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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, Inc.; SPX Corporation;

Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable, LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; and Zurn Industries, LLC,

Defendants,

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

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

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

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

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

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

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

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

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

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

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

²⁵ *Id.* at 50.

²⁶ *See id.*

²⁷ *See generally id.*

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

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

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

²⁸ See generally *id.*

²⁹ *Id.* at 56.

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

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

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

³³ *Id.* at 11.

³⁴ *Id.* at 48-49.

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

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

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

³⁵ *Id.* at 40.

³⁶ *Id.* at 37.

³⁷ *Id.* at 41-42.

³⁸ *Id.* at 5.

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

⁴⁰ *Id.* at 6.

⁴¹ *Id.*

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

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

⁴⁴ *Id.* at 11-12, 69.

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

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

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

⁴⁶ Mendelle Deposition, *supra*, at 58.

⁴⁷ *Id.* at 56-57.

⁴⁸ *Id.* at 66.

⁴⁹ *Id.* at 68.

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

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

⁵² Letter from Galloway (Aug 19, 1966).

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

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

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

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

⁵³ *Id.*

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

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

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

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

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

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

⁵⁷ *Id.*

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

⁵⁹ *Id.*

⁶⁰ PRU Preliminary Report (April 30, 1962).

⁶¹ *Id.*

⁶² *Id.*

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

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

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

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

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

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

⁶⁴ *Id.* at 2.

⁶⁵ *Id.* at 34.

⁶⁶ *See, e.g., id.*

⁶⁷ *Id.* at 35.

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

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

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

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

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

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

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

⁷⁰ *Id.* at 2.

⁷¹ *Id.*

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

⁷³ *Id.*

⁷⁴ *Id.* at 13.

⁷⁵ *Id.*

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

⁷⁷ *Id.* at 135.

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

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

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

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

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

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

⁷⁸ *Id.* at 116.

⁷⁹ *Id.* at 24.

⁸⁰ *Id.* at 38, 63.

⁸¹ *Id.* at 11-12, 30.

⁸² *Id.* at 40, 57.

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

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

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

⁸³ *Id.* at 41.

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

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

⁸⁶ ARC-19th meeting (July 12, 1962).

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

⁸⁸ *Id.* at 723-29.

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

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

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

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

⁸⁹ ARC-19th Meeting (July 12, 1962).

⁹⁰ *Id.*

⁹¹ *See generally id.*

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

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

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

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

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

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

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

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

⁹⁸ Cape_Receiver_00132246.

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

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

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

⁹⁹ *Id.* at Cape_Receiver_00132239-40.

¹⁰⁰ *Id.*

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

¹⁰² *Id.* at Cape_Receiver_000 96000.

¹⁰³ *Id.* at Cape_Receiver_00095991.

¹⁰⁴ *Id.* at Cape_Receiver_00095992-3.

¹⁰⁵ *Id.* at Cape_Receiver_00096066.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹¹⁴ *Id.* at 44-45 (emphasis added).

¹¹⁵ *Id.* at 44.

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

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

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

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

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

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

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

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

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

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

Welch notes that Atlas Turner's first line of defense

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

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

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

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

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

¹¹⁸ *See Id.*

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

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

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

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

¹²⁰ Virta at 13.

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

¹²² *Id.* at 30.

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

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

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

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

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

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

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

¹²⁶ *See id.*

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

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

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

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

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

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

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

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

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

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

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

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

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

¹³² *Id.* at 8.

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

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

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

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

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

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

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

¹³⁶ CIHL Annual Report at 6 (2020).

¹³⁷ CIHL Annual Report at 6 (2021).

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

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

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

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

¹³⁹ *See id.*

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

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

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

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

e. The Receiver’s authority to act in Tibbs

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

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

2025). The Order further notes, “[t]he receiver is not to be authorized to conduct work as to a case in which no receiver appointment order has been filed.” *Id.*

This Court finds that the Receiver referenced the Cape Receiver Appointment Order multiple times in *Tibbs*, including first in the Third-Party Complaint. See Third-Party Complaint at 10 (“On March 17, 2023, this Court appointed the Receiver to undertake actions to administer all assets of Third-Party Plaintiff. See Cape PLC Receivership Order.”). The parties filed the Cape Receiver Appointment Order as an exhibit to at least 23 filings in *Tibbs*, including in the Receiver’s Omnibus Memorandum in Opposition to Third-Party Defendants’ Motions to Dismiss, filed on October 18, 2023.¹⁴³

This Court finds that the Receiver was authorized to file the Third-Party Complaint in *Tibbs* to seek declarations as to the nature of the relationships among Charter, Central Mining, and Cape;

¹⁴³ The full list is as follows: (1) Motion to Dissolve, Arranco US, LLC, Hawk Bidco (US), Inc., & Sparrows Offshore LLC, Aug. 21, 2023, Ex. E, (2) Motion to Dismiss, Altrad Invesmtent Authority S.A.S., Sept. 1, 2023, Ex. 9 (3) Memo in Opposition to MTD, Cape Receiver, Oct. 18, 2023, Ex. 1; (4) Motion to Dissolve, Lightbox Jewelry Inc, Oct. 26, 2023, Ex. A; (5) Motion to Dissolve, Anglo American Crop Nutrients USA LLC, Oct. 26, 2023, Ex. A; (6) Motion to Dissolve, Anglo American Us Holdings Inc, Oct. 26, 2023, Ex. A; (7) Motion to Dissolve, De Beers Jewellers US Inc, Oct. 26, 2023, Ex. A.; (8) Motion to Dissolve, Element Six Technologies (OR) Corp, Oct. 26, 2023, Ex. A; (9) Motion to Dissolve, First Mode Holdings Inc, Oct. 26, 2023, Ex. A; (10) Motion to Dissolve, Forevermark U.S., Inc, Oct. 26, 2023, Ex. A; (11) Motion to Dissolve, Platinum Guild International Usa Jewelery Inc, Oct. 26, 2023, Ex. A; (12) Motion to Dissolve, Anglo American US Holdings Inc, Oct. 26, 2023, Ex. A; (13) Motion to Dismiss, Anglo American plc, Dec. 21, 2023, Ex. A; (14) MTD for Lack of SMJ, De Beers plc, Dec. 21, 2023, Ex. A; (15) MTD for Lack of SMJ, De Beers Centenary AG, Dec. 21, 2023, Ex. A; (16) MTD for Lack of SMJ, De Beers UK Limited, Dec. 21, 2023, Ex. A; (17) MTD for Lack of SMJ, De Beers Consolidated Mines Proprietary, Dec. 21, 2023, Ex. A; (18) MTD for Lack of SMJ, Anglo American plc, Dec. 21, 2023, Ex. A; (19) Motion to Dissolve, Anglo American Plc, June 24, 2025, Ex. B; (20) Memo in Opposition to Receiver’s MTC, Anglo American plc, July 18, 2025, Ex. 2 at 48-51; (21) Supp. Memo in Support of Motion to Dissolve, Anglo American plc, July 31, 2025, Ex. A; (22) Receiver’s Resp. in Opp. to TPD’s Motions to Dissolve, Cape Receiver, Aug. 5, 2025, Ex. A; and (23) Receiver’s Resp. to the Submission of Mohed Altrad, Cape Receiver, Aug. 5, 2025, Ex. D.

the status of the named Third-Party Defendants as successors to Cape and/or Charter and Central Mining; and that the Third-Party Defendants were unjustly enriched by their participation in Cape's scheme.

f. Clarification of Scope of Receivership Appointment Order

Finally, Third-Party Defendants argue that the Receiver has undertaken certain actions that are beyond the scope of the authority that should be granted to a receiver in South Carolina because certain language in *Welch* – in particular, language related to limiting the receivership to the entity's insurance assets – limits all South Carolina receiverships in the same manner. Additionally, the South Carolina Supreme Court Order in *Tibbs v. 3M Company*, Appellate Case Nos. 2024-001423, 2024-001499, 2024-000916, 2024-002114, 2024-002116, 2024-002117, and 2025-000052 remanded the cases to this Court and directed the Court to ensure “that the receiver’s scope of authority is limited as set forth in *Welch*.” Slip Op. at 4 (June 26, 2025).

First, as to the Third-Party Defendants’ contention that *Welch* requires limitation of this Court’s appointment only to Cape’s insurance assets, this Court finds that *Welch* does not require such a limitation. The *Welch* opinion recognized this Court’s limitation on the Atlas receiver’s powers to marshal only the insurance assets of Atlas Turner.¹⁴⁴ This Court appointed the Receiver “with the power and authority [to] fully administer **all insurance assets** of Atlas Turner, Inc.,” and specified that the order “includes the right and obligation to **administer any insurance or indemnification assets of Atlas** as well as any claims related to the actions or failure to act of Atlas insurance carriers or other entities, including, but not limited to the officers, directors and/or shareholders of Atlas against which [] Atlas may have claims.”¹⁴⁵

¹⁴⁴ See Ex. 2, Order on Plaintiffs’ Motion to Appoint A Receiver, *Welch v. 3M Co.*, No. 2022-CP-40-03834 at 6 (S.C. Ct. Com. Pl. Jun. 21, 2023).

¹⁴⁵ *Id.* (emphasis added).

The Cape receiver order includes no such limitation.¹⁴⁶ The receivership court appointed the Receiver “with the power and authority [to] fully administer **all assets of Cape**,” and specifying that the order included, but was “**not limited to**” “the right and obligation to **administer any insurance assets of Cape** as well as any claims related to the actions or failure to act of Cape’s insurance carriers.”¹⁴⁷

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

In the context of the Atlas Turner insurance assets receivership order, the South Carolina Supreme Court questioned the court’s definition of Insurance Assets – a definition *not* present in the Cape receivership order because, again, the Cape receivership is more broadly defined. The definition included the following: “other information which is reasonably calculated to lead to the discovery of admissible evidence about those insurance policies or any other assets which are related to, touch or are otherwise relevant to such insurance.”¹⁴⁸

The Court found that definition too broad in the context of an insurance assets receivership: “We find equity only allows insurance policies that have the potential to cover Mr. Welch’s injuries

¹⁴⁶ See Ex. 70, Order Appointing Receiver, *Park v. Armstrong Int’l, Inc.*, No. 2021-CP-40-02727 at 1 (S.C. Ct. Com. Pl. Mar. 16, 2023).

¹⁴⁷ *Id.* (emphasis added).

¹⁴⁸ [citation].

to be included in this definition, and we reverse and vacate the portion of this definition that allows the Receiver to have power over ‘any other assets which are related to, touch or are otherwise relevant to such insurance.’”¹⁴⁹

Nothing in *Welch* order requires application of this holding to South Carolina receiverships generally. Indeed, *Welch* recognized that a court may specify the assets included in the receivership: “it is well established that a Receiver has the right and duty to collect and accumulate the property and assets of the defendant specified in the appointment order, including its rights and claims.”¹⁵⁰

Second, as to the contention by the Third-Party Defendants that the Cape Receiver Appointment Order is otherwise overly broad, this Court acknowledges that certain portions of the Order can be clarified to better reflect the facts of the Cape receivership. This Court clarifies the *Park* Cape Receiver Appointment Order as follows:

1. The Court clarifies that the entity in receivership is “Cape Intermediate Holdings Limited, formerly known as Cape plc from 1989-2011, Cape Industries Limited from 1974 to 1989, and Cape Asbestos Company Ltd. from 1893 to 1974.”
2. The Court clarifies that Cape Intermediate Holdings Limited is not dissolved and has not forfeited its charter. However, failed to answer the *Park* case.
3. The Court adopts all findings of fact as to Cape’s moral fraud made herein to establish the appropriateness of appointment of the Receiver under S.C. Code §15-65-10(5).

¹⁴⁹ *Id.*

¹⁵⁰ *Welch* at *11.

4. The Court adopts all findings of fact as to Cape's financial position so as to render it in danger of insolvency, therefore establishing the appropriateness of appointment of the Receiver under S.C. Code § 15-65-10(4).
5. The Court limits the authority of the Receiver to administer the assets of Cape responsive asbestos personal injury claims properly brought in South Carolina, as is appropriate given Cape's moral fraud in making the conscious decision not to participate in asbestos personal injury litigation in South Carolina despite having made direct sales of asbestos fiber into South Carolina.
6. The Court clarifies that upon appointment as Receiver over Cape, the Receiver was permitted to accept service on behalf of Cape through all the same mechanisms as service may be made on any corporation in South Carolina.
7. The Court clarifies that although the eleven enumerated activities in which the Court permitted the Cape Receiver to engage on page 2 of the Appointment Order are activities in which South Carolina receivers ordinarily may engage, these activities do not reflect the scope of the Cape Receiver's charge, with the exception of point 10, the power to "hire any person or company necessary to accomplish any right or power under this Order." Additionally, point 8, relating to financial records belonging to the Defendant, is relevant, but should be and is clarified to reflect that the scope of the Receiver's charge includes the right to obtain from any third party copies of any records belonging or pertaining to the assets of Cape responsive to asbestos personal injury claims properly brought in South Carolina, including prior legal representation of Cape. The Court therefore strikes this paragraph from the appointment order, and replaces it with the following language: "In addition to the powers of the Receiver set forth herein,

- the Receiver shall have the right to (1) hire any person or company necessary to accomplish any right or power under this Order and (2) obtain from any third party copies of any records belonging or pertaining to the assets of Cape responsive to asbestos personal injury claims properly brought in South Carolina, including prior legal representation of Cape.”
8. The Court confirms that the Receiver’s litigation activity to date has been conducted within the scope of the Appointment Order.
- IT IS SO ORDERED.

[JUDGE’S ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Richland Common Pleas

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

Case Number: 2023CP4001759

Type: Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2025-10-10 16:08:09 page 49 of 49

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.

In Re: Asbestos Personal Injury Litigation
Coordinated Docket

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

AMENDED NOTICE OF 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.

MOHED ALTRAD, ALTRAD INVESTMENT
AUTHORITY SAS, CHARTER CONSOLIDATED
LTD, CENTRAL MINING & INVESTMENT CORP.
LTD., ESAB CORP.,

Third-Party Defendants

Notice is hereby given that the hearing originally scheduled in the above-captioned case for 9:30 AM on Wednesday, November 12, 2025, will now take place at 9:30 AM on **Thursday, December 4, 2025**, at the Richland County Judicial Center in Courtroom 3B.

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 2025-11-05 10:51:48 page 3 of 3

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

ISABELLA PARK,

Plaintiff,

vs.

C/A No.: 2021-CP-40-01759

ARMSTRONG INTERNATIONAL, ET AL.,

Defendants.

(Caption continued on the following page.)

H E A R I N G

BEFORE THE HONORABLE

CHIEF JUSTICE (RET.) JEAN TOAL

DATE TAKEN: Tuesday, August 12, 2025

TIME START: 9:24 a.m.

TIME END: 4:58 p.m.

LOCATION: Richland County Judicial Center

1701 Main Street

Columbia, South Carolina

REPORTED BY: Sheri L. Byers, RPR

Magna Legal Services

866.624.6221

www.MagnaLS.com

CAPTION CONTINUED:
JOHN A. TIBBS AND
MARGARITE B. TIBBS,

Plaintiffs,

vs.

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

3M COMPANY, ET AL.,

Defendants.

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2 P R O C E E D I N G S

3 - - -

4 THE COURT: Preliminarily, let me give you
5 focus of how I'm looking at this melange of
6 things that have been sent to us for
7 adjudication.

8 I have been remanded seven cases which were
9 brought by defendants in the third-party action
10 in Tibbs as appeals of rulings that I made in
11 Tibbs some time ago. The Court of Appeals ruled
12 that those matters were not appealable, went up
13 to the Supreme Court.

14 In the meantime, the Welch matter was
15 decided and certain parties that are
16 participating in these matters filed material in
17 Welch, though they were not parties in Welch,
18 that looked kind of like a motion for
19 reconsideration and attempted to argue with the
20 Court about some of the conclusions it had made
21 about their clients in Tibbs in the course of
22 dealing with the matters at play in Welch.

23 So to that end, when the Supreme Court
24 finally decided it wasn't going to fool with
25 these things anymore and didn't like the

1 repetitive nature of the filings and the
2 negative nature of some of what was contained in
3 the filings, they sent the matters back to me
4 with some instructions on remand.

5 And those instructions included some
6 questions about the Park case and the validity
7 of the appointment of the receiver for Cape in
8 the Park case and the validity of or the status
9 of the Park case and what -- in terms of what it
10 was acting.

11 But they also asked me to rule on
12 everything that was outstanding in Parks, any
13 motions. And it also said with respect to all
14 the other receiverships, tell us what is going
15 on, tell us what's still outstanding in these
16 cases and if you haven't ruled on them, tell us
17 why.

18 So I have a huge plate of things that
19 involve kind of moving a target as to who the
20 parties are at play in the various buckets of
21 things that I have to deal with. And I have
22 tried to iron that out the best way I can. I
23 don't just speak from the thrown to the Court
24 about kind of my general opinions about
25 everything. I make rulings in cases that are

1 before me and make a record and then the
2 appellate process takes place.

3 And in addition to that, in these
4 particular matters, I am required to give a
5 report every 30 days to the Court that is a
6 procedural report about what's taking place.

7 But it is not a report that involves
8 anything that needs to be ruled on as a
9 contested matter by the Court. It's simply a
10 report. The parties' ability to engage about
11 the merits of things takes place within the
12 course of the cases that are pending in front of
13 me.

14 That's the only way I have any business
15 ruling about anything that has to do with
16 matters is in the posture of ruling on matters
17 that are before me and the cases that are before
18 me.

19 To that end, the two cases that we are
20 dealing with today, as promised, are Park and
21 Tibbs. And in each case, what I attempted to do
22 was, first of all, identify any outstanding
23 motions in Park and in both cases identify
24 anything that dealt with the legitimacy and
25 status of the receiver appointed for Cape in

1 Park and participating as receiver for Cape in
2 Tibbs.

3 So the way I propose to move forward with
4 this thing, I've listed everything that I think
5 is pending. I might say to begin with that
6 there are certain things that I think were
7 referred to perhaps in what the Court was asking
8 about in Park that are no longer pending.

9 The only outstanding motion I had before I
10 started looking at this thing in any great
11 detail was Locke Lord's motion to dismiss
12 third-party complaint for lack of jurisdiction
13 and for stay of discovery. And that was filed
14 by Locke Lord on September the 15, 2023.

15 On July the 10th, 2025, Locke Lord was
16 dismissed with prejudice by means of a
17 stipulation entered into by attorneys for
18 Locke Lord, Womble Bond & Dixon, Turner Padgett
19 Graham & Laney, and Harling & West and attorneys
20 for the receiver or for this third claimant
21 Harling & West and Rikard & Protopapas.

22 So that's no longer outstanding and I know
23 regarding something I need to deal with. So I
24 just mention that, that part of my report will
25 be to say that that motion has been -- will not

1 be acted on by me by reason of the fact that the
2 entire matter with regard to Locke Lord has been
3 stipulated as dismissed.

4 That would leave in the Park case,
5 Plaintiff's brief about the status of the Park
6 case, which was filed on August the 4th. The
7 receiver's Motion to Compel Certain Underwriters
8 of Lloyd's filed in June of 2025. Certain
9 Insurers' Motion in Opposition to this Motion to
10 Compel. That's Mr. Sawyer.

11 Certain Insurers, Continental Casualty
12 Return to the Bench Brief. That's again
13 Mr. Sawyer. And then nonparty Travelers motion,
14 Memo in Opposition, I guess, to what was said in
15 the bench memo by me to the Court.

16 I do not regard nonparty Travelers as
17 having any status in Park. But after I finish
18 hearing from those that do have status in Park,
19 before I leave Park, I will ask any comments
20 that nonparty Travelers wishes to make.

21 Also, filed in Tibbs are some other matters
22 that relate to the current status of Park, and
23 they are filed by entities that are not
24 defendants in Park. They are defendants --
25 third-party defendants in Tibbs.

1 So I don't regard them as having any status
2 in Park to say anything. But I'm not going to
3 preclude them from putting on the record what
4 they would like to put on the record. I regard
5 the parties that I need to hear from in Park as
6 the plaintiff, the receiver, and Mr. Sawyer on
7 behalf of Certain Insurers and Continental
8 Casualty. So that's how I'm going to start Park
9 now.

10 With respect to the Tibbs matter, I have
11 outlined as best I can everything I think is
12 pending on the subject of the legitimacy of the
13 Cape receivership, and that takes the form of
14 many filings by Anglo, De Beers, and others
15 asking that the Cape receivership be
16 dismissed -- be dissolved and the third-party
17 complainant dismissed. Receiver's opposition to
18 those things.

19 And also the receiver's motion to confirm
20 the appointment of receiver. That kind of puts
21 out of the picture. Along with others'
22 objection and opposition to the submissions of
23 the receiver as well as motion to dismiss,
24 strike all filings and so forth and so on. I
25 will in due time get to those as well.

1 That is how I'm going to set the hearing
2 up. And so I would call on Ms. McVey to begin
3 with.

4 MS. MCVEY: Thank you, Your Honor.

5 And just for clarity's sake as we argue,
6 one of the things the Supreme Court has to do is
7 ensure, as you recall, our motion to appoint a
8 receiver over Cape was filed in Park. And one
9 of the things that the Supreme Court has to do
10 is ensure that the order is based on findings of
11 fact sufficient under Welch to justify the
12 order.

13 So with your permission, because the motion
14 was filed in Park, I would like to argue the
15 personal representative issue as well as to go
16 into the basis of the Park motion to appoint the
17 receiver.

18 THE COURT: Here's what I would like for
19 you to do before you do that as a preliminary
20 matter.

21 MS. MCVEY: Yes, ma'am.

22 THE COURT: I would like for you to discuss
23 the status of the Park case because that's to be
24 attached, much of it made by people who are not
25 in Park, so I don't think they have much status

1 to raise those issues in Park.

2 But Park does form the basis of the
3 appointment of the receiver, and they make
4 certain contentions that they say invalidate the
5 activity in appointing the receiver apart from
6 all the other things they say are wrong in the
7 receivership.

8 And they revolve around whether they think
9 Park is still alive and well, whether the
10 personal representative had authority, et
11 cetera. So I would like for you to first cover
12 those matters.

13 MS. MCVEY: Absolutely. Happy to do that
14 this morning.

15 Your Honor, just by way of background with
16 the Park case, the Park case, when Mrs. Park was
17 still alive, was filed on July 4th of 2021.
18 Mrs. Park died from her mesothelioma, and we
19 allege as a result of her exposure to asbestos
20 imported by Cape and incorporated into hundreds
21 of miles of insulation at the Celanese facility
22 where her husband worked.

23 THE COURT: Let me stop you right there.
24 When Park was first filed, was Cape a defendant
25 in the case?

1 MS. MCVEY: A Cape entity was named as a
2 defendant in the case.

3 THE COURT: All right. It was named in the
4 caption, right?

5 MS. MCVEY: And in the body of the
6 complaint.

7 THE COURT: And in the body of the
8 complaint.

9 MS. MCVEY: Right.

10 THE COURT: And what was that entity?

11 MS. MCVEY: I think it just was Cape. I
12 don't think we had the right name.

13 THE COURT: Well, something that called
14 itself Cape or Cape PLC was named --

15 MS. MCVEY: Yes, ma'am.

16 THE COURT: -- in the caption of the case
17 and in a paragraph in the case.

18 MS. MCVEY: That's right.

19 THE COURT: All right.

20 MS. MCVEY: That's right. On August 4th,
21 after Mrs. Park died, Keith Park was appointed
22 as a personal representative of the estate. On
23 December 21st of 2021, Keith Park filed his
24 second amended complaint naming Cape PLC and
25 Cape Intermediate Holdings.

1 THE COURT: That date is what?

2 MS. MCVEY: December 23rd, 2021.

3 THE COURT: All right.

4 MS. MCVEY: Mr. Park was still the personal
5 representative.

6 THE COURT: Is that when he filed the
7 complaint?

8 MS. MCVEY: Yes. And then the complaint
9 was served on the Cape defendants on March 8th,
10 2022. Keith Park was still the personal
11 representative.

12 THE COURT: And that was the service --
13 that service was filed at some later time, but
14 the service itself was made then?

15 MS. MCVEY: Absolutely. And you have
16 already ruled in a prior motion that that was
17 proper service.

18 THE COURT: That's correct.

19 MS. MCVEY: On August 26th, 2022,
20 unbeknownst to us, the probate court closed the
21 estate. Now the case remained open and you have
22 seen on the Common Pleas docket the Park case
23 remains open. As soon as we found out about
24 this, we moved to reopen the estate and the
25 estate is now currently open.

1 THE COURT: When did you move to reopen?

2 MS. MCVEY: We moved it the day after they
3 filed their pleading. It's reopened on
4 July 30th. Or filed it on July 30th. I may
5 have my dates wrong a little bit. But the
6 complaint has been -- I mean, that I think we
7 filed the motion to reopen the estate on
8 July 30th and it has since been reopened.

9 THE COURT: What is your position with
10 respect to whether Keith Park had the
11 authority -- whether the -- on the impact of the
12 closing of estate on August the 6th, 2022?

13 MS. MCVEY: Okay. So here's my -- at the
14 time that Cape was -- the complaint was filed
15 against Cape, at the time that Cape was served,
16 at the time that Cape's answer was due, Mr. Park
17 was the personal representative.

18 THE COURT: Right.

19 MS. MCVEY: Okay. And so what the
20 defendants argue is that the closing of the
21 estate -- by the way, an honest mistake -- was
22 jurisdictional. And they point to three
23 different cases.

24 Those cases deal with when a complaint is
25 filed whether or not the personal representative

1 had jurisdiction, had authority to bring the
2 case. In this case we know Mr. Park absolutely
3 had authority to deal with it.

4 So what do we look to if some mistake
5 happens in the interim? There's three places
6 that you can look. The first one is a probate
7 Section 62-3-701, and that provides the duties
8 and powers of a personal representative commence
9 upon his appointment.

10 The powers of a personal representative
11 relate back in time to give acts by the person
12 appointed, which are beneficial to the estate,
13 occurring prior to the appointment, the same
14 effect of those occurring after.

15 A personal representative may ratify and
16 accept acts on behalf of the estate done by the
17 others where the acts would have been proper for
18 the personal representative.

19 So that's the first thing.

20 The second thing is Rule 17(a), and that
21 requires ratification, joinder substitution, and
22 it gives the abilities for an -- in this case
23 for Mr. Park to cure what happened with the
24 probate case.

25 And we know that because there's a Fisher

1 case, and it's called Fisher versus Huckabee,
2 and it discusses Rule 17(a). Fisher is a
3 Supreme Court case, South Carolina Supreme Court
4 case from 2018.

5 And in discussing Rule 17(a), which says no
6 action shall be dismissed on the ground that is
7 not prosecuted in the name of the real party in
8 interest until a reasonable time has been
9 allowed, after objection, for ratification or
10 commencement of the action or joinder. And such
11 ratification shall be -- and it goes on.

12 The last sentence according to the notes of
13 17(a) is intended to prevent a forfeiture in
14 those cases in which there's been a
15 determination that the party -- the proper party
16 to sue is difficult for where there's been an
17 honest mistake.

18 And the Fisher case, the Supreme Court, and
19 I have that case if Your Honor would like a copy
20 of it.

21 THE COURT: I would.

22 Thank you.

23 MS. MCVEY: Thank you.

24 The Fisher case makes it -- the Court
25 doesn't have discretion not to allow us a chance

1 to cure this. What the Fisher case says is that
2 if they -- Ms. Fisher had asked to cure the
3 defect from the probate court, the Court would
4 have had to allow her to do that.

5 So this isn't a case where when we filed
6 the complaint there wasn't a personal
7 representative. This isn't a case where that
8 when Cape was sued, we didn't have a personal
9 representative. It's not a case when Cape was
10 served that we didn't have a personal
11 representative.

12 Simply what happened is when he filed an
13 ancillary motion to the case, the estate had
14 been closed. That's an honest mistake, and the
15 rules allow us to cure it. We have since cured
16 it. And so we believe the motion was proper and
17 that Mr. Park had the authority to bring that
18 motion.

19 The cases that they cite, including a
20 New York case -- they cite three cases. The
21 first is the Glenn case, the second is the
22 McCullar case.

23 And in McCullar, what the Court said there
24 is the question of whether at the time the suit
25 was commenced there existed a judicial entity

1 known as the estate of, is the question before
2 the Court. And the Court held undisputed estate
3 was closed before the action was commenced. The
4 answer is no.

5 Same thing with Glenn.

6 In the New York case that they site
7 litigation was ongoing, the estate was closed,
8 but what happened is the defendant wanted to
9 bring counterclaims. That's the same thing.
10 That's a jurisdictional issue.

11 We don't have a jurisdictional issue here.
12 We simply have an opportunity under 17(a) to
13 correct an honest mistake. And that's what has
14 been done here. And there's certainly no
15 prejudice to any party here.

16 And I'll just note that Cape never appeared
17 to contest any of this. And still hasn't. Cape
18 is not in this courtroom, if you ask any of
19 these guys.

20 So, Your Honor, we believe under the
21 preliminary basis, we have absolutely authority
22 to bring the motion.

23 THE COURT: All right.

24 MS. MCVEY: I'm happy to roll into the
25 moral fraud on the basis of our motion.

1 THE COURT: Yes, I'm going to let you be
2 heard on everything, and we'll move from there.

3 MS. MCVEY: Okay. Your Honor, I wanted to
4 hand up, because it was so long ago. This was
5 our original motion to appoint a receiver in the
6 Park case over Cape. If I could hand that to
7 you.

8 And in it, it contained 35 exhibits which
9 outlined at length the moral fraud of Cape. And
10 let me remind you of how we got here in Cape.
11 You've already found that Cape was sued and
12 served with the complaint. You have found that
13 service of that complaint was proper. They did
14 not appear at all for well over a year. And we
15 moved to have a receiver appointed outlining the
16 moral fraud contained in that original motion
17 along with exhibits.

18 Not only did we serve the complaint on
19 them, we also served that motion to appoint the
20 receiver. They got actual notice of our motion
21 to appoint a receiver. And what did Cape do?
22 Nothing. They didn't appear because that's what
23 they do.

24 And I'm going to outline it for you if
25 you'll give me just a few minutes to outline

1 because the moral fraud here, what the Supreme
2 Court told you to do was look at Welch and to
3 say does the moral fraud of Welch rise to the
4 level? Does Cape rise to that level? I would
5 represent to you that this moral fraud is like
6 Atlas Turner on steroids. And let me go through
7 it in just a moment.

8 But they have never appeared to dispute
9 this appointment of the receiver. Ever.
10 They've never disputed that they engaged in
11 moral fraud. They never filed an answer.

12 And just a reminder that in the Welch and
13 Tibbs case, Atlas Turner was the one that came
14 in and disputed the appointment of the receiver.
15 It was Atlas Turner the company. Cape has never
16 done that and still hasn't done it two years
17 after appointment.

18 To emphasize and to establish the moral
19 fraud of Cape, I do want to emphasize my
20 brethren on the other side keeps saying the
21 moral fraud of any of Cape was in the past.
22 It's not ongoing. What you see is that not only
23 is it ongoing, it's been ongoing for decades.
24 And we know it because they didn't show up in
25 the Park case despite being properly served.

1 At the last hearing I heard counsel say
2 this is not about whether or not Cape is a bad
3 company or engaged in moral fraud. It
4 absolutely is about whether Cape did that.

5 At the time that you appointed this
6 receiver, you had that notebook, you had 35
7 exhibits. And so just briefly, I'd like to go
8 through the allegations of the moral fraud that
9 are really undisputed in this case.

10 As you know, Cape was organized and
11 existing under the laws of the United Kingdom.
12 They bind thousands of tons of raw asbestos
13 fibers in South Africa. And they admit they
14 sold most of the blue and brown asbestos
15 products into the United States. That, as you
16 know, is the crocidolite and the amosite. The
17 most deadly types of asbestos.

18 We cited to you a case, Hammond versus
19 Northern American Asbestos Court, 454 Minnesota
20 East 2d -- I'm sorry, I had that wrong.
21 Southeastern -- it's an Illinois case from 1983.
22 In that case the court confirmed that Cape
23 asbestos supplied 90 percent of the world's
24 amosite and was virtually the sole supplier of
25 the longer fiber grades.

1 It's undisputed that Cape knew about the
2 dangers of asbestos and sought to hide those
3 dangers. And the scene is outlined in their own
4 documents and they wrote it down. Cape said,
5 and I quote, It had no moral responsibility to
6 the end users of asbestos.

7 Since the 1970s, it's refused to appear in
8 any litigation to defend its conduct. Instead,
9 what Cape decided to do is accept default
10 judgments in asbestos lawsuits because they
11 couldn't be collected in the UK or South Africa.

12 Now, that sounds very familiar to what
13 Atlas Turner was doing about Canadian default
14 judgments. That continues today, as you know,
15 from the Park case. And ultimately what Cape
16 decided to do is dissolve, to liquidate its
17 North American arm so that it couldn't be
18 touched in the United States.

19 But first what Cape did to make as much
20 money off their asbestos products selling it to
21 the United States is they established an
22 American presence through the NAAC, who you've
23 heard about.

24 And the purpose of establishing the NAAC
25 was to expedite and facilitate the movement of

1 asbestos from the South African mines into North
2 America. That was established October 14th,
3 1953. And that is a direct subsidiary that was
4 part of Cape Mining's division that was
5 domiciled in Illinois. That's Exhibit 2 to our
6 motion.

7 NAAC had both marketing and distribution
8 roles. NAAC was Cape's sole agency in the
9 United States with the sole authority to offer
10 Cape products. It was responsible for
11 transmitting information about customer needs to
12 Cape mines.

13 The goal, as stated in their own documents,
14 was to make sure that shipments from Africa made
15 it, and I quote, all the way through to the
16 customer's plant. And that's Exhibit A to our
17 original motion.

18 They intended to, and I quote, put the
19 mines, South African mines at every U.S. port.
20 That's Exhibit 5 to our original motion.

21 By 1970, NAAC was the largest U.S. importer
22 of amphibole fibers, which were redistributed
23 from warehouse locations on the East Coast, the
24 Gulf Coast, and West Coast ports. That's
25 Exhibit 6 to our original motion.

1 NAAC described itself as essentially a one
2 man in motion, a one-man operation. But they
3 were overseen -- this is important -- they were
4 overseen by a board of directors made up of
5 largely company lawyers or other Cape executives
6 until all Cape officials resigned in 1975, and I
7 quote, as a simple precaution in light of U.S.
8 litigation.

9 That's Exhibit 6 to our original motion.

10 In coordination with Cape, NAAC sold
11 asbestos to Cape's numerous American-based
12 clients, including the U.S. government, King
13 Corp, Carey Fiber Board, Owens Corning,
14 Johns-Manville and Pittsburgh Corning.

15 That was Exhibit 7 to our original motion.

16 And we know these companies, because you've
17 seen them in many trials, were all over
18 South Carolina and supplied asbestos insulation
19 to industrial facilities all over this state and
20 of course others.

21 They didn't stop there. Cape and NAAC
22 tried to influence public and corporate opinion
23 about the safety of asbestos by rebutting
24 emerging medical critiques of the safety.

25 We have seen testimony from a chemist,

1 Dr. Gaze, who is a Cape chemist employee. And
2 he said since 1961, he continually discussed
3 health hazards that neither Cape nor the NAAC
4 had never placed warning labels on asbestos
5 bags.

6 Exhibit 13 to our original motion is a 1977
7 document from Cape prioritizing the efforts,
8 their efforts, to, and I quote, It is clear to
9 me that one of our first tasks must be to try to
10 organize a body of medical opinion that is
11 prepared to stand up to Dr. Selikoff.

12 And this Court knows very well who
13 Dr. Selikoff was. He was one of the first
14 American scientists to really sound the alarm
15 about how hazardous asbestos was on human
16 health.

17 So what did Cape do in response to that?
18 They didn't say, hey, we're going to look at
19 what Dr. Selikoff is saying. Instead what they
20 decided to do is fund their own science.

21 Anthony Mendell, who was the plant manager
22 for Cape from 1956 to 1968, admits that its
23 workers were dying of mesothelioma by the late
24 1950s. He admits that Cape knew that amosite
25 caused the disease, and they closed the Barker

1 plant -- the Barking plant.

2 There was a Gaze memo, that's the chemist
3 that we mentioned earlier, dated July 24th,
4 1964. And it gives an internal warning that
5 asbestos conditions are dangerous. But guess
6 what? Cape keeps that in house and doesn't tell
7 anyone else.

8 And they even reached out to North American
9 customers. Cape did. How do we know that?
10 Pittsburgh Corning contacted Cape and said, hey,
11 we're seeing some stuff about asbestos being
12 dangerous for workers. We're worried about
13 that. What do you think, Cape?

14 And Dr. Gaze, the chemist again, he wrote
15 to Pittsburgh Corning on March 22, 1966, and he
16 tells Pittsburgh Corning, and I quote, No
17 mesothelioma has ever been linked to amosite.

18 And we know that the customers rely because
19 when what happened? It's Pittsburgh Corning
20 wrote back to Cape after receiving that letter.
21 And at that -- and what Pittsburgh Corning says
22 back to Cape, and I quote, At this point from
23 your letter, I am assured that no customers'
24 worker need to be concerned about mesothelioma.

25 That's Pittsburgh Corning relying on what

1 Cape has told them. And guess what? Cape
2 wasn't just saying that to North American
3 customers, they're saying it internally.

4 And in an August 19th, 1966, memo, Cape
5 circulated the same false claim to the entire
6 company saying that no mesothelioma had ever
7 been linked to amosite.

8 And so they have Dr. Selikoff out there.
9 They have Dr. Wagner's study, who you've heard
10 about in many of these cases, and they know that
11 the science is turning against them.

12 And so what they did, November 29th, 1960,
13 they come up with a study proposal. In that,
14 Cape agrees to fund the study in order to gain
15 access to the interim results.

16 April 30th, 1962, that interim study finds
17 alarmingly high mesothelioma in miners and not
18 just in the miners but also in nearby residents.

19 August 30th, 1962, it's the Smither report
20 to Cape. This Cape doctor admits that the
21 findings are alarming but urges no other survey,
22 suggest moving patients hundreds of miles away
23 to hide cases.

24 Cape threatened -- and you have heard this
25 in other cases, to threaten and ruin a local

1 doctor's practice if he kept raising a
2 mesothelioma alarm. And that's from a 1996
3 deposition of a Dr. Van Rooyen, who was a
4 South African physician.

5 And we know while all of that is going on,
6 Cape is also dominating what NAAC is doing in
7 the United States. For example -- and this is
8 Exhibit 14 to our original motion. NAAC was
9 unable to borrow one dollar without Cape's
10 approval.

11 NAAC routinely forced to withdraw cash from
12 the United States to pay dividends to Cape
13 Asbestos minimizing the assets on NAAC's balance
14 sheets.

15 That's Exhibit 16 to our original motion.

16 And we know that to keep the scheme going,
17 as they called it, Cape handpicked personnel for
18 NAAC that would go along with its scheme.

19 Exhibit 15 to our original motion suggests
20 that Cape was extremely cautious in picking NAAC
21 personnel who would, and I quote, fit into the
22 company's scheme of things without causing
23 embarrassment all around.

24 NAAC understood that it had to subordinate
25 its own interest to its master, which was Cape.

1 Then Cape decides to accept default
2 judgments. What happens is they're sued and
3 they think we're going to be fine. There's no
4 personal jurisdiction, and then they get hit and
5 they have to settle a case.

6 So after the onset of asbestos-related
7 product liability claims in 1970, Cape becomes
8 really concerned with its own liabilities. And
9 we see from Exhibit 18 to our original motion,
10 the 1975 letter referring to the attempts -- and
11 I'm quoting here, attempt to limit NAAC's and
12 Cape's exposure to future U.S. litigation.

13 So Cape went through all those machinations
14 to make it appear that it was reducing its
15 oversight of NAAC. But in reality, NAAC
16 continued to operate as a mere division or
17 instrumentality under Cape. How do we know
18 that?

19 Exhibit 19 in our original motion. This is
20 a Cape document. And it's NAAC discouraging
21 Cape visits to the U.S. in 1978, or else that
22 may, and I quote, Negate maneuvers related to
23 continuing problems with product liability
24 litigation.

25 Don't come to the U.S. or people might find

1 out that you're still running NAAC, and you'll
2 be responsible.

3 Exhibit 20 to our original motion is a 1975
4 letter from Cape suggesting that the parent
5 company disassociate as fully as possible from
6 the other companies.

7 And then that letter goes on to say this:
8 And this letter should not appear in the office
9 files. We don't want anyone to know what we're
10 doing, so I'm sending it to your home address.

11 Who talks like that? Cape.

12 Exhibit 21 to our original motion is a 1975
13 letter raising whether to do something, and I'm
14 quoting here, whether to, quote, do something to
15 change the identity of NAAC in order to avoid
16 exposing the company unnecessarily while doing
17 everything possible to maintain its successful
18 selling operation in the United States.

19 We want to limit our liability. We're
20 going to do everything we can to do that. We're
21 going to hide it. We've got to keep making this
22 money off our sales in the United States.

23 Exhibit 9 to our original motion is a
24 1975 -- I'm sorry, Exhibit 22 to our original
25 motion is a 1974 NAAC letter suggesting, and I

1 quote, No one from Cape to be an officer of NAAC
2 since we want it to be as independent as
3 possible in order to avoid the contention that
4 it's the alter ego of Cape and that Cape is
5 doing business in the United States.

6 Exhibit 9 to our original motion is a 1975
7 Cape asbestos letter stating that it would be,
8 and I'm quoting, It would be a sensible
9 precaution against Cape's involvement in any
10 future proceedings for Cape's personnel to
11 resign from the NAAC boards. And in closing the
12 resignation letter.

13 They decide to dissolve NAAC and after
14 NAAC's debts were paid, of course not to any
15 claimant, the remaining assets were transferred
16 upstream to NAAC's direct parent company at that
17 time Cape Industries oversees. That is a UK
18 entity that was wholly-owned by Cape Industries.
19 And that's at Exhibit 27.

20 And then Cape does what it's continuing to
21 do today. Cape began to emerge in a campaign of
22 litigation avoidance by refusing to accept
23 process of service or appear at any U.S.
24 proceedings in the United States. And that
25 moral fraud continues today, and it continued in

1 the Park case.

2 Cape actually wrote down in 1977, and I'm
3 quoting, We really cannot be said to have a
4 moral responsibility to respond to suits and are
5 simply victims of a U.S. product liability cult.

6 That's Exhibit 25 to our original motion
7 from Cape's counsel.

8 The Cape board formally authorized its
9 withdrawal from the U.S. litigation and relied
10 on the inability of any default judgment to be
11 collected in the United Kingdom.

12 That was written down in November 1, 1977,
13 minutes, and it was confirmed in Exhibit 23 to
14 our original motion with NAAC personnel opining
15 that it's most unlikely that any plaintiff would
16 bother to pursue collection of any default
17 judgment against Cape.

18 Exhibit 24 to our original motion. NAAC's
19 counsel in 1979 confirming correspondence that
20 you UK -- they got advice from United Kingdom
21 and South African lawyers, and that they
22 confirmed any resulting judgments would not be
23 enforceable again Cape UK and South African
24 assets. And I quote, The potential loss of all
25 of NAAC's outstanding assets is not material in

1 the Cape group context.

2 They had already liquidated NAAC. To avoid
3 paying damages to workers to whom they made
4 sick, Cape resolved to liquidate NAAC. And
5 that's exactly what they did.

6 Exhibit 26. Just one more thing on that
7 with an April 1978 letter noting the liquidation
8 and requesting that Cape asbestos officials stop
9 sending accounting memorandum to NAAC officials,
10 quote, for safety's sake.

11 And NAAC's liquidation was central to
12 Cape's litigation avoidance strategy. They had
13 to get rid of their North American presence.
14 And that was based on legal advice they had
15 gotten, talking about default judgments. That's
16 exhibits 28, 29, and 30, outlining their
17 litigation strategy.

18 But Cape continued to kind of play schemes
19 to facilitate the sale of its asbestos to U.S.
20 customers while minimizing its product liability
21 risk. So what they decided to do is we're going
22 to liquidate NAAC. Because that's too
23 intertwined with Cape. And we're going to start
24 a new company. But guess what? It's going to
25 be in the same building and same office. It's

1 going to have the same phone numbers.

2 But don't worry, Exhibit 31 to our original
3 motion is a 1977 meeting memorandum to discuss
4 liquidation of NAAC and formation of a new
5 offshore company to service North American
6 companies.

7 For example, Continental Products
8 Corporation is using the same address as NAAC in
9 Chicago. Formed, and I quote, to act as a
10 commission agent for future sales of asbestos
11 from South Africa to the U.S. with South African
12 mines selling to a new Liechtenstein subsidiary
13 called Associated Mines Company. Which in turn
14 sold asbestos to the U.S. under its invoices.

15 And that's exhibits 32 and 33 to our
16 original motion.

17 The express purpose of this deal, and I'm
18 quoting, The purpose of this corporate
19 arrangement was to eliminate or reduce as much
20 as possible the exposure in the U.S. of
21 South African Mining Companies to lawsuits
22 brought against it under areas of strict
23 liability concerning products liability on the
24 sale of asbestos to you in the U.S.

25 That's Exhibit 34 to our original motion.

1 As noted in our motion to appoint the
2 receiver over Cape, the moral fraud is simply
3 overwhelming. It is way more extensive than any
4 of the allegations that we made against Atlas
5 Turner in the Welch. Cape knew of the dangers
6 of asbestos in 1950. They publicly denied the
7 dangers. They had extensive sales, and they
8 took a no-moral-responsibility stance.

9 And while they were trying to hide
10 themselves and protect themselves, they
11 continued to profit off of sales into the United
12 States. There's no higher moral fraud.

13 And the Welch court talked a lot about how
14 Atlas Turner was thumbing its nose at the
15 courts, at claimants. Atlas Turner, I mean, if
16 you want to give them credit for anything, you
17 can say they showed up and filed a personal
18 jurisdiction motion and then they fought the
19 receivership and they filed an appeal and they
20 did it fairly.

21 Cape hasn't even done that here. They are
22 not going to show up. They have never shown up
23 since the late 1970s.

24 THE COURT: Ms. McVey, let me ask you this:
25 The order appointing Mr. Protopapas' receiver

1 for Cape -- for Cape, which was filed March the
2 17th, 2023, is heavily criticized by nonparties
3 in this case, but by parties in Tibbs and by
4 others who aren't even parties in Tibbs but have
5 filed claims, because it doesn't recite what you
6 just recited.

7 There's no question that all of that was
8 before the Court. All those materials were
9 filed on March 6th, 2023, and were before the
10 Court when the Court issued the appointment
11 order.

12 But the details were not recited in the
13 order, and this is viewed as a problem with not
14 reciting reasons for the appointment.

15 Also, recited in the order is Cape or the
16 company have dissolved and Cape, a foreign
17 corporation, has forfeited its chart and further
18 failed to answer in this case. They don't
19 contest that Cape failed to answer, although
20 they say it's defective that no default was
21 filed.

22 But it concentrates its criticism on the
23 recitation that Cape was dissolved. What was
24 meant by that and what is the status of Cape?

25 MS. MCVEY: So that's a good question. I

1 think Receiver's counsel could probably dig into
2 a little bit more because they had -- at the
3 time that we filed that, we were unsure whether
4 or not they had resolved or were insolvent
5 because they had not participated in anything
6 going on. So that's the first.

7 THE COURT: You did recite in your papers
8 that they had dissolved.

9 MS. MCVEY: Yes.

10 THE COURT: And it's on that basis the
11 Court put that in the order.

12 MS. MCVEY: Absolutely.

13 THE COURT: It wasn't in your filing about
14 it.

15 MS. MCVEY: That's right. So the Court
16 relied on our filing.

17 THE COURT: Right.

18 MS. MCVEY: Which recited all the basis for
19 the moral fraud, number one. And that's
20 important because the moral fraud that we talk
21 about --

22 THE COURT: Right. I'm not talking about
23 the moral fraud right now. I'm just talking
24 about the recitation they had dissolved. It was
25 contended by the plaintiff when the application

1 in Park was made to the appointment of a
2 receiver that Cape had dissolved.

3 MS. MCVEY: Yes, ma'am.

4 THE COURT: What was the basis for that at
5 the time?

6 MS. MCVEY: We did not know exactly the
7 status of Cape. I have to go back and remember
8 now what that was. Because they had not
9 appeared in any litigation, they had not shown
10 up. I think we had a good faith basis to assert
11 that they had dissolved or were insolvent. And
12 that is the insolvency or dissolve defunct,
13 that's the Section 4. And then the moral fraud
14 is the Section 5.

15 THE COURT: Section 5. I get that.

16 MS. MCVEY: So those are the two different
17 bases that we had a good faith to believe. And
18 now, they never came in to dispute that.

19 THE COURT: Second area that they fuss
20 about, and this, again, may be something for the
21 receiver to make a presentation on, is the
22 breadth of the order that the receiver was
23 empowered to administer all of the assets of
24 Cape and not just to pursue the insurance
25 matters.

1 The order does say that the Court expects
2 the receiver to investigate the existence of all
3 insurance coverages potentially available to the
4 company in receivership, but the appointment
5 piece of it is broader than that.

6 What do you say that the contentions are?
7 You can defer to the receiver if you want to,
8 but somebody's going to have to answer the
9 question of whether that's appropriate. And if
10 it's not appropriate, whether that defeats the
11 whole order or whether that can be cured by some
12 kind of amendment to the order.

13 MS. MCVEY: So two things are true. The
14 receiver only had the ability to collect assets
15 that are within the state of South Carolina.
16 Right.

17 THE COURT: Right.

18 MS. MCVEY: Those can be intangible assets
19 which may not physically be here but may be --

20 THE COURT: We know from several decisions
21 of the Court that insurance that covers torts
22 committed in South Carolina is regarded as an
23 asset present in South Carolina.

24 MS. MCVEY: Right. But it also goes
25 further than that. In Welch, you see when they

1 go through the history of receiverships, they
2 talk about bank accounts in another state. They
3 talk about a horse getting moved from one state
4 to another state. You're not limited to just
5 insurance.

6 Now, Welch was a little bit different
7 because the receivership order itself limited
8 just to insurance. We don't know, and the
9 receiver can probably speak more to this, about
10 whether or not there's insurance here for Cape
11 even more.

12 But that order was broader than it needed
13 to be. It still is in the parameters of the
14 receivership statute because he only has the
15 authority to collect the assets that are
16 within --

17 THE COURT: Within the state.

18 MS. MCVEY: That's right.

19 THE COURT: Right.

20 MS. MCVEY: And those assets don't have to
21 be physically located here. But I don't think
22 anybody is saying they are going to go to Cape
23 and run the board room just as anybody else is
24 saying.

25 THE COURT: Right.

1 MS. MCVEY: As to your contention about --
2 or your point, not your contention, your point
3 about whether the recitation of the factual
4 basis for the moral fraud in the order should be
5 in there or not, I think that's easily solved.

6 And, in fact, the Supreme Court kind of
7 instructs us, you know, if we haven't outlined
8 the facts, that's an easy fix, we can do that.
9 So certainly that's an order that can be
10 supplemented to outline the ongoing.

11 And, look, we gave you more than enough, we
12 believe, in the original appointment. I think
13 you saw that, too. There's even more now that
14 has been discovered. You know, one thing I
15 wanted to mention, and maybe this is
16 appropriate, you know, there's been a lot of --
17 how should I say this? -- what I would deem as
18 intimidation or attempted intimidation of the
19 receiver and his lawyers and to some extent the
20 Court.

21 And this is a book -- I only have one copy,
22 but it's called In a Rain of Dust. And it
23 really involves a plaintiff's lawyer who kind of
24 went after Cape. And there's a chapter in this
25 book, and I would just note it for the Court and

1 for others, where they personally went after --
2 as a strategic litigation strategy to go after
3 this lawyer himself to try to ruin his
4 reputation while he was fighting Cape.

5 That is, to me, evidence of a continuing
6 ongoing fraud, that it is a litigation strategy
7 to try to go after anybody who's trying to hold
8 Cape accountable.

9 So, Your Honor, this is not bad stuff that
10 Cape has done in the past, and, oh, well, it's
11 just a typical product liability case. No, this
12 is ongoing, and it hasn't stopped.

13 So I'm happy to answer any other questions
14 about the original motion to appoint a receiver
15 or anything else.

16 THE COURT: And so your -- and then the
17 final thing is this.

18 MS. MCVEY: Yes, ma'am.

19 THE COURT: This case appears as an open
20 case on my docket.

21 MS. MCVEY: Yes.

22 THE COURT: On my asbestos docket. What do
23 you plaintiffs regard as the status of this
24 case?

25 MS. MCVEY: That we have the Cape

1 defendants remaining in the case, and that when
2 we get to the point where we feel like we could
3 try a case against Cape, it would move to have
4 you set a trial on those issues.

5 We haven't had any discovery, obviously,
6 from Cape. They haven't appeared. And so we
7 could certainly move, I assume, for a default
8 judgment or do something of that type. But we
9 haven't done that yet.

10 THE COURT: And you stated when we were in
11 court on our status conference that was held
12 recently in early June, following the issuance
13 of the Court's remand order in Tibbs, you stated
14 that with regard to Park, you had a tolling
15 agreement.

16 MS. MCVEY: That's correct.

17 THE COURT: Tell the Court what is the
18 situation about that.

19 MS. MCVEY: We entered into a tolling
20 agreement with the receiver for Cape. In order
21 to allow -- as you know, they keep telling this
22 court and they told the federal court this, too,
23 that I said the Park case had been fully
24 resolved.

25 And what I meant by that is it was totally

1 over. And you know the context of that was
2 simply that the Park case was up for trial and
3 all the trial defendants had resolved.

4 We later entered into a tolling agreement
5 because we weren't ready to try the Cape case
6 yet. And so we entered into a tolling agreement
7 with the receiver to allow us to do that at a
8 certain point going forward.

9 THE COURT: All right. And that tolling
10 agreement is still in existence?

11 MS. MCVEY: Yes, ma'am.

12 THE COURT: And your contention is that the
13 tolling agreement, although signed at the time
14 when the estate was closed, that the
15 reinstatement of the estate ratifies the
16 authority that was given by Mr. Park to his
17 attorneys to sign a tolling agreement.

18 MS. MCVEY: Absolutely. And, in fact, the
19 case law on the statute mandates that the court
20 allow us to cure that and those acts can be
21 ratified. Which we believe we've done.

22 THE COURT: All right. All right. I think
23 I've got what you can supply me with. Is there
24 any presentation that --

25 MS. MCVEY: The receiver may want to.

1 THE COURT: -- that receiver -- what I have
2 listed is open for the receiver is the Motion to
3 Compel Certain Underwrites of Lloyd's. And I
4 want to cover that because that's one of the
5 outstanding -- that's the only other outstanding
6 motion that I see in Park. So I want to cover
7 that.

8 Certain Insurers, this is Mr. Sawyer, will
9 then have the ability to come and argue against
10 that.

11 So that's where I am in the process. So
12 who will speak for the receiver in connection
13 with the Motion to Compel Certain Underwriters
14 of Lloyd?

15 MR. LAY: Mr. Protopapas is going to be
16 dealing with that motion.

17 THE COURT: Yes, sir.

18 MR. LAY: Do you want me to -- I do have
19 some things to add to some of the comments made
20 by Ms. McVey.

21 THE COURT: They need to be brief. I think
22 I got -- I think I have the status of the Park
23 case well in mind --

24 MR. LAY: Okay.

25 THE COURT: -- Mr. Lay. If you wish to

1 make some brief comments, that's fine. But I
2 think I understand from Plaintiff's counsel
3 where that is. Your status in the case is
4 you're the attorney for the receiver?

5 MR. LAY: The receiver.

6 THE COURT: Right.

7 MR. LAY: Yes, ma'am.

8 THE COURT: Right. So right now my main
9 concentration is on the open motion. But if
10 you've got something that you want to add
11 briefly, I'll be glad to hear from you.

12 MR. LAY: Okay. Very briefly. I just
13 wanted to add just a little bit.

14 THE COURT: This is John T. Lay for the
15 receiver.

16 MR. LAY: Your Honor, one of the things
17 that the Welch case delineated is what was
18 required as it relates to bad conduct or fraud
19 for someone that's going into a receivership
20 under Subsection 5 of the receivership statute.

21 And in that, it states very clearly that if
22 there is some sort of fraud or if there is some
23 sort of indication that if there is an attempt
24 to avoid paying that for being responsible,
25 being held account for whatever acts have been

1 done by that party, that is a basis for the
2 appointment of a receiver.

3 And it gave an example as someone that's
4 currently trying to move assets. That was an
5 example. But the fraud itself can exist over a
6 period of time. Which is what concerns me, as
7 Receiver for Cape is going to have to defend
8 these cases down the road but also trying to
9 figure out a way to hold other parties
10 responsible for what happened with Cape. I've
11 got to deal with some of the things that have
12 occurred over that 30-year period of time.

13 And what has been clear and we're looking
14 at others as being responsible for what happened
15 over the 30 years, but there's an ongoing
16 attempt to create issues in litigation by Cape
17 that is continuing and it's active.

18 We have seen it during the life of this
19 case. And I think what is important to
20 recognize is that Cape now is completely and
21 utterly controlled by Altrad. How do we know
22 that? We know that because Altrad is paying
23 Cape's bills and litigation that's being done in
24 the UK.

25 We have gotten that information. We

1 received that information. We know that the
2 Altrad lawyers were involved with the UK
3 litigation. We also know what's going on in the
4 litigation, the UK litigation, and what has been
5 filed there. This is ongoing.

6 What has been filed in the UK litigation,
7 there are many misstatements, misrepresentations
8 that were made to the UK court about what is
9 going on in this courtroom.

10 For example, taking comments that you made
11 from the bench, transcripts to suggest that
12 you're trying to take over the company. Making
13 suggestions that you and Mr. Protopapas have
14 some sort of connection because he clerked for
15 you and he couldn't be fair. But that's not
16 true.

17 THE COURT: That's not true.

18 MR. LAY: Yeah, that's not true.

19 They made comments about what the Barton
20 doctrine was, and it was completely wrong about
21 what the Barton was.

22 THE COURT: Well, Mr. Lay, I don't think we
23 need to get very far into that. All that's in
24 the record. The federal courts have dealt with
25 the Barton doctrine. Much of what is said in

1 the UK court, from what little I have been
2 exposed to, is not correct.

3 But the bottom line is, what you simply say
4 is that the moral fraud is ongoing via attempts
5 to avoid responsibility. But in the end, your
6 role is about finding assets that can stand good
7 for the responsibility of Cape in this
8 particular matter. The Park matter.

9 MR. LAY: And really, I think it's twofold.
10 It's making sure that Cape is protected by
11 looking at others that could have caused what is
12 going on here. The moral fraud.

13 THE COURT: That's something that would
14 occur if this case is tried, but --

15 MR. LAY: That's right.

16 THE COURT: -- one thing you contend is
17 that Altrad is really the controller of Cape.

18 MR. LAY: Yes, ma'am.

19 THE COURT: Has Altrad been made a party in
20 Park?

21 MR. LAY: Not yet. Altrad was made a party
22 in the Tibbs case.

23 THE COURT: Right. But Altrad is not a
24 party at the present time in this case; is that
25 correct?

1 MR. LAY: Yes, ma'am. That is correct.

2 THE COURT: All right. Okay. Now,
3 Mr. Protopapas, on the question of the Motion to
4 Compel.

5 MR. PROTOPAPAS: Thank you, Your Honor.

6 Peter Protopapas. Your Honor, when faced
7 with the appointment order as receiver, one of
8 the first things we do is we try to identify the
9 insurance assets of the entity.

10 And to that end, NAAC, which was dissolved,
11 which was one of these companies that -- it was
12 the company in the United States that Ms. McVey
13 was detailing to the Court. That company did
14 dissolve and forfeit its charter. And it was no
15 daylight between Cape and NAAC.

16 So we sent out subpoenas to begin with.
17 And as the Court knows, how you ask questions to
18 the carriers will dictate the response. We've
19 had many examples in this court of a subpoena
20 going out, no insurance is available, and then
21 we find, oh, wait a minute, there's an
22 additional insurer and there's significant
23 amounts of insuring assets.

24 So it is a learning curve for me to figure
25 out how to write the right question to my

1 friends in the insurance group.

2 So on April 28, 2025, I took another stab
3 at trying to write the right question. I tried
4 to write a simple subpoena, sent eight of them
5 out, Your Honor. And unbeknownst to me, on
6 May 7th of 2025 -- so the subpoenas go out on
7 April 28th -- on May 7th of 2025, a gentleman
8 named Ran Oren.

9 Now, Mr. Oren is the director of Cape
10 Intermediate Holdings, the director of Cape PLC,
11 the group CO of Altrad Group, and he is the
12 director of other Cape entities. That's how he
13 describes himself. Those are his positions.

14 So on May 7th, he writes a letter to at
15 least four of those eight carriers saying "Do
16 not give any information to the receiver." That
17 is attached to our motion, Your Honor.

18 Now, Hartford went ahead and did a search,
19 Your Honor, and they found nothing. I have
20 reached an agreement with my friends at
21 Travelers. And so --

22 THE COURT: Wait a minute. Hartford was
23 one of the companies you moved to compel in the
24 Park case, correct?

25 MR. PROTOPAPAS: Yes, Your Honor. I did

1 not have to compel them because they complied
2 with the subpoena. Whether they got the
3 letter --

4 THE COURT: Hartford, you subpoenaed them.
5 Hartford, you subpoenaed them in --

6 MR. PROTOPAPAS: Park.

7 THE COURT: The Park case?

8 MR. PROTOPAPAS: Yes, Your Honor, and they
9 complied.

10 THE COURT: And Hartford complied and gave
11 you information about coverage of NAAC/Cape.

12 MR. PROTOPAPAS: Yes, Your Honor.

13 THE COURT: All right. And then you
14 mentioned Travelers.

15 MR. PROTOPAPAS: Yes, Your Honor.
16 Travelers originally refused in Park based on
17 Mr. Oren's letter. But we have reached an
18 agreement with them, and so I have no motion. I
19 withdraw that relief I was seeking against
20 Travelers.

21 THE COURT: So Hartford and Travelers has
22 complied.

23 Any other information about your subpoenas
24 and whether others have complied?

25 MR. PROTOPAPAS: Allianz and I have reached

1 an agreement of a company -- an insurance
2 company controlled by Allianz.

3 THE COURT: That's Allianz, the one with
4 the Z at the end?

5 MR. PROTOPAPAS: Yes, Your Honor.

6 THE COURT: So you reached an agreement
7 with them with regard to information about
8 insurance or NAAC/Cape that would -- or Cape
9 entities that might respond in the Park case,
10 right?

11 MR. PROTOPAPAS: That's correct, Your
12 Honor. And specific subsidiary's name is
13 Interstate Fire & Casualty Company, which is on
14 the first page of my Motion to Compel. And they
15 had received -- my understanding is they may
16 have received a letter from Mr. Oren.

17 THE COURT: All right.

18 MR. PROTOPAPAS: Now, the three that are
19 still remaining on the compel are what we call
20 the Resolute administered insurers, which are
21 Liberty, Lloyd's, Continental Casualty.

22 THE COURT: And just to complete the
23 record, we all know what we're talking about
24 here, just to complete the record, Resolute is a
25 company we've seen many times in many asbestos

1 litigation cases. It is a company that manages
2 insurance assets for various companies and in
3 the asbestos world manages insurance assets for
4 various companies that have policies that might
5 respond to some particular -- this is in the
6 industrial world -- industrial asbestos claims,
7 correct?

8 MR. PROTOPAPAS: Correct, Your Honor.

9 THE COURT: And in that connection, the
10 negotiation is generally with Resolute, but it's
11 Resolute on behalf of Liberty, Continental, and
12 Lloyd's, right?

13 MR. PROTOPAPAS: You're correct, Your
14 Honor.

15 THE COURT: All right. And so they --
16 there are remaining discussions, I guess, taking
17 place, but this Motion to Compel has not been
18 resolved.

19 MR. PROTOPAPAS: Correct, Your Honor.

20 THE COURT: All right. So that's still
21 outstanding?

22 MR. PROTOPAPAS: Yes, your honor.

23 THE COURT: All right.

24 MR. PROTOPAPAS: And so, Your Honor,
25 Resolute retained my friends at Murphy &

1 Grantland. They wrote me a letter on May 15th
2 on behalf of those three entities. And, Your
3 Honor, it's a curious letter in this sense: The
4 letter, of course, mentions they do not want to
5 comply because Mr. Oren has told them do not
6 give Mr. Protopapas any information.

7 But also, Your Honor, the very end, there's
8 this curious statement from Underwriters of
9 Lloyd's, it states, "Underwriters also do not
10 consider the subpoena or any of the above-stated
11 objections to constitute evidence of a tender of
12 any claim to underwriters nor evidence of any
13 notice pursuant to the terms and conditions of
14 any insurance policy."

15 And I get a lot of letters telling me I'm
16 not -- we're not giving you something. Rarely
17 does it talk about tender, really it's to talk
18 about underlying insurance policies, if any.
19 So, Your Honor, what is curious about it, and
20 this goes as well for Continental and Liberty,
21 but in particular as it pertains to my friends
22 at Lloyd's.

23 And if I may hand up two copies to the
24 Court.

25 So, Your Honor, what I've handed up to you

1 is something that Aon had produced to me.
2 Your Honor, Aon is an entity that brokers
3 insurance for various entities. They're a
4 well-known broker of insurance.

5 And, Your Honor, in the Aon production on
6 page 1, you will see an inception date of an
7 insurance policy of October of 2009 to September
8 of 2010.

9 THE COURT: Right.

10 MR. PROTOPAPAS: And then, Your Honor, if
11 you go to page 2 of the production, it
12 identifies the insured. And there's been lots
13 of name games that go on in this process. I
14 don't mean name games pejoratively. I mean, are
15 you asking the right question?

16 On page 2 of the production, it states
17 insured is Cape PLC, Cape Industrial Services
18 Division Limited and/or its associated and/or
19 its subsidiary companies and/or Cape Industrial
20 Services Limited and its agent subsidiary
21 companies, and/or Cape Limited and/or its
22 associated or subsidiary companies. And it goes
23 on.

24 So it doesn't identify all the additional
25 insureds, but it identifies all their

1 subsidiaries, all their associated entities, and
2 it's a very broad insured definition.

3 And, Your Honor, if you were to go to page
4 3, and it talks about business on page 3 that
5 they're insuring.

6 THE COURT: Looking right at it.

7 MR. PROTOPAPAS: It says insulation. And
8 under business, first paragraph, last sentence,
9 "Manufacturers of fire retardant products and
10 insulation materials."

11 Now, Your Honor, if you go further down,
12 the limit of liability is 50 million pounds.
13 What grabbed my attention even more so,
14 Your Honor, is on page 4. On page 4,
15 Your Honor, at line 13 appears the word
16 asbestos. And it says asbestos total buyback to
17 GP, which I believe sterling is pounds --
18 50 million pounds or 10 million pounds -- as per
19 policy endorsement CCLATV011107-V1.

20 So I have a suspicion that my friends at
21 Lloyd's may have issued insurance to cover Cape
22 and the subsidiaries. I have not properly asked
23 the question apparently before April of 2025. I
24 asked the question. Mr. Oren immediately jumps
25 up and says -- told Lloyd's -- not to me but to

1 Lloyd's --

2 THE COURT: He mentions on down in this
3 thing, I notice it mentions Lloyd's, Aon,
4 others.

5 MR. PROTOPAPAS: And so this is a
6 Lloyd's -- my understanding is this is a summary
7 of a Lloyd's policy. And you're correct, Your
8 Honor, on page 5 it talks about -- the line the
9 terms of trade agreement of Lloyd's.

10 THE COURT: Right. I notice that as well.

11 MR. PROTOPAPAS: So I have been struggling
12 to find the insurance in this receivership, but
13 maybe I haven't asked the right question. But
14 maybe I asked the right question in April of
15 2025, which we got a response from Mr. Oren
16 telling Lloyd's do not comply.

17 And perhaps, Your Honor, when Lloyd's
18 writes to me and says we're not accepting it as
19 a tender, perhaps there is an insurance policy
20 that I should be tendering to. But in order for
21 me to do that, I need a little bit of assistance
22 from my friends at Lloyd's. I need them to tell
23 me is there an insurance policy which would
24 cover the Park claim.

25 THE COURT: This document would certainly

1 suggest that.

2 MR. PROTOPAPAS: It does. And, Your Honor,
3 Continental and Liberty had insuring
4 relationships either through workers' comp or
5 otherwise with other entities affiliated with
6 Cape.

7 So I sent out eight what I thought were
8 going to be targeted subpoenas in an effort to
9 unwind. I'd be remiss not to tell the Court
10 that I'm familiar with a fund in Great Britain
11 to pay British folks who have felt the effects
12 of Cape asbestos. That fund has over
13 170 million pounds in it, to my understanding.
14 Perhaps these policies were all liquidated and
15 put into that fund. I don't know.

16 But when we think about the assets or
17 within the context of South Carolina, certainly
18 I'd ask my friends at Lloyd's, Continental, and
19 Liberty to go ahead and search for and produce
20 to me those policies which may be responsive.

21 Your Honor --

22 THE COURT: Now, this policy you've
23 described in this material from 2009 to -- 2009
24 to 2010 would be within the period of exposure
25 in the Park case, would it not?

1 MR. PROTOPAPAS: Yes, Your Honor. And,
2 Your Honor, I may have not crafted questions
3 artfully enough for my friends at Lloyd's, but
4 what I would like from Lloyd's is their Cape
5 file. I would like to know what insurance they
6 sold to Cape. I would like to know if it had
7 been liquidated, what those agreements look
8 like. And is there an opportunity to tap into
9 that.

10 I will say, Your Honor, it is hard to
11 defend Cape in the Park case like a traditional
12 defendant because I don't have a depository of
13 documents that have been easily given to me to
14 provide the defense.

15 THE COURT: Yeah, Cape is taking the
16 position you are not in any way authorized and
17 they have this order from England that takes
18 that position, and yet you have insurance that
19 covers matters in the United States
20 apparently --

21 MR. PROTOPAPAS: Yes, Your Honor, I
22 believe --

23 THE COURT: -- of companies that are
24 well-known to South Carolina.

25 MR. PROTOPAPAS: That's right, Your Honor.

1 And to the extent they don't cover the claim, an
2 explanation in the policy itself so I can make a
3 determination and report to the Court.

4 I will say, Your Honor, that a lot of the
5 policies we found from various periods of time
6 for NAAC, carriers gave me proper documentation
7 of exhaustion. And so there has --

8 THE COURT: So you know there's some that
9 are exhausted, no good, do not cover anything.
10 And that's what you're seeking to find in this
11 particular situation?

12 MR. PROTOPAPAS: Yes, Your Honor.

13 THE COURT: Thank you.

14 MR. PROTOPAPAS: Thank you, Your Honor.

15 THE COURT: Okay. Now, we have nonparty
16 Travelers who sent a memorandum filed July 18th,
17 2025, in opposition. And we have a party -- a
18 subpoenaed entity, Continental, which has filed
19 a reply and a return along with Certain
20 Insurers.

21 So what I'm going to do now is turn to
22 Mr. Wes Sawyer, your motion -- your opposition
23 to the motion by Mr. Protopapas' receiver to
24 compel.

25 MR. PROTOPAPAS: Your Honor, as it pertains

1 to Travelers, Mr. Conor Brady, a lawyer for
2 Travelers, we have reached agreement on his
3 position pertaining to that subpoena. And I
4 have withdrawn my request for relief to compel
5 Travelers.

6 THE COURT: All that's left is the Certain
7 Insurers of Lloyd's, Resolute -- what you say
8 are the Resolute managed three claims.

9 MR. PROTOPAPAS: Yes, Your Honor.

10 THE COURT: All right. Mr. Sawyer. And
11 you know, Mr. Sawyer, before you get started,
12 it's 20 minutes until 11. I should have some
13 mercy on the court reporter. So let me turn to
14 you, Madam Court Reporter, a short break?

15 THE COURT REPORTER: Yes. Thank you.

16 THE COURT: Very good. Why don't we
17 take -- let's be back at 5 of. I just don't
18 want to have to interrupt you after you get
19 started, Mr. Sawyer.

20 MR. SAWYER: I understand, Your Honor.
21 Thank you.

22 THE COURT: Thank you, sir.

23 The Court will be in recess.

24 - - -

25 (A recess transpired.)

1 - - -

2 THE COURT: The Court will resume, and
3 we'll hear now from Mr. Wesley Sawyer on behalf
4 of Certain Insurers as we kind of have
5 colloquially referred to them, a group of the
6 insurers who oppose the Motion to Compel.

7 MR. SAWYER: Thank you, Your Honor.

8 Good morning. Wesley Sawyer. I represent
9 Continental Casualty Company, Liberty Mutual
10 insurance Company, and Certain Underwriters at
11 Lloyd's of London.

12 Before I get started, Your Honor, to be
13 clear, my clients are not parties in this case.
14 I think the Court -- Your Honor acknowledged
15 that.

16 THE COURT: I do. You are not parties of
17 this case in any way. This is a subpoena of a
18 nonparty to the case. And I'm sure you will
19 have some certain arguments about the presence
20 and whether it can be subpoenaed and so forth
21 and so on, which I certainly will be glad to
22 listen to. But they are not parties.

23 MR. SAWYER: Thank you, Your Honor.

24 Also, we raise personal jurisdiction. I
25 will get to that in time. I think the order of

1 presentation the Court has heard, it makes sense
2 to start with the procedure and then work our
3 way up to that and we get to the Motion to
4 Compel, if that pleases Your Honor.

5 THE COURT: Yes, sir.

6 MR. SAWYER: Your Honor, let's start with
7 procedure. And to be quite blunt, everything
8 that's happened in this case since the estate
9 was closed, after this Court was told the case
10 was fully resolved, has been a nullity. And
11 that's nothing of the Court's fault. That's a
12 matter of fundamental rules of the Court's
13 jurisdiction.

14 In June of 2022, this case was set up and
15 was for trial and about three weeks before
16 trial, this Court receives an email from
17 Plaintiff's counsel stating that this case is,
18 quote, fully resolved.

19 And, Your Honor, today that was presented
20 as a -- you know, just a mere mistake, an honest
21 mistake. But Mr. Parks' actions at that time
22 confirm there was absolutely no mistake.
23 Because that email came to the court on a
24 Friday.

25 On Monday, the following business day,

1 Mr. Park, who had just represented to you, this
2 court, that the case was fully resolved, went to
3 the probate court in Spartanburg County, that
4 had given him authority to act as a personal
5 representative, and represented to that court
6 under oath that the case was fully resolved.

7 He stated that he had done all the work
8 required of him as a personal representative of
9 the estate. He filed for a settlement of the
10 estate and asked to be relieved, terminated is
11 the statutory term, as a personal representative
12 of the estate.

13 So it was not an honest mistake telling
14 this court that the case was fully resolved, not
15 partially resolved, because Mr. Park's conduct
16 the following Monday confirmed his intent.
17 Which was this case is done. Because if the
18 case was not done, the estate would not be ready
19 to close. Because he had asserted a survival
20 and wrongful death claim.

21 As Your Honor knows by statute and your own
22 case law you've written, only a personal
23 representative can pursue a wrongful death and
24 survival claim, other than a rare exception for
25 a special personal administrator, which is not

1 an issue here.

2 So after telling this court the case is
3 fully resolved, he tells the probate court the
4 case is fully resolved. And both courts relied
5 upon that representation in 2022.

6 This court relied upon that representation
7 by taking the case off the trial docket. And we
8 all know when a case is up for trial, the
9 plaintiff has to be ready to try against all
10 parties. If there's a party in default, then
11 their job is to move for default and proceed on
12 default judgment because the case is up, and
13 it's not unusual for a court to dismiss a party
14 that hasn't been reserved once trial comes up
15 for failure to prosecute.

16 But the court didn't get that information
17 presented to it. The court was told the case is
18 fully resolved, and the court relied upon that.

19 The probate court, considering the
20 application of Mr. Keith Park to close the
21 estate, granted the relief he requested. This
22 is not some administrative closing of the estate
23 because a certain amount of time had passed by.
24 No. He affirmatively went to the court, signing
25 under oath that the estate was ready to close.

1 And particularly, Your Honor, with that
2 submission, he submitted waivers and releases
3 from all the heirs of the estate saying we
4 release all claims of the estate. And he filed
5 that support of asking the probate court to
6 close the estate. And the probate court granted
7 that relief in reliance upon those
8 representations made under oath to the probate
9 court.

10 It entered two orders. It entered one
11 order closing the estate, and it entered a
12 second order terminating Mr. Park's authority,
13 his appointment as a personal representative of
14 the estate.

15 And that has significant statutory
16 implications under the probate code. Section
17 608 of the probate code says that upon
18 termination, the personal representative cannot
19 act any further on behalf of the estate in any,
20 quote, pending or future litigation.

21 So as of August 2022, by his own request,
22 which is not an honest mistake, he signed an
23 affidavit, said Court do this for me. Mr. Park
24 was terminated, and very importantly the estate
25 closed. Those have two independent, legally

1 significant impacts.

2 Mr. Park's termination as the personal
3 representative goes to standing. It goes to his
4 authority to act. In March of 2023, when he
5 approached this court, they'll tell, Your Honor,
6 that he had been terminated at his own request,
7 and that the estate has been closed at his
8 request, and ask Your Honor to appoint a
9 receiver without letting you know that he had
10 taken the steps in another court and made those
11 representations to another judge and got relief
12 based on those representations.

13 It also has significance that the estate
14 was closed. And that goes to the most
15 fundamental rule for our adversarial judicial
16 system. Which is you have to have a party with
17 a legitimate issue on both sides of the beat.
18 Courts don't sit over and give advisory opinions
19 to individuals who may have quandaries before
20 the court. You have to have an adversarial
21 situation. Plaintiff versus defendant.

22 And when the estate was closed, there was
23 no longer a -- the Supreme Court uses the term
24 juridical entity, known as the estate. There
25 was no plaintiff on that side of the beat.

1 And that was as of August 2022. So when
2 this court heard a motion in 2023 to appoint a
3 receiver, again, this wasn't told to Your Honor,
4 so it's not a matter of the court making an
5 error, but it is a matter of the court's
6 jurisdiction, which is what the Supreme Court
7 says in the McCullar case that Ms. McVey
8 referenced.

9 In that case, what the Court said, and this
10 was a situation where there was no defendant, as
11 opposed to no plaintiff. They cite old case law
12 dealing with a lack of a plaintiff. So they
13 appealed it on both sides of the beat. Is this
14 gets to something even more fundamental than the
15 phrase we use for subject matter jurisdiction.
16 It's just fundamental jurisdiction.

17 And if you don't have a party on each side
18 of the beat, there is no case for the court to
19 preside over.

20 In fact, Your Honor, you were on that panel
21 for that decision. And interestingly in a
22 footnote at the end of that sentence, procurance
23 so we don't know who actually penned it.

24 But at the footnote, at the end of that
25 decision, the Court says, you know, we hesitate

1 to even call this a dismissal because there was
2 never a defendant in the case. There simply was
3 no case. So they called it a dismissal because
4 in our lingo in courts, that's the best that
5 they could come up with. But they said we
6 really hesitate to even use that. There was no
7 case at all.

8 And if there's no case, there can be no
9 motion to appoint a receiver. There certainly
10 can be no order to appoint a receiver.

11 And the case law is very clear. That a
12 court that acts without jurisdiction, whether it
13 knows it or not, any order from that court is a
14 nullity for its lawyer. Depending on which case
15 you read. But the case law is very consistent.
16 When a court has no jurisdiction, any order
17 entered is a void order.

18 Again, this is because of what was
19 presented to the court. The court relied upon
20 what was presented to it. But the reality is
21 there was no plaintiff to move for appointment
22 of a receiver and, therefore, no basis to
23 appoint a receiver in 2023.

24 And Mr. Park did go in 2025, two years
25 later, and file a motion for a subsequent

1 administration. That's a second administration,
2 a new administration of an estate. It's not a
3 reopening of the original estate. It's called a
4 subsequent administration.

5 And, Judge, that motion, which is filed by
6 the plaintiff, is quite interesting for a few
7 reasons. One, even now in this new filing to
8 the probate court, when they state the basis for
9 the subsequent administration, they put the
10 reason is possible civil litigation.

11 Not, hey, Probate Judge, we've had this
12 case pending for years. We've been filing
13 motions. We've taken action. It's possible
14 civil litigation.

15 And in reliance upon that, the probate
16 judge did a new estate. A subsequent
17 administration. In fact, if you look at the
18 case number for the probate for the subsequent
19 administration, it's dash 2. It's not the
20 original administration. It's a subsequent
21 administration. And that, also, Your Honor, has
22 a significance from a probate code statutory
23 perspective. That's Section 62-3-1008.

24 And the last sentence of that, which is the
25 subsequent administration statute, states that

1 if a new appointment is made, unless an order is
2 otherwise, the provisions of this code applies
3 appropriate. But here's the kicker: But no
4 claim previously barred may be asserted in the
5 subsequent administration.

6 This is not a savings clause for plaintiffs
7 that should have been brought with the first
8 estate. It's not a saving clause for a case
9 that was fully dissolved, their language, and
10 represented to the probate court as done and
11 ready to close. It's for future claims. New
12 claims. Which is not what is before the court
13 today. There's no new summons and complaint.
14 There's no new allegation. It would be barred
15 by the statute of limitations, of course.

16 The case was represented to the court in
17 2022 as fully resolved. And that's what it was.
18 And all of the conduct of Mr. Park close in time
19 to that representation to this court, including
20 his representations to the probate court,
21 confirmed all of that.

22 So then what's the case law saying? In
23 addition to the McCullar case, which is
24 fundamental jurisdiction, you have the Lennon
25 case from the Court of Appeals, which I also

1 cited in our brief, that deals with standing.

2 Another subject matter jurisdiction issue.

3 And it also said that when you don't have
4 the authority to speak on behalf of someone
5 else, there's no standing. And that's the issue
6 here because there was no estate to speak on
7 behalf of.

8 And by statute, under 608, once terminated,
9 which, again, Mr. Park was terminated from the
10 first estate, which was the plaintiff, in August
11 of 2022. And noted no one in this room disputes
12 that he was still terminated in March '23 when
13 he moved to appoint receiver and continued to be
14 terminated all the way up until the filing for
15 the subsequent administration, which again we
16 note is not the original estate. It's a new
17 one.

18 The statute at 608 -- 62-3-608, the last
19 sentence says this: Termination does not affect
20 the jurisdiction of the court or the personal
21 representative, but terminates his authority to
22 represent the estate in any pending or future
23 proceeding.

24 He sought the termination. He got the
25 termination. He had no authority to represent

1 the estate in pending or future litigation,
2 including in 2023 when they moved for the
3 appointment of a receiver.

4 These are statutory boundaries on a
5 personal representative's conduct. Not judge
6 made; they're statutory. We all have to follow
7 them, including Mr. Park. He has to honor what
8 he has told this court.

9 And, Your Honor, you did pen this decision,
10 adopting judicial estoppel in South Carolina,
11 and it's a good rule. It's a rule often used in
12 other cases. And what it says is that when you
13 represent to a court a fact and the court relies
14 upon it, you're bound by that. You can't take
15 off that fact later on whenever it suits you.

16 Well, Mr. Park represented to two courts
17 the fact that the case was fully resolved.
18 Quote, fully resolved for this court and in his
19 motion to close the estate in the probate court.

20 And, again, it's not just a motion to close
21 the estate and terminate himself and say I've
22 done all I'm supposed to do. He got releases
23 from the heirs of the estate that he filed in
24 support for that motion.

25 So multiple people rely upon that

1 representation, and the probate certainly does
2 because it grants the relief he asked for based
3 upon those representations. That's judicial
4 estoppel. The foundational rule of judicial
5 estoppel. You can't tell a court something,
6 expect the court to rely upon it, have the court
7 rely upon it, and then when it doesn't suit you
8 later on, say, you know what, honest mistake,
9 you know. But it wasn't.

10 Now, a friend of Ms. McVey may not have
11 known. I don't know what communications took
12 place between her and the probate lawyer. But
13 Mr. Park, who is actually the party to this, or
14 at least the estate and is the PR, certainly.
15 And his conduct in time, a Friday email to this
16 court, a Monday filing to the probate court,
17 leaves no room for doubt about his intentions in
18 2022. They were very, very clear.

19 So, Your Honor, there was reference made to
20 the Fisher case. That case, Your Honor is a --

21 THE COURT: Which case?

22 MR. SAWYER: The Fisher case.

23 THE COURT: Yes.

24 MR. SAWYER: Judge, that case is about real
25 party in interest. That's a whole different

1 issue. I agree real party in interest is not a
2 jurisdictional issue. The court has made that
3 very clear.

4 And, in fact, the McCullar decision I cite
5 from the Supreme Court, it notes that the issue
6 dealing with the McCullar about the existence of
7 the estate is not a real party in interest
8 issue. It's in a more fundamental issue.

9 And the Lennon case, from the Court of
10 Appeals, says standing is not real party in
11 issue. It's more fundamental.

12 So that's what the cases say. It's why
13 Fisher doesn't meet anything for this case.
14 Because we're not arguing real party interest.
15 We're arguing that when the estate closed, after
16 telling this court the case was fully resolved,
17 there was no party, there was no plaintiff,
18 which means there was no case for the court to
19 preside over. And that cannot be remedied
20 because it goes to fundamental existence of the
21 case.

22 THE COURT: What do you do with Section
23 62-3-701, which is sometimes termed the relation
24 fact section, and with Rule 17(a) that discusses
25 ratification? How do they affect, if they do,

1 this case?

2 MR. SAWYER: That's a great question,
3 Your Honor, and the argument they try to hang
4 their hat on. 17 -- or the Fisher cases say how
5 that rule works. It's a real party at issue
6 that's -- when there's an estate, you file a
7 claim, but you haven't gotten properly appointed
8 as the PR for whatever reason, then they can go
9 and use Rule 17 to fix that sort of situation.
10 It deals with -- and by the statutory term, the
11 commencement of the personal representative's
12 authority.

13 608, which is what we relied upon, deals
14 with the termination of that authority. And all
15 the conduct we're talking about is after the
16 termination order, not before the appointment
17 order.

18 So they're looking at the wrong statute.
19 And the statute can't fix a fundamental problem
20 on the lack of plaintiff, which is what the
21 McCullar case is. And the McCullar case, again,
22 is after the estate closed. I'm sorry, I
23 misstated. Not the McCullar case. I'll get to
24 the case that deals with when the estate closes.

25 THE COURT: Yeah.

1 MR. SAWYER: And that case is the New York
2 appellate division case. And while we're
3 talking about a New York appellate division
4 case, it's applying South Carolina probate law.
5 And I think that's important. This is not some
6 court talking about a similarly adopted uniform
7 probate code. They're actually looking at the
8 South Carolina probate code.

9 And in that case, when the complaint was
10 brought, there was an active estate. And then
11 the estate closed. The PR was terminated.
12 Asserted a counterclaim, which is just like
13 filing a motion in a case. It's something you
14 do during the life of a case. They moved in the
15 case to assert a counterclaim. Which the court
16 at that point granted, I believe.

17 But what they didn't tell the court
18 anymore, just like they didn't tell Your Honor
19 when they moved to appoint a receiver is,
20 actually I've been terminated as the PR. The
21 estate has been closed.

22 So when the plaintiff in that case learned
23 about it, near the end of the life of the case,
24 they raised that issue. And just like what
25 Ms. McVey did, they went to the probate court,

1 got the estate reopened -- or actually, excuse
2 me, got the probate court to issue a subsequent
3 administration of the estate, and appoint the
4 same person as the PR again.

5 And they said, hey, this fixes all the
6 problems. It cures everything. Same argument
7 that's been presented to you today.

8 And the appellate division said, no, it
9 does not. And, in fact, what they said was that
10 the reappointment in the context of a subsequent
11 administration constitutes a subsequent
12 administration, which has no nunc pro tunc
13 effect, and does not relay back to the initial
14 appointment and, therefore, the counterclaim was
15 dead and dismissed.

16 THE COURT: Did the New York opinion
17 discuss Rule 17(a) ratification rule at all?

18 MR. SAWYER: It did not talk about real
19 party in interest. It talked about the fact
20 that -- but it does cite 608, which I think is
21 critical. The impact of a termination of a
22 personal representative. Because the statute
23 itself says you can't work an opinion case. And
24 ratification can't fix something when you're
25 violating a statute. It makes no sense.

1 The code sections are in the same probate
2 code. The drafters understood those two rules.
3 And what they said is, yes, 701 is going to deal
4 with the creation, the appointment, the
5 commencement of the PR's authority.

6 608 deals with something different. That
7 is, when you ask to get terminated or the court
8 terminates you, what's the consequence? And all
9 the conduct we're talking about today is post
10 termination.

11 So that's the appropriate statute for this
12 court to look at and the lens through which it
13 should look at it.

14 Now, Your Honor, getting past that, I think
15 we've addressed it hopefully fairly completely.
16 We provided the full probate filing to you, at
17 least as July 25th. The subsequent filings for
18 the subsequent administration have been filed by
19 the plaintiffs. But we wanted you to have the
20 full probate file, at least as to the paper
21 copy, so you can see what was submitted to the
22 court.

23 There's a couple of other oddities there.
24 The application for the PR, there's two
25 questions in the probate form code or probate

1 form to be appointed to ask about the existence
2 of pending litigation. And are you being
3 appointed for pending litigation? That
4 application was made while this case was
5 pending. They didn't disclose to the probate
6 court the existence of this case.

7 That's an oddity. I don't think it matters
8 for today, but it is an oddity and a sworn
9 application. But ultimately, I don't think it
10 matters because when everything that took place
11 that we're dealing with today happened, not only
12 were they not a personal representative, so
13 Mr. Park had no authority to file, but there was
14 no estate so there was no case law. And that's
15 really where we sit today.

16 You can't fix that on the back end.

17 Dealing with other things that were tried
18 that -- there were attempts to fix on the back
19 end cannot be fixed.

20 Let's deal with service. The Court's heard
21 service but not in this case actually. I think
22 all the service arguments happen in Tibbs. So
23 it's worth going over that some.

24 The timeline is important here. There was
25 a question from Your Honor about the original

1 complaint. It never alleges a factual
2 allegation as to Cape. When it does the party
3 allegations about jurisdiction, Cape is not
4 listed in there. It is on the caption, but
5 there's no factual allegation about what Cape
6 did or did not do.

7 The First Amended Complaint does reference
8 Cape. And then in December -- on December 23rd
9 of 2021, I believe, and I'll check my time,
10 that's right. The second amended complaint is
11 file after a motion to Your Honor.

12 Shortly before that -- now I think what was
13 put on the record today is service was
14 accomplished in March of '22. Let's start with
15 that, if that's true. There's no affidavit to
16 this court about service in '22. That would
17 require service in the Second Amended Complaint
18 because that's the operative complaint as of
19 December of 2021. There's never been anything
20 filed with this court in terms of a proof of
21 service of the Second Amended Complaint. Ever.

22 So let's look at the First Amended
23 Complaint. There's an affirmation that's been
24 filed with Your Honor, in October of 2023, five
25 months after the order appointing the receiver,

1 but not at the time that the court appointed a
2 receiver, which is the first attempt to show
3 this Court that there was service on Cape.

4 So when the Court got the motion to appoint
5 a receiver, when it ordered it, there was
6 actually nothing in the file showing service on
7 Cape. No attempt to prove it. And to this day,
8 this is, I think, important, there's still is no
9 proof of service as to the motion to appoint a
10 receiver being served on Cape either. Three
11 years after the fact or two years after the
12 fact.

13 But what was filed in October of '23,
14 again, after the order appointing a receiver,
15 and apparently in response to challenges in the
16 Tibbs case, was an affirmation from a gentleman
17 who appears to be in the UK.

18 And, Your Honor, the problem with that
19 affirmation is that it says a few things. One,
20 it says that this was attempted in December of
21 2023 or 2021. December 16th is the day that he
22 states it would have been effective.

23 Well, a few days later, December 23rd, the
24 Second Amended Complaint is filed. Case law is
25 really clear. Any amended complaint renders the

1 prior complaint null. It's the operative
2 complaint. And, therefore, if you have to
3 serve, guess what you have to serve? You have
4 to serve the Second Amended Complaint. And
5 there's no affidavit as to service of the Second
6 Amended Complaint.

7 But if you actually look at the
8 affirmation, it is deficient under Rule 3 for
9 service. Because Rule 3 says you have to serve
10 two things: Summons and a complaint.
11 Foundational rules of South Carolina Civil
12 Procedure.

13 So what did the person signing the
14 affirmation state that he served? I'm reading
15 from paragraph 6 of that. On December 14, 2021,
16 I did serve copies of the First Amended Summons
17 in the matter on Cape PLC and Cape Intermediate
18 Holdings Limited at the aforementioned address,
19 and I did so rural mail, first class post.

20 He doesn't say he served the complaint.
21 But that's not the only document we have from
22 his affirmation to rely upon that. Your Honor,
23 then he attaches an exhibit, cover letters for
24 service that he used. We enclose herewith by
25 way of service the First Amended Summons in this

1 matter. Again, no reference to the complaint.

2 And then in the enclosures, guess what's in
3 the enclosures? You guessed it. First Amended
4 Summons. The list of enclosures doesn't include
5 the complaint. So this affirmation under
6 South Carolina's simple rules, which you have
7 the service of a summons and complaint, is
8 defective in and of itself.

9 Judge, I'd also note that he says he served
10 it first class mail. The stamp on the picture
11 -- we took a picture of the envelope was one
12 pound. And I don't think that you find, if you
13 did some research on the postal rates of the
14 mail during 2021, that a pound would be
15 sufficient for a packet of this size of the
16 summons and complaint in this case.

17 So there's no evidence of service on the
18 complaint before the court today. And certainly
19 there wasn't even that filing with the court
20 when they moved to appoint the receiver.

21 So there's no proper reason for appointment
22 of the receiver on the record. That means, of
23 course, the Motion to Compel is a moot point
24 because the receiver's appointment is a nullity
25 and everything else falls from that, that

1 defect. But it's a critical issue in terms of a
2 procedure, of course, that would be the first
3 step, not the only step, but it's a necessary
4 step for establishing personal jurisdiction over
5 a defendant.

6 They also have to be properly subject to
7 the court's jurisdiction for a slew of other
8 reasons. Right? But service is a foundational
9 first step to trying to establish personal
10 jurisdiction of a defendant.

11 And the argument is, well, Cape has never
12 appeared, Cape has never fought this, Cape's
13 never done this, Cape's never done that. I
14 can't speak for Cape, but what I can say is,
15 well, if they weren't served, maybe that's why
16 they haven't responded.

17 I don't know. I know that their position
18 is Cape never answers anything in any
19 litigation. I don't have any facts on that. I
20 don't think that's been submitted to the court
21 in terms of admissible evidence. But it really
22 is neither here nor there. Here there's no
23 evidence of proper service of the complaint of
24 this case at all.

25 And I would note there have been multiple

1 times when filings have been submitted to this
2 court to correct the record. This affirmation
3 filed after the fact was an omitted exhibit, is
4 what it was labeled as when it was filed.

5 Then after he pointed out the personal
6 representative issue, he stated you get a
7 subsequent administration. They file to this
8 court to correct the record.

9 The defects in service have been raised, at
10 least in the Tibbs case, for almost two years.
11 I think that if he had served a complaint after
12 two years, you probably would have gotten an
13 affidavit saying that. I think it's a fair
14 assumption since they've certainly taken steps
15 to fix other parts of the record. Why hasn't
16 that been fixed?

17 But it really doesn't matter because the
18 issue is the record doesn't support service at
19 this point as we sit here today, which is a
20 necessary first step to everything else they're
21 wanting to do in this case.

22 So, Your Honor, those are the procedural
23 defects. That's the case law on the procedural
24 defects. And if you have questions, I'm happy
25 to deal with those and then move on to the

1 motion to compel or I can just move on to the
2 Motion to Compel.

3 THE COURT: You can move on.

4 MR. SAWYER: Thank you, Your Honor.

5 Judge, on the Motion to Compel, the
6 receiver's only focus is on, well, I sent them a
7 subpoena and I want a response. And,
8 Your Honor, you have our brief. We raise a lot
9 of very serious issues about the process for the
10 subpoena, the scope of the subpoena.

11 And, again, all of this is moot if the
12 receivership is improper. An improperly
13 appointed receiver, again, if the court lacked
14 jurisdiction when it appointed a receiver, that
15 order is null. Simple as that. Which means a
16 subpoena from the receiver is null. That's not
17 a slight on the receiver; it's just a reality of
18 how the law works.

19 But for purposes of this argument, assuming
20 the court finds all of those other defects are
21 not a problem and that there was a proper
22 appointment in 2023 so the subpoena is proper in
23 2025, and all the other things, let's get to the
24 Motion to Compel issue.

25 So first of all, let's deal with the issue

1 of the court's subpoena power. The reason I
2 want to start there is because you're on really,
3 really, really solid ground here. We're not
4 dealing with something from some esoteric
5 location. We're dealing with a Supreme Court
6 decision from the South Carolina Supreme Court
7 and then repeated Supreme Court decisions from
8 courts all over the country dealing with the
9 issue of the scope and jurisdiction of court
10 subpoena power.

11 And when I talk about courts, I'm talking
12 about Supreme Court, state highest appellate
13 courts of Virginia, Florida, Mississippi,
14 Colorado, Alabama, Louisiana, Nevada, the 11th
15 Circuit, and the New Jersey Superior Court. Not
16 the highest court but the another appellate
17 court in New Jersey.

18 And, Judge, that's not even me doing an
19 exhaustive search. I can't represent to you
20 that that's all the cases because I didn't do an
21 exhaustive search. Those are the ones I came up
22 with in the time that I had allowed to oppose
23 the Motion to Compel.

24 And, Judge, every one of those
25 jurisdictions has held unequivocally that the

1 court's subpoena power does not give the court
2 power to subpoena a nonparty, nonresident to go
3 and search for documents or produce documents
4 outside the jurisdiction.

5 And this court knows that that's been in
6 the rule for forever because that's why we have
7 letters derogatory. And that's why courts issue
8 writs of commission, to go to the jurisdiction
9 where defendants are located to seek discovery.

10 And courts, through comity, historically
11 and much more recently through the Uniform
12 Interstate Depositions and Discovery Act have
13 recognized those things. But the recognition is
14 that the authority stops at the borders.

15 And the courts over the party where that
16 party is located have an interest in protecting
17 that party from overreaching, abusive, improper
18 discovery from another jurisdiction.

19 Now, they still often entertain that for an
20 act of comity or now statutory comity, which is
21 the UIDDA. But the reason the General Assembly
22 and 48 general assemblies across the country
23 enacted the UIDDA is because they all recognize
24 that the subpoena power of the court doesn't go
25 beyond its borders.

1 And importantly, Your Honor, it's
2 oftentimes that people mix up personal
3 jurisdiction and the court's subpoena power,
4 which is understandable. But multiple of these
5 cases that I've cited to, Your Honor,
6 specifically and explicitly state that those two
7 things are not the same.

8 Yes, you need personal jurisdiction to be
9 able to enforce a subpoena over a nonparty, but
10 that's not enough. Even if you had personal
11 jurisdiction, you still have to have subpoena
12 power over what you're asking them to do. It
13 has to be something within the borders of the
14 state.

15 And the Supreme Court's decision in the
16 John Deere case is a real good example. In that
17 case, it was really interesting that they were
18 trying to garnish wages from a family court
19 matter. The family court judge tried to get
20 creative and use essentially subpoena to garnish
21 wages from another jurisdiction. And the
22 Supreme Court said despite the desire, despite
23 the novel way the court was trying to do it, we
24 don't have authority to do that because the
25 party is not here.

1 THE COURT: Mr. Sawyer, insurance companies
2 are very different in that regard. And all
3 three of these insurance companies have done a
4 lot of business in South Carolina over the
5 years. I don't understand the concept that
6 something like a Lloyd's or Liberty or
7 Continental doesn't have enough presence in
8 South Carolina when they write -- each of those
9 companies writes a lot of business in
10 South Carolina.

11 I do not understand the concept that they
12 are not subject to the subpoena power of the
13 courts of this state. How about educating me
14 about that.

15 MR. SAWYER: I would be happy to,
16 Your Honor. First of all, that question --

17 THE COURT: The John Deere case and some of
18 the rest of them, I get that. But this is --
19 insurance companies are very different and
20 insurance companies that do business in this
21 state are subject to the courts of this state,
22 the jurisdiction of the courts of this state,
23 the subpoena power and everything else about it.

24 MR. SAWYER: So a few things --

25 THE COURT: And if they don't respond, the

1 insurance commission, whether it licenses them
2 specifically or not, can accept service for
3 them.

4 MR. SAWYER: I will get to that because
5 that's another argument we raised that I think
6 is very important. But let me focus on what
7 you're focused on, which is presence through
8 activities in the state is enough.

9 First of all, John Deere. John Deere did a
10 lot of business in South Carolina. Certainly
11 did a lot of business at the time of the John
12 Deere --

13 THE COURT: Right. The insurance industry
14 has a bunch of material that's specific to the
15 insurance companies that talks about this.

16 MR. SAWYER: But so does John Deere
17 certainly has all of those things.

18 THE COURT: It's not even in the same
19 hemisphere with a regulated industry like an
20 insurance industry.

21 MR. SAWYER: I certainly disagree with
22 that -- the idea that some presence for one
23 business isn't a similar presence or another
24 business.

25 THE COURT: We'll agree to disagree. I

1 want to hear you specifically as applies to
2 insurance company.

3 MR. SAWYER: Certainly. So the
4 North Carolina court that we cite, which is from
5 Judge Diaz, when he was on the business court, a
6 very respected court in North Carolina. Of
7 course, Judge Diaz went from that court to the
8 Fourth Circuit, obviously respected not just in
9 North Carolina but on a broader scale, dealt
10 with the issues of subpoenas to an insurance
11 company in North Carolina, served through the
12 North Carolina Department of Insurance, through
13 their substitute service statute, and said the
14 fact that you can serve them or could isn't
15 enough, although that service wasn't proper. He
16 said both.

17 And I'll deal with again the service issue
18 later, but he said that that's not enough.

19 There's also the Cuomo case that we sited.
20 I think it's NRA v. Cuomo. That's the Board of
21 New York case, federal case. That similarly
22 said you can't serve through this. If you want
23 to do it, you have got to go through it the
24 proper way. And that was Lloyd's. And said go
25 after it, if you need.

1 So there are courts that have dealt with
2 this in the insurance context and said that's
3 not enough. And then all of these cases that we
4 cite from other jurisdictions have entities with
5 varying degrees of interaction with the state.
6 In many of those cases, service was done through
7 a registered agent for service in the state
8 because they were licensed to do business in the
9 state.

10 And what the subpoenaing parties move to
11 compel in those cases argue is, look, they
12 submitted to the jurisdiction of the state.
13 They're allowed to be served here. They've got
14 a registered agent. We serve a registered
15 agent. That's enough.

16 And the courts repeatedly say, no, personal
17 jurisdiction is not the same as the court's
18 subpoena power. And here, Judge, we submit --

19 THE COURT: Wait a minute. We're not
20 talking about -- we are talking about the
21 ability to subpoena the records of an insurance
22 company that does business in the state and
23 writes policies in the state pertaining to those
24 policies.

25 MR. SAWYER: Well, except -- let's be clear

1 here. Pertaining to policies allegedly or
2 potentially issued to an entity of the UK. I
3 don't think we can ignore that that's what these
4 subpoenas are supposed to be.

5 THE COURT: I don't see that. The question
6 is whether they've got insurance that covers
7 torts committed in this state.

8 MR. SAWYER: Well, Judge, in terms of
9 activity, I don't think that's all that we look
10 at. And obviously, Your Honor, you and I have
11 mentioned this repeatedly about insurance
12 policies in the state. I'd be remiss if I
13 didn't mention Howard v. Allen. I know we have
14 a disagreement on --

15 THE COURT: I understand.

16 MR. SAWYER: But I have a strong, strong
17 belief on what Howard v. Allen says. So I'll
18 note that, preserve that. We've noted it in our
19 brief as well.

20 So we'll obviously always disagree on
21 whether liability policies are properly issued
22 within the state -- or issued out of the state.
23 I understand that. I don't want to hammer that
24 whole point. We have a disagreement. Maybe one
25 day I'll get fortunate enough to get the

1 appellate courts to find out if I'm wrong. I
2 might find out I'm wrong. Who knows. But for
3 now, we'll leave it at that.

4 Your Honor, these courts -- all of these
5 courts we cite, seven state supreme courts say
6 that presence is not enough. Again,
7 North Carolina, doesn't matter if it's an
8 insurance company. Because the documents aren't
9 there, the people aren't there. And we provide
10 you affidavits in our opposition for Liberty,
11 for Certain Underwriters of Lloyd's, for
12 Continental, that tells you that the people who
13 do this search are not located in
14 South Carolina. The people who do the search
15 are over where the home offices are or in Boston
16 or for Lloyd's of London.

17 So you'd be subpoenaing persons to go to a
18 search that are not inside the state. And
19 that's what the recognition was from all of
20 these jurisdictions. From the Yelp decision,
21 which is California but a Virginia case. Yelp
22 is everywhere. It's ubiquitous. It reviews
23 everybody.

24 But the Virginia court said we can't go and
25 tell Yelp, whose personnel who do this search

1 are located in California, we can't tell those
2 people to do that search in California just
3 because Yelp can be served here or does business
4 here. Even if they're ubiquitous there.

5 Poultry Growers Association, case in
6 Alabama, is the same. All the cases we site are
7 the same.

8 And, Judge, this is not a
9 you-have-no-solution problem. Before the UIDDA,
10 you could issue a writ of commission. They
11 could take it to these places and get a court
12 there, if the court found it appropriate to
13 issue a subpoena and enforce that subpoena. The
14 UIDDA just makes it that much easier because the
15 UIDDA codifies the process for doing that.

16 What's interesting is 48 states have
17 adopted the UIDDA. And the UIDDA says what
18 court controls that subpoena and controls the
19 motion to compel and an order compliant with
20 that subpoena. It's the discovery state. It's
21 the state where the party being subpoenaed is.
22 Because those courts have an interest in
23 protecting the people in those states or the
24 businesses in those states.

25 And the General Assembly of South Carolina

1 has obviously adopted the UIDDA.

2 And what the Virginia Supreme Court says is
3 the General Assembly's adoption of this is its
4 recognition of this important principle and its
5 adoption of this principle. And, in fact, the
6 UIDDA, South Carolina's version, as well as the
7 others, say that the statute is supposed to be
8 construed uniformly amongst the states that have
9 adopted this uniform act.

10 It's a comity. And if states treat it
11 differently from one state to the next, it
12 erodes the usefulness of that act as other
13 states may choose to do the same.

14 So the Virginia court said this is evidence
15 of the state General Assembly's intent because
16 they adopted it. South Carolina adopted it.
17 Same thing.

18 And there's a solution to do this. If they
19 believe the subpoenas are proper, they can go
20 serve the subpoenas where they are supposed to
21 be done via the proper process, whether that be
22 UIDDA or writ of commission. And then if
23 there's a fight over the propriety or scope of
24 the subpoena, the court in those jurisdictions
25 can hear that and say, hey, Continental, comply

1 fully, or it can say, hey, this is too broad,
2 here's what you have to comply with, or it can
3 say, hey, this is all improper. No.

4 But that's the Court's job where the
5 discovery state is and as established by the
6 UIDDA adopted by South Carolina and 47 other
7 jurisdictions.

8 THE COURT: Well, assume for a minute the
9 court would have submitted to it something like
10 Mr. Protopapas submitted to us in the argument
11 he just made, that indicates the issuance of a
12 policy by Lloyd's for the years 2009 to 2010
13 that covers Cape for asbestos liability,
14 wherever Cape incurs that kind of liability.

15 You're telling me that under that set of
16 circumstances those records could not be
17 subpoenaed by a South Carolina subpoena?

18 MR. SAWYER: Let me answer two things.
19 First of all, just a note. The court gave us a
20 briefing schedule. Gave the reply deadline.
21 Mr. Protopapas never submitted this in reply or
22 response -- I'm bringing up today, I know
23 nothing about it is my point.

24 THE COURT: Well, that's fine.

25 MR. SAWYER: So I think asking some

1 questions about, you know what, I've had
2 forewarning submitted, you know, in accordance
3 with the court's briefing schedule, I could know
4 something about this maybe today. I don't.

5 THE COURT: If we've got to do something
6 about that, we will, Mr. Sawyer. The question
7 I'm asking is simply this: If it can be shown
8 that there's a policy of insurance or the
9 possibility that there's a policy of insurance
10 that actually covers a defendant that has
11 refused to cooperate with this court, that has
12 been sued in this court, let's just put aside
13 for a moment all the squabble we've got going
14 about how they were served and so forth.

15 But we've got a foreign defendant who,
16 evidence would show, has some insurance to cover
17 torts that it has alleged that foreign entity
18 caused to occur in the state of South Carolina
19 that were written by a Lloyd's, for example,
20 you're telling me that we couldn't subpoena that
21 information?

22 MR. SAWYER: So I'm saying that a
23 South Carolina court cannot issue the subpoena.
24 Not that it cannot be subpoenaed. And that's an
25 important distinction. What I'm saying is the

1 subpoena has to be served where it's supposed to
2 be served.

3 THE COURT: Where would that be in this
4 case?

5 MR. SAWYER: Yeah, so --

6 THE COURT: Where would that be in this
7 case?

8 MR. SAWYER: It's where these insurance
9 companies are located, which they're in the
10 affidavits that I provided to the court.

11 THE COURT: Well --

12 MR. SAWYER: I don't have them.

13 THE COURT: So that would be in the UK?

14 MR. SAWYER: I think one is Boston, one is
15 Illinois, and one is UK. That's what seven
16 state supreme courts have held. That's what the
17 UIDDA recognizes. I'm not going out on a limb
18 saying that.

19 And it's not anything to degrade or dismiss
20 this court because this court will receive
21 subpoenas under the UIDDA from all over the
22 country. And it follows the UIDDA just the same
23 way to protect the citizens of South Carolina.
24 So it's not a matter of can it be subpoenaed,
25 it's matter of what court decides about the

1 subpoena and where the subpoena is issued from.

2 And this case, the subpoenas have to be
3 issued. And, again, I apologize, I'll mix up if
4 I say where Liberty is versus where Continental
5 is. We know Lloyd's operates out of London.

6 THE COURT: All right. I understand the
7 argument you're making.

8 MR. SAWYER: Sure. And, Your Honor, I
9 would note, it's significant on Bates number Aon
10 8, page 15, of what was handed up. Again, from
11 looking at this for a matter of minutes, the
12 country of origin, United Kingdom. There's
13 nothing here that said this was issued in
14 South Carolina, and nobody would think that a
15 policy issued to Cape, a UK entity, would be in
16 South Carolina. Plus, we're dealing with the
17 2009 policy.

18 But, Your Honor, those are all extra
19 points. I don't want to get bogged down on
20 that. Let's deal with service.

21 I know the Court has looked at this --
22 actually, I don't think the Court has ever
23 looked at this issue. I note that I wanted to
24 raise it for many years, and I never had the
25 chance. So I've got my chance. I'm a little

1 excited. If I get over my skis a little bit,
2 back me off a little bit. How about that?

3 There are two substitute service statutes
4 that authorize the Department of Insurance to
5 accept service for insurance companies. They
6 actually fit hand in hand. One says, To
7 operate, the insurer shall give the Department
8 of Insurance certain authority. And the other
9 one says summons shall be done in this way. So
10 they're really dovetailing each other for a
11 complete picture.

12 And, Judge, I'll start with Section
13 15-9-270. This is the statute that's titled
14 Service on Insurance Companies. And it says at
15 the beginning, The summons and any other legal
16 process and any action or proceeding against it
17 must be served on an insurance company as
18 defined in the statute ... through Department of
19 Insurance.

20 Summons and any other legal process and any
21 action or proceeding against it is important
22 language. You have the same language in the
23 appointment statute which it says that insurance
24 companies have to appoint the Department of
25 Insurance to be able to do this. And that's

1 Section 38-5-70. Every insurer shall, before
2 being licensed, skip a little ahead, designate
3 the director of successors as the lawful
4 attorney upon whom all legal process in any
5 action or proceeding against it must be served.
6 An action or proceeding against the insurance
7 company.

8 And, Your Honor, a subpoena to a nonparty
9 is not an action or proceeding against a
10 nonparty. This is for case initiating
11 documents, for documents that are bringing
12 actions or proceedings against an insurance
13 company.

14 THE COURT: Well, then what would the
15 meaning of nonparty be?

16 MR. SAWYER: Excuse me. What do you mean
17 by meaning of nonparty?

18 THE COURT: You're saying that this doesn't
19 include a proceeding against a nonparty.

20 MR. SAWYER: Well, no, what I'm saying
21 is -- no, what I'm saying is that there's no
22 proceeding against the insurance company because
23 the subpoena is not a proceeding against an
24 insurance company. It's a request for
25 documents. There's no summons and complaint.

1 There's no assertion of claims against an
2 insurance company.

3 THE COURT: So the word proceeding, in your
4 view, is a -- the initiation of a lawsuit
5 against the person being subpoenaed. That means
6 nobody else but the people that are sued could
7 ever be subpoenaed.

8 MR. SAWYER: No. What I'm saying is that
9 the service statute is only for actions or
10 proceedings against the insurance company. A
11 subpoena to a nonparty is not action or
12 proceeding against an insurance company.

13 THE COURT: So you're saying that the
14 substituted service provisions in the Department
15 of Insurance cover only initiation of summons
16 and complaint against an insurance company?

17 MR. SAWYER: Or a similar thing. That it's
18 a proceeding against the insurance company.

19 THE COURT: What else would a proceeding --

20 MR. SAWYER: There may be administrative
21 proceedings that I'm not aware of, so I don't
22 want to -- I don't want to be more narrow than
23 what the statute is, but I certainly don't think
24 the statute permits any interpretation that a
25 subpoena to a nonparty is an actual proceeding

1 against it.

2 And I'm not getting that out of thin air.
3 That's what Judge Diaz said. He actually puts
4 an emphasis against it or against the insurance
5 company. And the quote in his decision, and we
6 quote to you in the brief. Because he says,
7 yes, I have no problem with the idea that a
8 subpoena is processed. That's not shocking to
9 the court. But it's not an act or proceeding
10 against an insurance company.

11 And the statute is a little bit different.
12 He actually uses the phrase against the
13 insurance company, I think. He emphasizes it.
14 Which is significant. He says it's not a
15 proceeding against them. The statute's for
16 case-initiating-type proceedings, not for
17 subpoena. And that's why he says the service
18 through the part of insurance in North Carolina
19 was improper for a subpoena.

20 And the NRA v. Cuomo case, their statute
21 again, a little bit different, but same result.
22 It's not a proper basis for the department to
23 accept service on.

24 Again, this doesn't mean a subpoena can't
25 be done. It emphasizes the subpoena has to be

1 done in the right place. This makes sure that
2 the insurance company, when it's getting sued in
3 South Carolina for something, whether it should
4 be sued in South Carolina, that the plaintiff
5 can serve the Department of Insurance and
6 doesn't have to find out where Progressive
7 Direct versus Progressive Northern versus
8 Progressive Home may be located and serve the
9 right entity.

10 It doesn't say, hey, this is a one all, you
11 can serve them with anything you want no matter
12 what. It says action or proceeding against it.

13 And, Your Honor, this is important because
14 in South Carolina substitute service statutes
15 are deemed in contradiction of the common law
16 and must be narrowly construed. That's been the
17 law in South Carolina for many, many years. The
18 South Carolina Supreme Court held that in
19 Seubert versus Buchanan at 250 S.C. 140. It's a
20 1967 Supreme Court case. That notes the
21 derogation of common law.

22 It says, quote, Substituted service must
23 conform to the statute which authorized it.

24 Justice Kittredge, just as early as two
25 years ago in the Denson case, reiterated that,

1 moreover legislation and derogation of common
2 law must be strictly construed under several
3 principles enunciated by this court.

4 And you, Your Honor, wrote, when you were I
5 think at the time acting Chief Justice in the
6 Gilfillin case in 2001, that statutes in
7 derogation of common law must be strictly
8 construed, and I'll quote, We will not extend
9 the application of a statute beyond the clear
10 legislative intent.

11 And, Your Honor, Judge Diaz, in his order,
12 notes that substitute services in derogation of
13 common law and says it has to be strictly
14 construed. That was part of his reasoning in
15 that decision. The same rule applies here.
16 Strictly construed what is an action or
17 proceeding against the insurance company.

18 THE COURT: I think I get this argument.

19 MR. SAWYER: That's fine, Your Honor.
20 Sorry for beating a dead horse. I've wanted to
21 raise it for a long time. Thank you for letting
22 me.

23 THE COURT: I know. Yes, sir.

24 MR. SAWYER: Your Honor, I guess let me
25 look at my notes before I get off of the Motion

1 to Compel issue because we'll deal with the
2 moral fraud issue, which I know will be more
3 fully fleshed out in Tibbs. But since it's
4 being brought up now, I will also deal with it
5 now.

6 Again, Your Honor, just one other note.
7 The John Deere case is a South Carolina case.
8 And then Florida, Virginia, Alabama, and
9 Eleventh Circuit cases all dealt with services
10 of subpoena in the state through registered
11 agents for service process. All those courts
12 held that wasn't enough to give the court
13 subpoena power. So well established in that
14 regard as well.

15 We talked about lack of personal
16 jurisdiction. There's obviously a general
17 jurisdiction. Specific jurisdictions, your
18 actual connection with this matter. There's no
19 allegation of issuing of a policy in
20 South Carolina.

21 In fact, here the claim would be policies,
22 if they exist, would be in the UK. So I don't
23 think there's a basis for specific jurisdiction.
24 But again, even if you have personal
25 jurisdiction over the insurance company, that's

1 not the same as the court's subpoena power. And
2 all those cases that we just talked about deal
3 with that.

4 Service is improper. I'm raising the AARP
5 case, that's Judge Diaz. The NRA v. Cuomo,
6 that's New York. Talk about the rules of
7 construction. Let me get to Rule 45, subpoenas,
8 and burden and that sort of thing, because
9 there's also issues with that, Your Honor. If
10 we get to that point, I've lost the war and
11 maybe I can keep a couple of strongholds,
12 Your Honor.

13 Your Honor, we've also raised the fact that
14 the subpoena is overbroad, burdensome. One of
15 the most obvious ones is one that you have ruled
16 on multiple times in the past, which is the
17 subpoena asked for additional insured
18 information. And there's no information
19 provided in connection with that.

20 It says Cape and its affiliates and all the
21 other terms they use to say anybody who ever may
22 have been somewhat affiliated with Cape. We
23 don't have a list of what those other entities
24 are, so we're left to guess. Or my clients are
25 left to guess, I should say.

1 So there's those problems in terms of just
2 the simple fact that it's impossible to comply
3 with the subpoena as written in a way that we
4 could say, hey, we have given you everything.
5 We can try to, but there's going to be a lot of
6 question marks. And that can be dealt with
7 through, you know, properly extrauding what --
8 who made the requirement to name Cape as an
9 additional insurer.

10 I can't imagine who that would be, frankly,
11 but I'm not that creative. So maybe there's a
12 very reasonable thing to list that.

13 What it can be is a list of 10,000 entities
14 or a thousand entities that creates a burden
15 that again violates Rule 45. Because Rule 45
16 expressly states as to nonparties, the party
17 issuing the subpoena has a duty to avoid
18 creating undue burden. Baked into Rule 45 to
19 protect nonparty recipients of subpoenas for
20 good reason. They're not in litigation. They
21 can't seek costs at the end of the day. So
22 they're protected by Rule 45.

23 Your Honor, there's privilege issues. They
24 ask for claims, underwriting files, things like
25 that that are likely to have privileged

1 communications. Especially when you're dealing
2 with potentially policies that aren't issued to
3 CIHL, or whatever may be the actual entity and
4 receivership.

5 THE COURT: This whole issue would be
6 something you get to with a lot more showings
7 than have been made now because this is not the
8 centerpiece of the discussion now. It's the
9 validity of the service, et al. You know, I've
10 read your material. I know what it says. But I
11 don't think that's a key issue right now.

12 MR. SAWYER: I don't think it's a key
13 issue, but I do think that if the Court ends up
14 ruling that the subpoena is properly served,
15 enforceable, and enters an order enforcing the
16 subpoena, I've got to raise the problems of --

17 THE COURT: I understand all that. I think
18 you've raise it adequately.

19 MR. SAWYER: One other thing on burden
20 before I get to everything else. And I realize
21 this is touchy subject, but I also cannot ignore
22 the existence of the subject, and that is the
23 existence of this UK high order.

24 And I know what the Supreme Court has
25 indicated in Welch. I know what this court

1 thinks about it. But I also know that one of my
2 clients in this subpoena issue is Certain
3 Underwriters at Lloyd's London. They're not a
4 party in Welch. They're not a party in Tibbs.
5 They're not a party here. But they operate out
6 of London and there's a UK high court order
7 saying something about the receiver's
8 authorities.

9 And a nonparty is put in a really
10 difficult --

11 THE COURT: I don't see the bind you're put
12 in at all in that regard. I really don't.
13 There's no suggestion that even in the very
14 broad parameters of the order of the British
15 court that its reach would extend to voluntary
16 cooperation or to any other kind of cooperation
17 processes in this country. So we don't need to
18 spend a lot of time on that.

19 MR. SAWYER: Just to note on the record, I
20 think my client has a significant concern.

21 THE COURT: I know that. The Supreme Court
22 is the arbiter of that, not me. So that's just
23 not an argument that I think is something I need
24 to be getting into.

25 MR. SAWYER: I'll put on the record and

1 I'll move on because I understand Your Honor.

2 THE COURT: It's on the record.

3 MR. SAWYER: I'll be very quick. Which is
4 just Rule 45, again, baked in, cannot put an
5 undue burden. And for Lloyd's in particular,
6 that is a significant burden to have two courts
7 saying two different things. And they are not
8 in a position --

9 THE COURT: My friend, that happens all the
10 time state to state and country to country.
11 That's not something that somebody in my
12 position in the chain of authority is going to
13 need to worry about.

14 MR. SAWYER: Okay. Well, unfortunately, my
15 client is worried about it.

16 THE COURT: Well, that's fine. I'm not the
17 person that's going to give them much relief in
18 that regard.

19 MR. SAWYER: And, Judge, the only other
20 thing in terms of scope, Ms. Park's complaint
21 says she was exposed, again, in the mid 1960s.
22 The subpoena asks beginning in the 1930s.
23 Welch -- I think one thing Welch was clear about
24 was that the property that's subject to the
25 receivership or the receiver's scope is limited

1 to the assets that could be responsive to the
2 claim of the party that sought the appointment.
3 In that case, Welch.

4 If her exposure begins in 1960, then the
5 subpoena should be limited to 1960. Shouldn't
6 date back to 1930 or earlier because those
7 policies could be not responsive to somebody
8 that wasn't exposed until the 1960s.

9 THE COURT: Well, as we know, there's a
10 whole other dimension to this thing. You are
11 going after things that are so far away from the
12 main argument, I'm not going to entertain too
13 much more of this.

14 MR. SAWYER: That was actually my last
15 point on this.

16 THE COURT: Well, the reason that you put
17 stuff like that in these kind of documents is
18 because some of those policies are written in
19 the old fashioned way, where they are per
20 occurrence policy. Mesothelioma is a disease
21 with a long tail of between exposure and
22 disclosure or discovery.

23 And for that reason, some of these
24 policies -- some of those subpoenas and other
25 discovery requests in these mesothelioma cases

1 go way back before the exposure takes place
2 because there are some policies that would still
3 be viable depending on how they are written in
4 terms of exposure.

5 So I'm not going to pick down to a granular
6 level like that. Thanks for that argument.
7 It's noted.

8 MR. SAWYER: All right. I'll move on then
9 to the Cape moral fraud issue, which, again, as
10 was noticed before we came in today, my
11 understanding was that that issue was going to
12 dealt with in Tibbs, frankly to be dealt with
13 first.

14 So I may be a bit of a fish out of water on
15 that being a nonparty subpoena opposer having to
16 deal with that weight. But I will do my best to
17 at least address it. Others can do it much
18 better.

19 THE COURT: I don't think you can add much
20 to what your brothers on your side of the fence
21 are going to say about this, Mr. Sawyer.

22 MR. SAWYER: They have raised it quite
23 well.

24 THE COURT: Briefly.

25 MR. SAWYER: Briefly. Thank you,

1 Your Honor.

2 First, Welch dealt with current activity to
3 avoid or hideaway assets. The claim at least by
4 the Supreme Court, their finding was that Atlas
5 had recently or actively tried to enter
6 agreements that could highway insurance and it
7 represented to the court there was no insurance.

8 That's active attempts to hide assets.

9 THE COURT: That was part of it, but Welch
10 covered a lot of other things.

11 MR. SAWYER: At of things they did in your
12 case, that they were accused of disregarding
13 your orders in that case.

14 THE COURT: I'm just saying that's not
15 dispositive based on the other things that
16 happened in Welch. Welch has had that dimension
17 to it but also had a long history. ACL had a
18 long history in that regard.

19 MR. SAWYER: I think the Supreme Court had
20 two bases that it stated for a point of
21 receiver. One was the active litigation conduct
22 in your court; and two was that issue about the
23 insurance and the risk of those assets that was
24 a current risk.

25 THE COURT: Its analysis of moral fraud did

1 not just cover the time parameters when I got
2 this case, it was a broader analysis than that.

3 MR. SAWYER: I will note Virginia Chemical
4 case, which is one of the receiver's favorite
5 cases to cite. Same thing. The defendant there
6 was actively signing away land, deeding away
7 land to family members to avoid his liabilities,
8 including the fact that he had just been charged
9 with manslaughter -- convicted of manslaughter.

10 Sounds a lot like Murdaugh, which, by the
11 way, the evidence in the motion to appoint a
12 receiver for Murdaugh was replete with evidence
13 of him trying to squander his assets away to his
14 family to protect it from predators.

15 THE COURT: We have no averment about that
16 here that involves the continuing activity of
17 the company. You know, that's away, away from
18 what you need to be arguing on behalf of your
19 insurance clients. So others will cover that,
20 but I don't think I need to plow that ground a
21 whole bunch of times.

22 MR. SAWYER: I'll try to be quick. There's
23 a few more points. One in terms of active
24 versus past. I listened to all the dates that
25 Ms. McVey listed in her recitation of the moral

1 fraud activities of Cape. All of them are 1977,
2 1978, or long before that. Fifty years ago.

3 There's no asset they're alleging currently
4 is being squandered away by Cape. Not alleged,
5 not in a motion that's before you. It's not in
6 a file that's before you in the Park case.
7 There's nothing that says there's an active
8 thing. There wouldn't be if this was done 50
9 years ago. I should say I wouldn't expect there
10 to be. I don't know.

11 THE COURT: Mr. Sawyer, again, the clash of
12 that is going to be the clash of people other
13 than yourself. Their allegation is that Cape's
14 legacy is the activity of folks that now own it,
15 and it is an unbroken series of activities in
16 aid of not living up to their responsibility
17 about these torts.

18 So that's not something you need to get
19 into. There are other people who are going to
20 argue to me. You've had a good, long time at
21 the podium.

22 MR. SAWYER: As long as I can adopt
23 whatever they argue at the end of it, we're
24 good.

25 THE COURT: That's what you always do.

1 That's not going to change. That's already been
2 done in your pleadings.

3 MR. SAWYER: Well, I haven't adopted all of
4 their pleadings. As long as I'm able to do that
5 at the end, I'm happy to sit down. I think I've
6 said my part. If I'm allowed to do that again.

7 THE COURT: Yes, sir.

8 MR. SAWYER: Thank you, Your Honor.

9 THE COURT: All right.

10 All right. Now, the question is what to do
11 now, whether to go back to Ms. McVey and the
12 receiver, which is what I'm inclined to do. But
13 I have this nonparty Travelers memo in
14 opposition.

15 Travelers, as I understand it, is not a
16 party in Tibbs. Am I right about that?

17 MR. PROTOPAPAS: You are correct,
18 Your Honor. And we have reached resolution.
19 And that opposition memo does not need to be
20 considered, is my understanding.

21 THE COURT: All right. So I can strike
22 that off the list of things I need to take into
23 account.

24 MR. PROTOPAPAS: Yes, Your Honor.

25 THE COURT: Travelers?

1 MR. CARROLL: Yes, ma'am. Your Honor, Todd
2 Carroll with Travelers. I'm joined by Connor
3 Reed.

4 THE COURT: Well, who is really the author
5 or what we're talking about right here?

6 MR. CARROLL: Well, Your Honor, I'm the one
7 who signed the document. But when you were
8 reciting the agenda this morning, when you got
9 to that, you seemed to indicate that you thought
10 it was about the bench brief. It's not. It was
11 a -- it was the same motion that Mr. Sawyer --

12 THE COURT: It's the same motion that
13 Wesley Sawyer is making. I understand that now.

14 MR. CARROLL: Correct. And it's been
15 withdrawn.

16 THE COURT: And it's been withdrawn.

17 MR. CARROLL: Yes, ma'am.

18 THE COURT: All I need to do is strike that
19 off?

20 MR. CARROLL: Yes, ma'am.

21 THE COURT: Okay. We got it.

22 All right. Very briefly, my friends, in
23 reply, and then we're going to shut this down
24 and go to lunch and come back and hopefully do
25 the rest of this today. At least that would be

1 my desire.

2 All right. Mr. Protopapas.

3 MR. PROTOPAPAS: Your Honor, just very
4 briefly cause it's the tail end of Mr. Sawyer's
5 argument so I'll do three things very quickly.

6 One, just to refresh the Court's
7 recollection, you did indeed rule on these
8 service issues before with Lloyd's. But
9 Mr. Sawyer was not the lawyer for Lloyd's at
10 that time. At that time I believe it was
11 Mr. Rawl.

12 THE COURT: That's correct.

13 MR. PROTOPAPAS: You issued an order on
14 March 22nd of 2024 in regards to ACL and Lloyd's
15 compelling Certain Underwriters of Lloyd's,
16 Resolute, Lloyd's of London, and so forth, where
17 they raised those similar type arguments.
18 That's one.

19 Two, I note to the Court that Ran Oren,
20 which is attached to my motion to compel,
21 Mr. Oren's letter of May 7th telling Lloyd's do
22 not cooperate with the receiver in his attempt
23 to find assets as a part of this continuing
24 pattern.

25 And finally, Your Honor, I will

1 reference -- I will reference the Welch opinion,
2 Your Honor, which I thought was a complete
3 victory and a complete affirmation of this
4 Court's proceeding when it says, "We hold any
5 insurance assets owned by Atlas Turner that may
6 cover Mr. Welch's injuries are properly within
7 the receivership estate, meaning those insurance
8 assets are within South Carolina's exclusive
9 jurisdiction."

10 They have an asset that's in the exclusive
11 jurisdiction of this Court. And I just raise
12 those three points briefly, Your Honor.

13 Thank you so much.

14 THE COURT: Hang on for a minute. He's got
15 a little bit of a -- kind of sideways approach
16 to that subject. He doesn't argue at all about
17 the asset in its presence here. What he argues
18 instead is the only service requirements with
19 regard to the nonparty subpoenas, much like
20 Judge Diaz talked about in the North Carolina
21 case, the typical, more usual subpoenas to
22 insurance companies for information about
23 policies.

24 Tell me why it's different here in the
25 light of what's said in Welch and otherwise.

1 MR. PROTOPAPAS: Yes, Your Honor. So our
2 Code 38-5-70 and 15-9-270 work together to
3 appoint the Department of the Director of
4 Insurance to accept summons and other process.

5 And as the Court knows, the commencement of
6 the civil action is by summons and complaint,
7 they could have said summons and complaint. It
8 said process. And it is to allow people like
9 South Carolinians, who are looking to recover
10 for a personal injury, to find out what asset is
11 there.

12 It could be Rule 33, our standard
13 interrogatories. It could be through these two
14 statutes. This insurance is properly before the
15 court to address a South Carolinian's injury.
16 And so 38-5-70, all legal process.

17 THE COURT: What do you do with the UIDDA
18 and the decisions like the North Carolina
19 decision Diaz authored?

20 MR. PROTOPAPAS: I think you can utilize
21 that tool if the entity is not registered with
22 our Department of Insurance. But once they
23 register with our Department of Insurance, they
24 subject themselves, and that's what our case law
25 references. It is giving our courts -- the

1 procedures were intended by the legislature to
2 be methods of obtaining jurisdiction over a
3 foreign insurance company. That's Equilease
4 Corp v. Weathers, 272 S.E.2d 789.

5 So if they're not registered to do
6 business, and many insurance companies are not
7 registered to do business in this state. I can
8 certainly go through that other format. But our
9 courts and our statutes and our legislatures say
10 all process.

11 And so we are attempting to find an asset
12 that is within the exclusive jurisdiction of
13 this Court. And this Court addressed these
14 issues with ACL and Atlas Turner where we ended
15 up finding, if you ask the right question,
16 there's a billion dollars of insurance for ACL.

17 And so the question -- I've been trying to
18 ask the right question over and over again. I
19 think I finally asked the right question.

20 And so in my mind, Your Honor, when I look
21 at the statutory provisions, and our case law,
22 all process can be accepted by the Department of
23 Insurance, and I must serve it on the insurance
24 company. I did that. I must deliver two
25 copies. I did that. And these procedures then

1 are intended to bring them before this Court.

2 THE COURT: They got a whole lot of other
3 questions about what you did in that regard, but
4 we're concentrating right now on the service on
5 the Department of the Insurance. And tell me
6 again, what you mean by registered with the
7 Department of Insurance.

8 Are you taking the position that Lloyd's,
9 Liberty, and Continental are certainly -- well,
10 those three companies that Mr. Sawyer
11 represented have some different status because
12 they are registered in South Carolina?

13 MR. PROTOPAPAS: Yes, Your Honor. Every
14 insurer shall, before being licensed, appoint in
15 writing the director and its successors in
16 office --

17 THE COURT: And are those three companies
18 registered in South Carolina?

19 MR. PROTOPAPAS: I attached a response from
20 the Department of Insurance --

21 THE COURT: I think the answer is yes.

22 MR. PROTOPAPAS: Yes. I believe the answer
23 is yes. I'm pulling up the letter from the
24 Department of Insurance, which was Exhibit B in
25 my motion. And they forward those to

1 continental Casualty. They forward them to
2 Liberty Mutual Insurance Company. And they
3 forward them to underwriters at Lloyd's of
4 London.

5 So I served the Department of Insurance
6 Exhibit B to my motion is the South Carolina
7 Department of Insurance acceptance and
8 forwarding of that process. And so I believe
9 the Department of Insurance did what it's
10 supposed to, forward it on. And if the asset is
11 there, and they're not willy-nilly subpoenas, I
12 understand the additional insured is a tricky
13 question.

14 All I can tell Your Honor is I have reason
15 for it, which was the Aon paragraph of how they
16 define their own insureds. I'm trying to use
17 their words to them. I'm trying to get -- ask
18 the right question. If I ask the right
19 question, perhaps I find the 50 million pounds
20 insurance policy capable of covering Ms. Park's
21 injuries.

22 THE COURT: Now, what do you say to the
23 argument that going back to the 1930s is way,
24 way over reaching?

25 MR. PROTOPAPAS: Your Honor, on that

1 specific issue, I'm more than happy to reform it
2 to the 1960s to present. That's perfectly fine
3 with me. It's just what the hope was if they
4 find it -- if somebody calls me and says we
5 can't go back that far, Peter. Fair enough.

6 But if they can, and if they can give me --
7 unlock another piece of information and another
8 piece of information.

9 And I would give the Court the example of
10 ACL. Where 46 times somebody represented to you
11 there's no insurance to tender to. And that
12 representation obviously, I guess it was '23
13 now, if you go by the named insured on the
14 policy was adequate.

15 But if you go by the additional insured or
16 if you keep asking the question in a way -- you
17 know, the 2009 policy is now -- maybe it opens
18 up ten years of historical coverage or people
19 tend large --

20 THE COURT: I understand that, but, you
21 know, when you go back way beyond what the --
22 you know, back years before this exposure took
23 place, you don't really have much of an argument
24 that there's a high probability that you're
25 going to find something that covers something

1 that's 20 years or 30 years pre the exposure.

2 MR. PROTOPAPAS: And I'm fine with
3 reforming the subpoena to be post 1960 policies.

4 THE COURT: Okay. What else?

5 MR. PROTOPAPAS: That is it, Your Honor.

6 THE COURT: All right. Ms. McVey, I
7 hesitate to call on you.

8 MS. MCVEY: I'm happy to even not stand up,
9 but I didn't know if you wanted me to respond to
10 a few of his arguments or not.

11 THE COURT: Well, I'm covering all my
12 bases, but I'm not begging you to.

13 MS. MCVEY: The only thing I will say is
14 you have ruled about the service on the Park
15 case was proper in Cape. You had a day-long
16 hearing. You issued an 80-page order. That
17 issue is done, as far as I'm concerned.

18 I have walked you through why the cases
19 that Mr. Sawyer and others rely on about the
20 closing of the estate. It's not applicable
21 here. The cases they rely on talk about
22 jurisdiction at the beginning of a case when a
23 case is filed. We have had that here. We had
24 jurisdiction. There was a mistake. The estate
25 was closed. We reopened it. It can be ratified

1 again. Otherwise, the statute 701 makes no
2 sense, nor does 17(a), nor does Fisher, which
3 tells you you have no discretion but to allow us
4 to cure it.

5 THE COURT: So in sum, all right, kind of
6 heart and soul of that is we sued Cape before he
7 got -- before this estate was closed?

8 MS. MCVEY: Sued and served.

9 THE COURT: And served --

10 MS. MCVEY: Yes, ma'am.

11 THE COURT: -- before the estate was
12 closed. That's your argument. And so beyond
13 anything else, the action commenced at a time
14 when there wasn't any question but what he had
15 the authority to commence.

16 MS. MCVEY: Absolutely. And while he was
17 still PR, Cape's answer was due. Okay. Which
18 they never have responded to and still haven't.
19 So I don't even think they have standing to
20 raise these issues, but if they do, then we have
21 statutes and case law that protect us on it and
22 allows us to correct it, which is what the court
23 has directed us to do. There's no prejudice to
24 anybody here with that.

25 THE COURT: One thing I never did ask, and

1 I don't want to open a whole can of worms. It
2 will be explored when we get to the bigger
3 question of Tibbs anyway, and that is this: Why
4 did you never put them in -- ask for an order of
5 default?

6 MS. MCVEY: So that's a valid question, and
7 that is a thought that we had had based on past
8 cases. What I don't ever want to do is get a
9 default judgment that I can't do anything with.
10 And that becomes the dilemma. So we wait for
11 them to come in, see what we can do.

12 And then is there a reason to appoint a
13 receiver here? Let me go look. Because if
14 there's insurance and I have a default judgment
15 and now it gets tendered to the insurance
16 carrier, what is the insurance carrier going to
17 say? You can't collect it. You can't do
18 anything with it because we have noncooperation.
19 That's why we didn't do it.

20 And Welch says, you know, look, this
21 shouldn't be used in a typical default case.

22 THE COURT: What you're saying is they let
23 themselves go into default, then the insurance
24 company comes out from under them and says, hey,
25 that was noncooperation by our insured so we're

1 sorry, Plaintiff, but you don't get anything.

2 MS. MCVEY: Absolutely.

3 THE COURT: So that's the rationale. I
4 understand it now. I'm not saying agree,
5 disagree, or anything else --

6 MR. PROTOPAPAS: I understand.

7 THE COURT: -- but I wanted to have the
8 record clear about why you all didn't do that.

9 MS. MCVEY: So that's why we didn't do it.
10 I'm not getting into the moral fraud argument
11 again. I think you've heard enough about that
12 unless you want me to respond to --

13 THE COURT: No, I think that's on the
14 record by both sides.

15 MS. MCVEY: Okay. Anything else I can
16 answer?

17 THE COURT: That's it.

18 All right. Now, it's 12:10. Okay. Guys,
19 if we do it at quarter of 2, will we have time
20 to finish today? I'm not pressing anybody. I
21 know you all got many, many things to say on the
22 bigger question of the receivership in Tibbs.

23 MR. CARROLL: Your Honor, Todd Carroll for
24 the Altrad defendants. I think so. If we come
25 back at 1:45. Is that your question?

1 THE COURT: Yeah. I'm not -- listen here,
2 you all have handled things with great respect
3 and economy of motions so far, and I appreciate
4 that very much. And so I'm just kind of trying
5 to plan a little bit.

6 MR. CARROLL: Yes, ma'am. I can't envision
7 any reason why we can't be done today. I don't
8 speak for everybody.

9 THE COURT: I get it.

10 Anybody else got any thoughts about it?

11 MR. RAWL: Mr. Carroll can speak for me.

12 MR. CARROLL: No, thank you.

13 THE COURT: Ms. McVey.

14 MS. MCVEY: I think that's fine. And I
15 know Mr. Carroll said in his briefing, he made a
16 lot of his arguments last time so I don't know
17 how much more he's going to do.

18 THE COURT: Well, I'm not going to restrict
19 him. So, you know, we want this record to be
20 kind of a freestanding, complete picture on
21 everything, so ...

22 All right. Come back at quarter of 2.

23 MR. CARROLL: Thank you.

24 THE COURT: The court will be in recess.

25 - - -

1 (A lunch recess transpired.)

2 - - -

3 MR. BALBER: All right. Ladies and
4 gentlemen, come to order.

5 Let me ask you this. You know, we've done
6 that first part of the agenda on the Isabella
7 Park matter, and I just put that note that there
8 were things filed in Tibbs that related to the
9 Isabella Park case. That's because the
10 contentions of Altrad and certain others about
11 the receiverships tee off of Park and then, of
12 course, also have some other arguments that are
13 pertinent to Tibbs itself.

14 So I'm assuming that you're going to cover
15 those things in your presentation in Tibbs; am I
16 right?

17 MR. CARROLL: Your Honor, yeah, we're going
18 to cover all the Park issues and the Tibbs
19 issues at once.

20 THE COURT: Good.

21 MR. CARROLL: If that's okay with you.

22 THE COURT: Sure. Absolutely. All right.
23 I kind of was hoping that's the way it would go.
24 It just works a little bit better that way.

25 Let me just say to begin with, if the

1 parities feel that they need more time than what
2 is this day, I'm certainly willing to come back.
3 So please don't feel like you have got to be
4 rushed in making the kind of record you want.

5 We know we're making a record that won't
6 stop with me. So I want to be sure that you
7 have in the record the things that you would
8 like to have there.

9 Whether or not I agree with the pertinence,
10 or whether or not I agree with your status as an
11 entitled party or whatnot, I want everybody to
12 be able to get in the record what they want to
13 get in. So please understand I'm not
14 restricting you at all in that regard.

15 All right. So we look at the first thing
16 in the Tibbs, and it's Anglo American, De Beers,
17 et cetera's, Motion to Dismiss for Lack of
18 Subject Matter Jurisdiction, the Receiver's
19 Memorandum in Opposition, Anglo American support
20 or the memos in support of motions to dissolve
21 the Cape receivership and dismiss the
22 third-party plaintiff, Receiver's opposition,
23 and then of course replies.

24 So, to me, there's not a whole lot of
25 difference between dismissing the receivership

1 and the third-party complaint and dissolving the
2 receivership and dismissing the third-party
3 plaintiff's claims, but you all decide how you
4 want to do that. So with that.

5 MR. BALBER: It's up to you, Your Honor.
6 But I'm happy to go first on behalf of Anglo
7 American and De Beers.

8 THE COURT: Certainly. Certainly. In any
9 event, you do that. I'm just trying to figure
10 out whether both of those things mirror parts of
11 each other. So I'm not restricting you if you
12 want to cover both of them. However you want to
13 do it is what I'm saying.

14 MR. BALBER: Thank you, Judge. I think
15 they are all intertwined, and I will address all
16 of my points at least at one time. So thank
17 you.

18 THE COURT: For the record, introduce
19 yourself.

20 MR. BALBER: Yes, of course, Your Honor.

21 Scott Balber on behalf of the Anglo
22 American and De Beers defendants.

23 As a threshold matter, Your Honor, I just
24 want to thank you for adjourning from yesterday
25 to today so I could have the extra vacation day.

1 My wife is a little suspicious as to why I came
2 to visit with you instead of being on vacation,
3 but she'll get over it, Judge.

4 THE COURT: She will. Even husbands get
5 over it sometimes.

6 MR. BALBER: So first of all, Your Honor, I
7 just want to refresh on who we are, who my
8 clients are. I feel I need to do that because
9 there have been some allusions to these parties
10 and these guys, I just want to refresh on who we
11 actually are.

12 So we are a publicly-traded company in the
13 United Kingdom. My clients mine diamonds,
14 platinum, and copper. We're not an insurance
15 company. We've never mined or sold asbestos in
16 South Carolina or anywhere else.

17 We are in this case, I believe, because at
18 one point in time, a number of decades ago, one
19 of my client entities was a minority shareholder
20 in Charter, which was a minority shareholder in
21 Cape.

22 And that's our nexus to these facts. Never
23 a majority interest, only a minority interest.
24 We've cooperated fully in discovery. We
25 produced documents. We provided witnesses for

1 depositions. Already have proffered three
2 senior executives for depositions in this case.

3 And, again, just to distinguish ourselves,
4 we have not been part of any UK litigation, and
5 I certainly don't believe we've made any attacks
6 on plaintiffs or Mr. Protopapas or plaintiff's
7 counsel. I just wanted to clear all that up
8 first.

9 So moving to why we're here today,
10 Your Honor, and the Supreme Court's June 26th
11 order and Welch.

12 One principle, which I think is crystal
13 clear, is there must be an appointment order for
14 the receiver entered in this case. And I know
15 that we collectively did something
16 unprecedented, which is we broke the electronic
17 docket with the number of filings in this case.

18 And you know what you will not find in that
19 massive, broken electronic docket? You will not
20 find the entry of an appointment order vis-a-vis
21 the receiver in this case. It did not happen.

22 And therefore, there could be and have not
23 been -- could not have been and were not any
24 specific findings of fact or conclusions of law
25 about the appropriateness of a receivership

1 being entered in this case.

2 There is no evidence that Cape was
3 dissolved, and, in fact, we know Cape was not
4 dissolved. Cape continues to be an active,
5 living company in the United Kingdom. And I
6 know Ms. McVey said that in her good faith
7 belief when she sought the Park appointment
8 order was that Cape was defunct and had been
9 dissolved.

10 All I had to do, Your Honor, is go on the
11 company's house register in the UK, publicly
12 available, and search for Cape. And I found
13 sure enough, Cape remains a viable company today
14 and was so in 2024, 2023, 2022 and 2021.

15 We have a copy of the printout from the
16 Cape Intermediate Holdings Company house
17 register in the UK. I'm happy to share it with
18 counsel and the court.

19 THE COURT: Certainly. That would be well.

20 MR. BALBER: I will do that, Your Honor.

21 There's also no evidence that Cape is now
22 or has been insolvent. And we know that from
23 the receiver's own filings.

24 I believe it was Exhibit 24 of the
25 receiver's filings in which the receiver -- I'm

1 sorry, the receiver's Motion to Confirm, Exhibit
2 24, page 2, reflects that for the fiscal year
3 ending in August 2025, I believe -- I'm sorry,
4 August 2024, Cape had a profit of more than
5 25 million pounds. Not insolvent, not
6 dissolved, still in existence.

7 There's also no evidence of any in-state,
8 South Carolina assets that may be dissipated.
9 In fact, again, the receiver has stated that any
10 insurance that Cape may have had in
11 South Carolina or elsewhere was exhausted in
12 1978. That was in his report to the court from
13 a number of weeks ago.

14 Now, there's also no evidence of any
15 misconduct in this litigation before this court
16 by Cape.

17 Now, I heard Ms. McVey and Mr. Lay talk
18 about the things that Cape may have done
19 historically, and I can't really comment on that
20 except to say there was no admissible evidence.
21 They're from many decades ago. It was triple
22 levels of hearsay. And none of the things that
23 Ms. McVey or Mr. Lay claim that Cape did was
24 done before this court in this case. Unlike
25 what happened with regard to Atlas Turner and

1 Welch.

2 Now, the absence of an appointment order in
3 this case, vis-a-vis the receiver, means that
4 Cape was never served with the complaint. No
5 dispute about that. We know that
6 Mr. Protopapas, in his capacity as receiver for
7 Cape, accepted service of the complaint. That
8 deprived Cape of service and therefore due
9 process.

10 Now, I get that everybody is of the belief,
11 and it may be true, that Cape has engaged in all
12 this misconduct and has repeatedly defaulted for
13 many years and many jurisdictions and the like.
14 It doesn't deprive them of due process
15 entitlement to be served.

16 I said this last time and I'm going to say
17 it again, both because I like it and because
18 it's true, but due process is not reserved for
19 the good guys. You get due process whether
20 you're a good guy, a bad guy, or something else.
21 And Cape was deprived of due process in this
22 case because it was not served.

23 Now, that is not curable, Judge, because
24 everything that happened since then is a nullity
25 since Cape was not given due process and the

1 opportunity to respond.

2 And I analogize it to a criminal defendant
3 who has engaged in many crimes over many years.
4 Do they still get a trial? Yes, they do.

5 It's not good enough to say Mr. Jones or
6 Ms. Smith did bad things for many years and,
7 therefore, why bother giving them a trial? Due
8 process demands they get a trial in the case at
9 issue, and Cape was entitled to be served in
10 this case. They were not.

11 Now, to the extent the receiver and
12 Plaintiff's counsel are relying on the Park
13 order, I am not going to reiterate Mr. Sawyer's
14 points. I will incorporate them by reference,
15 if that's okay with Your Honor, and we certainly
16 agree with them.

17 Because the problems with Park, to the
18 extent Park is being relied on here, bleed into
19 this case. Not only were there all of these
20 incurable infirmities in the Park order, again,
21 that Mr. Sawyer alluded to, and I believe
22 Mr. Carroll will address as well, and, again,
23 which we incorporate by reference.

24 The order itself is grossly overbroad. It
25 does not comply with what the Supreme Court has

1 said is required under Welch. It allowed the
2 receiver in this case, in the Tibbs case, to
3 take action that is not permissible. And
4 there's a long list of things that have happened
5 in this case that the receiver has done because
6 of the breadth of the Park order that he's
7 relying upon that are improper.

8 And I'm going to list the laundry list of
9 things that happen, which in our view intrude
10 upon the purview of Cape's board, invade the
11 board room, and therefore are improper under
12 Welch.

13 He accepted service of the Tibbs lawsuit
14 against Cape. The receiver filed an answer on
15 behalf of Cape. The receiver waived Cape's
16 jurisdictional and merit defenses. The receiver
17 confessed Cape's liability. The receiver
18 entered into a tolling agreement with
19 Plaintiff's counsel. He sought to pierce the
20 corporate veil of Cape. He asserted third-party
21 claims.

22 He deprivileged Cape's documents. Many of
23 the documents that Ms. McVey alluded to, that
24 were part of her submission in Park, are
25 deprivileged Cape documents where the

1 attorney-client privilege was waived.

2 They have taken the position they're in a
3 common interest with their litigation
4 adversaries, the plaintiffs in Tibbs and the
5 plaintiffs in Park. They have appointed counsel
6 on Cape's behalf, and they sought the removal of
7 and sanctions of Cape's own lawyers.

8 These things are all things that are
9 reserved exclusively for the board of directors
10 and management of Cape, which, again, remains an
11 operative entity.

12 Now, one thing that struck me when we were
13 in front of Your Honor a couple of weeks ago,
14 which I want to come back to. And I don't
15 purport to know what Your Honor was thinking,
16 but I would like to take a guess and try to
17 address it.

18 Your Honor knows far more about
19 receiverships on this asbestos docket than I
20 will ever know and I could possibly learn. Let
21 me accept that fact. And I know Your Honor has
22 been instrumental in orchestrating the effective
23 use of receiverships on this docket for many
24 years.

25 And I think, again, not to be presumptuous,

1 that Your Honor had some discomfort with some of
2 the arguments that the defendants were making.
3 And I think, and Your Honor suggested this on
4 several occasions, that you stated and believed
5 this has worked for many years in these
6 receiverships.

7 Why is what we're doing now different?
8 What is problematic about this receivership in
9 Tibbs that has been sustained by the Supreme
10 Court, recognized by this court, repeatedly for
11 many years?

12 So what I did, my team did, I should say,
13 I'm not going to take credit for it, we looked
14 back and we tried to identify all of the
15 receiverships on the asbestos docket. We
16 believe there have been 21 of them. And I'd
17 like to explain why those 21 are different than
18 this one and why this one, the Tibbs
19 receivership, is unprecedented, and I
20 respectfully submit in a fundamentally flawed
21 way.

22 So 18 -- and I'm going to give you the list
23 after I make the point, if that's okay.

24 THE COURT: I'm aware.

25 MR. BALBER: I'm sure you can cite them

1 chapter and verse. But I will do it anyway for
2 the record, if that's okay, Your Honor.

3 THE COURT: It's perfectly okay, but I'm
4 tracking.

5 MR. BALBER: Thank you, Judge.

6 So 18 of the 21 receiverships on the docket
7 involve dissolved or defunct entities. Again,
8 not Cape. As I said a few minutes ago, Cape was
9 at the time the Park order was entered, at the
10 time that Tibbs case was initiated, and today, a
11 living, breathing entity, continues to be
12 registered in the UK corporate system. Not
13 dissolved or defunct.

14 The other three, which, again, I'll
15 enumerate in a second, the other three
16 receiverships on the asbestos docket involve
17 entities that were solvent, that were still in
18 existence, but for which there was evidence of a
19 risk of dissipating in-state assets. Neither of
20 those situations is applicable to Tibbs or, I
21 would submit, Park.

22 Let me read for the record the 18 that
23 involve the dissolved defunct entities. If I
24 missed one, I have no doubt Your Honor will
25 correct me. And if I misstated it, I say the

1 same thing. I'll do it quickly just for sake of
2 brevity.

3 The first one is Beaty Investments, Inc.,
4 formerly known as Guy Beaty Inc., B-E-A-T-Y.

5 THE COURT: Beaty.

6 MR. BALBER: Beaty. I knew it, Judge.
7 Thank you. I knew you would correct me if I was
8 wrong. I appreciate.

9 Covil Corporation, C-O-V-I-L; Davis
10 Mechanical Contractors, Inc.; Flame Refractories
11 Inc./United Construction Company of Rome, Inc.;
12 General Boiler Casing Company, Inc.; Great
13 Barrier Insulation Company; Heat and Frost
14 Insulation Company, Inc.; Hefco, H-E-F-C-O,
15 Inc.; J&L Insulation, Inc.; J.R. Deans Company,
16 Inc.; Payne & Keller Company; Piedmont
17 Insulation, Inc.; Pipe and Boiler Insulation,
18 Inc., formerly known as Carolina Industrial
19 Insulating Company, I'm sorry, Windup Limited.

20 Presnell, P-R-E-S-N-E-L-L, Insulation
21 Company, Inc.; Southern Insulation, Inc.;
22 Stafford Insulation Company; Standard Insulation
23 Company of North Carolina, Inc.; and Starr Davis
24 Company, Inc., and Starr Davis Company of
25 South Carolina, Inc.

1 Those are the 18 that were defunct or
2 dissolved at the time the receivership was
3 formed.

4 The three involving viable companies with
5 risk of dissipation of in-state assets were
6 Asbestos Corporation Limited, Atlas Turner,
7 Whittaker Clark & Daniel. And the last one, by
8 the way, Whittaker Clark & Daniel was a post
9 judgment receivership appointment, but I
10 included it anyway.

11 Those are the 21, Judge. Not one of them
12 involved a viable, vibrant corporation that
13 lacked, A, in-state South Carolina assets, let
14 alone in-state South Carolina assets that were
15 at risk of being dissipated and the process
16 being dissipated.

17 So this is a unique situation where,
18 Your Honor, we've heard quite a bit today
19 already. You'll hear some more about why this
20 is a failed receivership. Why this should not
21 be recognized.

22 And I believe Your Honor can continue to
23 utilize the receivership process in the way
24 you've done it in the past 21 receiverships and
25 in the future receiverships where you have,

1 again, either defunct entity or a risk of
2 dissipation -- a material risk of dissipation of
3 in-state assets.

4 That's all I have, Your Honor. Happy to
5 answer any questions.

6 THE COURT: Thank you, Mr. Balber. That's
7 a good summary.

8 Let me ask you this: Just put yourself in
9 the Court's shoes for a minute. If you got a
10 defendant who won't answer, not even to say what
11 many people say, what other folks in this case
12 have said, which is my answer is I'm not subject
13 to your jurisdiction, or my answer is I'm not
14 appropriately in this case because the plaintiff
15 has no valid claim against me or a myriad of
16 things that indicate a challenge to the Court's
17 authority to have that entity appear.

18 Then, of course, the Court knows what it's
19 dealing with. How does the Court respond when
20 you've got a company that absolutely defies and
21 instructs even its insureds to defy the Court's
22 authority?

23 And I'm not asking you to give away
24 anything or concede to anything. I understand
25 your position, and it's a well-presented one and

1 an honestly held view on the part of your
2 client. But what does a Court do in that
3 situation?

4 MR. BALBER: Thank you for the question,
5 Your Honor. I'll put it this way. Step one --
6 and I'm going to lay it out how I see it if I
7 were in your shoes, which I am not and will
8 never be.

9 Step one, the plaintiff in the lawsuit, the
10 injured plaintiff, files the complaint and
11 serves the defendant. Step one. That step has
12 not happened.

13 Step two, that defendant either appears or
14 not. I know in your hypothetical, Judge, that
15 defendant does not appear and they default.

16 Step three, the plaintiff, then, either
17 seeks a default judgment. And that's clean and
18 that's easy. We all know how that works. I
19 know Ms. McVey articulated an insurance-related
20 reason why not to do that. But that is
21 certainly inevitable. Obtain a default
22 judgment, have a receiver appointed post
23 judgment, very frequent, very common, and have
24 that post judgment appointed receiver seek to
25 enforce the judgment and collect assets on

1 behalf of the plaintiff.

2 Alternative is the plaintiff, again, in
3 this case with Mr. Tibbs, Mr. and Mrs. Tibbs,
4 they then come to Your Honor. Your Honor, I
5 served Cape, or whoever the defendant may be,
6 they have not appeared. Now I'm Mr. Tibbs and
7 making a motion to you, Your Honor, to appoint a
8 receiver.

9 Your Honor then follows through with a
10 proper finding of facts and conclusions of law.
11 Your Honor appoints a receiver in accordance
12 with the statute. That imposes certain
13 obligations on to Tibbs, as Your Honor is aware,
14 post a bond, be liable if it's determined that
15 there's no receivership, and you're off to the
16 races.

17 But none of that happened here, Your Honor.
18 So I am not suggesting, and I would not suggest,
19 that there is no mechanism for an injured party
20 or an aggrieved court that feels like somebody
21 is thumbing their nose at the court to find a
22 remedy. But it has to be done the right way.
23 And what I've articulated is the only right way
24 to do it.

25 Again, Mr. Sawyer said this, and I'm going

1 to reiterate it, it's not Your Honor's fault
2 that we are where we are. I think Your Honor
3 relied on statements that were I think made in
4 good faith but end up being wrong about certain
5 aspects of the court receivership.

6 And now we're at a Tibbs situation that is
7 impregnated by the Park situation. It's the
8 fruit of the poisonous tree. And now the whole
9 thing is flawed and we have to go back to the
10 beginning or not.

11 But what's happened here is not sustainable
12 because it is not abided by due process or the
13 receivership rules or what I understand the
14 Supreme Court to have asked to be done.

15 I'm happy to answer any more questions.

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

17 MR. BALBER: Thank you for your time,
18 Your Honor. And I do have the company house
19 listing, which I don't know how you would like
20 me to offer it. May I approach and give you
21 that?

22 THE COURT: Yes, of course.

23 And, Madam Court Reporter, Mr. Balber is
24 giving the other side a copy.

25 And if you will give the court reporter a

1 copy and that will be Court's Exhibit 1. It's
2 in the record.

3 MR. BALBER: Thank you, Your Honor.

4 - - -

5 (COURT'S EXHIBIT NUMBER 1, Cape
6 Intermediate Holdings Limited House Register,
7 was marked for identification.)

8 - - -

9 THE COURT: Now, what's going to happen
10 next? Do you want to continue your side?

11 MR. CARROLL: Do you want to finish us off?

12 THE COURT: I think that's an excellent --
13 let's get the complete argument out there, and
14 then I will turn it to the other side.

15 MR. CARROLL: Yes, ma'am. Thank you.

16 Good afternoon, Chief Justice Toal.

17 THE COURT: Yes, sir.

18 MR. CARROLL: May it please the Court.

19 Todd Carroll on behalf of the Altrad defendants
20 in the Tibbs case.

21 Your Honor, I appreciate you giving us some
22 time. I appreciate the way you're
23 systematically working through this.

24 I do not intend to replot all of the ground
25 that my friends on the -- Mr. Sawyer and

1 Mr. Balber, I don't intend the reflow all that
2 ground. I do want to incorporate by reference
3 what Mr. Sawyer said with regard to the myriad
4 of problems with the Park receivership
5 appointment. And I want the record to be
6 crystal clear on this.

7 At the time the appointment was entered, it
8 was a nullity. The estate was closed. There's
9 no dispute about that. There did not exist an
10 entity that could have even asked for that order
11 to be entered.

12 I want -- I do diverge with Mr. Sawyer on
13 one point, and I want to make sure this is in
14 the record. So, Your Honor, if I may approach,
15 this is a compilation of some exhibits that
16 we've already filed. But I want to mark, Your
17 Honor, do this a little systematically just so
18 it's clear what we're talking about.

19 - - -

20 (COURT'S EXHIBIT NUMBER 2,
21 DESCRIPTION , was marked for
22 identification.)

23 - - -

24 THE COURT: Mr. Carroll hands to the Court
25 an order on Plaintiff's Motion to Appoint

1 Receiver.

2 MR. CARROLL: Well, this isn't an order,
3 Your Honor. This is Mr. Park's application to
4 open the estate.

5 THE COURT: Well, I was trying to read all
6 these documents at one time.

7 MR. CARROLL: Yes, ma'am, of course.

8 THE COURT: Let me put them in order here.

9 Mr. Carroll hands up Plaintiff's Motion for
10 the Appointment of a Receiver. July the 28th,
11 2023.

12 MR. CARROLL: No, ma'am.

13 THE COURT: Oh, it's these packets?

14 I'm sorry, Mr. Carroll. You're handing me
15 something that I've seen before, of course.
16 This was an exhibit to your argument regarding
17 this matter, and it is represented to be a copy
18 of the estate file in Park. It ends with a
19 document filed March of 2022.

20 There has, of course, been other activity
21 in the file since then, but this represents the
22 activity from June 2021, when the estate was
23 filed, until --

24 MR. CARROLL: Yes, ma'am.

25 THE COURT: -- March of '22. March 18,

1 2022, when the estate was closed.

2 MR. CARROLL: That's right. Your Honor,
3 there is one document in there that has my name
4 at the top that's not yet in the record. It is
5 now, and we'll file it later on in the public
6 index. It's a calendar appointment for
7 mediation in the Park case. It should be the
8 third stapled document.

9 It looks like this.

10 THE COURT: I have it. I have it.

11 MR. CARROLL: No, ma'am.

12 THE COURT: Not yet. Yes. All right.

13 Mr. Carroll is drawing my attention to a
14 document labeled Todd Carroll dated May the
15 24th, 2022.

16 MR. CARROLL: Yes, ma'am.

17 THE COURT: And it is memorandum of a Zoom
18 conversation.

19 MR. CARROLL: Well, it's a calendar
20 appointment for a Zoom conference.

21 And, Your Honor, let me walk you through
22 these documents.

23 THE COURT: All right. Okay. I've got
24 them in the order you gave them to me.

25 MR. CARROLL: The top document is what

1 Mr. Sawyer referred to as an oddity. And this
2 is where he and I diverge a little bit because
3 Mr. Sawyer talked about he gave Your Honor a big
4 argument about judicial estoppel.

5 And he said, Look, Mr. Park has made
6 representations to multiple courts. His counsel
7 told this court in June of '22 that his case was
8 fully resolved. He went to the probate court
9 the next business day, told probate Judge
10 Caldwell that his time as a personal
11 representative should come to an end because he
12 had done all of his work. And he asked Judge
13 Caldwell to terminate his appointment and close
14 the estate.

15 And Judge Caldwell did. She took him at
16 his word and she granted his motion.

17 Mr. Sawyer pointed out that when Mr. Park
18 opened the estate, he filled out this document.
19 And on the third page, questions 11C and 11D
20 asks specifically, "Are you seeking appointment
21 as personal representative in order to pursue
22 civil litigation on behalf of the decedent's
23 estate? Is there a civil litigation attorney?"

24 And of course at the time that he answered
25 this question, the Park case already existed.

1 It had already been filed in Your Honor's court.
2 Yet Mr. Park told the probate court no.

3 Question 11D: "At the time of decedent's
4 death was he or she involved in any pending
5 civil litigation? Is there a civil litigation
6 attorney?"

7 Again, we know the answer is yes because
8 the Park case already existed in front of
9 Your Honor. Yet Mr. Park told the probate court
10 and the creditors of the estate and his
11 co-beneficiaries and presumably his probate
12 attorney, he told them no.

13 Then that was in June of '21. Mr. Park
14 then gets his personal representative
15 appointment from the probate court, and he comes
16 back to your court.

17 He then, in May, there were three -- there
18 were three beneficiaries of this estate,
19 Your Honor. There's Keith Park, who became the
20 personal representative. He had two siblings,
21 Alistair and Fiona. One of them lives in
22 Greenville. The other lives in Texas.

23 On May 21st, Fiona, Fiona Wiley, signs a
24 receipt and release. It's witnessed. She
25 acknowledges that she has received all she's

1 supposed to get from the estate, and she
2 releases -- quote, releases and forever
3 discharges the estate and the personal
4 representative from any and all rights and
5 claims which the undersigned may have relating
6 to the estate. Ms. Wiley signed that on
7 May 21st, 2022.

8 The brother, Alistair Park, signs the exact
9 same form, making the exact same
10 representations, containing the exact same
11 releases on May 22nd of 2022.

12 Now let me tell you why that strikes me as
13 something that ought to be a concern for the
14 court in the context of judicial estoppel.

15 Keith Park went to the probate court in
16 Spartanburg and told that judge, I need you to
17 open this estate, but I'm not looking to get
18 involved in any civil litigation. And, in fact,
19 there isn't any civil litigation regarding the
20 decedent.

21 That's not true. But that was his
22 representation to that court. And anybody else
23 who looked at the probate file, including
24 creditors of the estate, potential creditors of
25 the estate, and his co-beneficiaries.

1 In May of '22, May 21st and 22nd of '22,
2 the two other co-beneficiaries executed releases
3 that were witnessed that forever released any
4 claim they might ever have against the estate or
5 against the personal representative.

6 Then -- and this is the new document that
7 I've added, that I was trying to get Your Honor
8 to find in the packet -- the Park case is
9 mediated with Tom Wills, who is the regular
10 mediator for these asbestos cases. Mr. Wills
11 mediated the Park case on May 24th of 2022.

12 And that's what this Zoom meeting
13 appointment is that I put in the record.

14 That time -- the date and time of that
15 meeting -- of the mediation was announced on May
16 the 19th of 2022.

17 So between May 19th, when the mediation was
18 announced, and May 24th, when the mediation
19 actually took place, Mr. Park's two
20 co-beneficiaries released any interest they may
21 ever have in this estate, and they released any
22 claim they may ever have against the personal
23 representative.

24 Then the case is mediated. And then the
25 story picks up, Your Honor. You know on June

1 the 3rd, Ms. McVey represented to the court that
2 the Park case and the Garrin case were both
3 fully resolved.

4 THE COURT: Well, Mr. Park himself, also on
5 June 6th, 2022, signed a release, correct?

6 MR. CARROLL: Yes, ma'am. Yes, he signed a
7 release as well.

8 THE COURT: This is not something he pulled
9 over on them. All three of them signed a
10 release that was filed with the estate papers.

11 MR. CARROLL: All three filed the release,
12 but, Your Honor, the timing, again, we're
13 talking about judicial estoppel, the timing
14 matters. The co-beneficiaries, who, I don't
15 know if Alistair Park and Fiona Wiley even know
16 this case exists. They certainly wouldn't learn
17 of it by looking at the probate file because
18 their brother, when he applied to open the
19 estate and be named as the personal
20 representative, told the Spartanburg probate
21 court --

22 THE COURT: I get that already.

23 MR. CARROLL: I understand. But the timing
24 of them releasing their claims comes right
25 before the money actually comes in for the case.

1 They release it days before the mediation.

2 Then he -- Mr. Keith Park releases his
3 future interest in the estate after the
4 mediation. And that he releases his the same
5 time he goes back to the Spartanburg County
6 probate court and says terminate my appointment,
7 close the estate, my work here is done.

8 And the last document in that packet that I
9 handed up, Your Honor, as far as we can tell,
10 the only inventory that was filed with the
11 probate court, it does not appear to make any
12 mention of this case in Richland County.

13 There is a Tab C.

14 THE COURT: Spartanburg County.

15 MR. CARROLL: No -- yes, ma'am. What I'm
16 saying is there's no filing in the probate court
17 in Spartanburg that in any way references the
18 Richland County wrongful death/survival act.

19 THE COURT: Yeah.

20 MR. CARROLL: Even category C, which is on
21 page 2 of the inventory, is called -- the
22 heading says Cash, Bank Accounts, Notes
23 Receivable. But then in the non-bold type it
24 lists what you're supposed to put in there and
25 that includes Survival Action Proceeds.

1 And all Mr. Park represented to the probate
2 court was that there a little less than \$28,000
3 cash on hand. He doesn't reference anything
4 about survival action proceeds. And this was
5 filed in March of '22 before the Park case was
6 mediated.

7 So, again, if we're talking about judicial
8 estoppel, I want the record to be crystal clear
9 on this, because the Supreme Court has
10 specifically asked what's going on in Park? So
11 if the Supreme Court ever reads this record, I
12 want them to know loud and clear, there's not
13 one document filed in the Spartanburg County
14 probate court that in any way references this
15 case in Richland County -- this tort case in
16 Richland County.

17 South Carolina Code 15-51-42 puts it on the
18 personal representative to tell the probate
19 court about the survival -- survival actions and
20 survival settlements. There's nothing in the
21 probate court about it.

22 And as Mr. Sawyer mentioned when Mr. Park's
23 probate attorney, which is not Ms. McVey, a
24 different lawyer up in Spartanburg, when
25 Mr. Park's probate lawyer filed a motion to have

1 him reappointed and have a new estate created to
2 be administered, they didn't mention in that
3 filing the Park case in Richland County. They
4 said meet Mr. Park, representative. I want to
5 be reappointed for possible litigation or
6 potential civil litigation. Again, not
7 referencing this case.

8 THE COURT: Let me see if I understand what
9 your argument is. You're arguing that the --
10 what took place in the estate case operates as a
11 judicial estoppel against what?

12 MR. CARROLL: Well, I think that
13 Mr. Park -- I'm not sure Mr. Park had authority
14 to be the personal representative in the tort
15 case that was in front of you in the first
16 place. Because his appointment out of
17 Spartanburg came based on a statement to the
18 Spartanburg County probate court that he was not
19 going to try to get involved in any civil
20 litigation on behalf of the decedent because
21 there was no civil litigation on behalf of the
22 decedent.

23 Now, I'm not trying to undo any kind of
24 settlements that he's entered or any dismissals
25 that may have already taken place.

1 THE COURT: You could have fooled me.
2 Arguing judicial estoppel. But I'm listening.

3 MR. CARROLL: Well, but what I am saying is
4 not only are the legal impediments of the
5 action -- the receivership order was a nullity
6 when it was entered. And that is an incurable
7 problem because you can't -- the Rule 17 --

8 THE COURT: I understand what you're
9 arguing with respect to the receivership. But
10 when you start arguing judicial estoppel with
11 respect to the estate, that's where I'm wanting
12 to understand what you're arguing there.

13 What does the activity in the estate, how
14 does it judicially estop something? And what is
15 the something it judicially estops?

16 MR. CARROLL: As I understand it, from the
17 receiver and from Ms. McVey, they want
18 Your Honor to say what happened in March of 2023
19 in this court was just fine. They want -- they
20 want to nunc pro tunc all of the many, many
21 flaws and all of the jurisdictional defects by
22 saying, well, he got reappointed so it's all
23 good.

24 And what I'm saying is his initial
25 appointment all the way to the current

1 reappointment of a new estate never mentions
2 this case.

3 THE COURT: I'm asking a real simple
4 question, Mr. Carroll, and that is are you
5 claiming that -- that, A, you've got the
6 standing? And B, are making the argument that
7 this estate is somehow judicially estopped from
8 being created and moving forward?

9 MR. CARROLL: I'm saying that I think --

10 THE COURT: Just answer me that question
11 first. I don't mind whatever else you say. I
12 want to know, first of all, whether what you're
13 arguing now is an -- is a direct attack on the
14 existence of the estate from the git-go and its
15 operation.

16 MR. CARROLL: I'm not attacking the estate.
17 What I'm saying is that the punitive personal
18 representative's behavior in front of this court
19 should be judicially estopped because --

20 THE COURT: Well, what is the behavior of
21 his you want to be judicially estopped?

22 MR. CARROLL: The attempt -- the attempt to
23 stand here in August of 2025 and say, well,
24 whatever happened in March of '23 was okay.

25 THE COURT: Why does that concern you?

1 What you are really trying to do is say he
2 didn't have the authority or the lawsuit didn't
3 have the existence to allow the appointment of
4 the receiver. I get that argument.

5 MR. CARROLL: Sure.

6 THE COURT: But what I'm very concerned
7 about is this broader argument you're making
8 that this whole estate is somehow or another
9 acting ultra vires or is not properly in
10 existence. I don't think you've got the
11 standing to make that argument to begin with
12 because it has --

13 MR. CARROLL: That's right.

14 THE COURT: -- the broader issue of the
15 estate, how it operated, how it received,
16 whatever it received, whether those funds went
17 directly to beneficiaries or anything else about
18 it is not Altrad's concern.

19 MR. CARROLL: You're right, Your Honor.

20 THE COURT: That's all I want to do. I
21 want to stay within my lanes. I'm not a probate
22 judge either. Ponda is the probate judge up
23 there, and she can make the decisions if there's
24 some challenge in the probate court to his
25 authority.

1 But up here, all I've got is documents that
2 indicate the authority and then a claim that
3 stands on its own by you that the receiver was
4 not properly appointed.

5 I am -- I've got heartburn about you all
6 wanting to attack the whole operation of this
7 estate. I don't know how it was operated and
8 whether everything it did satisfied every nicety
9 of the law. But that's not something that's
10 before me right now. All I've got is a very
11 narrow question about the legitimacy of the
12 appointment of the receiver.

13 MR. CARROLL: Yes, ma'am.

14 THE COURT: And I want to keep it on that
15 basis. That's plenty enough to digest all by
16 itself.

17 MR. CARROLL: Understood. Yes, ma'am.

18 THE COURT: I'm not saying this in a
19 hostile way, but what I want to be sure we all
20 understand is there is nothing that's being
21 argued here in front of me today by you,
22 Mr. Balber, or anybody else that requests that
23 some action be taken with respect to the
24 legitimacy of this estate.

25 MR. CARROLL: No, ma'am. I'm simply

1 extrapolating on Mr. Sawyer talking about
2 judicial estoppel.

3 THE COURT: I know I had some heartburn
4 about that too. But I decided in light of all
5 the other things he was talking about, that
6 really that's a tangential issue to what he's
7 really saying.

8 MR. CARROLL: Sure.

9 THE COURT: Judicial estoppel is a loaded
10 term, a complex term, that can encompass a lot
11 of different things. And I certainly don't want
12 to get off on that tangent.

13 MR. CARROLL: Yes, ma'am.

14 THE COURT: Articles by me to the contrary
15 notwithstanding, I don't want to get into all of
16 that. That's way above my pay grade now.

17 MR. CARROLL: Oh, Your Honor, judicial
18 estoppel is not above your pay grade. You wrote
19 the opinion.

20 THE COURT: I've written a lot of opinions
21 and articles and everything else. I don't want
22 that to infect the legitimacy of this estate, is
23 what I'm telling you.

24 MR. CARROLL: I understand.

25 THE COURT: And I'm saying that unless I

1 hear differently, there's nothing I have heard
2 so far or have read in all of the many filings
3 that I have studied closely that would lead me
4 to believe that it is necessary to make any kind
5 of judgment about the legitimacy of this estate.
6 And I'm not going to do that.

7 MR. CARROLL: Your Honor, I'm not
8 challenging the legitimacy of the estate.

9 THE COURT: We're on the same page.

10 MR. CARROLL: What I am saying is that when
11 Mr. Park drives down I-26 from Spartanburg to
12 Richland County and comes in this court and
13 says, oh, yeah, the estate was closed in 2022,
14 and then my lawyer filed for a receivership in
15 2023, and I wasn't the PR, and the estate was
16 closed. And now I'm going to go back to
17 Spartanburg and get a new appointment --

18 THE COURT: We'll make -- we can make
19 decisions about what the effect is of reopening
20 the estate. I get that. But that's something
21 that's a very narrow issue, and I'm hearing both
22 sides of that.

23 MR. CARROLL: Yes, ma'am.

24 THE COURT: And I very open-minded about
25 it.

1 MR. CARROLL: I just think he's estopped
2 from going back up there, getting another order,
3 and coming down here saying whatever happened in
4 '23 --

5 THE COURT: That's where I cannot follow
6 that argument. The idea that a person who has
7 formerly been the administrator or the executor
8 of an estate is estopped to go back to the
9 probate court and request an opening of the
10 estate, I don't think it's in front of me. I
11 don't think it's appropriate that I rule on
12 that.

13 And I don't think that's -- you can attack
14 this with all the legitimacy on the basis of
15 good arguments you make about the order
16 appointing and whether it gets into Park or if
17 it's to be recognized in the subsequent Tibbs
18 suit. I get that.

19 MR. CARROLL: Sure.

20 THE COURT: That's all fair game. But I
21 can tell you that I'm very resistant to the idea
22 of characterizing anything that Mr. Park did to
23 reopen this estate or open it to begin with and
24 answer the questions in a way that doesn't
25 comport with the way we view it here as anything

1 that I need to review.

2 And I certainly do not think that I would
3 have the ability to rule that an individual who
4 was the former executor or personal
5 representative of an estate in Spartanburg is
6 estopped by anything from going back and
7 reopening. And I'm not going to do that.

8 MR. CARROLL: Very good, Your Honor. I
9 just want -- because the Supreme Court has asked
10 what is going on in Park? I want the record to
11 be clear on that.

12 THE COURT: That ain't going on in Park in
13 my view. I can answer a whole lot of other
14 questions about what's going on in Park, but I
15 am not disposed one bit to say that activity in
16 this case somehow estops what the probate judge
17 did in reopening this estate. That's an
18 argument --

19 MR. CARROLL: Your Honor --

20 THE COURT: The legitimacy of the reopening
21 of the estate or how it affects your case is
22 something you can argue. But the concept that
23 anything that was done in this case estops
24 someone from going to a duly authorized probate
25 judge and making showings to that probate judge

1 and reopening the estate, I don't see judicial
2 estoppel as being something I would rule on in
3 that.

4 MR. CARROLL: Your Honor, so I'm actually
5 arguing the exact opposite. I'm not arguing
6 anything happened here that should estop
7 Mr. Park in Spartanburg. I'm arguing the exact
8 opposite. I'm saying what he told the judge in
9 Spartanburg --

10 THE COURT: And I'm saying I don't have any
11 business in that judge's court and in that
12 judge's determination. That would be completely
13 wrong for me to sit here and say with the
14 advantage of what I know, Judge, he was estopped
15 from coming before you. That would be something
16 that judge could decide.

17 MR. CARROLL: Yes, ma'am. I understand.
18 And that's not my argument. But the simple fact
19 is, is that everything that's happening in the
20 Park case only -- can only happen if there was
21 actually any authority for Mr. Park and the
22 creation of the estate that comes out of
23 Spartanburg.

24 THE COURT: I can rule on the authority
25 thing, but I'm not going to rule on it on the

1 basis of judicial estoppel.

2 MR. CARROLL: Very good. Thank you for
3 letting me make my points on that.

4 THE COURT: Yes, sir. All right.

5 MR. CARROLL: I will also join I think
6 Mr. Balber and Mr. Sawyer on the service issues
7 with Cape. I know that the common retort to
8 that has been we've already decided that. Well,
9 Your Honor, the facts remain the same. There's
10 a single affidavit in the file that didn't exist
11 in March of '23 when the receivership
12 appointment order was entered.

13 That affidavit says I served the first
14 amended summons. And that's -- and then the
15 affiant shows us his cover letter. And the
16 cover letter says enclosed herewith is the First
17 Amended Summons. Full stop. And then it says
18 enclosures. And the only thing it says for
19 enclosures is First Amended Summons.

20 I understand when Ms. McVey was up here,
21 she was saying that, well, Mr. Park had
22 authority and the estate was still open when
23 Cape's answer was due. But what she didn't tell
24 you is when was Cape's answer due? And the
25 reason she didn't tell you is because there is

1 no date that Cape's was due.

2 It was never served -- there are three
3 complaints in this case. She can't tell you
4 which of those complaints were ever sent to any
5 Cape entity because the record is totally silent
6 on that.

7 The guy who did the service didn't identify
8 any pleading that he sent to any Cape entity.
9 And I understand that they say, well,
10 Your Honor, you've already decided that. You
11 know Rule 54 pointblank says until an order is
12 up on appeal, you can correct it.

13 And I would urge Your Honor to look
14 carefully at the evidence on this issue because
15 it is a -- without service, there's no personal
16 jurisdiction. You know, I don't know, I'm still
17 kind of puzzled why a South Carolina trial
18 court -- why the plaintiffs and the receiver are
19 insisting that a South Carolina trial court just
20 seize assets of a UK company for which there is
21 no evidence it has any personal jurisdiction
22 here in the first place.

23 But notwithstanding is the lack of
24 personal jurisdiction for Cape in
25 South Carolina, you can't even get to that

1 analysis without first having legitimate service
2 of process. The record is devoid of that
3 threshold point.

4 I know you've heard these arguments. I
5 want to remind you Rule 54 gives you the chance
6 to fix that. And that's the easiest rebuttal I
7 can think of to my friends on the other side's
8 retort that, well, you've already ruled on that.

9 THE COURT: Right.

10 MR. CARROLL: Your Honor, I feel like I
11 need to address some of the -- some of the
12 so-called moral fraud points.

13 THE COURT: Certainly.

14 MR. CARROLL: Ms. McVey gave you a pretty
15 fulsome presentation on that. I haven't heard
16 anybody really respond to the actual merits. I
17 will point out, as I frequently do, my clients
18 are Mr. Altrad and Altrad Investment Authority.

19 My clients, Altrad Investment Authority,
20 bought shares of Cape in 2017. They were
21 publicly available shares. Everything you've
22 heard about moral fraud and what was going on
23 with NAAC was all from the 1970s. So 40 years
24 before my client even had an ownership interest
25 in Cape.

1 Cape is a stand-alone company. There is
2 certainly no -- there's nothing in the record to
3 suggest otherwise.

4 But I want to address the moral fraud
5 points in two ways: First, Mr. Balber pointed
6 this out, and I would be remiss if I don't
7 reiterate. The Welch court specifically says
8 that the moral fraud that formed the basis of
9 the receivership appointment order that it
10 approved there was internal to the litigation in
11 South Carolina.

12 And I know Your Honor earlier this morning
13 said, well, yeah, but it was really looking at
14 the whole history -- the whole history. I
15 disagree. I disagree because -- and I'm looking
16 at my dog-eared copy of the advance sheets. I'm
17 sorry, I don't have the South Carolina Reporter
18 citation. I have the old fashioned -- the old
19 fashioned document.

20 THE COURT: So have I.

21 MR. CARROLL: But on page 25, Justice Hill
22 writes, "We conclude Atlas Turner conduct
23 justified the appointment of a receiver before
24 judgment."

25 Then he says, "First, Atlas Turner's

1 disregard of this court's discovery orders."

2 That was his first point. Your Honor issued
3 discovery orders. Atlas Turner didn't do
4 anything in response. Justice Hill and his
5 colleagues on the Supreme Court did not care for
6 that.

7 Then about halfway down the paragraph, it
8 says, second, Atlas Turner represented to the
9 trial court that it had no insurance assets in
10 the case. And Your Honor thought otherwise.
11 The Supreme Court thought otherwise.

12 It was the Atlas Turner's active --
13 seemingly active hiding of insurance in response
14 to the request to produce it. And it said I
15 don't have it. And the Supreme Court said that
16 that was -- that was the second point of moral
17 fraud.

18 What it didn't say is Atlas Turner sold
19 asbestos, and Atlas Turner is a foreign company.
20 It didn't say that that was moral fraud. It
21 said that the way that that company acted when
22 interacting with Your Honor was the proof of its
23 moral fraud.

24 There is, of course, nothing like that with
25 respect to Cape. Not in Park, not in Tibbs.

1 Cape was never served in Park. You just
2 heard me argue about that. And we definitely
3 know that Cape was never served in Tibbs because
4 the receiver filed -- Ms. McVey, at our last
5 hearing, said we served Cape through the
6 receiver in Tibbs.

7 And then in one of the receiver's filings
8 since that last hearing, he said that's a
9 nonissue. I accepted service on behalf of Cape.
10 Well, he's a nullity. He doesn't exist in
11 Tibbs.

12 The Supreme Court's order in Tibbs is
13 crystal clear on this. He can't be authorized
14 to do work outside the case in which an
15 appointment order is filed. There is no such
16 order in Tibbs. Without such an order, he
17 doesn't exist as a legal entity. How could he
18 possibly accept service of a complaint when he
19 doesn't exist in the first place?

20 Mr. Balber made that point, and I think it
21 is one worth reiterating.

22 Your Honor, the Welch case makes it clear
23 that basically everything that Ms. McVey and the
24 receiver presented as, quote, unquote, moral
25 fraud is simply not relevant to any analysis

1 that our Supreme Court has cosigned on. But I
2 will address their points head-on because what
3 they're doing is giving Your Honor a -- they're
4 giving you little drips and drabs of the
5 evidence that was presented to the courts in
6 England at trial in 1988 and again on appeal in
7 1990 in the Adams case.

8 Ms. McVey told you there was -- the moral
9 fraud in part was the Cape controlled NAAC's
10 finances. You heard that throughout her -- she
11 gave a presentation about half an hour. One her
12 main things over and over again, Cape controlled
13 NAAC's finances.

14 Well, the English Court of Appeals
15 issued -- they had -- they issued a lengthy
16 order rejecting all these arguments, but they
17 also had opinions with their order that
18 addressed these exact same factual allegations.

19 And in point 5 in the appendix, the English
20 Court of Appeals explained that NAAC carried on
21 its own business. It was its own thing. It
22 wasn't this puppet of Cape. NAAC ran its own
23 business.

24 In point 7, the Court said, quote, Each
25 corporate member was carrying out its own

1 well-defined commercial function for serving the
2 overall commercial purpose of mining and
3 marketing asbestos.

4 Point 13 is actually specific to this
5 notion of Cape controlled -- Cape controlled
6 NAAC's finances.

7 In point 13, the Court said Cape did not
8 interfere with day-to-day expenditures or with
9 particular borrowings by NAAC.

10 That's not me making it up. That's not me
11 cherry-picking some random document from 1978.
12 This is a court reviewing the evidence after a
13 34-day-long trial and 17-day-long appeal that
14 was highly adversarial. The receiver talks
15 about Adams. They blow off the Adams case by
16 acting like Cape went and just got that order.

17 Cape was the defendant. The plaintiff was
18 a group of 200 Americans who had default
19 judgments against Cape. And they had gone to
20 the United Kingdom to enforce those judgments.
21 And Cape said I wasn't in the United States.
22 Those judgments aren't enforceable against me.

23 They had this lengthy trial about is NAAC
24 the alter ego of Cape? Because NAAC is in the
25 United States. That's what that trial was

1 about. Because if -- and maybe in his most
2 recent filing, the receiver has this kind of
3 casual sentence that says in England they never
4 pierce the corporate veil. The principal always
5 stands apart from its subsidiary. That its law
6 is completely different than South Carolina.

7 Well, that's not true. We've given you the
8 Adams case. It's in the file. There's a
9 five-page discussion on page 539 through 544 of
10 the Adams case where they talk about English
11 corporate veil piercing, and it sounds
12 remarkably similar to ours in South Carolina and
13 just about every other western country and
14 jurisdictions that uses western jurisprudence.

15 Before Ms. McVey also said in addition to
16 controlling NAAC's finances, she said, hey, Cape
17 control NAAC's day-to-day operations. That's
18 all part of the moral fraud because Cape sold --
19 Cape mined asbestos and put asbestos in the
20 market, and it controlled NAAC, so moral fraud.

21 Well, that's point 11 of the English
22 appellate court's ruling.

23 And this is after -- after reviewing the
24 evidence, this is what the English appellate
25 court said. Nor did Dr. Gaze or any

1 representative of Cape, quote, run NAAC, close
2 quote, with reference to the internal affairs of
3 NAAC.

4 Such as -- pardon me, lower case i,
5 staff -- they did not run -- they did not
6 have -- run the internal affairs of NAAC, such
7 as the staff dealing with direct customers and
8 its own source of supply, such as U.S.
9 government stocks.

10 Roman numeral lower case ii, they did not
11 run NAAC's own office premises and warehouse
12 premises.

13 Iii, NAAC's arrangements for insurance.

14 Iv, NAAC's pension scheme.

15 V, formulation of NAAC's accounts.

16 And vi, NAAC's payment of U.S. taxes on
17 NAAC's profits.

18 This idea that Cape ran the day-to-day of
19 NAAC and therefore Cape was in the United
20 States, the Adams courts took the evidence that
21 Ms. McVey has given you and all the other
22 evidence before it, heard from witnesses
23 contemporaneous with all of this -- these goings
24 on and said, no, NAAC was a -- it was a
25 stand-alone subsidiary. It ran its own

1 business. It had its own contract. It paid its
2 own taxes. It had its own employees, had its
3 pension system. It had its own office space.
4 Had its own equipment. It's its own company.

5 That's the same analysis that a
6 South Carolina court would do here.

7 But my point is in Welch, in Tibbs, in
8 dozens of other cases from the South Carolina
9 Supreme Court, the Court hammers home the point
10 that receivers are rare and reserved for the
11 most extraordinary circumstances.

12 What the plaintiffs have brought to you and
13 the receiver has brought to you is their version
14 of a story that has been flatly rejected by a
15 trial court and an appellate court from 40 years
16 ago who heard the witnesses and reviewed the
17 evidence that they're asking you to review. And
18 they're asking you to just say, I don't care, I
19 don't care what this court said, I'm just going
20 to find that the evidence is what they are
21 trying to present it to you as.

22 I would suggest that that would be an
23 unprecedented departure from any kind of
24 receivership law. In particular, in light of
25 the Supreme Court's order in Welch and Tibbs to

1 reserve such an extraordinary remedy. And
2 again, the remedy they're asking you to do is to
3 put into receivership a company in the
4 United Kingdom that has no connection to
5 South Carolina. They don't have -- they can't
6 tell you a connection to South Carolina. Other
7 than they'll try to tell you there's NAAC.

8 But that ship has sailed. The train has
9 left the station. Those facts, that argument
10 has been thoroughly vetted and rejected.

11 And, you know, I've said this a couple of
12 times. I don't want this point to get lost in
13 my restitution of Adams. The people that are
14 making these arguments that I'm rebutting, they
15 didn't exist as a jural entity to even be making
16 these arguments.

17 The receiver doesn't exist in Tibbs. How
18 can he possibly come to this court and say moral
19 fraud, appoint me as a receiver in Tibbs. He
20 doesn't exist in Tibbs. Everything he says is a
21 brutum fulmen. He has -- he can't say anything
22 here because it doesn't exist here.

23 Cape can't be put in a receivership in
24 Tibbs because Cape hasn't been served with
25 anything in Tibbs. The Tibbs plaintiffs haven't

1 even tried to serve Cape in Tibbs. They named
2 Cape in their -- it's not in their caption, but
3 in the body of their pleading, they say Cape
4 or -- yeah, Cape PLC is a European entity and
5 its receiver is located at Beltline Boulevard in
6 Columbia, South Carolina. They identify Cape as
7 if it is the receiver in the body of their
8 pleadings. And they certainly haven't even made
9 CIHL a defendant in the Tibbs case.

10 So again, Your Honor, I made a lot of these
11 arguments last time. I'm going to sit down.
12 Unless Your Honor has any questions. But I do
13 want to address one thing that Ms. McVey pointed
14 out. She came up here, she had a color copy of
15 a book and said, oh, there goes Cape,
16 intimidating lawyers. Can you believe these
17 guys? Cape intimidates lawyers.

18 I have stood at this podium a half dozen
19 times, maybe more, in the five and a half years
20 since these receiverships have been existing in
21 these asbestos dockets, where I've had to
22 defend, myself, my colleagues, my clients
23 against sanctions motions that get filed against
24 me, my colleagues, and my clients for simply
25 arguing the law.

1 The Supreme Court still has another
2 sanctions motion against me and my clients that
3 it has not yet ruled on that the receiver has
4 brought against us. But my clients and my law
5 firm are not alone in this. Your Honor knows.

6 They have sued -- the receiver has sued
7 Winston and Strawn. They sued Locke Lord. You
8 mentioned it earlier. They sued Robert
9 Thackston, a lawyer at Nelson Mullins. The sued
10 the Fox Rothschild's firm. They got a
11 malpractice settlement from their own lawyer's
12 law firm now.

13 Your Honor, will recall back in Covil days,
14 Mr. Lay's firm was within the receiver's
15 crosshairs. This idea that the receiver is
16 being somehow intimidated by Cape is just
17 inconsistent with the record and inconsistent
18 went his consistent behavior over the last
19 five-plus years.

20 So I didn't --

21 THE COURT: There's been -- there's been a
22 lot of activity on both sides. I am still, as
23 the Supreme Court is, appalled at the English
24 court's imposition of over a million-dollar
25 award against the receiver in this case for

1 doing nothing more than being the receiver.

2 So there's a lot of excess on all sides in
3 this thing. And I think that's what the Supreme
4 Court wants to avoid in talking about these
5 matters on the merits.

6 MR. CARROLL: Sure. Yes, ma'am.

7 THE COURT: My heart does not bleed too
8 much for anybody in this case because there
9 isn't anybody that's gotten that kind of
10 judgment against them. Mr. Protopapas can't go
11 abroad at the present time because of these
12 filings, not just in England, but in France and
13 other places. So, you know, don't talk to me
14 about excessive conduct. I'm horrified about
15 any kind of attempt to attack lawyers
16 individually.

17 MR. CARROLL: I don't think anybody is --

18 THE COURT: Not just you and others, but it
19 goes very much for these rogue orders that
20 attempt to impose that kind of financial burden
21 on someone who has done nothing but try to be a
22 receiver but is taking actions they don't agree
23 with legally. There's a way to address that
24 without trying to imperil somebody financially.

25 MR. CARROLL: Your Honor, I think he's done

1 a whole lot more than just act as a receiver.
2 He has filed a complaint in which he is
3 pretending to be Cape PLC and is trying to
4 commit corporate sabotage as that company by
5 engaging in some self-piercing exercise.

6 THE COURT: That's a pejorative way of
7 characterizing it and another way of
8 characterizing it is he is acting per the orders
9 of this court appointing him as the receiver.
10 And if there's something wrong with that, this
11 court and the -- what I'm engaged in right now
12 is the perfect way to repair that.

13 MR. CARROLL: Yes, ma'am.

14 THE COURT: Because that deals with legal
15 issues that I can deal with, which is whether
16 the receiver was properly appointed. And I'm
17 going to decide those things on their merits.

18 But this idea that your status for your
19 client is somehow enhanced because you all have
20 been unfairly attacked and other lawyers in your
21 position have been unfairly attacked, I don't
22 like that on any side. Not on your side and
23 certainly not against Mr. Protopapas.

24 These issues are legal issues that can be
25 argued on the basis of who's right and who's

1 wrong about the law. But trying to punish the
2 lawyers or the receiver is, I think, way out of
3 bounds.

4 MR. CARROLL: Well, Your Honor, you will
5 note that we haven't filed a single thing in
6 this court asking for sanctions on anything in
7 the five-plus years we've been dealing with
8 this. I want that to be clear.

9 Also, with respect to whatever cost order
10 the court in England issued pursuing its loss,
11 the receiver was served with pleadings in that
12 case. He chose not to respond.

13 Now, they come to this court and say if
14 somebody behaves like that, that's moral fraud
15 and you should appoint a receiver over them.
16 But when they had a chance to appear in front of
17 a court and if the situation is as simple as
18 Your Honor says and they could have just gone
19 and said, look, I have this order. I'm doing
20 what I've been authorized to do. Well, he sure
21 should have said that, but he didn't. He
22 instead ignored it. And now there's a cost
23 order consistent with that country's loss.

24 THE COURT: All of that the pretty doggone
25 irrelevant to what I'm deciding.

1 MR. CARROLL: I agree.

2 THE COURT: And what I'm telling -- and I
3 tell Mr. Protopapas and Ms. McVey and everybody
4 else the same thing is I'm like the Supreme
5 Court, I'm fed up with this idea that we ought
6 to take into the account the injured feelings of
7 anybody in this case about so-called personal
8 attacks. What we ought to do is stay away from
9 that.

10 MR. CARROLL: Your Honor, I could not agree
11 more. And the only reason I brought it up was
12 because this morning Ms. McVey was waving around
13 a book and said that apparently she feels
14 intimidated by Cape or somebody feels
15 intimidated by Cape.

16 THE COURT: Well, let's move on to merits.

17 MR. CARROLL: Yes, ma'am. Well, I've said
18 what I need to say on the merits. Unless you
19 have any more questions, I'll have a seat.

20 THE COURT: I don't.

21 MR. CARROLL: Thank you, Judge.

22 THE COURT: Mr. Rawl.

23 MR. RAWL: Your Honor. May it please the
24 Court.

25 I represent Charter, Consolidated Mining,

1 and ESAB Group. And, Your Honor, if I may, I
2 would like to join the arguments that have been
3 made today by Mr. Sawyer.

4 THE COURT: What he means is E-S-A-B.

5 MR. RAWL: I would like to join in the
6 arguments that Mr. Sawyer made this morning in
7 regard to the Park arguments and with regard to
8 the Altrad counsel and the Anglo counsel that
9 Your Honor just heard. That will shorten my
10 comments substantially.

11 Initially, I wanted to ensure that my
12 client is standing on personal jurisdiction and
13 I make these arguments and do not intend to
14 waive any personal jurisdiction.

15 And I apologize, I'm going to make a couple
16 of points, you know, but not try to go through,
17 you know, the whole arguments all over again.

18 With regard to the errors or the problems
19 with the face of the Park appointment order, one
20 thing I would like to add is that the Park order
21 does not have on its face the amount of a bond
22 that should be required to be paid should any of
23 the entities for which the receiver is seeking
24 their assets would be able to pay in order to
25 terminate the receivership.

1 I cite all this in the brief, but the
2 Supreme Court case states that that bond is --
3 the amount of that bond is not in the face of
4 the order and that the order is aware of that
5 issue.

6 THE COURT: And tell me a little bit more
7 about what you all's argument is about a bond
8 and how that bond works and what kind of -- what
9 setting an amount of a bond would depend on.
10 Nobody has argued that before me, yet you bring
11 it up, so I want to hear from you on it.

12 MR. RAWL: I appreciate that. I have
13 argued this before, Your Honor.

14 THE COURT: I'm talking about today in this
15 proceeding.

16 MR. RAWL: Yes, Your Honor. The
17 receivership statutes, the Section 10 talks
18 about the different reasons why a receiver can
19 be appointed. And in Section 20 and 30 it says
20 who has to get notice of the receiver.

21 And then you get to Sections 50 and 60,
22 ones which says that if the party that's holding
23 the assets that are being sought to be put into
24 the receivership pays a bond to the court of I
25 believe it's two times the amount of the asset.

1 Then the receiver -- the order appointing
2 receiver will not be entered or may not be
3 entered.

4 The next section states that if before any
5 receiver may be appointed under this statute,
6 that the amount of a bond would have to be put
7 into the order such that, you know, the parties
8 could pay the bond at any time prior to
9 prejudgment.

10 THE COURT: How is that going to
11 practically work in a case like this? You've
12 got an entity that's been served and won't
13 respond. A receiver's been appointed. Let's
14 not get into the intricacies about this, but in
15 some kind of normal case, there's no attempt to
16 attack the concept of using a receiver as a
17 general matter specific to what happened in this
18 particular case.

19 But let's say the receiver is regularly
20 appointed. And what the receiver is appointed
21 for is to look for potential insurance assets.

22 How in the heck -- and you've got insurance
23 companies that say you don't have any ability to
24 even serve a subpoena on me. I'm not telling
25 you anything. Or I've been told by my company

1 not to even respond to you.

2 So how is a bond supposed to be set when
3 the receiver has not yet gotten information
4 about the assets available? And particularly
5 when there are insurance assets, which is the
6 main thing that is mostly sought in
7 receiverships is insurance assets. I mean, that
8 doesn't make any sense to me that an insurance
9 company can just never respond, hide behind the
10 idea that they don't have to respond or that
11 their information is not even subpoenaable in
12 this case, and yet a bond is supposed to be set?
13 You tell me how that works.

14 MR. RAWL: Yes, Your Honor. So initially
15 the bond would be --

16 THE COURT: Because you're saying the
17 receiver can't even be appointed until the bond
18 is set, and yet you hold the key as insurance
19 companies as to what the assets might be, you
20 sit there and say, oh, I can't possibly be
21 involved in this. So how does the bond work in
22 that kind of situation?

23 MR. RAWL: Your Honor, in this case, I do
24 not represent insurance carriers. I
25 represent -- this is a case where I represent

1 ESAB, Charter, and Central Mining. You know,
2 they're not --

3 THE COURT: Well, it's the same kind of
4 concept. You all are not going to be
5 forthcoming about anything.

6 MR. RAWL: I just want to be clear who I
7 represent in this case.

8 THE COURT: Same thing as the example I
9 gave with insurance assets. If those assets are
10 sought in aid of trying to establish a pool for
11 the payment of claims made in this case, you
12 know, you sit on your thing of this whole thing
13 is illegal therefore I don't have to respond;
14 but by the way, you can't be appointed as a
15 receiver until you know how much assets I have
16 that might be applicable to this situation.

17 What kind of argument is that?

18 MR. RAWL: I'll be happy to explain,
19 Your Honor. So my reading of the statute is
20 that, you know, the person -- the plaintiff in
21 the cause -- the plaintiff in the case where the
22 receiver is being sought, that person, when
23 making the -- an appointment, making a motion to
24 appointment a receiver, you know, normally says
25 there are some type of assets that are at risk

1 of dissipation and those assets would be
2 identified, you know, by the plaintiff.

3 THE COURT: How are they going to identify
4 them when you won't even respond to their
5 request for discovery?

6 MR. RAWL: Again, Your Honor, I represent
7 three entities that have been sued by a receiver
8 in a case other than the one in which he was
9 appointed.

10 THE COURT: I get all those arguments, but
11 let's get beyond the legitimacy of the
12 appointment for a minute. You're making a very
13 specific argument about another reason that the
14 receivership fails is because they haven't set a
15 bond. And I just want to know in practical
16 terms how that bond is supposed to be set. It
17 has nothing to do with whether the receiver can
18 be appointed, the Park versus Tibbs thing.

19 You say that the bond requirement is there
20 even if you have an otherwise legitimate
21 appointment of a receiver. And I want to know
22 how that would work in a situation like this.
23 And so far I'm not hearing you address that at
24 all other than to say, hey, I'm not what you
25 think I am.

1 MR. RAWL: I apologize. I'll do my best to
2 describe my position. My position is that,
3 Your Honor, the receiver cannot be appointed.
4 No appointment order can be issued without a --
5 without the amount that is at issue, you know,
6 that the plaintiff is seeking from the
7 defendant, that is seeking to put that
8 defendant's assets into the receiver's hands.

9 So before -- and I'm not making this up.
10 This is what the statute says.

11 THE COURT: Let me tell you something,
12 Mr. Rawl. Most receiverships could never be
13 started if you had to identify the specific
14 asset and its value before the receiver was
15 appointed. That is often why the receiver is
16 appointed because there is an entity that has
17 assets but you're not sure of the amount of them
18 or whether they've been dissipated or just what
19 has happened.

20 And the entity won't respond otherwise to
21 the suit. So you appoint a receiver to try to
22 find out what kind of assets they have. That
23 receiver -- you're saying the receivers could
24 never be appointed in that situation, as I
25 understand it.

1 MR. RAWL: I understand that a receiver
2 should not be appointed prejudgment on their --
3 the receivership's --

4 THE COURT: That's yet another argument and
5 prejudgment that that -- that is not an argument
6 that's going to prevail in this court. The
7 Supreme Court has already said that, yes, there
8 are times when prejudgment a receiver can be
9 appointed. They are rare but, yes, there are
10 times when that can happen. You all have
11 already lost that. And I'm going to go by what
12 the court has said so far in that regard.

13 MR. RAWL: I'm not arguing there's no such
14 thing as a proper prejudgment appointment of a
15 receiver. That's not what I'm here to argue.

16 THE COURT: What is your argument?

17 MR. RAWL: My argument is that in order to
18 appoint a prejudgment receiver, the court has to
19 follow the receivership statutes. Which one of
20 the requirements, it says before an appointment
21 may be entered, the amount of the bond has to be
22 on the face of the order.

23 And so I didn't write the statute. That's
24 what the statute says. And so -- and then the
25 Supreme Court has interpreted that statute to

1 say if there is no amount on the face of the
2 order of the bond, then the order is void
3 ab initio.

4 And the Welch opinion, actually the last
5 line of the sentence says, And the -- you know,
6 and the entity receivership can always pay the
7 bond if they want to get rid of the
8 receivership.

9 So the Welch opinion actually referenced
10 the bond statute. It wasn't raised in the Welch
11 matter by any of the parties. However, the
12 Supreme Court sua sponte raised the issue of
13 this bond protection. And the bond protection
14 that is in the underlying statute says that the
15 amount of the bond needs to be on the face of
16 the order so that the implicated parties could
17 pay the bond in that case because the
18 receivership statute makes it very clear the
19 receiver is only to act in the case in which he
20 was appointed. In that cause, if they pay the
21 amount of the bond prejudgment, then the
22 receiver is to be terminated.

23 So, Your Honor, I've made this argument
24 before. I apologize if I'm being wordy, but I
25 just want to make sure that I'm pointing out

1 that another defect on the face of the actual
2 Park appointment order is it does not have --
3 does not reference the bond or the amount of the
4 bond that would need to be paid in order to
5 terminate any existence of the receiver.

6 THE COURT: I understand your argument.

7 MR. RAWL: Thank you, Your Honor.

8 THE COURT: I hear your argument. I don't
9 think I understand it yet.

10 MR. RAWL: So I apologize for jumping
11 around. My client also agrees that in the Park
12 case at the time when Keith Park went and filed
13 the application to close the estate and to
14 terminate his receivership, that that -- at that
15 point there no longer existed a plaintiff in the
16 case and that that case was abated. And that
17 that case at this time no longer exists.

18 And interestingly, the plaintiff's bench
19 brief concedes that, you know -- you know, what
20 she states is each of Mr. Park's actions taken
21 in the interim period will relate back thus
22 rendering them proper and valid, including the
23 appointment of the receiver.

24 You know, what she's saying is that she
25 acknowledges that at the time of the appointment

1 there was no plaintiff, and that the appointment
2 of receiver was void or a nullity.

3 What I think the argument is, is that Park
4 can do something now or later in order to
5 somehow ratify or relate back or, you know, to
6 make the appointment order not a nullity.

7 And, Your Honor, my client respectfully
8 disagrees with that because you can't go back
9 and reinvent subject matter jurisdiction or a
10 capacity when there was none at the time that
11 the motion was filed or considered.

12 And frankly, my client's position is that
13 everything that was filed, you know, in the name
14 of the Park plaintiff after the estate was
15 closed and there existed -- there no longer
16 existed a plaintiff much less a PR that could
17 act on behalf of the plaintiff is a nullity and
18 should not be considered.

19 And to take that one step further, I heard
20 the plaintiff, and I think I believe even
21 Your Honor said it at one point that Mr. Park
22 sought a reopening of the estate. And I just
23 want to be clear what Mr. Park sought was
24 subsequent administration, which is different
25 than going back and reopening the same estate.

1 A subsequent, you know, administration --

2 THE COURT: Well, is there such a thing in
3 your mind as reopening an estate?

4 MR. RAWL: I mean, it could be done.

5 THE COURT: What's the basis for it?

6 MR. RAWL: They would have to --

7 THE COURT: Is there a statutory provision
8 that talks about that as opposed to
9 subsequent -- what are you basing that on? Is
10 subsequent administration something that's found
11 in the Uniform Probate Code?

12 MR. RAWL: It is. It's under 1008.

13 THE COURT: Exactly.

14 MR. RAWL: And it's also reference -- you
15 know, it says it's not retroactive. It's, you
16 know, a -- a subsequent administration and it's
17 done when additional assets are found and need
18 to be dealt with under the estate. And not what
19 we have here.

20 What Ms. McVey argued is that she made a
21 mistake, did not understand that the estate had
22 been closed at the time the motion to appoint
23 was made. And so then went back --

24 THE COURT: I'm saying it sounds to me like
25 it's more a quibble about verbiage than it is

1 something real because of the interaction of the
2 statutory provisions about what happens when you
3 have a subsequent administration or a reopening
4 of the estate, whatever you want to call it, it
5 sounds like we are quibbling about words rather
6 than talking about what the probate court means
7 and what the rule means.

8 MR. RAWL: Well, what the rule means or
9 what the rule says is that if additional assets
10 are found that were not dealt with in the
11 original estate, then an interested party can
12 make a petition for a subsequent administration,
13 which opens a new estate. Even when you look at
14 the numbers, they don't go back to the same
15 numbers.

16 THE COURT: They go back to the very same
17 number, they just call it 2. They add the
18 number 2 to it. So it is a part -- it's not
19 something that stands completely unrelated to
20 the other estate.

21 MR. RAWL: Well, the original PR --

22 THE COURT: There's no sense in quibbling
23 about it.

24 MR. RAWL: I mean, my understanding of the
25 probate code in some of the cases that have

1 discussed these issues is that when an estate is
2 closed, that estate is forever closed. Unless
3 somebody goes back and shows some kind of fraud
4 to get -- you know, to get nunc pro tunc
5 reopened. That would be the reopening of an
6 estate, you know.

7 With regard to subsequent administration,
8 there must be something different in the new
9 estate in order --

10 THE COURT: And from what do you derive
11 that understanding?

12 MR. RAWL: From the statute itself.

13 THE COURT: Is there case law on that?

14 MR. RAWL: There are a couple of cases.
15 Some of the cases that have been cited already
16 in the briefs suggest like the Glenn v. DuPont
17 case, 254 S.C. 128.

18 Also, the principal is in the McNair v.
19 Howle case, 123 S.C. 252.

20 In that matter, the court emphasized that
21 the appointment of an administrator de bonis
22 non, which is a successor administrator, you
23 know, is not a revocation of prior orders and
24 does not infer a retroactive authority but
25 instead that the appointment process itself is

1 new and that the authority starts at that time
2 and goes forward as opposed to retroactive.

3 But my point, Your Honor, is that at this
4 time, the only plaintiff even listed on the
5 caption is still the original PR and the
6 original estate in which --

7 THE COURT: Well, the name is the same name
8 as the PR that's also just been appointed in
9 subsequent administration, correct?

10 MR. RAWL: The PR had -- the same person
11 was appointed the PR in subsequent
12 administration. However, it is a different
13 estate, so it is a different entity.

14 THE COURT: I don't see any case that says
15 that and certainly not under the Uniform Probate
16 Code. Some of the -- McNair, for example, is a
17 very old case. And I started practicing when
18 you still had to appoint administrators or
19 executors to de bonis non. But the Uniform
20 Probate Code is a different kettle of fish in
21 terms of regularizing all of that.

22 MR. RAWL: Your Honor, I understand, but
23 the process didn't change. I mean, from a
24 standpoint of the probate court's appointing of
25 a -- and now is of course a PR.

1 But what Mr. Park did is he said he went to
2 the probate court three days after Ms. McVey
3 emailed that the case was fully resolved. And
4 at that time, when he filed with the probate
5 court his sworn statement saying that everything
6 needed to be done in that estate had been
7 completed --

8 THE COURT: I understand that argument.

9 MR. RAWL: And also he filed not only the
10 release from his siblings, but also his own
11 release. So at that time when the estate was
12 closed, not only did no party have any interest
13 in the estate whatsoever, the estate was closed.

14 And even Mr. Park's coming back and opening
15 the subsequent administration. What I, Your
16 Honor, would respectfully the new estate. What
17 he again said was that that was for potential
18 litigation. Which what that suggests,
19 Your Honor, is that there is concern that
20 they -- the estate will be sued, not that the
21 estate is going to bring litigation.

22 Because at the time they closed the
23 original estate, Mr. Park, of course, was well
24 aware of his litigation that he had just settled
25 and told the court that that matter was over.

1 So anyway, Your Honor, my slightly subtle
2 difference than what my colleagues have argued
3 is that at this time in the Park case nothing
4 has been done or filed to show that there is
5 some new party or new estate that has intervened
6 in or substituted in, in order to try to do any
7 type of Rule 17 or Rule 25 or some type of
8 ratification.

9 At this point, it still shows the same
10 original estate, the same original PR, both of
11 which we know are nullities.

12 And so as we stand here now, you know,
13 frankly, Plaintiff's counsel in Park haven't had
14 a client with regard to the original estate
15 since that estate was terminated. So everything
16 that was filed after that was done with no
17 client and is a nullity.

18 At this point, my client's position is that
19 counsel may represent Mr. Park in his new
20 appointment as PR for the subsequent estate, but
21 that is different than -- that does not allow
22 counsel to go back and make arguments again on
23 behalf of the original state or claim to
24 represent the original estate. You can't get
25 rid of that gap where there was no estate and no

1 standing of the court and no capacity.

2 THE COURT: I understand your argument.

3 MR. RAWL: And because of those same
4 issues, of course the receivership appointed is
5 a nullity, is void. And my client would object
6 to any arguments being considered at this point
7 by the receiver or by counsel because they don't
8 have the authority or standing to make any of
9 the arguments.

10 And lastly, to the extent that the
11 receiver's, you know, appointment was not void,
12 the arguments being made now are in furtherance
13 of his own jurisdiction. And an arm of the
14 court, I don't think that the receiver is meant
15 to be an adversarial party arguing, you know, on
16 behalf of Park as to what Park should have
17 ordered in order to get a receiver, or in Tibbs
18 on behalf of, you know, himself in order to
19 support an appointment of his own receiver or
20 his own authority to act in Tibbs.

21 You know, Your Honor, with regard to Park,
22 the only party that would be improper to argue
23 about the propriety of the underlying motion to
24 appoint the receiver would be the original
25 estate and Mr. Park as PR of the original