a principled decision. If that is right then it must be open to De Beers to be able to settle the action if it wishes to do so.
36. I acknowledge that there is some degree of detriment to CIHL in “allowing” the settlement. It is possible that it will encourage copycat litigation by claimants and others who might wish to consider adopting Mr Protopapas’s techniques. I also acknowledge that it is likely that the settlement funds could be further used to pursue CIHL. It is not known for certain whether the funds could be used for that purpose, because the terms of the QSF have not been disclosed, but that was expressed as a fear in CIHL’s evidence and it has not been met by a denial, and the history of the matter indicates that it is eminently plausible. However, if copycats are encouraged then that is because US jurisdictions, as a matter of local law, permit it. Unless and until a court rules against Mr Protopapas’s techniques CIHL (and others, I suppose) remain exposed in any event. If Mr Protopapas manages to get funds made available to him by settling cases then that is because the local law and the *realpolitik* of litigation enables it. It would not be right for an English court to try to exercise some sort of extra-territorial control by denying a defendant the right to settle cases brought which an English court may regard as unmeritorious, even if likely to cause trouble, but which the defendant no longer wishes to run.
37. I am less convinced by CIHL’s other claims to prejudice. Part of the purpose of my granting declarations in my first judgment was to be able to demonstrate to people such as auditors, bankers, lenders and suppliers that as a matter of English law Mr Protopapas’s claims had no validity. That still stands. Although that cadre of people



would have to speak for themselves, I am not sure why their views, whatever they may be, would be changed by the fact that another set of parties no longer has the stomach for a fight. It is not obvious to me how any risk to CIHL is increased, at least on the evidence I have seen. The same should apply to employees and would-be employees. However, even if I have underestimated the significance of this factor, it does not have much weight in a decision as to whether De Beers should be restrained from settling.

38. Nor do I consider it likely that allowing the settlement will somehow give credence in the South Carolina courts to the techniques deployed by Mr Protopapas. The South Carolina courts will make their own decisions as to their own procedures and laws, without any assistance from me, and in any event no-one reading this judgment could think that I am in any way resiling from the English position on Mr Protopapas's status.
39. Mr Joseph made much of an averment that people in the position of his client cannot have been intended to be caught by the injunction restraining the receiver. He is right about that to a degree. The position of third parties was not the subject of consideration, and in the unusual circumstances of this case they may require special consideration. These applications provide that special consideration.
40. For his part Mr Dale emphasised that not granting his injunction, and releasing the present injunction to allow the settlement, would amount to the English court giving up in its attempts to control what it has found to be the illegitimate activities (under English law) of Mr Protopapas, and that to do so would somehow nullify the effect of the relief granted. I do not accept that submission. To allow the settlement would in no way go counter to the declarations which I have granted. They would continue to have their full force and effect. What would be permitted is a settlement by a third party who wishes to pay money to a person who has no entitlement (under English law) to demand or receive it. If De Beers wish to do that that is a matter for them. It does not make any difference to the force and effect of the determinations that I have made as to the status of that person. Nor is the court giving up in some sort of tussle between the two jurisdictions. It is merely acknowledging that if a commercial entity wishes to take a commercial view of its own position, which contrasts with the legal position, all in its own interests, because it is caught in a dilemma, then it should be allowed to do so. Mr Joseph's skeleton argument made it plain that his clients "did not disagree" with the proposition that the settlement agreement would not be binding on CIHL and would be of no effect under private international law. He is right about that. The English court is not giving up any sort of principled position in not standing in the way of De Beers.

### **The relief to be granted**



41. I would therefore refuse the injunction sought by CIHL. I would also modify the injunction granted against Mr Protopapas so as to remove the risk of De Beers being in contempt of court if it settles and pays money, but not in the terms sought by De Beers. I need to return to the fact that these matters are essentially interlocutory even though I have given heavy weight to what I consider what the result of a trial would be if there were a trial of at least the injunction application. These applications were brought on with great urgency, and I would not wish to adopt a course which would have the effect of depriving CIHL of claims to damages if they have them and wish to pursue them. If I granted the relief sought by De Beers it might remove claims in tort based on the existence of the injunction, depending on how one analyses the torts. I do not intend to do that on this application. All I intend to do is make sure the De Beers can enter into their settlement knowing that whatever else they might be liable for, contempt remedies are not a risk. I believe that that can be done by expressing the relief in terms which remove remedies but leave the potential wrong in place. I confess that I have not had time to work this thought process through but I would hope that it can be achieved as a matter of drafting with the assistance of the experienced counsel before me. Whether or not De Beers might be said to be entitled to more than that, so that the basis of any injunction-based tort can be cut away, can be a matter of a trial if necessary. This may seem to be a bit convoluted, but decisions have to be taken now and I do not wish for my decision to decide anything beyond that which it needs to decide going to the variation of orders.

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

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

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

In Re:  
Asbestos Personal Injury Litigation  
Coordinated Docket

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

Third-Party Plaintiff,

v.

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

Third-Party Defendants.

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

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

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

## PROCEDURAL BACKGROUND

### 1. Procedural Background of *Park*

#### *a. Park Plaintiffs filed an amended complaint naming Cape*

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

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

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

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

***b. Park Plaintiffs properly served Cape***

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

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

***c. Park Plaintiffs moved to appoint a Receiver over Cape***

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

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

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

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

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

## **2. Procedural Background of *Tibbs***

### ***a. Tibbs Plaintiff sued Cape***

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

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

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

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

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

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

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

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

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

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

## **ORDERS**

### **1. Validity and effect of reopening Park Estate**

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

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

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

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

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

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

***a. Validity of the Park Estate***

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

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

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

***b. Analysis of alleged moral fraud on behalf of Cape***

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

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

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

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

a. Cape establishes American presence and operations through NAAC

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

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

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

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

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

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

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

<sup>7</sup> NAAC Internal Memorandum dated Oct. 27, 1969, CAPE000988–89

<sup>8</sup> Cape Newsletter, No. 5, No. 12, Dec. 1970, CAPE000878–79 at 1.

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

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

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

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

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

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

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

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

machinations to make it appear it was reducing oversight over NAAC, but in reality, NAAC continued to operate as a mere division or instrumentality under Cape's domination and control.<sup>14</sup>

In addition, Cape began to engage in a campaign of litigation avoidance by refusing to accept process or appear in any proceedings in the United States, including failing to respond to the Second Amended Summons in this action, as properly served pursuant to Article 10 of the Hague Convention on March 8, 2022.<sup>15</sup> According to Cape executives, this strategy was warranted because they “really cannot be said to have a moral responsibility [to respond to the suits] and are simply victims of [a] US product liability cult.”<sup>16</sup>

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

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

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

Ultimately, to avoid paying damages to workers whom were made sick or died as the result of using its asbestos, Cape resolved to liquidate NAAC, effective January 31, 1978.<sup>17</sup> Existing debts of NAAC were paid, with remaining assets transferred upstream to NAAC's direct parent company at the time, Cape Industries Overseas Ltd. (a U.K. entity wholly owned by Cape Industries Ltd.).<sup>18</sup> NAAC's liquidation was central to Cape's litigation-avoidance strategy, based on legal advice that no British or South African court would enforce a judgment against a Cape entity if it never appeared again in the United States.<sup>19</sup>

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

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

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

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

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