

RECEIVED

Nov 07 2025

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.

**THE RECEIVER'S APPENDIX
VOL IV**

Document

Page Number

Volume I

Order Granting the Receiver's Motions to Compel, March 12, 2024 1

Motion to Pre-Admit Exhibits, April 3, 2024	15
Motion for Adverse Inference and a Motion for Sanctions, April 12, 2024.....	22
Order Granting Motion to Approve Confidential Settlement Agreement, October 30, 2025	28
Notice of Filing Post Status Conference Report, July 29, 2025	43
Motion to Dissolve the Cape Receivership, June 24, 2025	45
Opposition to Motion to Dissolve, July 18, 2025	68
Motion to Confirm Appointment of Receiver, July 11, 2025	97
Tibbs Plaintiffs Joinder to Motion to Confirm Appointment, July 18, 2025.....	139
Charter-ESAB TPDs Memos in Opp. To Mot. to Confirm App., uly 18, 2025	141
Anglo TPDs Memos in Opp. To Mot. to Confirm App., July 18, 2025	151
Altrad Defs' Notice of Sup. Ct. Auth, June 18, 2025.....	162
Notice of Pretrial Hearing	204
Notice of Filing Signature Letter	207
Altrad & Ors-v-Proptopapas & Ors BL-2025-000785 sealed order 25.07.2025	217
Approved Judgement re De Beers Proposed Settlement with Cape Rcvr	219
Order, October 13, 2025	237

Volume II

Order, October 13, 2025 (cont.).....	251
Amended Notice of Hearing	286
Hearing Transcript, August 12, 2025.....	289

Volume III

Hearing Transcript, August 12, 2025 (cont.)	501
Hearing Transcript, July 22, 2025.....	558

Volume IV

Hearing Transcript, July 22, 2025 (cont.)	751
May 23, 2024 Order	752
Motion to Confirm Appointment, July 11, 2025	786
Report of the Receiver Relating to the Factual Predicate	828
Bench Brief to the Court on the Status of the Park Case	868
Notice of Filing Supplemental Exhibit	873
Notice of Filing, September 18, 2025	875
UK Judgment, September 30, 2025	953
UK Costs Order, October 27, 2025	993
Brussels Order	995

Volume V

Brussels Order (cont.)	1001
Trial Transcript Vol. I Excerpt, October 20, 2025	1051

CERTIFICATE OF REPORTER

I, Sheri L. Byers, Registered Professional Reporter and Notary Public of the State of South Carolina at Large, do hereby certify:

That the foregoing proceedings were taken before me on the date and at the time mentioned on page 1 and the proceedings were recorded stenographically by me and were thereafter transcribed under my direction; that the foregoing transcript as typed is a true, accurate and complete record of the proceedings to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 24th day of July, 2024, at Lexington, Lexington County, South Carolina.



Sheri L. Byers,
Registered Professional Reporter,
Notary Public
State of South Carolina at Large
My Commission expires:
November 1, 2033

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

JOHN A. TIBBS and MARGARET B. TIBBS,

Plaintiffs,

v.

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

3M COMPANY *et al.*,

Defendants.

In Re:

Asbestos Personal Injury Litigation
Coordinated Docket

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

Third-Party Plaintiff,

**ORDER GRANTING THE RECEIVER
FOR CAPE PLC'S MOTION FOR
SANCTIONS AND MOTION FOR
ADVERSE INFERENCE AS TO THE
ALTRAD AND CHARTER THIRD-PARTY
DEFENDANTS**

v.

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

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

Third-Party Defendants.

This matter came before the Court on certain motions of Third-Party Plaintiff Cape PLC, individually and as successor in interest to Cape Asbestos Company Ltd., n/k/a Cape Intermediate Holdings Ltd. (“Cape”), by and through its duly appointed Receiver Peter D. Protopapas (the “Receiver”), specifically the Motion for Adverse Inference as to the Altrad and Charter Third-Party Defendants¹ filed on April 5, 2024 and Motion for Sanctions filed on April 12, 2024 (collectively, “Motions”). Having considered the Motions and record, along with the Third-Party Defendants’ responses, and having conducted a hearing in which the Third-Party Defendants presented oral argument on the Motions, the Court grants the Motions for the reasons set forth below.²

¹ The Altrad Third-Party Defendants are Mohed Altrad and Altrad Investment Authority S.A.S. (“Altrad Owners Third-Party Defendants”), along with the U.S. subsidiaries of the Altrad Group that have responded to the Receiver’s third-party action, *i.e.*, Arranco US LLC (“Arranco”), Hawk Bidco (US) Inc., and Sparrows Offshore, LLC (“Altrad Sparrows Third-Party Defendants”). The Charter Third-Party Defendants are Central Mining & Investment Corporation Ltd., Charter Consolidated Ltd., and ESAB Corporation.

² The Motions exclude the five Third-Party Defendants that are not categorically refusing to participate in discovery: Anglo American PLC (individually and as successor in interest to Anglo

FACTUAL AND PROCEDURAL BACKGROUND

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

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

On June 9, 2021, less than five months after her diagnosis, and within five days of filing her lawsuit, Ms. Park passed away. On November 17, 2021, Ms. Park’s son, Keith, amended the complaint, appearing individually and as personal representative to Ms. Park’s estate (the “*Park* Plaintiffs”), to assert a wrongful death action. *See* First Amended Compl., *Park et al. v. Armstrong Int’l, Inc., et al.*, No. 2021-CP-4002727 (Nov. 17, 2021). The amended complaint added Cape Intermediate Holdings Limited (f/k/a Cape Intermediate Holdings PLC) (together with all predecessors in interest, “Cape”) as a defendant. Cape Intermediate Holdings Limited and Cape PLC—both referring to the same English company originally named Cape Asbestos Co. Ltd.—were identified as successors in interest to Cape Asbestos Company Ltd. *Id.* at 9; *see also id.* at ¶¶ 26–27. In December 2021, the *Park* Plaintiffs served the named Cape entities, which (as has been their practice for decades) never answered, moved, or otherwise responded.

American Corporation of South Africa Ltd.), De Beers PLC, De Beers Centenary AG, De Beers UK Ltd., and De Beers Consolidated Mines Pty. Ltd. (“Oppenheimer Third-Party Defendants”).

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

On March 17, 2023, this Court appointed a receiver for an entity identified as Cape PLC as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) pursuant to S.C. Code § 15-65-10(5), as well as § 15-65-10(4) in the alternative. Order, *Park et al. v. Armstrong Int'l, Inc. et al.*, No. 2021-CP-4002727 (Mar. 17, 2023) (“Appointment Order”), at 1. Pursuant to the Appointment Order and South Carolina law, the Receiver has “power and authority [to] fully administer all assets of Cape, . . . engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape”—in proper satisfaction of claims against Cape—“whatever they may be.” *Id.* The Appointment Order further vested the Receiver with “rights, authority and powers with respect to” Cape’s property, including to “obtain from any . . . third party, any financial records belonging to or pertaining to” Cape. *Id.* at 2.

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

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

The 65-page Third-Party Complaint alleges a remarkable system of avoiding responsibility for the harm caused by Cape’s asbestos over a period of decades—which the Court summarizes (as more fully set forth in the Court’s December 6, 2023 order) to contextualize the findings and adverse inferences made herein, in resolution of the Receiver’s Motions. Although the Third-Party

Complaint categorized the Third-Party Defendants into three groups, only the Altrad Third-Party Defendants (Third-Party Compl. ¶ 119) and Charter Third-Party Defendants (*id.* ¶ 124) are subject to the sanctions issued herein, though certain allegations against the Oppenheimer Third Party Defendants (Third-Party Compl. ¶ 122) also relate to the alleged common history among the Charter Third-Party Defendants and Cape.

In sum, the Third-Party Complaint comprehensively described the alleged interconnected history of Cape and certain of these entities, including their alleged dominion over the South African commodity mining industry, and their alleged role in controlling, continuing, and/or benefiting from Cape's strategic exploitation of the U.S. asbestos market, as well as its accompanying alleged scheme to insulate itself, and its foreign affiliates and agents, from the resulting litigation exposure.

A. **Cape.**

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

In 1953, while under the control of Central Mining, Cape established North American Asbestos Corporation (“NAAC”) “to operate as [its] wholly controlled instrumentality for the ‘purpose of expediting and facilitating the movement’ of asbestos from South African mines into

the United States (including in South Carolina).” *See id.* ¶¶ 70, 72. The two decades following Cape’s formation of NAAC were Cape’s “most bountiful years.” *Id.* ¶ 70. Cape effectively enjoyed an asbestos monopoly, controlling 90% of the global supply of amosite asbestos and dominating the distribution of other types of asbestos. *Id.* ¶ 69.

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

At Cape’s direction and consistent with its company-wide policy, NAAC purchased “wholly inadequate” insurance coverage to address its massive future products liability exposure. *Id.* ¶ 80. In addition to allegedly maintaining egregious and inhumane labor practices for its indigenous workers in its South African mines, Cape—as supported by other members of the broader mining business empire—also is alleged to have actively suppressed information about

the known risks of asbestos in the United States and used misinformation to influence public opinions about asbestos. *See id.* ¶¶ 81–88.

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

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

asbestos in the United States. *Id.* ¶¶ 94–96, 99. The stated purpose for doing so was to “eliminate or reduce as much as possible the exposure in the United States of [South African mining companies] to [product liability] lawsuits.” *Id.* ¶ 101. Although Cape entered into certain agreements to address a fraction of the bodily harm caused by its asbestos around the world, including through a 2006 Scheme of Agreement with former employees in the United Kingdom, Cape has allegedly “done **nothing** about its massive unpaid responsibility for the death and illness caused by its asbestos products in South Carolina and elsewhere in the United States.” *Id.* ¶ 114.

B. The Altrad Third-Party Defendants.

Since 2017, Cape has been part of the Altrad Group, of which various entities, along with Mohed Altrad, its French-Syrian founder and President, have been named as Third-Party Defendants. Third-Party Compl. ¶¶ 113, 116–119 & nn. 39–40. Specifically, the “Altrad Third-Party Defendants” include:

- Cape subsidiaries or affiliates based in the United Kingdom: Cape Holdco Ltd., Cape UK Holdings NewCo Ltd., Cape Industrial Services Group, Ltd., and Altrad Services Ltd. (f/k/a Cape Industrial Services Ltd.);³
- Cape owners based in the United Kingdom and France: The foreign Altrad Group entities that now own and control Cape, *i.e.*, AIA and Altrad UK Ltd., with their majority shareholder and founder, Mohed Altrad (*id.* ¶ 116); and

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

- Cape U.S. affiliates: Certain Altrad Group U.S. subsidiaries, including Hawk Bidco US Inc., Arranco US, LLC, Sparrows Offshore, LLC, and the Sparrows Group, LLC, as were part of Sparrows Offshore Group, Ltd. d/b/a the “Sparrows Group” (n/k/a “Altrad Sparrows”) based in Aberdeen, Scotland.⁴ *Id.* ¶¶ 117, 119.

Notably, seven of the 12 Altrad Third-Party Defendants failed to respond to the Third-Party Complaint: Altrad UK Ltd.; Cape Industrial Services Ltd., n/k/a Altrad Services Ltd. (since June 1, 2021); Cape Holdco Ltd.; Cape Industrial Services Group Ltd.; Cape UK Holdings Newco Ltd.; Sparrows Offshore Group Ltd.; and The Sparrows Group LLC. As a result, on December 6, 2024, the Court entered default against those seven non-responding Altrad entities, several of which—including Altrad UK Ltd.—have the same registered address of Cape Intermediate Holdings Ltd. (*i.e.*, the current name of the Cape Asbestos Company Ltd.) in England at 6-7 Lyncastle Way Barleycastle Lane, Appleton, Warrington. In addition, in an email dated August 18, 2023, Todd Carroll, Esq., as counsel for Mohed Altrad and AIA, represented to the Receiver that he also represents one of the non-responding Third-Party Defendants, Altrad UK Ltd. *See* Ex. 87 to Omnibus Opp. to Personal Jurisdiction Motions (Oct. 18, 2023).

⁴ On July 11, 2022, Altrad completed the acquisition of “the Sparrows Group.” Press Release, *Altrad Completes Acquisition of Engineering and Maintenance Specialist Sparrows Group* (July 11, 2022), <https://www.altrad.com/en/newsreader/altrad-completes-acquisition-of-engineering-and-maintenance-specialist-sparrows-group.html>. Within two weeks of being served with the Third-Party Complaint on July 14, 2023, Sparrows Offshore Group Ltd. passed a resolution to liquidate on July 27, 2023 (while other Sparrows entities continue to operate at the same registered address, including Sparrows Offshore International Group Ltd.). As of October 2, 2023, Altrad announced the rebranding of the “Sparrows Group” to “Altrad Sparrows.” Aberdeen Business News, *Altrad Spreads Its Wings as Altrad Sparrows* (Oct. 2, 2023), <https://aberdeenbusinessnews.co.uk/sparrows-spreads-its-wings-as-altrad-sparrows/>.

C. The Charter Third-Party Defendants.

The Charter Third-Party Defendants include Charter Consolidated Ltd., its subsidiary, Central Mining & Investment Corporation Ltd. (“Central Mining”), and ESAB Corporation, as the ultimate parent company and successor in interest to Charter and Central Mining. *See* Third-Party Compl. ¶ 124. Cape, Central Mining, and Charter were all allegedly critical parts of a common South African mining enterprise, which had a majority of shares in Cape and controlled its board and directed its operations. *Id.* ¶¶ 50–52. In addition, Charter Consolidated Ltd. was created in 1965 by merging Central Mining with two other mining companies, which served as an “international investment arm” for the global mining enterprise. *Id.* ¶ 54. While Charter had direct and indirect interests in Cape from its founding, by 1969 Charter had acquired majority ownership of Cape. *Id.* ¶ 55. Cape was Charter’s primary operating company and principal industrial subsidiary, and, by extension, Cape and its subsidiaries were part of a group of companies that dominated the South African mining economy. *Id.* ¶¶ 55–56, 61–62.

By 1993, there were certain organizational changes, by which Charter Consolidated Ltd. was no longer part of the global mining enterprise that allegedly controlled Cape in the 1980s and decades prior, with “Charter” re-registering as a public company. *Id.* ¶ 123. Three years later, Charter sold its interest in Cape for approximately £48 million. *Id.* And in 2012, Charter, with its affiliated entities, was acquired by Colfax Corporation (“Colfax”) at a valuation of \$2.4 billion. *See id.* (disclosing Charter’s exposure to asbestos-related lawsuits in the United States but assessing that exposure as not “material” and making no reserves). In 2022, Colfax spun off ESAB Corporation, allegedly becoming the parent company of Charter and Central Mining. *Id.* ¶ 124.

IV. The Ongoing Refusals to Participate by These Third-Party Defendants.

For the trial block set to commence April 15, 2024, this case was set for a bench trial. It was continued during the April 10 pretrial hearing, however, because of the Altrad and Charter

Third-Party Defendants’ refusal to provide any discovery to the Receiver to prepare this case for trial. Despite receiving initial discovery requests more than nine months ago, the Altrad and Charter Third-Party Defendants have provided no substantive information in response.

On January 12, 2024, the Receiver filed motions to compel these Third-Party Defendants’ basic compliance with their discovery obligations, which the Court granted on March 12 (the “March 12 Order.”). Pursuant to the March 12 Order, the Court directed all Third-Party Defendants “(i) to provide responsive, substantive, and complete answers to the Receiver’s Discovery Requests with 14 days of entry of this Order and (ii) to begin producing documents in response to the Receiver’s Requests for Production the same day,” and (iii) as to Arranco and Central Mining, “to designate witnesses for . . . Rule 30(b)(6) depositions” by March 19 and “produce those witnesses” by April 2. (Order at 13).

The Court-ordered deadlines to provide substantive responses to the Receiver’s discovery have long passed, and the Third-Party Defendants’ flagrant violations of the Court’s March 12 Order persist. In turn, this discovery misconduct has caused delays and prejudiced the Receiver’s ability to investigate and bring his claims, which have already been subjected to extensive motion practice. The Receiver has also been forced to exert additional time and resources in a continued effort to have these Third-Party Defendants come into even basic efforts at compliance with existing orders of the Court, including the March 12 Order, and the laws of this State—something that has yet to be achieved.

In defense of this coordinated strategy of non-participation, the only excuses offered by these Third-Party Defendants are frivolous: In essence, they claim a right—above the authority of this Court—to fully relitigate the merits (or lack thereof) of their numerous motions to dismiss and dissolve that were denied by the Court in early December 2023. They argue that Rule 205, SCACR,

poses a jurisdictional bar preventing this third-party action from continuing, because by simply appealing those denied motions to dissolve the receivership, they can deprive the trial court of jurisdiction for an indeterminate time period.⁵ These very same arguments, however, have been repeatedly dismissed by the Court of Appeals and Supreme Court.⁶ The Court of Appeals and Supreme Court have identified those attempts to appeal as interlocutory and governed by the limited scope of permissible appealability granted pursuant to S.C. Code Ann. § 14-3-330. Thus, the Supreme Court and Court of Appeals have made clear that—categorically—the denial of motions to dismiss and dissolve a receivership, like discovery orders, are not immediately appealable under South Carolina law. *See also* Order, *Tibbs et al. v. 3M Co. et al.*, Appellate Case No. 2024-000524 (Apr. 17, 2024) (dismissing as interlocutory these Third-Party Defendants’ separate attempt to appeal the Court’s March 12 discovery order, which they brazenly mischaracterized as a “refusal to enter an injunction”). Those decisions raise the same appealability issues invoked by the Altrad and Charter Third-Party Defendants in their pending appeal. Thus, the legal basis for the Third-Party Defendants’ refusal to participate in discovery and comply with

⁵ In contrast, the other participating Third-Party Defendants in this action (*i.e.*, in the “Oppenheimer” group) do not take this position currently, and instead have communicated an intent to participate in discovery and have reportedly made efforts in that respect.

⁶ *See* Order Denying Rehearing, *Childers v. Davis Mech., et al.*, Appellate Case Nos. 2024-000005 and 2023-000727 (Sup. Ct. Apr. 17, 2024); Order Dismissing Appeal, *Childers v. Davis Mech., et al.*, Appellate Case Nos. 2024-000005 and 2023-000727 (Sup. Ct. Mar. 27, 2024); Order, *Childers v. Davis Mech., et al.*, Appellate Case No. 2023-000727 (Ct. App. Nov. 21, 2023); Order, *Childers v. Davis Mech., et al.*, Appellate Case No. 2023-000727 (Ct. App. Sept. 8, 2023); Order Denying Rehearing, *Link v. 3M Company, et al.*, Appellate Case No. 2024-000342 (Ct. App. Apr. 30, 2024); Order Dismissing Appeal, *Link v. 3M Company, et al.*, Appellate Case No. 2024-000342 (Ct. App. Apr. 12, 2024); Order Denying Rehearing, *Mitchell v. 3M Company, et al.*, Appellate Case No. 2024-000341 (Ct. App. Apr. 30, 2024); Order Dismissing Appeal and Denying Rule 205 Motion to Enforce, *Mitchell v. 3M Company, et al.*, Appellate Case No. 2024-000341 (Ct. App. Apr. 12, 2024); Order Denying Rehearing, *Welch v. Advance Auto Parts, Inc., et al.*, Appellate Case No. 2024-000337 (Ct. App. Apr. 30, 2024); Order Dismissing Appeal and Denying Rule 205 Motion to Enforce, *Welch v. Advance Auto Parts, Inc., et al.*, Appellate Case No. 2024-000337 (Ct. App. Apr. 12, 2024).

the Court's orders is legally untenable—indeed, frivolous and flatly inconsistent with those recent, directly applicable decisions of the Court of Appeals and Supreme Court—while appearing to further an improper purpose, *i.e.*, to delay progress in this matter.

In light of this ongoing discovery misconduct, the Receiver moved for relief. Specifically, as relevant here, the Receiver filed these Motions on April 5 and 12 requesting certain sanctions for the Altrad and Charter Third-Party Defendants' ongoing discovery misconduct, including (i) that certain inferences be drawn with respect to the Altrad and Charter Third-Party Defendants, including with respect to their alleged current and historical statuses, respectively, as the alter ego(s) of Cape, and alleged unjust enrichment from Cape's liability-avoidance scheme, and (ii) for an award of fees and costs associated with bringing the Motion for Sanctions and all associated motions. On April 25, 2025, the Court heard argument on those motions.

LEGAL STANDARD FOR SANCTIONS

The selection of a sanction for discovery violations is within the trial court's discretion. *Kershaw Cnty. Bd. of Educ.*, 302 S.C. 390, 396 S.E.2d 369 (1990). Thus, where a "party fails to obey an order to provide or permit discovery," then a court "may make such orders in regard to the failure as are just." Rule 37(b)(2), SCRPC. Sanctions can range up to default or dismissal, or more intermediate relief such as designating facts as established; and "[i]n determining the appropriateness of a sanction, the court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice." *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 199, 511 S.E.2d 716, 719 (Ct. App. 1999) (citing *Laney v. Hefley*, 262 S.C. 54, 202 S.E.2d 12 (1974)). The sanction should

be aimed at the specific conduct of the party sanctioned. *Id.* at 198, 511 S.E.2d at 719 (citing *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 399 S.S.D. 439 (Ct. App. 1990)).

Among other facts, “courts also consider unnecessary time delays in determining the appropriateness of discovery sanctions.” *Jones v. Robinson*, 2023 WL 7685902, at *7 (S.C. Ct. App. Nov. 15, 2023). And where there “is some showing of *bad faith, willful disobedience, or gross indifference* to the rights of the adverse party,” even the most severe sanctions, such as “default or dismissal,” may be warranted. *Rickerson v. Karl*, 412 S.C. 215, 221, 770 S.E.2d 767, 770 (Ct. App. 2015) (emphasis in original); *see also Skywaves I Corp. v. Branch Banking & Trust Co.*, 423 S.C. 432, 458, 814 S.E.2d 643, 657 (Ct. App. 2018) (citing “several cases” involving “striking the answer of a defendant in recent years,” where the defendant “violated a court order”).

Without discovery sanctions, discovery procedures would be ineffectual, as improper conduct would “go unpenalized,” thereby “decreas[ing] the likelihood of others being deterred from similar conduct”; accordingly, over-leniency should be avoided. *Creighton v. Coligny Plaza Ltd. P’ship*, 334 S.C. 96, 124, 512 S.E.2d 510, 524 (Ct. App. 1998); *see also, e.g., McNair v. Fairfield Cnty.*, 379 S.C. 462, 467, 665 S.E.2d 830, 832 (Ct. App. 2008) (affirming “severe sanction of dismissal” in light of “willful disobedience of previous orders” and “conduct in refusing to provide that which it has been ordered to produce,” which was “a serious affront to the integrity of the judicial system”); *Howe v. Air & Liquid Sys. Corp.*, 2021 WL 5626487, at *2 (S.C. Ct. App. Dec. 1, 2021) (affirming imposition of sanctions on common client of Todd Carroll, Esq., Elizabeth O’Neill, Esq., and Steven James Pugh, Esq., based on their client’s “failure to cooperate with the discovery process . . . despite numerous requests”). Ultimately, the “imposition of

sanctions is generally entrusted to the sound discretion” of the Court. *Downey v. Dixon*, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987).

DECISION ON ADVERSE INFERENCES

It has long been the law of South Carolina that “the failure or refusal of a party to produce evidence may create an adverse inference where such evidence is within his knowledge, and within his power to produce, is not equally accessible to his opponent, and is such as he would naturally produce if it were favorable to him.” *Davis v. Sparks*, 235 S.C. 326, 333, 111 S.E.2d 545, 549 (1959). Here, more than six months after being served discovery, and more than a month since the Court imposed deadlines to comply with their discovery obligations, the Altrad and Charter Third-Party Defendants continue to refuse any effort at compliance with the Court’s orders and the discovery rules of this State. Despite multiple warnings by this Court and directives to **proceed with discovery**, these Third-Party Defendants have continued their misconduct, while filing multiple frivolous appeals that, based on clearly applicable appellate precedent, will inevitably be dismissed.

The Court finds that this continued discovery misconduct on the part of these Third-Party Defendants amounts to bad faith, willful disobedience, and gross indifference to the rights of the Receiver and this Court’s management of its docket. Based on this discovery misconduct, moreover, the Court further finds certain adverse inferences to be warranted (as detailed below) against the Altrad and Charter Third-Party Defendants on facts and matters underlying the Receiver’s claims. *See, e.g., Kershaw Cnty. Bd. of Educ. v. U.S. Gypsum Co.*, 302 S.C. 390, 394, 396 S.E.2d 369, 372 (1990) (affirming decision to allow adverse inference for lost evidence, while permitting the party to “explain the circumstances” and mount a defense, which was “drawn to facilitate discovery in . . . asbestos cases”); *Griffith v. Griffith*, 332 S.C. 630, 640–41, 506 S.E.2d

526, 531–32 (Ct. App. 1998) (finding trial judge “in error when she refused to consider an adverse inference” from a party’s “refusal to answer questions”). The Court notes that these rebuttable inferences are subject to evidentiary challenge by these parties in these proceedings should these recalcitrant Third-Party Defendants elect to participate in these proceedings, as they are required to do by our rules and the orders of this Court.

The Court further notes that the parties should treat this sanction as an intermediate form of relief, which stops short of more severe sanctions, such as striking their pleadings or holding them in default. While eventually those sanctions may also be warranted, to the extent these Third-Party Defendants continue to refuse to engage in discovery and comply with the Court’s orders, those sanctions are not the subject of this Order, nor should this Order be interpreted as tantamount thereto.

I. The Court’s Adverse Inferences Against the Charter Third-Party Defendants.

As to the Charter Third-Party Defendants,⁷ the Court draws the adverse inference that each of the Charter Third-Party Defendants was at relevant times the alter ego of Cape, requiring piercing of the corporate veil. Likewise, each of the Charter Third-Party Defendants is responsible for or has benefitted unjustly from Cape’s liability-avoidance scheme. In order to reach that inference, the following inferences are made against each of the respective Charter Third-Party Defendants:

⁷ The Court makes these adverse inferences independent of any other evidence that may support the Receiver’s claims against the Charter Third-Party Defendants. *See, e.g.*, Order (Dec. 6, 2023) at 14–15, 52–54, 65–70 (detailing allegations and documents regarding longstanding relationship between Central Mining and Cape; the alleged role of Charter Consolidated Ltd. as a liability buffer, or so-called “products-liability patsy,” in the Oppenheimer-dominated “Greater Group”; the common control of Charter Consolidated Ltd. by Oppenheimer Third-Party Defendants and their predecessors; and the control of ESAB Corporation over Central Mining and Charter Consolidated Ltd. currently).

Inferences as to Central Mining & Investment Corporation Ltd.

1. In the first decades of the twentieth century, Central Mining was one of the most powerful mining finance houses in South Africa.
2. Soon after it was formed in 1905, Central Mining controlled Cape Asbestos Co. Ltd.
3. Central Mining was responsible for and directed Cape's establishment of the North American Asbestos Corporation ("NAAC") in 1953.
4. NAAC was formed to act as Cape's wholly controlled instrumentality for the purpose of facilitating and expediting the movement of asbestos from South Africa to the United States.
5. Central Mining owned Cape and its subsidiaries, including NAAC, through 1965.
6. Central Mining dominated and controlled Cape and its subsidiaries, including NAAC, through 1965, including with respect to their financing and capitalization.
7. Central Mining was responsible for any sale of asbestos into the United States by Cape through 1965.
8. Central Mining knew of certain health hazards of asbestos exposure including death by the 1920s.
9. Central Mining was aware of medical literature authored by J. C. Wagner, C. A. Sleggs, and Paul Marchand, titled *Diffuse Pleural Mesothelioma and Asbestos Exposure in the North Western Cape Province*, as published in the British Journal of Industrial Medicine, at the time of its publication in 1960 or soon after.

Inferences as to Control of Cape in Era of Charter Consolidated Ltd.

10. In 1965, Central Mining merged with two other mining and investment companies, The British South Africa Company and The Consolidated Mines Selection Company Ltd., into Charter Consolidated Ltd.
11. With the merger of companies in 1965, Charter Consolidated Ltd. acquired a controlling interest in Cape, including a majority of Cape's preference shares.
12. Prior to the merger of companies in 1965, Charter Consolidated Ltd. knew of certain health hazard of asbestos exposure including death.
13. Charter Consolidated Ltd. and Central Mining were aware of, and responsible for, unsafe and unhealthy working conditions at Cape asbestos mines.
14. Charter Consolidated Ltd. and Central Mining were aware of, and responsible for, Cape's labor practices.
15. Charter Consolidated Ltd. and Central Mining were responsible for Cape's lobbying efforts, including through trade associations such as the U.K.-based Asbestosis Research Council and U.S.-based Asbestos Textile Institute.
16. Charter Consolidated Ltd. and Central Mining were responsible for efforts to misinform companies, persons, and the general public about the health hazards associated with asbestos.
17. Charter Consolidated Ltd. and Central Mining were responsible for operating NAAC in an undercapitalized manner, including through the siphoning of funds from NAAC.
18. Charter Consolidated Ltd. and Central Mining were responsible for NAAC's risk-management decisions and failure to purchase additional liability insurance to adequately satisfy the liabilities of Cape to asbestos personal-injury claimants.

19. Charter Consolidated Ltd. acquired a majority of Cape's common equity shares by 1969, making Cape the principal industrial subsidiary of Charter Consolidated Ltd.
20. Charter Consolidated Ltd. owned, dominated, and controlled Cape and its subsidiaries, including NAAC, between 1965 and 1996, including with respect to their financing and capitalization.
21. Charter Consolidated Ltd. and Central Mining exercised influence in Apartheid-era South Africa, thereby allowing Cape to profitably mine and export asbestos to the United States for decades.
22. Charter Consolidated Ltd. and Central Mining seconded employees and other officials to work for Cape, or otherwise financed and spent resources for Cape, including for operational, marketing, research and development, and lobbying activities.
23. Charter Consolidated Ltd. and Central Mining were both aware that Cape asbestos was being sold or ultimately distributed into the State of South Carolina.
24. Charter Consolidated Ltd. and Central Mining were responsible for a conscious pattern of the production, distribution, and sale of Cape asbestos nationally in the United States, including asbestos used in South Carolina.
25. Charter Consolidated Ltd. was responsible for any sale of asbestos into the United States by Cape between 1965 and 1996.
26. Charter Consolidated Ltd. was responsible for a decision to drop *Asbestos* from the name of "Cape Asbestos Company Ltd."
27. Charter Consolidated Ltd. was responsible for a decision to cease the appointment of Cape officials to the board of directors of NAAC.

28. Charter Consolidated Ltd. was responsible for the decision to interject another entity (Cape Industries Overseas Ltd.) between NAAC and Cape.
29. Charter Consolidated Ltd. was responsible for decisions to deplete NAAC of assets to avoid claimants.
30. Charter Consolidated Ltd. was responsible for the decision to close and liquidate NAAC.
31. Charter Consolidated Ltd. was responsible for the decision to allow default judgments in asbestos lawsuits to be entered against Cape and its subsidiaries.
32. Charter Consolidated Ltd. was responsible for designing ways to continue the flow of South African asbestos to U.S. customers and the counterflow of asbestos profits out of the United States after the liquidation of NAAC.
33. Charter Consolidated Ltd. was responsible for directing and facilitating the sale of Cape's asbestos mining interests in South Africa to Transvaal Consolidated Land & Exploration Company Ltd.
34. Charter Consolidated Ltd. had financial interests in Transvaal Consolidated Land & Exploration Company Ltd. when it bought Cape's asbestos mining interests in 1979.
35. Charter Consolidated Ltd. was responsible for directing the transfer of certain intellectual property owned by NAAC for future use by other companies selling South African asbestos in the United States, including in South Carolina.
36. After 1979, Charter Consolidated Ltd. profited from entities that continued to mine, distribute, or sell South African asbestos.
37. Charter Consolidated Ltd. was responsible for Cape's refocusing its business on asbestos removal.

38. Charter Consolidated Ltd. and Central Mining were both part of a scheme to facilitate Cape's escape from legal or financial responsibility for people harmed by Cape asbestos in the United States, including in South Carolina.
39. Charter Consolidated Ltd. and Central Mining were both part of a corporate arrangement to eliminate or reduce as much as possible their exposure in the United States to lawsuits brought against them for the sale of asbestos in the United States.
40. Charter Consolidated Ltd. and Central Mining intentionally designed complexity into their organization and corporate relationships in order to obfuscate those relationships and ownership interests while minimizing Cape's and their own liability risks, including for asbestos sold in the United States, including in South Carolina.
41. Charter Consolidated Ltd. and Central Mining refused to make adequate provisions or reserves of cash for Cape's and their own asbestos-related liabilities.
42. In 1996, Charter Consolidated Ltd. sold off its direct equity interests in Cape for approximately £48 million.

Inferences as to South Carolina Presence,⁸ Control by and Responsibility of ESAB Corporation

43. From 1989, ESAB Group, Inc. ("ESAB Group") maintained its principal place of business in Florence, South Carolina.⁹

⁸ Paragraphs 43 to 52 undermine the many representations made by ESAB Corporation to this Court regarding an alleged lack of ties to South Carolina.

⁹ Brief for Pl.-Appellant ESAB Grp., No. 11-1243, at 7 (4th Cir. Aug. 24, 2011). The Court may take judicial notice of judicial filings. See Rule 201(b), SCRE; *Rouse v. Nessel*, 2023 WL 4235614, at *1 n.1 (D.S.C. June 28, 2023) ("[A] court may take judicial notice of public filings, including court filings.").

44. In 1994, ESAB Group was acquired by Charter PLC (a new holding company formed in 1993) and continued to operate primarily from Florence, South Carolina.¹⁰
45. In or around October 2008, ESAB Group “became an indirect subsidiary of Charter International plc.”¹¹
46. Through at least 2012, “ESAB Group has maintained its principal place of business in Florence, South Carolina, where it ha[d] a manufacturing plant, executive offices, and sales, engineering, and research development divisions.”¹²
47. While operating in the United States, principally from Florence, South Carolina, ESAB Group initiated multiple lawsuits in South Carolina. *E.g.*, *ESAB Grp., Inc. v. Centricut, Inc.*, No. 4:96-cv-00168 (filed Jan. 19, 1996); *ESAB Grp. Inc. v. Centricut LLC*, No. 4:98-cv-01654 (filed Jun 8, 1998); *ESAB Grp. Inc. v. Arrowood Indem. Co. et al.*, No. 4:09-cv-01701 (filed on June 25, 2009).
48. As of 2011, ESAB Group employed “523 people at its Florence facilities, which include[d] a manufacturing plant, executive offices, the company’s information technology department, and a substantial portion of the company’s sales, engineering, and research and development divisions”; the company had “paid more than \$6 million in taxes to the State of South Carolina and Florence County”; and the company “derive[d] a substantial portion of its total revenue from its operations and facilities in Florence, South Carolina,”

¹⁰ See *ESAB Grp., Inc. v. Zurich Ins. PLC*, 685 F.3d 376, 383 (4th Cir. 2012) (Floyd, J.).

¹¹ *Id.*

¹² *Id.*

including “generat[ing] approximately \$225 million in revenue from its Florence operations” from 2008 through the first half of 2009.¹³

49. In 2011, Colfax acquired Charter and ESAB Group, along with ESAB Group’s “North American headquarters . . . located in Florence, South Carolina.”¹⁴

50. In 2022, Colfax sold its interests in Charter’s businesses, including those associated with Cape-related liabilities—namely, ESAB Corporation.

51. ESAB Group is currently a wholly owned subsidiary of ESAB Corporation.¹⁵

52. ESAB Group’s Terms and Conditions of Sale, which appear on ESAB Corporation’s website, require its buyers to “expressly submit[] to the exclusive jurisdiction of the state and/or Federal courts located in Florence, South Carolina with respect to all lawsuits arising under or in connection with this Offer.”¹⁶

53. In 2022, the spinoff of ESAB Corporation, which was formally organized in 2021, was completed.

54. After the spinoff, ESAB Corporation served as the ultimate parent company of Charter Consolidated Ltd. and Central Mining.

¹³ Decl. of Neil C. Schemm, *The ESAB Grp., Inc. v. Arrowood Indem. Co.*, No. 4:09-cv-01701, ECF No. 25-2, at ¶¶ 10–14 (July 17, 2009).

¹⁴ “ESAB Acquired by Colfax Corporation,” ESAB News Release (Jan. 13, 2012), *available at* <https://web.archive.org/web/20121029032933/http://www.esabna.com/us/en/news/ESAB-Acquired-by-Colfax-Corporation.cfm>.

¹⁵ ESAB Grp., Inc. 401(k) Retirement Savings Plan, 2022 Form 11-K (July 12, 2023), *available at* <http://pdf.secdatabase.com/2169/0001983853-23-000006.pdf>; *see also* *KBC Asset Mgmt. NV v. DXC Tech. Co.*, 19 F.4th 601, 607 (4th Cir. 2021) (“We may also take judicial notice of the content of relevant Securities and Exchange Commission (‘SEC’) filings and other publicly available documents included in the record.”).

¹⁶ ESAB Terms and Conditions of Sales (accessed May 4, 2024), https://esab.com/us/nam_en/terms-and-conditions-of-sales/.

55. ESAB Corporation obfuscated the relationship between ESAB and its post-spinoff subsidiaries—including Charter Consolidated Ltd. and Central Mining—and also historically with Cape, with the purpose of frustrating creditors and avoiding liability.
56. ESAB Corporation is the successor in interest to Central Mining and Charter Consolidated Ltd.
57. ESAB Corporation can appoint executive personnel and directors of Charter Consolidated Ltd. and Central Mining.
58. There is common ownership between Central Mining, Charter Consolidated Ltd., and ESAB Corporation.
59. There was common ownership among Central Mining, Charter Consolidated Ltd., and Cape before 1996.
60. There was common ownership among Central Mining, Charter Consolidated Ltd., Cape, and ESAB Group between 1994 and 1996.
61. Cape was financially dependent upon Central Mining and Charter Consolidated Ltd. before 1996.
62. ESAB Group was financially dependent upon Charter PLC between 1994 and 1996, as well as for many years after.
63. Central Mining and Charter Consolidated Ltd. are financially dependent upon ESAB Corporation.
64. The Charter Third-Party Defendants have failed to properly observe corporate formalities over their existence.

65. The Charter Third-Party Defendants have done nothing to address Cape’s massive unpaid responsibility for the death and illness caused by Cape’s asbestos products in South Carolina and elsewhere in the United States.
66. The Charter Third-Party Defendants have taken possession of property, including cash and other assets, which they should have not taken from Cape and should have remained available to bodily-injury claimants in the United States, including in South Carolina.
67. The Charter Third-Party Defendants have destroyed corporate records and publicly misrepresented the nature of Cape’s business and liability-avoidance scheme in the United States.
68. The Charter Third-Party Defendants are responsible for the absence of corporate records with respect to Cape, with Charter Consolidated Ltd. and Central Mining responsible for the destruction of records referenced with respect to the Barlow World Rand Mines Archive. See <https://researcharchives.wits.ac.za/5-3-14> (referencing “certain boxes [that] have been destroyed” or “negative material on miners’ phthisis and asbestos [that] have been removed – perhaps even before the collection came to Barlows”).

General Inferences as to Alter Ego Liability

69. The Charter Third-Party Defendants—with Cape prior to 1996—are subject to the same total dominion and control, and ability to be influenced with respect to major business decisions and are mere instrumentalities for the purposes of committing fraud or other violations of statutory or legal duties—namely, by ESAB Corporation currently, and by Charter Consolidated Ltd. previously.
70. The Charter Third-Party Defendants—with Cape prior to 1996—are part of a single business enterprise or single enterprise-in-fact, have an amalgamation of corporate

interests, entities, and activities, and have unified, integrated, and intertwined business operations and resources to achieve and act with a common business purpose.

71. The Charter Third-Party Defendants—with Cape prior to 1996—have acted with bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of legal distinctions among the Charter Third-Party Defendants, and that inequitable consequences and fundamental unfairness have been caused from such blurring of legal distinctions and their activities and assertions of corporate separateness, including in an attempt to shield fraud, evasion of existing obligations, circumvention of statutes, criminal conduct, and the like with respect to the Cape liability-avoidance scheme, and that adherence to the fiction of separate corporate identities would defeat justice.

General Inferences as to Unjust Enrichment

72. The Charter Third-Party Defendants participated in, or otherwise directed or facilitated, Cape's liability-avoidance scheme.
73. The Charter Third-Party Defendants have financially benefited from Cape's liability-avoidance scheme, including receiving diverted funds directly or indirectly from Cape and retaining the benefits of Cape's asbestos business.
74. It would be inequitable for the Charter Third-Party Defendants to retain any financial benefit or monetary value from the liability-avoidance scheme without contributing to the compensation of persons harmed by Cape asbestos, including by returning the financial benefit or monetary value of the funds obtained from Cape.

II. The Court's Adverse Inferences Against the Altrad Third-Party Defendants.

As to the Altrad Third-Party Defendants (inclusive of both the “Altrad Owners” and “Altrad Sparrows” groups),¹⁷ the Court draws the adverse inference that each of the Altrad Third-Party Defendants was at relevant times the alter ego of Cape, requiring piercing of the corporate veil. Likewise, each of the Altrad Third-Party Defendants is responsible for or has benefitted unjustly from Cape’s liability-avoidance scheme. In order to reach that inference, the following inferences are made against each of the respective Altrad Third-Party Defendants:

Inferences as to AIA and Mohed Altrad

1. Mohed Altrad is the majority shareholder of the Altrad Group.
2. Mohed Altrad controls the Altrad Group, including AIA.
3. In 2022, Mohed Altrad was convicted of corruption offenses in France, punished by the imposition of an 18-month suspended jail term.
4. Mohed Altrad has been convicted of a crime involving dishonesty or false statement.
5. AIA is the head company of the Altrad Group and the ultimate parent of all of the Altrad Third-Party Defendants.

Inferences as to Altrad and Cape

6. AIA acquired Cape in 2017 through its wholly owned subsidiary, Altrad UK Ltd.

¹⁷ The Court makes these adverse inferences independent of any other evidence that may support the Receiver’s claims against the Altrad Third-Party Defendants. *See, e.g.*, Order (Dec. 6, 2023) at 9–12, 38–50 (detailing allegations and documents regarding AIA’s common control of Altrad Third-Party Defendants; the alleged domination of AIA by Mohed Altrad as the founder, face, and owner of more than 90% of AIA shares; the mass termination of “Sparrows” executive management after being acquired by Altrad; the liquidation of a Scottish “Sparrows” entity within two weeks of being served the Receiver’s complaint; the rebranding of “Sparrows” entities as “Altrad Sparrows”; and efforts to acquire and integrate Cape, with its affiliates, into the Altrad Group as a profitable, wholly owned subsidiary that—with other Altrad Third-Party Defendants with defaults entered against them—continues to avoid responding to claims in the United States.

7. Altrad UK Ltd. was incorporated for the specific purpose of acquiring Cape.
8. Altrad UK Ltd. functions as a wholly owned subsidiary of AIA.
9. Altrad UK Ltd. is financed by AIA.
10. AIA and Mohed Altrad own Altrad UK Ltd.
11. AIA and Mohed Altrad dominate and control Altrad UK Ltd.
12. AIA and Mohed Altrad were aware of Cape's asbestos-related liabilities and liability-avoidance scheme prior to the acquisition of Cape.
13. AIA and Mohed Altrad acquired Cape with the intent to continue Cape's liability-avoidance scheme and refusal to respond to litigation in the United States.
14. Since the acquisition of Cape, AIA and Mohed Altrad have dominated and controlled Cape, including with respect to its financing and capitalization.
15. AIA and Mohed Altrad can appoint executive personnel and directors of Cape.
16. The Altrad Group has incorporated Cape into its enterprise, including through rebranding efforts, such as changing the name of Cape Industrial Services Ltd. to Altrad Services Ltd.
17. The Altrad Group set aside substantial proceeds to address certain non-US historical claims relating to asbestos exposure.
18. AIA and Mohed Altrad are responsible for Cape's continued failure to respond to litigation against Cape in the United States.

Inferences as to Altrad and Altrad Sparrows

19. The Altrad Group acquired an enterprise known as the "Sparrows Group" in July 2022.
20. In July 2023, the Sparrows Offshore Group Ltd. passed a resolution to liquidate.
21. AIA and Mohed Altrad were responsible for the decision to liquidate the Sparrows Offshore Group Ltd.

22. The service of the Third-Party Complaint on the Sparrows Offshore Group Ltd. earlier in July 2023 contributed to the decision to liquidate the Sparrows Offshore Group Ltd.
23. Hawk Bidco US Inc., Arranco US, LLC, and Sparrows Offshore, LLC (“Altrad Sparrows Third-Party Defendants”) are U.S. subsidiaries of the Altrad Group.
24. AIA and Mohed Altrad own the Altrad Sparrows Third-Party Defendants.
25. AIA and Mohed Altrad dominate and control the Altrad Sparrows Third-Party Defendants.
26. The Altrad Sparrows Third-Party Defendants are financially dependent upon AIA and Mohed Altrad.
27. AIA and Mohed Altrad can appoint executive personnel and directors of the Sparrows Third-Party Defendants.
28. AIA and Mohed Altrad were responsible for the termination of the executive leadership at the Sparrows Group in April 2023.
29. The Altrad Group has incorporated the Altrad Sparrows Third-Party Defendants into its enterprise, including through rebranding efforts, such as changing the name of “Sparrows” to “Altrad Sparrows.”

Inferences as to All Altrad Third-Party Defendants

30. There is common ownership between the Altrad Third-Party Defendants and Cape.
31. The Altrad Third-Party Defendants intentionally designed complexity into their corporate relationships in order to obfuscate those relationships and ownership interests while minimizing Cape’s and/or their own liability risks, including for asbestos.
32. The Altrad Third-Party Defendants are part of a scheme to facilitate Cape’s escape from legal or financial responsibility for people harmed by Cape asbestos.

33. AIA and Mohed Altrad are responsible for Cape's and other non-responding Altrad Third-Party Defendants' failure to respond to litigation involving Cape in the United States, including with respect to the actions brought by the Park and Tibbs plaintiffs in this Court.
34. The Altrad Third-Party Defendants have refused to make adequate provisions or reserves of cash for Cape's and their own asbestos-related liabilities.
35. The Altrad Third-Party Defendants have failed to properly observe corporate formalities over their existence.
36. The Altrad Third-Party Defendants have done nothing to address Cape's massive unpaid responsibility for the death and illness caused by Cape's asbestos products in South Carolina and elsewhere in the United States.
37. The Altrad Third-Party Defendants have taken possession of property, including cash and other assets, which they should have not taken from Cape.
38. The Altrad Third-Party Defendants have destroyed corporate records and publicly misrepresented the nature of Cape's business and liability-avoidance scheme in the United States.

General Inferences as to Alter Ego Liability

39. The Altrad Third-Party Defendants—with Cape—are subject to the same total dominion and control, and ability to be influenced with respect to major business decisions and are mere instrumentalities for the purposes of committing fraud or other violations of statutory or legal duties—namely, by Mohed Altrad and AIA.
40. The Altrad Third-Party Defendants—with Cape—are part of a single business enterprise or single enterprise-in-fact, have an amalgamation of corporate interests, entities, and

activities, and have unified, integrated, and intertwined business operations and resources to achieve and act with a common business purpose.

41. Mohed Altrad acts as the alter ego and “guiding spirit” of the Altrad Group.
42. Mohed Altrad controls decision-making within the Altrad Group, including for Cape.
43. The Altrad Third-Party Defendants—with Cape—have acted with bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of legal distinctions among the Altrad Third-Party Defendants, and that inequitable consequences and fundamental unfairness have been caused from such blurring of legal distinctions and their activities and assertions of corporate separateness, including in an attempt to shield fraud, evasion of existing obligations, circumvention of statutes, criminal conduct, and the like with respect to the Cape liability-avoidance scheme, and that adherence to the fiction of separate corporate identities would defeat justice.

General Inferences as to Unjust Enrichment

44. The Altrad Third-Party Defendants are part of the Cape liability-avoidance scheme, or have otherwise directed or facilitated the liability-avoidance scheme.
45. The Altrad Third Party Defendants have financially benefited from Cape’s liability-avoidance scheme, including receiving diverted funds directly or indirectly from Cape and retaining the benefits of Cape’s asbestos business.
46. It would be inequitable for the Altrad Third-Party Defendants to retain any financial benefit or monetary value from the liability-avoidance scheme without contributing to the compensation of persons harmed by Cape asbestos, including by returning the financial benefit or monetary value of the funds obtained from Cape.

DECISION ON REQUEST FOR ATTORNEYS’ FEES

A court may award reasonable expenses, including attorneys' fees, for a party's failure to make or cooperate in discovery. Rule 37(b), SCRCF (stating such payment "shall" be made unless the "failure was substantially justified" or "an award of expenses [is otherwise] unjust"); *see also*, *e.g.*, *Davis v. Parkview Apartments*, 409 S.C. 266, 270, 762 S.E.2d 535, 537 (2014) (affirming award of attorneys' fees and costs as sanctions for refusal to comply with discovery rulings); *Arnal v. Arnal*, 363 S.C. 268, 297-98, 609 S.E.2d 821, 836 (Ct. App. 2005), *aff'd as modified*, 371 S.C. 10, 636 S.E.2d 864 (2006) (court imposed sanctions awarding attorneys' fees for discovery abuse); *Scott v. Greenville Hous. Auth.*, 353 S.C. 639, 644, 579 S.E.2d 151, 154 (Ct. App. 2003) (trial court granted attorneys' fees for failure to participate in discovery); *Hundley ex rel. Hundley v. Rite Aid of S.C., Inc.*, 339 S.C. 285, 305, 529 S.E.2d 45, 56 (Ct. App. 2000) (trial court assessed attorneys' fees for discovery abuses); *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 511 S.E.2d 716 (Ct. App. 1999) (trial court awarded attorneys' fees for failure to comply with discovery order). "As a general rule," moreover, "the amount of attorneys fees to be awarded in a particular case is within the discretion of the trial judge." *Jones v. Robinson*, 2023 WL 7685902, at *10 (S.C. Ct. App. Nov. 15, 2023).

Consistent with the Court's other findings herein, and following a hearing on these issues, the Court finds that the Altrad and Charter Third-Party Defendants' persistent refusal to participate in discovery amounts to bad faith, willful disobedience, and gross indifference to the rights of the Receiver and the Court's management of its docket, and accordingly, the failure of these Third-Party Defendants falls short of substantial justification. Accordingly, the Court finds that the Receiver is entitled to reasonable attorneys' fees and costs as a sanction against the Altrad Third-Party Defendants and Charter Third-Party Defendants for the litigation activities to date necessary for addressing these Third-Party Defendants' frivolous positions and proceedings, culminating in

these Motions. The Receiver is ordered to produce within thirty (30) days from this order evidence of its reasonable attorneys' fees and costs for this Court's *in camera* review.

* * * * *

For the reasons set forth herein, the Court **GRANTS** the Receiver's Motions and, accordingly, (i) draws the adverse inferences set forth herein given the discovery misconduct of the Altrad Third-Party Defendants and Charter Third-Party Defendants, and (ii) concludes that an award of reasonable attorneys' fees and costs in favor of the Receiver is proper, and accordingly, the Receiver must submit evidence *in camera* of such fees and costs within 30 days of this order.

IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

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

Case Number: 2023CP4001759

Type: Order/Sanctions

So Ordered

Jean H. Toal

Electronically signed on 2024-05-23 15:38:06 page 34 of 34

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

v.

3M COMPANY *et al.*,

Defendants.

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

Third-Party Plaintiff,

v.

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

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

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

In Re:

Asbestos Personal Injury Litigation
Coordinated Docket

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

ALTRAD; ALTRAD UK LTD.; Cape UK Holdings Newco Ltd.; Altrad Services Ltd., f/k/a Cape Industrial Services Ltd.; ALTRAD INVESTMENT AUTHORITY S.A.S.; SPARROWS OFFSHORE GROUP LTD.; HAWK BIDCO US INC.; ARRANCO US, LLC; SPARROWS OFFSHORE, LLC; The Sparrows Group, LLC,

Third-Party Defendants.

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

INTRODUCTION

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

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

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

PROCEDURAL BACKGROUND

As this Court is already aware, on March 6, 2023, Plaintiffs in the Park Action moved for an Order Appointing a Receiver over Cape. *See* Motion to Appoint Receiver, *Park et al. v. Armstrong Int’l, Inc. et al.*, No. 2021-CP-4002727 (Mar. 6, 2023) (“Park Appointment Motion”), at 1. The Park Appointment Motion was made under S.C. Code Ann. Sec. 15-65-10(4) and (5)³. *Id.* at 1. The Park Appointment Motion described Cape’s longstanding litigation-avoidance strategy – starting nearly half a century earlier, in the late 1970s – by which Cape (with its subsidiaries, affiliates, successors, and assigns) “decided to simply accept default judgments in asbestos lawsuits and ultimately flee the [United States], knowing that nearly all [its] assets were in jurisdictions . . . where judgments in those lawsuits could not be enforced.” *Id.* at 2. On March 17, 2023, this Court issued an Order appointing Peter D. Protopapas as Receiver for Cape pursuant to S.C. Code Ann §§ 15-65-10(4) and (5). *See* Order, *Park et al. v. Armstrong Int’l, Inc. et al.*, No. 2021-CP-4002727 (March 17, 2023) (“Park Appointment Order”). The Park Appointment Order set forth, in detail, the Receiver’s powers and rights in this role. *See id.*

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

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

On June 30, 2023, in the fulfillment of his duties under the Park Appointment Order, the Receiver filed a Third-Party Complaint in the Tibbs Action asserting claims against Third-Party Defendants, alleging that they facilitated, caused, or directed Cape’s U.S.-based asbestos sales and liability avoidance scheme, or otherwise acted as successors in interest to or beneficiaries of entities involved in that scheme, and are therefore responsible for the bodily injury underlying the claims against Cape, including specifically those claims asserted by South Carolinians.

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

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

⁴ *Id.*

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

FACTUAL BACKGROUND⁶

A. The Foundation of Cape's Moral Fraud

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

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

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

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

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

⁸ *See Id.*

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

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

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

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

¹⁰ Ex. 1 at 13.

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

¹² *Id.* at 30.

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

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

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

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

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

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

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

¹⁶ See *supra* note 15.

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

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

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

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

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

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

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

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

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

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

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

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

²⁵ See generally *id.*

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

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

B. Cape's Continuing Moral Fraud

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

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

²⁷ See generally *id.*

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

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

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

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

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

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

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

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

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

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

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

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

³⁶ *Id.* at Cape_Receiver_00132239-40.

³⁷ *Id.*

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

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

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

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

³⁹ *Id.* at Cape_Receiver_00096000.

⁴⁰ *Id.* at Cape_Receiver_00095991.

⁴¹ *Id.* at Cape_Receiver_00095992-3.

⁴² *Id.* at Cape_Receiver_00096066.

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

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

⁴⁵ *See id.*

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

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

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

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

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

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

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

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

C. Key Evidence Supporting Appointment of a Receiver over Cape

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

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

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

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

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

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

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

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

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

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

⁵⁴ *Id.* at 50.

⁵⁵ *See id.*

⁵⁶ *See generally id.*

⁵⁷ *See generally id.*

⁵⁸ *Id.* at 56.

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

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

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

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

⁶⁰ Ex. 36 at 62.

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

⁶² *Id.* at 11.

⁶³ *Id.* at 48-49.

⁶⁴ *Id.* at 40.

⁶⁵ *Id.* at 37.

⁶⁶ *Id.* at 41-42.

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

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

⁶⁷ *Id.* at 5.

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

⁶⁹ *Id.* at 6.

⁷⁰ *Id.*

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

⁷² Ex. 37 at 11-12.

⁷³ *Id.* at 11-12, 69.

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

⁷⁵ Ex. 37 at 58.

⁷⁶ *Id.* at 56-57.

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

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

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

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

⁷⁷ *Id.* at 66.

⁷⁸ *Id.* at 68.

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

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

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

⁸² *Id.*

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

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

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

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

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

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

⁸⁶ *Id.*

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

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

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

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

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

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

⁸⁸ *Id.*

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

⁹⁰ *Id.*

⁹¹ *Id.*

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

⁹³ *Id.* at 2.

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

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

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

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

⁹⁴ *Id.* at 34.

⁹⁵ *See, e.g., id.*

⁹⁶ *Id.* at 35.

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

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

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

¹⁰⁰ *Id.* at 2.

¹⁰¹ *Id.*

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

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

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

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

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

¹⁰² Ex. 48 at 11-12.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 13.

¹⁰⁵ *Id.*

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

¹⁰⁷ *Id.* at 135.

¹⁰⁸ *Id.* at 116.

¹⁰⁹ *Id.* at 24.

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

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

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

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

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

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

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

¹¹⁰ *Id.* at 38, 63.

¹¹¹ *Id.* at 11-12, 30.

¹¹² *Id.* at 40, 57.

¹¹³ *Id.* at 41.

¹¹⁴ Ex. 49

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

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

¹¹⁵ Ex. 48 at 42.

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

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

¹¹⁸ *Id.* at 723-29.

¹¹⁹ Ex. 51.

¹²⁰ *Id.*

¹²¹ See generally *id.*

3. *Cape orchestrates its exit plan from the U.S. Judicial System with the cooperation of Lord Bissell & Kadyk, a Chicago-based Law firm*¹²²

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

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

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

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

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

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

¹²⁶ *Id.*

¹²⁷ *Id.*

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

¹²⁹ See Exs. 54-61.

¹³⁰ *Id.*

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

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

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

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

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

¹³⁴ *Id.*

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

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

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

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

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

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

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

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

¹³⁹ *Id.*

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

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

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

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

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

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

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

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

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

¹⁴⁶ *Id.*

¹⁴⁷ *See id.*

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

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

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

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

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

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

LAW AND ARGUMENT

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

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

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

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

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

See *First Carolinas Joint Stock Land Bank of Columbia v. Knotts*, 191 S.C. 384, 1 S.E.2d 797 (1939). The central function of a receivership is “to marshal and collect—to receive—the assets of the corporation” for the purposes of satisfying creditors. *Welch v. Advance Auto Parts, Inc.*, No. 2023-001096, 2025 WL 1450573, at *7 (S.C. May 21, 2025). “[T]he Receiver, as a ‘hand of the court,’ exercises power and control over the defendant’s assets and property specified in the appointment order and administers them at the court’s discretion for the benefit of creditors and the debtor’s estate.” *Id.* (quoting *Allen v. Cooley*, 53 S.C. 414, 446, 31 S.E. 634, 646 (1898)).

Creditors for whose benefit a receiver is authorized to marshal assets can include tort claimants. Indeed, the Supreme Court of the United States recognizes that a “state court, upon . . . hearing or information, . . . may permit its receiver to sue . . . upon any controverted claim,” including the ability to assert “all . . . rights of action.” *Porter v. Sabin*, 149 U.S. 473, 480 (1893). Rule 66, SCRCP, which concerns the “Powers of Receiver,” also provides that “[i]n addition to the powers conferred by law, every receiver of the property and effects of a debtor shall, unless restricted by order of the court, have general power and authority to sue for and collect the debts, demands and rents belonging to the debtor, and . . . may also sue . . . in the name of the debtor where it is necessary or proper for him to do so.”

South Carolina law allows appointment of a receiver in several circumstances. Pursuant to S.C. Code § 15-65-10(4), a receiver may be appointed, in relevant part, when a corporation is “in imminent danger of insolvency.” Under subsection (5) of S.C. Code § 15-65-10, this Court has authority to appoint a receiver “either in or out of court . . . [i]n such other cases as are provided by law or may be *in accordance with the existing practice*, except as otherwise provided in this Code” (emphasis added). Section 15-65-10(5) reflects an “old practice” of equity and an “important principle of law” to correct injustice, particularly “when a debtor is trying to defeat his

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

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

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

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

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

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

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

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

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

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

¹⁵⁶ *Id.* at 8.

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

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

¹⁵⁹ See Ex. 25 at 9.

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

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

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

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

¹⁶² *See id.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

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

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

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

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

Paul A. Scrudato

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

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

July 11, 2025
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

JOHN A. TIBBS and MARGARET B. TIBBS,

Plaintiffs,

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

v.

In Re:

3M COMPANY *et al.*,

Asbestos Personal Injury Litigation
Coordinated Docket

Defendants.

**REPORT OF THE RECEIVER
RELATING TO THE FACTUAL
PREDICATE UNDERLYING THE CAPE
APPOINTMENT ORDER**

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

Third-Party Plaintiff,

v.

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

Third-Party Defendants.

Peter D. Protopapas, as Receiver (the "Receiver") for Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd. ("Cape")), submits this Report on the Cape receivership. This Report addresses issues raised in a recent Order of the Supreme Court of South Carolina relating to the appointment

and powers of a receiver, and specifically the factual predicate for the appointment of a receiver in this matter.¹

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

A. *Welch* and its support for appointing a receiver over Cape

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

Welch involved the appointment of a receiver pre-judgment to marshal insurance assets of Atlas Turner, Inc. ("Atlas Turner"), a non-defunct, foreign corporation.⁵ Atlas Turner sold asbestos

¹ *Tibbs v 3M Company*, et al. Nos. 2024-001423, 2024-001499, 2024-00916, 2024-002114, 2024-002116, 2024-002117 and 2025-000052 (S.C. Order dated June 26, 2025) (hereinafter “June 26 Order”).

² *Id.*

³ No. 2023-001096, 2025 WL 1450573, at *9-12 (S.C. May 21, 2025)

⁴ See generally June 26 Order.

⁵ Before proceeding further, an important difference between the Atlas Turner receiver order, and the order here, warrants highlighting. The Atlas Turner appointment order was confined to appointing a Receiver to marshal Atlas Turner's insurance assets, and the *Welch* opinion recognized that limitation on the Atlas receiver's powers to marshal such assets. See Order on Plaintiffs' Motion to Appoint A Receiver, *Welch v. 3M Co.*, No. 2022-CP-40-03834 at 6 (S.C. Ct.

containing spray and pipe insulation to a Greenville, South Carolina installer of asbestos insulation and to a North Carolina "wholesaler installer" that supplied South Carolina companies with these products.⁶ The *Welch* plaintiff was allegedly exposed to these types of Atlas Turner products at a facility in South Carolina and died from mesothelioma caused by his asbestos exposure.⁷

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

Com. Pl. Jun. 21, 2023) (appointing the Receiver "with the power and authority [to] fully administer **all insurance assets** of Atlas Turner, Inc.," and specifying 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.") (emphasis added). The Cape receiver order includes no such limitation. *See* Order Appointing Receiver, *Park v. Armstrong Int'l, Inc.*, No. 2021-CP-40-02727 at 1 (S.C. Ct. Com. Pl. Mar. 16, 2023) (appointing 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.") (emphasis added) (hereinafter "Appointment Order (Cape)"). As addressed more fully below, this difference stems, in part, from the relative participation of these entities in U.S. asbestos litigation: because Atlas appeared in U.S. litigation, this Court found that it needed a receiver to determine the scope of insurance resources available to pay claims when Atlas was not forthcoming with such information. Cape, on the other hand, refused to participate whole cloth, which necessitated a broader appointment in light of facts known from the motion to appoint a receiver as to Cape's decades-old scheme of liability avoidance.

⁶ *Welch*, 2025 WL 1450573, at *6.

⁷ *Id.* at *1-2.

⁸ *Id.* at *3.

⁹ *Id.* at *6.

and also to a North Carolina company for use in South Carolina, the Court rejected Atlas' jurisdictional objection.¹⁰

Second, as for the appointment of a pre-judgment receiver over a viable company under S.C. Code § 15-65-10(5), the Supreme Court said that this "extreme" remedy should be employed in the "rarest" of cases – namely, cases reflecting "moral fraud – a conscious intent to defeat, delay, or hinder" creditors.¹¹ The Court characterized this "moral fraud" requirement in varied but consistent language:

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

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

[where a] manufacturer . . . disposes of large resources . . . and leaves his debts unpaid, and sets creditors at arm's length by refusing to give any account of his property or to take any interest in the satisfaction of their claims, the court is warranted in drawing the inference that there has been a fraudulent disposition of the property.¹²

Each characterization suggests that the sort of "moral fraud" that can justify appointing a pre-judgment receiver under S.C. Code § 15-65-10(5) involves willful efforts to avoid being called to account for a "later judgment."¹³

The Supreme Court found that Atlas Turner's conduct satisfied the "moral fraud" standard because: (1) Atlas sought to evade its responsibilities as a civil litigant by disregarding the court's discovery orders and employed a "corporate policy" of minimal defense and then incurring default judgments, and (2) Atlas represented to the court that it had no insurance assets relevant to the

¹⁰ *Id.* at *6, *12.

¹¹ *See id.* at *7; *Virginia-Carolina Chem. Co. v. Hunter*, 66 S.E. 177, 179 (S.C. 1909).

¹² *Id.* at *7-8 (citation omitted).

¹³ *Id.* at *7.

Welch plaintiff, yet sought to compromise certain insurance assets by removing them from the plaintiff's reach.¹⁴ The Supreme Court declined to “upset the trial court's discretionary decision” in appointing a pre-judgment receiver given that Atlas Turner engaged in moral fraud against the trial court, the state of South Carolina, and the *Welch* plaintiff.¹⁵

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

Cape mined and distributed the most dangerous forms of asbestos in a manner far outstripping the damage done by Atlas Turner. Asbestos is a mineral that is mined from the ground.¹⁶ There are three commercial types of asbestos: chrysotile, amosite and crocidolite.¹⁷ Amosite and crocidolite—which are by far the most harmful to humans—were mined by Cape in South Africa.¹⁸ Asbestos fiber is typically processed at the mines and then sold to manufacturers of asbestos-containing products, such as pipe insulation and brake linings.¹⁹

Cape had a near monopoly on the global supply of amosite and crocidolite.²⁰ There were fewer than five principal asbestos mining companies world-wide, such as Cape.²¹ Unlike the small group of miners, the defendant in *Welch*—Atlas Turner—was one product manufacturer of many hundreds.²² Most of the manufacturers of asbestos-containing thermal insulation products in the

¹⁴ *Id.* at *9-12.

¹⁵ *Id.* at *8.

¹⁶ Ex. 1, Robert L. Virta, *Asbestos: Geology, Mineralogy, Mining, and Uses*, U.S. Geological Survey Open-File Rep. 02-149, at 5 (2002).

¹⁷ *See Id.*

¹⁸ Ex. 2, Jock McCulloch, *Surviving Blue Asbestos: Mining and Occupational Disease in South Africa* 115 (2002).

¹⁹ Ex. 1 at 13.

²⁰ Ex. 2.1, Jock McCulloch, *Asbestos Blues: Labour, Capital, Physicians & the State in South Africa* 27 (James Currey 2002).

²¹ *Id.* at 30.

²² *See, e.g.*, Ex. 3, “Asbestos Manufacturers,” The Mesothelioma Center (Nov. 14, 2024), <https://www.asbestos.com/companies/>.

United States filed for bankruptcy, and more than 60 of these companies established trusts to compensate asbestos victims.²³

Two points underlying this brief history are important to understanding a critical factual difference between Cape and Atlas Turner as asbestos companies. **First**, certain asbestos mining companies, like Cape, were the source of all the amosite and crocidolite asbestos fibers used in South Carolina and the rest of the United States.²⁴ 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, and to 750 manufacturing plants.²⁵ Cape sold asbestos direct to customers in South Carolina, as well.²⁶ Cape was aware that its asbestos could ultimately expose people in any of the 50 states, regardless of where the products were manufactured.²⁷ Cape is therefore fundamentally different from Atlas Turner, which manufactured a product, spray limpet insulation, from the asbestos fiber it mined and sold that product to customers in the United States, including in South Carolina. **Second**, the conduct of Atlas Turner touched people who used or worked around its products. Cape is different—its

²³ Ex. 4, U.S. Gov’t Accountability Off., GAO-11-819, *Asbestos Injury Compensation: The Role and Administration of Asbestos Trusts Highlights* (2011) (report noting that “about 100 companies have declared bankruptcy at least partially due to asbestos-related liability” and that “since 1988, 60 trusts have been established to pay claims”).

²⁴ Ex. 5, J.S. Harington & N.D. McGlashan, *South African Asbestos: Production, Exports, and Destinations*, 1959–1993, 33 AM. J. INDUS. MED. 321, 323 (1998) (reporting that in the early-1960s North America was a major recipient of South-African amosite and crocidolite exports); Ex. 6, Karen Selby, *Mesothelioma in South Africa*, ASBESTOS.COM (April 17, 2025), <https://www.asbestos.com/mesothelioma/south-africa/> (noting South Africa supplied 97 % of the world’s crocidolite and “practically all” amosite and that the mines were owned by companies including Cape Asbestos); *See also*, e.g., Ex. 7, North American Asbestos Corporation, *States Where Suits Have Been Filed and States We Shipped Asbestos To*; Ex. 8, North Am. Asbestos Corp., Customer List (Oct. 6, 1976).

²⁵ *See supra* note 24.

²⁶ Ex. 7; Ex. 8, NAAC Customer Lists; Ex. 9, NAAC Sales List.

²⁷ Ex. 10, Deposition of Richard Gaze at 26, *Yandle v. PPG Indus., Inc.*, No. TY-74-3-CA (E.D. Tex. June 4–5, 1975).

conduct touched every person who used or worked around *any asbestos-containing product* made by a multitude of manufacturers containing Cape asbestos—the evidence in this case will be that there are thousands of job sites in South Carolina where Cape asbestos was used in all manner of products made by scores of companies.²⁸

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.

Specifically, Cape's moral fraud was the product of company policy—as was the case with Atlas Turner—but far more ruthless and deliberate in terms of concealing assets that could be answerable to asbestos claimants to whom Cape deemed it has no "moral responsibility," and more egregious than Atlas Turner's conduct in terms of its current and past disrespect for the South Carolina judicial system.²⁹ In short, Cape's conduct disrespecting the South Carolina judicial system exceeds that of Atlas Turner's.

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

The *Welch* decision recognized that Atlas Turner continued to sell "pernicious products . . . for profit even after the lethal risk these products posed was known," and that when it was later sued by American workers, Atlas Turner claimed it would offend "traditional notions of fair play"

²⁸ 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).

²⁹ Ex. 11, Telex from A. Penna to S. Milwild (July 4, 1977).

and due process guarantees if the court were to exercise jurisdiction over the company.³⁰ Atlas Turner's knowledge of the dangers of asbestos exposure illuminated the scope of Atlas Turner's moral fraud, and is directly applicable to Cape, as well.³¹

Here, the evidence shows that Cape (1) knew very early that even small doses of asbestos could cause mesothelioma, and covered up that knowledge for decades; (2) affirmatively lied about the amosite's propensity to cause mesothelioma (it knew that it did, but said publicly and to its customers it did not); (3) threatened to economically ruin a South African village doctor who was caring for ten mesothelioma patients who worked at Cape asbestos mines if he did not remain quiet about the dangers of asbestos exposure, and (4) when faced with liability for flooding the market with its asbestos, closed its U.S. subsidiary and absconded back to England.³² And then, in a truly remarkable act of defiance and fraud on U.S. workers and the U.S. judicial system itself, Cape—which supposedly exited the U.S. domestic market for asbestos when it closed its Chicago sales subsidiary—hatched a scheme to continue to sell asbestos to customers in the United States through what it described as a camouflaged shell entity in Lichtenstein designed to disguise from "plaintiffs in future US asbestos litigation" (Cape's words) the fact that the company was still selling asbestos in this country.³³

³⁰ *Welch*, 2025 WL 1450573, at *8.

³¹ *Id.*

³² *See, e.g.*, Ex. 12, Memo from Gaze to Mendelle (July 24, 1964) (warning Cape personnel about asbestos hazards); Ex. 13, Letter from R. Cryor to R. Gaze (Nov. 20, 1969) (Cape controlling NAAC's customer relationships—showing Cape's domination of NAAC); Ex. 14, Memo to NAAC File re Liquidation of NAAC (April 7, 1978) (detailing Cape's liability-avoidance scheme post-dissolution of NAAC).

³³ *See, e.g.*, Ex. 15, Memo from A. Sarabia to Meyer (Jan. 23, 1978) (detailing Cape's liability-avoidance scheme post-dissolution of NAAC); Ex. 14.

Plaintiffs' counsel described Cape's moral fraud in the *Park* case in its Motion to Appoint a Receiver citing publicly available documents from litigation against Cape in the 1970s and other Cape-associated entities.³⁴ These documents outline the moral fraud allegations against Cape:

1. Cape established in 1953 a "one-man" subsidiary in the United States—North American Asbestos Corporation ("NAAC")—to coordinate deliveries of Cape asbestos to US purchasers.
2. Cape dominated NAAC's decision making in all respects such that NAAC had no independent personality and was a mere division of Cape.
3. NAAC and Cape coordinated efforts to rebut publicly emerging information about the health dangers of asbestos exposure.
4. Cape, and later NAAC, refused to participate in litigation involving US asbestos plaintiffs because, according to Cape executives, Cape had no "moral responsibility" to US workers.
5. Cape's litigation avoidance strategy was based in part on legal advice from UK counsel and US counsel (Lord Bissell and Brooke, a Chicago firm, now Trout Pepperman Locke).
6. Cape's strategy was to sell asbestos to U.S. customers, despite its private knowledge of the dangers of asbestos exposure and then retreat to England where U.S. default judgments would not be enforced.
7. Cape set up a phantom company in Liechtenstein designed to camouflage its connection to Cape, but was in fact Cape, to continue to sell asbestos in the US after Cape closed NAAC and retreated to England.³⁵

³⁴ See generally Motion to Appoint Receiver, *Park v. Armstrong Int'l, Inc.*, No. 2021-CP-40-02727 (S.C. Ct. Com. Pl. Mar. 6, 2023).

³⁵ See generally *id.*

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

Cape and Atlas Turner followed the same playbook.³⁶ **First, Atlas Turner:** As the court explained in *Welch*, Atlas Turner participated in U.S. litigation, but only to a degree.³⁷ Atlas had "long experience" as a defendant in asbestos litigation in the United States—and indeed, is still "participating" in cases such as *Welch*.³⁸ As further outlined in *Welch*, Atlas Turner first asserted that it was not subject to jurisdiction in U.S. courts.³⁹ When that strategy failed, Atlas objected to producing documents based on a Quebec "blocking statute" even after U.S. courts—including the United States Supreme Court—had uniformly ruled that the blocking statute lacked effect.⁴⁰ Then—still under the guise of “participating” in the *Welch* case—Atlas refused to produce a corporate witness because, it claimed, there was no such witness available.⁴¹ This Court and South Carolina Supreme Court rejected that strategy, too.⁴² Finally, when "that ploy fail[ed]," as the *Welch* court noted, Atlas Turner simply refused to abide by lawful court orders.⁴³ Atlas had other options, as the Supreme Court noted—it could have complied with the court's orders and raised disputed issues again at trial but it instead “acted as if a ruling against them granted it license to ignore its responsibilities. Such conduct has its consequences.”⁴⁴

After Cape settled an early Texas asbestos products liability case in 1977, Cape decided to refuse to participate *at all* in cases filed by U.S. plaintiffs and instead took default judgments based

³⁶ See *Welch*, 2025 WL 1450573, at *8.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at *3-9.

⁴⁰ *Id.* at *3-4.

⁴¹ *Id.* at *4, *8.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Welch*, 2025 WL 1450573, at *12.

on its bet that U.K. courts were unlikely to enforce an American default judgment.⁴⁵ While Atlas Turner went through the motions to suggest that it was participating in cases filed by U.S. plaintiffs, Cape walked off the litigation playing field altogether.⁴⁶ Cape first removed itself from U.S. litigation, and then soon after ordered the dissolution of its U.S. agent NAAC, thus removing NAAC from litigation, as well.⁴⁷

Importantly, Cape did *not* stop selling asbestos in the United States. Instead, it concocted a scheme to conceal its identity to U.S. litigants and continued selling the same South African asbestos fibers with the use of a Lichtenstein pass-through entity, Associated Minerals Corporation (“AMC”), to the same list of customers in the U.S. market. Anthony Penna, in-house counsel for Cape, referred to this scheme, which also included re-branding the entire NAAC operation as an independent entity under a new name, Continental Products Company (“CPC”), as only “a difference in form.”⁴⁸

⁴⁵ See, e.g., Ex. 15.1, Letter from A. Penna to M. Meyer (July 10, 1978) (detailing Cape’s default strategy).

⁴⁶ See *id.*

⁴⁷ The decision to liquidate NAAC occurred notwithstanding consistent years of record profits from Cape’s sale of asbestos fiber in the United States. See, e.g. Ex. 16, Charter, Annual Report (1976), at Cape_Receiver_00075720, Cape_Receiver_00075751-52 (reporting £10.2 million of operating profit “in spite of difficult trading conditions, with the “greatest increase” in improved profit “arising in the mining division, which raised total tonnage both mined and sold,” even despite “substantial price increases”); Ex. 17, Charter, Annual Report (1977), at Cape_Receiver_00075769,-75773 (reporting another “record year” from Cape with pre-tax profit of £14.2 million, with the “mining division again perform[ing] exceptionally well”).

⁴⁸ Ex. 18, Testimony of A. Penna, Mar. 14, 1988, at Cape_Receiver_00132247 (“It was a difference in form; and, as I have said, the Morgan company, new company, CPC, did carry on very much the same role that NAAC had carried on in trading terms.”); *id.* at Cape_Receiver_00132236 (“Our mining companies wished to continue selling asbestos in the United States, yes. . . . There needed to be an organization which could liaise with the customers.”), *id.* at Cape_Receiver_00132247 (“Certainly, Howard Tanner, the Sales Director of the South African mining companies was extremely keen to ensure that sales to America, that is there could be some continuation of sales to American customers.”).

Cape disguised this scheme even from NAAC's then-president, Charles Morgan, when Penna asked Morgan to consider opening CPC. While Cape averred that Morgan was well aware of the connection to Cape,⁴⁹ 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."⁵⁰ Morgan testified that he did not know that Penna was contacting him on behalf of Cape.⁵¹ He did not know who owned AMC, and no one had suggested to him that there was a relationship between Cape and it.⁵²

Once Morgan agreed to establish CPC, Cape's lawyers at the Lord Bissell firm in Chicago drew up the incorporation documents.⁵³ 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."⁵⁴ "The Lichtenstein company was a separately

⁴⁹ *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.").

⁵⁰ Ex. 19, Deposition of C. Morgan, Feb. 20, 1981, at Cape_Receiver_00096003.

⁵¹ *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.").

⁵² *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.").

⁵³ *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.").

⁵⁴ Ex. 18 at Cape_Receiver_00132246.

constituted company but it certainly had no direct employees of its own. . . . It was primarily an invoicing company.”⁵⁵ Cape’s fingerprints were all over the deal. Confronted with evidence, Penna was forced to admit, “Yes, it seems to be contemplated that Cape Asbestos Fibres would subscribe the initial capital.”⁵⁶

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.⁵⁷ 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.⁵⁸

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.”⁵⁹ 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.⁶⁰ CPC also took over the NAAC employees’ pension plan.⁶¹ Joan Holtze testified that she sat at the same physical desk at CPC as she had when she

⁵⁵ *Id.* at Cape_Receiver_00132239-40.

⁵⁶ *Id.*

⁵⁷ Ex. 19 at Cape_Receiver_00096022. (“I advised them that North American Asbestos was being liquidated, it was no longer to be in the position to supply them with fiber, I had made a connection where I thought I could supply them with fiber, I would like their consideration very much.”); *id.* at Cape_Receiver_00096003, Cape_Receiver_00096063-4 (“Q. When Tony Penna contacted you on behalf of the Lichtenstein corporation you knew, did you not, in fact he was actually contacting you on behalf of Cape Asbestos? A. No, Sir, I did not know that.”); *id.* at Cape_Receiver_00096064 (“Q. Do you know who owns the Lichtenstein corporation? A. No, Sir. Q. Has anyone ever suggested to you that Cape Asbestos has some ownership in the Lichtenstein corporation, Associated Minerals Corp.? A. Definitely not. Q. has anyone ever suggested to you that any of the principals of Cape Asbestos had some interest in that Liechtenstein corporation? A. No, Sir.”).

⁵⁸ *Id.* at Cape_Receiver_00096000.

⁵⁹ *Id.* at Cape_Receiver_00095991.

⁶⁰ *Id.* at Cape_Receiver_00095992-3.

⁶¹ *Id.* at Cape_Receiver_00096066.

worked for NAAC.⁶² In this way, Cape hoped to escape liability, but continued selling asbestos fibers to virtually the same contact list using a shell game and companies in Liechtenstein and South Africa to conceal any connection between it and the United States.

If Atlas Turner's conduct in refusing to “follow the rules like any other litigant” while acting as a litigant having actually appeared in a South Carolina court was sufficiently offensive to the South Carolina Supreme Court to satisfy the “moral fraud” requirement to appoint a prejudgment receiver, then certainly Cape's conduct does as well. Cape makes no pretense at following the rules—it refuses to show up—to defend its scheme of selling asbestos fiber into South Carolina and other states through a shell offshore company.⁶³

Cape's plan has worked to date. U.S. plaintiffs pursued their default judgments in England and were rebuffed. The English court concluded, based on English law, that Cape had no “presence” in the United States, and therefore the defaults were not enforceable in England.⁶⁴

Cape's defiance of South Carolina courts continues to this day. The successor corporation to Cape is a third-party defendant in the above-captioned matter—Altrad Investment Authority S.A.S (“Altrad”), which purchased Cape in 2017—and Altrad has, as this court knows, absolutely refused to participate in discovery in this case.⁶⁵ Altrad has not produced a single document to the Receiver, and as a result, this court entered an order against Altrad for sanctions and other relief on May 23, 2024.⁶⁶ On November 22, 2024, Altrad subsidiaries Cape plc and Cape Intermediate Holdings Limited obtained an injunction against this Receiver individually and

⁶² Ex. 20, Deposition of J. Holtze, Apr. 12, 1979, at Cape_Receiver_00097838-9.

⁶³ See *supra* notes 47-57.

⁶⁴ See generally *Adams v Cape Industries plc*, (1990) 1 Ch 433 (CA).

⁶⁵ See Order Granting the Receiver for Cape PLC's Motion for Sanctions and Motion for Adverse Inference as to the Altrad and Charter Third-Party Defendants, *Tibbs v. 3M Co.*, No. 2023-CP-40-01759 (S.C. Ct. Com. Pl. May 23, 2024).

⁶⁶ See generally *id.*

in his personal capacity in the High Court of England and Wales.⁶⁷ The order purportedly enjoined the receiver from acting as receiver for Cape worldwide, including before this court.⁶⁸ 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.”⁶⁹

The South Carolina Supreme Court characterized the U.K. Order as “shocking and indefensible.”⁷⁰ Altrad has repeatedly threatened the Receiver with personal financial penalties and criminal sanctions with one objective in mind—to stymie the judicial process *here in South Carolina* that exists to serve South Carolina claimants. Altrad's conduct is merely a continuation of Cape’s refusing to participate in U.S. litigation despite knowing that is in fact subject to U.S. law. Altrad's conduct goes far beyond not participating in U.S. litigation to include leveling threats against the Receiver and anyone else who furthers the work of the receivership – including South Carolina courts – for fulfilling his court-appointed obligations.⁷¹

⁶⁷ See *Cape Intermediate Holdings Ltd. v. Protopapas*, [2024] EWHC 2999 (Ch) (Eng.).

⁶⁸ See *id.*

⁶⁹ Order Appointing Receiver at 3, *Park v. Armstrong Int’l, Inc.*, No. 2021-CP-40-02727 (S.C. Ct. Com. Pl. Mar. 17, 2023).

⁷⁰ *Welch*, 2025 WL 1450573, at *10-12.

⁷¹ Altrad, through Cape Intermediate Holdings Limited, obtained an injunction against the Receiver in the High Court of England and Wales on November 22, 2024. The order includes a Penal Notice threatening criminal prosecution and imprisonment for anyone who knows of the order and fails to comply with it. See Penal Notice & Sealed Order (Nov. 22, 2024) (“IF YOU THE DEFENDANT DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED. ANY PERSON WHO KNOWS OF THIS ORDER AND DISOBEYS THIS ORDER OR DOES ANYTHING WHICH HELPS OR PERMITS ANY PERSON TO WHOM THIS ORDER APPLIES TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.”) (all capitals in original) .

Having benefitted from a decades-long litigation avoidance scheme, Altrad's aggressive conduct to avoid potential U.S. liability in this case is no surprise. Altrad most recently demonstrated its zealous commitment to litigation avoidance above all else when its lawyers wrote to the Receiver threatening him against "taking any steps in respect of" a lawsuit that the Pittsburgh Corning Bankruptcy Trust filed against Cape in this Court, and alluding to potential criminal and monetary judgments against the receiver personally.⁷² Altrad's ability to continue to profit off of Cape's 1978 decision to leave the United States hangs in the balance in this litigation.

Further, Ran Oren, the sole director of Cape Intermediate Holdings Limited and the CEO of defendant Altrad Investment Authority S.A.S., threatened at least four insurance companies on Altrad letterhead against responding to a subpoena for insurance information issued *from this court and in these proceedings*.⁷³ Mr. Oren is even today participating directly in what the court in *Welch* characterized as a "conscious intent to defeat, delay, or hinder" creditors of Cape, albeit by threats and intimidation against both the receiver and other U.S. entities to whom discovery requests have been served as a routine practice of the South Carolina judicial process.⁷⁴

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

⁷² See Ex. 21, Letter from Signature Litigation to P. Protopapas (May 19, 2025).

⁷³ See, e.g., Ex. 22, Letter from R. Oren to Lloyd's (May 7, 2025).

⁷⁴ See *id.*; see also *Welch*, 2025 WL 1450573, at *7. Altrad does not limit its use of threats and intimidation to U.S. parties. Just a week ago, a report was issued by the U.K. All-Party Parliamentary Group (APPG) on Occupational Safety and Health relating to a request by an asbestos victims' support group for mesothelioma research funding by Altrad. The APPG was composed of Peers and Members of Parliament. The report notes that "Altrad is the ultimate parent company of Cape. It purchased Cape in 2017 and has benefitted substantially from the transaction." Ex. 23, APPG Report (2025) at 7. The report noted that, on numerous occasions, Altrad lawyers (representing the parent in claims against Cape) "threatened to report" claimants' attorneys to the Solicitors Regulations Authority for requesting or disclosing certain documents relating to Cape. See generally *id.* Mr. Oren's unfavorable conduct in dealing with the victims' support group features prominently in the APPG Report. See *id.* at 10.

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

First, CIHL is in imminent danger of insolvency because it is a non-operating shell company in a corporate structure subject to the full control of an ultimate parent – Altrad Investment Authority S.A.S. – that could eliminate, shift, or move the company at any time. This means that even though CIHL appears to declare an annual dividend each year, those are the profits 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.⁷⁵ It exists solely as a corporate shell.⁷⁶ Ran Oren, Altrad Investment Authority S.A.S.’s CEO, is the sole officer and director of CIHL.⁷⁷ 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.⁷⁸ Importantly, though, the three Cape

⁷⁵ Ex. 24, CIHL Annual Report 3, 12, 14 (2025) (“Cape Intermediate Holdings had no employees in the current or prior year.”); *id.* at 3 (“The Company is a non-trading holding company”).

⁷⁶ *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.”).

⁷⁷ *Id.* at 8.

⁷⁸ *See id.* at 13; Ex. 25, Altrad Services Ltd. Annual Report 33 (2025); Ex. 26, Cape Insulation Ltd. Annual Report 9 (2025); Ex. 27, Cape Industries Ltd. Annual Report 9 (2025); Ex. 28, Cape Building Products Ltd. Annual Report 9 (2025).

entities – Cape Insulation Ltd., Cape Industries Ltd., and Cape Building Products Ltd. – are legacy Cape companies that generate no revenue.⁷⁹

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.⁸⁰ Because CIHL wholly owns Altrad Services Ltd., that full dividend went to CIHL. CIHL, in turn, did not hold any portion of the dividend itself, but instead declared the full £ 24,769,000 as a dividend to its shareholder.⁸¹ 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.

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

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

⁷⁹ Ex. 26 at 3; Ex. 27 at 3; Ex. 28 at 3.

⁸⁰ See Ex. 25 at 9.

⁸¹ See Ex. 24 at 7 (declaring 24,769,000 as dividends received for 2024).

Group has sufficient funds to satisfy all other *UK claims* settled outside the Scheme of Arrangement.”⁸²

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.⁸³ 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.⁸⁴ 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.”⁸⁵ 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

⁸² Ex. 29, Altrad Grp., Interim Consolidated Financial Statements at 32 (Feb. 28, 2025) (emphasis added).

⁸³ *See id.*

⁸⁴ Ex. 30, Altrad Services Limited Annual Report (2022), at Cape_Receiver_00248438 (“The Group continues to receive claims, from both individuals and insurance companies, in connection with historical alleged exposure to asbestos. Where claims are determined to have merit, the costs are provided for and claims are settled in the ordinary course, otherwise claims are defended.”).

⁸⁵ Ex. 31, *Former asbestos firm offers victims 3 m under gag clause*, Health & Safety Int’l, <https://www.healthandsafetyinternational.com/article/1913269/former-asbestos-firm-offers-victims-3m-gag-clause>

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

Second, since 1978, Cape has avoided liability to U.S. litigants by refusing to appear in U.S. courts. As demonstrated above, Cape has gone to great lengths to protect itself against these liabilities, including creating a fake offshore company. Faced with the possibility that U.S. litigants may now be able to access funds to pay future claims, and given that Cape is not a stand-alone company, but instead is a holding company within a large corporate structure, one should expect that Altrad will do anything to avoid its historical liabilities, including rendering the company fully 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.⁸⁶

4. *The Cape receivership order is sufficiently narrow.*

The *Welch* case correctly notes that the Receivership order for the insurance assets of Atlas Turner “does not give the Receiver entry into the Atlas Turner boardroom or some vague right to ‘take over’ operation of the company.”⁸⁷ Nor does the receivership order in Cape.⁸⁸ The Receiver

⁸⁶ Ex. 32, Cape, Altrad, and Sparrows, Agreement for Full and Final Settlement and Release of Claims (2025).

⁸⁷ *Id.* at 12.

⁸⁸ *Id.*; see also Order Appointing Receiver, *Park v. Armstrong Int’l, Inc.*, No. 2021-CP-40-02727 at 1 (S.C. Ct. Com. Pl. Mar. 16, 2023).

has no such intention (as his course of conduct has reflected), nor is any boardroom “take over” necessary for the Receiver to fulfill his court-appointed obligations.⁸⁹

Cape Intermediate Holdings Ltd (“CIHL”) is the receivership entity.⁹⁰ CIHL is a U.K.-registered holding company with no employees, no physical assets, no customer contracts, and no operational footprint.⁹¹ Ran Oren is the sole officer and director of CIHL.⁹² The English High Court issued a worldwide injunction after Altrad's lawyers misled the court to believe that CIHL operates a live business in danger of being taken over by the receiver.⁹³ Any CIHL revenue-generating operations, staff, and contractual obligations reside in different concerns and, since the Receiver’s appointment have, and will continue to, function without disruption (or any action by the receiver affecting their operations).

Further, the Cape Appointment Order allows the Receiver only the powers to “fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape whatever they may be.”⁹⁴ 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.”⁹⁵

d. *The Cape receivership involves non-insurer entities as third-party defendants*

As this Court knows, the Receiver’s litigation in South Carolina ordinarily involves insurance companies, as the receiver is marshaling dormant insurance assets to respond to asbestos

⁸⁹ *See id.*

⁹⁰ *see generally* Appointment Order (Cape)

⁹¹ Ex. 24 at 3, 12, 14.

⁹² *Id.* at 8.

⁹³ *See generally Cape Intermediate Holdings Ltd. v. Protopapas*, [2024] EWHC 2999 (Ch) (Eng.).

⁹⁴ *See* Appointment Order (Cape).

⁹⁵ *Id.*

cases. Here, part of Cape's plan was to set up NAAC to be intentionally underinsured, as its insurance appears to have been exhausted about the time NAAC was dissolved in 1978.⁹⁶ Cape Asbestos—the entity that owned NAAC—did not provide for *any* insurance for claims by injured U.S. workers exposed to their asbestos, but it did purchase coverage for U.K. claimants exposed to its asbestos-containing products Cape sold in England.⁹⁷ Consistent with the appointment order,⁹⁸ the Receiver's litigation here does not involve insurance companies. Rather, the litigation involves other entities that hold the legacy liabilities for Cape, either companies that were directly involved in directing the sale of asbestos in the United States, or entities that are legal successors to those entities. If the successor entities ever participate in discovery, the Receiver anticipates exploring whether these companies may hold such insurance or other relevant assets to pay viable asbestos claims.

B. Summary of Key Evidence Supporting A Receiver over Cape.

The plaintiffs' motion to appoint a receiver included over 30 exhibits from Cape, NAAC, and their legal counsel, that address the factual allegations relating to Cape's premeditated liability avoidance scheme, including (1) its domination of the U.S. market for amosite, (2) its strategy to accept default judgments and then abscond to England, (3) its knowledge of, but rejection of, U.S. laws imposing liability for sale of defective products, and (4) its scheme to continue to profit from the U.S. market for asbestos via a puppet offshore entity in Lichtenstein. Since the appointment order in 2023, and despite many of the Cape-related entities' absolute refusal to participate in South

⁹⁶ See Ex. 33, Letter from Meyer to Gaze (June 29, 1977); *see also* Ex. 18.1, Opening Statement of North Am. Asbestos Corp., *Pacello v. Johns-Manville Sales Corp.*, No. 80-CV-0080-2 (Colo. Dist. Ct. Boulder Cnty. Nov. 24, 1982).

⁹⁷ Ex. 34, Deposition of Geoffrey Arthur Higham at 64-67, *Yandle v. PPG Indus., Inc.*, Nos. TY-74-3-CA & TY-74-13-CA (E.D. Tex. June 4, 1975).

⁹⁸ See, e.g., Appointment Order (Cape) at 1 (appointing the Receiver “with the power and authority [to] fully administer **all assets of Cape.**”) (emphasis added).

Carolina litigation proceedings, the Receiver has amassed a far broader collection of Cape documents from various sources here in the United States, and from England and Australia. The Receiver will now address, as succinctly as possible, the key evidence in the case based on the documents attached to the motion to appoint a receiver as well as certain additional materials collected later.

1. ***Cape obtains early knowledge of asbestos dangers from disease in its own manufacturing plants***

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,⁹⁹ Cape published an 85-page brochure describing the company's origin, organization and operations.¹⁰⁰ Cape diagrammed its operations in the brochure.¹⁰¹ 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.¹⁰² Every one of these operations involved the exploitation of asbestos as a commercial raw material, from mining, to processing into finished products, to the

⁹⁹ Prior to 1953, Cape used an "agent" in New York City to assist in marketing to U.S. buyers. *See* Ex. 35, Letter from R. Dent to Lord Bissell (Sept. 18, 1953) ("We have recently discontinued our representation in America, which has hitherto been carried on in New York by Mr. A.W. Koehler, who runs a small selling agency, in which we were by far the largest of his principals.").

¹⁰⁰ Ex. 36, *Cape asbestos, the story of the Cape Asbestos Company Limited, 1893-1953*.

¹⁰¹ *Id.* at 50.

¹⁰² *See id.*

sale of the fiber overseas.¹⁰³ The "overseas" companies, according to the diagram, were the asbestos mining operations in South Africa.¹⁰⁴ Cape noted that it would dispatch executives from London to "control [] the whole of Cape's operations in that country," meaning, South Africa.¹⁰⁵

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.¹⁰⁶

Among other products, Barking manufactured a pre-formed pipe and block insulation named "Caposite".¹⁰⁷ 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 1960.¹⁰⁸ 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.¹⁰⁹ Mendelle was instrumental in the closure of the Barking Plant

¹⁰³ *See generally id.*

¹⁰⁴ *See generally id.*

¹⁰⁵ *Id.* at 56.

¹⁰⁶ *Id.* at 50, 62; Ex. 37.1, Cape Inquests (1929-1938) (summaries of coroner inquests revealing early recognition of asbestos-related worker deaths at Cape's U.K. facilities.).

¹⁰⁷ Ex. 36 at 62.

¹⁰⁸ Ex. 37, Deposition of Anthony Mendelle at 3, *Smith v. Pittsburgh Corning Corp.*, Nos. GD81-20383 & GD81-20381 (Pa. Ct. Com. Pl. Allegheny Cnty. Nov. 13, 1984).

¹⁰⁹ *Id.* at 11.

because of the number of workers dying from exposures at the Plant.¹¹⁰ Mendelle testified that Caposite was a "major department" at Barking.¹¹¹ Caposite was made with 100% amosite asbestos.¹¹² Other operations used the two other types of asbestos, crocidolite and chrysotile.¹¹³

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.¹¹⁴ Richard Gaze worked at Barking from 1943 to 1963.¹¹⁵ Gaze rose to become the "Chief Scientist" at Cape and held senior management roles across the entire Cape asbestos operation.¹¹⁶ These included membership on the Board of Directors of numerous Cape asbestos subsidiaries.¹¹⁷ 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."¹¹⁸

Mendelle testified that Cape knew about asbestos and mesothelioma at Barking—because workers were dying of both asbestos-related diseases in the 1950s.¹¹⁹ Mendelle, Gaze and Smithers discussed mesothelioma and asbestosis at Barking, and that low exposures could cause mesothelioma.¹²⁰ Mendelle testified that "we knew there was an association" between amosite and

¹¹⁰ *Id.* at 48-49.

¹¹¹ *Id.* at 40.

¹¹² *Id.* at 37.

¹¹³ *Id.* at 41-42.

¹¹⁴ *Id.* at 5.

¹¹⁵ *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.

¹¹⁶ *Id.* at 6.

¹¹⁷ *Id.*

¹¹⁸ Ex. 38, NAAC Special Meeting Minutes (April 7, 1970).

¹¹⁹ Ex. 37 at 11-12.

¹²⁰ *Id.* at 11-12, 69.

mesothelioma well before a seminal article on asbestos disease was published in 1965 by Dr. Muriel Newhouse.¹²¹ Newhouse spent time at Barking, and much of her data for the article came from her time investigating disease at the plant.¹²² Mendelle said that he and Newhouse had numerous conversations about amosite as a cause of mesothelioma at Barking.¹²³ Mendelle was asked if workers in the Caposite operation—which used only amosite, as noted above—had developed mesothelioma, and he said “yes, many.”¹²⁴ 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.¹²⁵

Despite this knowledge, the evidence shows that Dr. Gaze repeatedly told Cape's customers that “it is a fact that not one authenticated case of mesothelioma has been associated with amosite anywhere in the world.”¹²⁶ 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.”¹²⁷ 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.”¹²⁸ The Sales Director mimicked exactly what Dr. Gaze wrote to Mr. Buckley at Pittsburgh Corning, noting first that Cape's Caposite line

¹²¹ *Id.* at 56-57; Ex. 39, Muriel L. Newhouse, *Asbestos in the Workplace and the Community*, 16 ANN. OCCUP. HYG. 97 (1973).

¹²² Ex. 37 at 58.

¹²³ *Id.* at 56-57.

¹²⁴ *Id.* at 66.

¹²⁵ *Id.* at 68.

¹²⁶ Ex. 40, Letter from Gaze to Cryor (March 22, 1966) (emphasis in original).

¹²⁷ Ex. 41, Letter from Buckley to Gaze (March 30, 1966).

¹²⁸ Ex. 42, Letter from Galloway (Aug 19, 1966).

of products made solely with amosite “are now our principal asbestos products,” the Sales Director then stated that “not one case of mesothelioma [has been] associated with amosite asbestos.”¹²⁹ Dr. Gaze later died from mesothelioma.

The Receiver will offer expert testimony on both Cape’s early knowledge and subsequent published scientific reports at the trial in the case. The totality of this evidence will demonstrate that Cape sat at the forefront of science when it came to the health hazards of asbestos, and not only chose to continue selling thousands of tons of raw asbestos fiber into the U.S. market, but also actively sought to obscure and delay the development of general medical and scientific knowledge in the name of profits. Cape knew of the health hazards of its product long before the medical and scientific community fully understood the risks, but Cape concealed this information.

2. ***Cape Suppressed a 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

¹²⁹ *Id.*

“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.”¹³⁰

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 1960.¹³¹ Wagner's investigation triggered the PRU to investigate mesothelioma at the South African asbestos mines.¹³² Cape and other mining companies partially financed the study, which meant the mining companies were copied on all reports and had input on designing study parameters.¹³³

The investigators saw troubling indications of disease soon after the study began.¹³⁴ 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.”¹³⁵ 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.”¹³⁶ In other words,

¹³⁰ Ex. 43, Letter from Christopher Wagner to Cape (November 30, 1994).

¹³¹ *Id.*; Ex. 44, Wagner, J.C., Sleggs, C.A., and Marchand, P, *Diffuse Pleural Mesothelioma and Asbestos Exposure in the North West Cape Province*, BR. J. IND. MED. 17:260-65 (1960).

¹³² Ex. 45, Memo from Gear re: Proposed Study of Mesothelioma in South Africa (Nov. 29, 1960).

¹³³ *Id.*

¹³⁴ Ex. 46, Letter from Naude to Diederichs (Oct. 6, 1961).

¹³⁵ *Id.*

¹³⁶ Ex. 47, PRU Preliminary Report (April 30, 1962).

mesothelioma occurred not only in miners, but also in the general population that lived near the asbestos mines.¹³⁷ 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.¹³⁸

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.¹³⁹ The report opens:

[a]s a result of a decision taken at a meeting between Dr. R Gaze, Dr. J McKeurtan and myself at Park Street, London, on 31st October 1961, I was sent by the company to South Africa. My terms of reference were to study all aspects of mesothelioma and asbestosis reported in South Africa on medical matters, and generally to learn as much as possible about conditions in the industry in that country.¹⁴⁰

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.¹⁴¹

At that point, Cape's support for the PRU ended.¹⁴² 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.¹⁴³

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ Ex. 48, Smither, *Visit to South Africa* (August 1962).

¹⁴⁰ *Id.* at 2.

¹⁴¹ *Id.* at 34.

¹⁴² *See, e.g., id.*

¹⁴³ *Id.* at 35.

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."¹⁴⁴ Cape was a member of that committee.¹⁴⁵ Walters quotes from the "committee memorandum"¹⁴⁶ in which it critiques the PRU investigation: "The whole survey appears to have been undertaken with the underlying object of implicating crocidolite asbestos as being directly responsible for the comparatively rare tumor known as mesothelioma of the pleura."¹⁴⁷

Walters noted that Smither identified 10 additional cases of mesothelioma during his visit to the Cape Prieska mine during his visit.¹⁴⁸ 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.'"¹⁴⁹ Smither advocated for removing the patients to Johannesburg for "investigation."¹⁵⁰ 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.¹⁵¹

¹⁴⁴ Ex. 49, Letter from Walters to Baxter (July 19, 1962).

¹⁴⁵ *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.").

¹⁴⁶ The Receiver has been unable to locate this memorandum but hopes that it will become available if the third-party defendants comply with their discovery obligations at some point in the future.

¹⁴⁷ *Id.* at 2.

¹⁴⁸ *Id.*

¹⁴⁹ Ex. 48 at 11-12.

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 13.

Smither went on to note that this move would bring “less attention from the politicians.”¹⁵² 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 1996.¹⁵³ He testified that Cape periodically dispatched “executives” and doctors (presumably, Smither) from London to visit asbestos mines in South Africa.¹⁵⁴ Dr. Van Rooyen testified that he tried to warn Cape about the dangers of asbestos exposure, but met a chilly response: “I experienced opposition[] . . . whenever we talked about asbestos as a danger, people saw us as dangers . . . we had a lot of opposition from these people. But very definitely, from the chief executives of Cape Blue Mines.”¹⁵⁵

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.¹⁵⁶ 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.¹⁵⁷ 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.¹⁵⁸ 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.¹⁵⁹

¹⁵² *Id.*

¹⁵³ Ex. 50, Deposition of Dr. Matthys van Rooyen, *In re Asbestos Personal Injury Cases, Arrington Lead*, No. 93-9-114 (Ms. Cir. Ct. Jones County, 1996).

¹⁵⁴ *Id.* at 135.

¹⁵⁵ *Id.* at 116.

¹⁵⁶ *Id.* at 24.

¹⁵⁷ *Id.* at 38, 63.

¹⁵⁸ *Id.* at 11-12, 30.

¹⁵⁹ *Id.* at 40, 57.

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

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

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

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

A: Yes. . . . I remember distinctly that this was treated in a very superficial way. And the chap . . . he said that with our directors in London earning a million a year, do you think they would listen to you?¹⁶⁰

The final PRU report was published 1964 but it was not circulated outside of the PRU and the mining companies.¹⁶¹ 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.

¹⁶⁰ *Id.* at 41.

¹⁶¹ Ex. 49.

Dr. Smither returned from South Africa on June 30, 1962.¹⁶² Less than two weeks later, on July 12, 1962, Drs. Smither and Gaze attended a meeting in London of the Asbestosis Research Council (ARC).¹⁶³ The ARC was an industry group founded by Cape and another mining and asbestos products company, Turner & Newell.¹⁶⁴ The ARC sponsored research into asbestos disease and had a hand in shaping final reports given its funding of the studies.¹⁶⁵ Scientists and physicians from Queen's College in Cambridge, Reading University, and Cambridge University, and some industry representatives attended the July 12 meeting.¹⁶⁶ The Receiver has located the 6-page detailed memorandum reporting the detailed minutes of the meeting.¹⁶⁷ 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.¹⁶⁸

3. ***Cape Orchestrates its exit plan from the U.S. Judicial System with the cooperation of Lord Bissell (now, Troutman Pepper Locke), a Chicago-based Law firm***¹⁶⁹

In 1953, Cape approached Lord Bissell & Kadyk, a Chicago law firm, to form a U.S. subsidiary named North American Asbestos Corporation (“NAAC,” as noted above) in Chicago.¹⁷⁰ Max Meyer, a young partner at Lord Bissell, agreed to the representation.¹⁷¹ Max Meyer

¹⁶² Ex. 48 at 42.

¹⁶³ Ex. 51, ARC-19th meeting (July 12, 1962).

¹⁶⁴ See generally Ex. 52, Geoffrey Tweedale, *Science or Public Relations? The Inside Story of the Asbestosis Research Council, 1957–1990*, 38 AM. J. INDUS. MED. (2000).

¹⁶⁵ *Id.* at 723-29.

¹⁶⁶ Ex. 51.

¹⁶⁷ *Id.*

¹⁶⁸ See generally *id.*

¹⁶⁹ Although the successor entities have refused to participate in discovery in this case, the Receiver was able to obtain the historical materials used in the following section from an archive at the University of Strathclyde in Glasgow, Scotland.

¹⁷⁰ Ex. 52.1, Letter from R. Dent to Lord Bissell & Kadyk (Sept. 18, 1953).

¹⁷¹ Ex. 53, Letter from Lord Bissell & Kadyk to Cape (Sept. 29, 1953).

represented Cape until after NAAC dissolved in 1978.¹⁷² He was on the Board of Directors from 1953—1978 and served as the trustee in NAAC's dissolution.¹⁷³ Meyer attended virtually every Board meeting and was the principal point of contact between the parent company Cape Asbestos in London, and NAAC.¹⁷⁴

Meyer drafted all of the NAAC board minutes, according to Joan Holtze, the Corporate Secretary who joined NAAC in 1953 (and remained there until NAAC dissolved).¹⁷⁵ Meyer's board minutes recorded Holtze as attending meetings in person as "Assistant Company Secretary,"¹⁷⁶ but in 1980, Ms. Holtze testified she *never* attended any Board Meeting.¹⁷⁷ The Receiver has searched the NAAC documents for some explanation as to why Meyer falsified the NAAC board minutes, but has found none. If the third-party defendants participate in discovery, this question may be answered.

NAAC was a small operation staffed by the President, who was the client liaison, and a few secretaries. Cape consistently described NAAC as a "one-man" operation.¹⁷⁸ Meyer, from his office at Lord Bissell, was involved in all decisions both small¹⁷⁹ and large.¹⁸⁰ Gerry Morgan, the

¹⁷² See, e.g., Ex. 54, NAAC Meeting Minutes (1971); Ex. 55, NAAC Meeting Minutes (Nov. 1971); Ex. 56 NAAC Meeting Minutes (1972); Ex. 57, NAAC Meeting Minutes (1973); Ex. 58, NAAC Meeting Minutes (1974); Ex. 59, NAAC Meeting Minutes (1975); Ex. 60, NAAC Meeting Minutes (1976); Ex. 61, NAAC Meeting Minutes (1977).

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ Ex. 62, Deposition of Joan Holtze at 15:12–16:8, *Barber v. Pittsburgh Corning Corp.*, No. GD 79-21544 (Pa. Ct. Com. Pl. Nov. 7, 1980).

¹⁷⁶ See Exs. 54-61.

¹⁷⁷ *Id.*

¹⁷⁸ Ex. 63, Deposition of Charles G. Morgan at 33, *Johnson v. North American Asbestos Corporation*, No. 75-L-1006 (May 27, 1975).

¹⁷⁹ Ex. 64, Letter from R. Gaze to M. Meyer (July 20, 1971) (correspondence regarding NAAC computerizing their systems).

¹⁸⁰ Ex. 65, Deposition of Charles G. Morgan, *Wolfe v. Johns-Manville Corporation*, No. 81-1272 (May 19, 1982) (Meyer unilaterally dictated the dividend NAAC declared to Cape, without the NAAC president's input).

President of NAAC from 1970—1978, testified that his influence on the Board or as a company decision-maker was “certainly nil” and that the Cape member of the Board (Richard Gaze) and Meyer would meet beforehand to “have their discussions.”¹⁸¹

The Lord Bissell lawyer Meyer was also involved in the early efforts by Cape to change the identity of NAAC to avoid exposure to asbestos litigation. On June 25, 1976, the General Counsel of Cape wrote Meyer, “[a]s briefly discussed in Chicago[,] . . . it may be advisable to change the identity of NAAC to limit its and Cape's exposure to future U.S. litigation.”¹⁸² A month later, Meyer received a memorandum from a Lord Bissell associate examining the use of an entity in Canada to sell asbestos into the United States, and the extent to which that entity would be immune to lawsuits from U.S. asbestos plaintiffs.¹⁸³ In October, Lord Bissell (presumably Meyer as he was the point of contact) sent Cape a lengthy letter on options for liquidating NAAC but continuing to serve the U.S. asbestos market from another location outside of the United States.¹⁸⁴

On June 3, 1977, Cape’s General Counsel (Anthony Penna) sent a telex to Meyer at Lord Bissell asking Meyer to confirm that, “in the opinion of the company's American legal advisors: the amounts claimed [in U.S. asbestos cases against Cape] are highly speculative and conjectural and have only a tenuous basis in law and fact,” referring to an insert in the parent company annual report.¹⁸⁵ Penna asked Meyer to confirm that this language, used in a prior report, was still Lord Bissell’s position.¹⁸⁶ Then, on July 5, 1977, Penna sent Lord Bissell a telex that, given Texas awards in asbestos cases, Cape should withdraw from the Texas litigation because:

¹⁸¹ *Id.*

¹⁸² Ex. 66, Letter from A. Penna to M. Meyer (June 25, 1975).

¹⁸³ Ex. 67, Memo from A. Sarabia to M. Meyer (July 25, 1975).

¹⁸⁴ Ex. 68, Letter to A. Penna re Limiting NAAC and Cape's Exposure to US Litigation (Oct. 3, 1975).

¹⁸⁵ Ex. 69, Letter from A. Penna to M. Meyer (June 3, 1977).

¹⁸⁶ *Id.*

we cannot foresee any court . . . enforcing a judgment which would have enormous financial . . . repercussions, when we really cannot be said to have a moral responsibility and are simply victims of the US product liability cult.¹⁸⁷

This marked the end of Cape's participation in all U.S. lawsuits, including this one.¹⁸⁸

On October 26, 1977, Meyer's Lord Bissell law partner Steve Milwid wrote Penna and identified all the pending cases against Cape, including numerous cases in South Carolina.¹⁸⁹ Milwid sent another letter to Penna the same day identifying NAAC's limited products liability insurance coverage.¹⁹⁰ A few days later, on November 1, 1977, Cape's Board of Directors authorized Cape's "withdrawal" from U.S. litigation on the bet that no U.K. court would enforce a U.S. default judgment in England.¹⁹¹

On January 23, 1978, a Lord Bissell lawyer sent Meyer a memorandum outlining Cape's scheme to continue selling asbestos into the United States through a Liechtenstein entity—owned by Cape—and through a reconstituted NAAC (but now re-named "Continental Products Corporation (CPC)").¹⁹² CPC was in the same building as NAAC, used the same office furniture, and had the same employees including the then-president of NAAC, Gerry Morgan.¹⁹³ Cape financed the entire scheme.¹⁹⁴

¹⁸⁷ Ex. 70, Telex from A. Penna to S. Milwid (July 4, 1977).

¹⁸⁸ *See id.*; *See also* Ex. 71, Letter from A. Penna to S. Milwid (Feb. 24, 1978) ("As you know our policy now is not to defend any asbestosis proceedings brought against us in the United States and in view of the fact that there is a likelihood that this will result in large default judgments being awarded against us . . . it would be extremely unwise for Cape to contemplate any further substantial acquisition in the United States . . .").

¹⁸⁹ Ex. 72, Letter from S. Milwid to A. Penna re: Pending Cases (Oct. 26, 1977).

¹⁹⁰ Ex. 73, Letter from S. Milwid to A. Penna re: NAAC Products Liability Coverage (Oct. 26, 1977).

¹⁹¹ Ex. 74, Cape's Board Meeting Minutes (Nov. 1, 1977).

¹⁹² Ex. 15.

¹⁹³ *Id.*

¹⁹⁴ *See id.*

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.¹⁹⁵ On June 26, 1978, Meyer wrote Penna advising that the Cape Mines would be protected from default judgments with the Lichtenstein “between them and any operations in the United States.”¹⁹⁶ 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.”¹⁹⁷

Cape understood that the law in the United States attached liability to manufacturers and sellers of dangerous products. Geoffrey Higham, Managing Director of Cape, testified in 1996 that “we didn’t like the rules, we didn’t think it was a reasonable burden to place upon a supplier of material [like Cape] that he should control how the material was used.”¹⁹⁸ And in a Press Release relating to a U.S. documentary about Cape's unflattering conduct involving its sales of asbestos to the Unarco Company in Bloomington Illinois, Cape noted that, in contrast to the law in the United States:

¹⁹⁵ Ex. 75, Memo to NAAC File re Liquidation of NAAC (April 7, 1978).

¹⁹⁶ Ex. 76, Letter from M. Meyer to A. Penna (June 26, 1978). Meyer was in the thick of the plan to create CPC and in fact formed the corporation, according to Gerry Morgan, the President of NAAC at the time. *See* Ex. 65. In a memo dated Dec 19, 1983, a Lord Bissell Partner inquired of Meyer about his formation of CPC in 1978 but noted that there were no billing records at LBB relating to this work; Ex. 77, Letter from Ingersoll to Meyer (Dec. 19, 1983).

¹⁹⁷ Ex. 78, Letter from M. Meyer to R. Gaze (July 29, 1980).

¹⁹⁸ Ex. 79, Deposition of Geoffrey Higham (excerpt), *In re Asbestos Pers. Injury Cases, Arrington Lead*, No. 93-9-114 (Miss. Cir. Ct. Jones Cnty., 2d Jud. Dist. Oct. 24, 1996).

[the] generally accepted legal principles throughout the world [are that] the direct employer, which in this instance would have been Unarco, should carry the immediate responsibility for the safety of its workforce. **Cape does not, however, accept responsibility towards employees of an independent organization over whose working conditions it had no control**¹⁹⁹

The Lord Bissell lawyers also knew what the law was in the United States, yet it enabled Cape in all of its schemes to sell asbestos in the United States, and they specifically designed and implemented its plan to create phantom entities to continue selling asbestos in the United States after Cape fled the jurisdiction.²⁰⁰

There is not a single document the Receiver has located in which a Lord Bissell lawyer advises Cape that the law in the United States imposes liability on the supplier of defective products and that Cape does not get to choose—as it seemed to think it could—whether that law applies to Cape, regardless of whether Cape "accepted responsibility" for its actions.²⁰¹ A supplier is free to avoid doing business in a jurisdiction whose laws it disagrees with; however, there is no evidence that Lord Bissell ever informed Cape that there was an appropriate way to do this—avoiding the sale of products in that jurisdiction—and a wrong way, too, as here: enabling Cape in its efforts to create a sham entity to specifically shield American asbestos plaintiffs from reaching Cape assets.

CONCLUSION

For the foregoing reasons, this Court's appointment over Cape fits squarely within the South Carolina Supreme Court order in *Welch*. As to the South Carolina Supreme Court's request for findings of fact to support the appointment of a receiver over Cape, in addition to the substantial evidence presented in the Motion to Appoint a Receiver over Cape, the Receiver has marshalled

¹⁹⁹ Ex. 80, Cape Statement to Granada TV (July 6, 1982) (emphasis added).

²⁰⁰ See, e.g., Ex. 81, Telex from A. Penna to S. Milwid (Aug. 7, 1984).

²⁰¹ See Ex. 80.

significant additional records (without the ability to conduct discovery as the South Carolina Rules of Civil Procedure envision) that even more fully demonstrate the depth of the moral fraud at issue in this case.

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

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

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

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

Brady Edwards (*pro hac vice forthcoming*)
 Lauren McCulloch Semlinger
 MORGAN, LEWIS & BOCKIUS LLP

1000 Louisiana St., Suite 4000
Houston, TX 77002
brady.edwards@morganlewis.com
lauren.semmlinger@morganlewis.com
(713) 890-5467

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

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

July 11, 2025
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

JOHN A. TIBBS and
MARGARET B. TIBBS

Plaintiff,

v.

3M COMPANY, et al.

Defendants.

) IN THE COURT OF COMMON PLEAS

) FOR THE FIFTH JUDICIAL CIRCUIT

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

) *In Re:*

) Asbestos Personal Injury Litigation

) Coordinated Docket

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

Plaintiffs,

v.

ARMSTRONG INTERNATIONAL, INC.,
et al.

Defendants.

) IN THE COURT OF COMMON PLEAS

) FOR THE FIFTH JUDICIAL CIRCUIT

) C/A NO. 2021-CP-40-02727

) *In Re:*

) Asbestos Personal Injury Litigation

) Coordinated Docket

RICHLAND COUNTY
FILED
2025 AUG -4 PM 4:18
JEANETTE W. McBRIDE
Clerk, S.C. & F.C.

BENCH BRIEF TO THE COURT ON THE STATUS OF THE PARK CASE

In their purported "Response to the Court's First Report Regarding the Current Status of *Park*" counsel for Altrad and CLMI make the following "factual" statement:

The *Park* case was commenced on June 4, 2021, by the filing of a summons and complaint. The original plaintiff was Isabella Park. No "Cape" entity was sued in that pleading. (Complaint (June 4, 2021).

Response to First Report at ¶1. That statement is untrue. A copy of the original complaint filed in the *Park* case is attached as Exhibit 1. In that case CAPE, PLC, individually and as successor-in-interest to CAPE ASBESTOS COMPANY is clearly named in the complaint.¹

Isabella Park died from mesothelioma, a disease that was substantially caused by her exposure to amosite asbestos imported into this country by CAPE and incorporated into the hundreds of miles of thermal insulation present at the Celanese facility where her husband worked, on June 9, 2021. *See* Park Death Certificate attached as Exhibit 2.

On August 4, 2021, Keith Park was appointed as the representative of Isabella Park's estate by the Spartanburg probate court. *See* Order of Appointment attached as Exhibit 3.

On November 17, 2021, Keith Park, the duly appointed representative of the Park estate, filed his first amended complaint again naming CAPE, PLC and adding CAPE INTERMEDIATION HOLDINGS. *See* First Amended Complaint attached as Exhibit 4.

On December 23, 2021, Keith Park, the duly appointed representative of the Park estate, filed his second amended complaint again naming CAPE, PLC and CAPE INTERMEDIATE HOLDINGS. *See* Second Amended Complaint attached as Exhibit 5.

On March 8, 2022, the Plaintiff effectuated service on CAPE and CAPE INTERMEDIATE HOLDINGS. *See* Affidavit of Andrew Geraint Morgan March 8, 2022 attached as Exhibit 6.

Thus CAPE was, from the outset, sued in each of the Complaints in this matter and, not later than March 8, 2022 service was effectuated on CAPE and at all relevant times in this process Keith Park was the duly appointed representative of the estate of Isabella Park.

¹ It is disturbing in the extreme that the entities filing this "Response" would seek to have such a basic falsity provided to the South Carolina Supreme Court in their attempt to contradict this Court's report to the Supreme Court.

On August 26, 2022, the Spartanburg Probate Court entered an order closing the Park estate. *See Order* August 26, 2022 attached as Exhibit 7.² Once counsel were made aware that the estate had been closed, they took immediate steps to have Mr. Park reopen the estate. *See Letter from Heather Hunter to Spartanburg Probate Court, July 25, 2025 attached as Exhibit 8.* As of the filing of this brief, that process is underway and the undersigned will supplement the order reopening probate as soon as it is received.

LAW AND ARGUMENT

Counsel for Altrad and CLMI complain to this Court that because the probate order lapsed on August 26, 2022, nothing done in this case during that period had any effect. In support of that flawed theory, counsel cite this court to *Glenn v. E.I. DuPont de Nemours & Co.*, 254 S.C. 128, 134, 174 S.E. 155, 158 (1970).³ Unfortunately, CLMI, Altrad and Travelers counsel fail to inform this Court that that opinion was overruled by the legislature of South Carolina when it enacted S.C. Code §62-3-701 in 2014. Section 701 provides, in relevant part that

The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

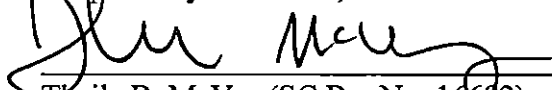
Id. Thus, each of Keith Park's actions taken in the interim period while his appointment as the Park estate representative lapsed will relate back to his original appointment, thus rendering them proper and valid. Moreover, the Supreme Court, again in a decision Altrad, CLMI and Travelers all fail

² Counsel for the Parks were unaware that this order had been applied for or issued until it was attached to pleadings in the instant matter.

³ This case serves as the basis for the claim assertion that nothing Keith Park did in the interim is effective. This argument is set forth by parties seeking the dissolution of the Cape receivership in a number of places including but not limited to Travelers' Opposition to Cape Receiver's Motion to Enforce Subpoena filed with this Court on July 18, 2025.

to inform this Court about, affirmed the fact that, pursuant to Rule 17(a)⁴ if the party who should have been appointed the representative had simply asked the court for permission to cure the real party in interest requirement, the “circuit court would have been required to allow time for ratification, joinder or substitution of the proper party” *Fisher v. Huckabee*, 422 S.C. 234, 239 (2018); *see also Thomas v. Grayson* 318 S.C. 82 (1995)(finding that where the primary estate in Michigan had been opened but the personal representative had failed to open an ancillary estate until after the statute of limitations had run, the widow’s appointment was still timely and valid). As is required by Rule 17a, once CLMI, Travelers and Altrad objected, the Parks moved immediately to reopen the estate and comply with Rule 17a and thus, pursuant to that rule and §62-3-701 each of Mr. Parks actions to date will be both ratified under Rule 17 and relate back to his original appointment under §701. Thus, Travelers, CLMI and Altrad’s attempt at a procedural “gotcha” fails and all of the actions taken by Mr. Park, including the appointment of a receiver over CAPE are valid and effective.

Respectfully submitted,



Theile B. McVey (SC Bar No. 16682)

KASSEL MCVEY ATTORNEYS AT LAW

1330 Laurel Street

Post Office Box 1476

Columbia, South Carolina 29202-1476

T: (803) 256-4242

tmcvey@kassellaw.com

Other email: emoultrie@kassellaw.com

and

⁴ Rule 17a states: Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute so provides, an action for the use or benefit of another shall be brought in the name of the State. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed, after objection, for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

Charles W. Branham, III (SC Bar No. 106178)
Dean Omar Branham Shirley, LLP
1801 N. Lamar Street, Third Floor
Dallas, TX 75202
T: 214-722-5990
tbranham@dobslegal.com
Other email: tgilliland@dobslegal.com

ATTORNEYS FOR PLAINTIFF

August 4, 2025,

Columbia, South Carolina.

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	)
COUNTY OF RICHLAND	) FOR THE FIFTH JUDICIAL CIRCUIT
	)
JOHN A. TIBBS and	) C/A NO. 2023-CP-40-01759
MARGARET B. TIBBS	)
	) <i>In Re:</i>
Plaintiff,	) Asbestos Personal Injury Litigation
	) Coordinated Docket
v.	)
	)
3M COMPANY, et al.	)
	)
Defendants.	)

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

NOTICE OF FILING SUPPLEMENTAL EXHIBIT

PLEASE TAKE NOTICE that Plaintiff Keith W. Park, individually and as the Personal Representative of the Estate of Isabella Park, deceased, and Plaintiffs John A. Tibbs and Margaret B. Tibbs, by and through their undersigned counsel, hereby file the attached Exhibit 9 as a supplemental exhibit in support of Plaintiffs' Bench Brief to the Court on the Status of the *Park* Case filed August 4, 2025.

Respectfully submitted,

s/ Charles W. Branham, III
Charles W. Branham, III (SC Bar No. 106178)
Dean Omar Branham Shirley, LLP
1801 N. Lamar Street, Third Floor
Dallas, TX 75202
T: 214-722-5990
tbranham@dobslegal.com
Other email: tgilliland@dobslegal.com

Theile B. McVey (SC Bar No. 16682)
KASSEL MCVEY ATTORNEYS AT LAW
1330 Laurel Street
Post Office Box 1476
Columbia, South Carolina 29202-1476
T: (803) 256-4242
tmcvey@kassellaw.com
Other email: emoultrie@kassellaw.com
ATTORNEYS FOR PLAINTIFF

August 6, 2025,
Dallas, Texas.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

JOHN A. TIBBS and
MARGARET B. TIBBS

Plaintiff,

v.

3M COMPANY, et al.

Defendants.

) IN THE COURT OF COMMON PLEAS

) FOR THE FIFTH JUDICIAL CIRCUIT

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

) *In Re:*

) Asbestos Personal Injury Litigation

) Coordinated Docket

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

Plaintiffs,

v.

ARMSTRONG INTERNATIONAL,
INC., et al.

Defendants.

) IN THE COURT OF COMMON PLEAS

) FOR THE FIFTH JUDICIAL CIRCUIT

) C/A NO. 2021-CP-40-02727

) *In Re:*

) Asbestos Personal Injury Litigation

) Coordinated Docket

NOTICE OF FILING

NOW COMES the undersigned, as counsel of record for Third-Party Plaintiff Peter D. Protopapas, in his capacity as the Court-appointed Receiver (the "Receiver") for Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.), who hereby gives notice that the Altrad Defendants are seeking to exact *new* damages and penalties against the Receiver for "pursuing proceedings against [the

Altrad Defendants] in South Carolina.” Ex. A at 5. Specifically, the Altrad Defendants are requesting the French court award a total of €28,612,062.32 in damages, an unidentified amount in costs to the Altrad Defendants’ French attorney, €50,000 in costs to Mohed Altrad, and €50,000 in costs to Altrad Investment Authority (over \$34 million). Ex. A at 30. These damages are being pursued against Mr. Protopapas for acting as an arm of the court in accordance with the South Carolina circuit court’s order of appointment and despite the circuit court’s order confirming his actions have been within the scope of the appointment order. *See* Order Granting Receiver’s Motion to Clarify Order Appointing a Receiver for Cape PLC, Nov. 5, 2024, *Tibbs v. 3M Co.*, No. 2023-CP-40-01759 (S.C. Ct. Comm. Pleas). The following documents were filed concerning French proceedings brought against Mr. Protopapas and related English proceedings by Defendants Altrad Investment Authority (AIA) and Mohed Altrad¹:

1. Summons to Mr. Protopapas to appear before the Montpellier Civil Court (English translation), noticing a hearing on 1 December 2025 at 9:00 a.m., courtroom “Frédéric Bazille,” and reciting appearance/representation requirements. Ex. A.
2. Summons to Mr. Protopapas to appear before the Tribunal Judiciaire de Montpellier (French original). Ex. B.
3. Sealed Order of the High Court of Justice, Business and Property Courts of England & Wales (Business List (ChD)), in *Altrad Investment Authority SAS & Ors v. Protopapas & Ors*, Claim No. BL-2025-000785, dated 25 July 2025, expediting the final hearing to a two-day hearing in a five-day window beginning Monday 22 September 2025 and setting associated directions. Ex. C.
4. Proposed hearing bundle index circulated on 10 September 2025 for the above English claim, listing core documents (including the South Carolina receivership order, the Tibbs third-party complaint, and the 22 November 2024 English judgment and penal notice) and the expedition order. Ex. D.

¹ The Altrad Defendants’ previously filed threats of criminal prosecution and pursuit of monetary retribution against the South Carolina Circuit Court-appointed Receiver are the subject of the Receiver for Cape Plc’s pending Motion to Enforce the Appointment Order filed October 11, 2024.

These materials are filed to ensure the Court and parties in *Tibbs* (C/A No. 2023-CP-40-01759) have contemporaneous notice of the French and English actions against the Receiver.² See Order, *Tibbs v. Cape plc.*, Appellate Case No. 2024-000916 at 5 (S.C. Jan. 16, 2025) (noting “[a]ny attempt by a foreign court to intervene in and threaten the participants in matters properly pending in the courts of South Carolina would be shocking and indefensible.”)

Respectfully submitted,

SMITH | ROBINSON

s/Jonathan M. Robinson

Jonathan M. Robinson

Shanon N. Peake

3200 Devine Street

Columbia, SC 29205

803-254-5445

jon.robinson@smithrobinsonlaw.com

shanon.peake@smithrobinsonlaw.com

RIKARD & PROTOPAPAS, LLC

John K. Chandler, SC Bar 100837

2110 N. Beltline Blvd.

Columbia, SC 29204

803.978.6111

jchandler@rplegalgroup.com

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

September 18, 2025.

² The Receiver is filing a contemporaneous Motion for Leave, requesting the South Carolina Supreme Court allow the Receiver to supplement his pending motion for sanctions with the Summons to appear before the Montpellier Civil Court so it may be considered at the appropriate time given the Supreme Court’s specific reservation in the *Tibbs* remand order that it would “rule at a later time on any currently pending motion for sanctions.”

SUMMONS BEFORE THE MONTPELLIER CIVIL COURT
--

IN THE YEAR TWO THOUSAND AND TWENTY-FIVE AND ON

AT THE REQUEST OF :

Altrad Investment Authority (AIA), a simplified joint stock company having its registered office at 16 avenue de la Gardie, Florensac (34510), registered in the Béziers Trade and Companies Register under number 529 222 879, acting through its legal representative, choosing address for service that capacity at the said registered office,

AND

Mr. Mohed Altrad, company director, of French nationality, born on March 9, 1948 and domiciled at 150 rue Le Pérugin, Montpellier (34000),

Represented by

Signature Litigation AARPI
 represented by Maîtres Thomas Rouhette & Ela Barda
 Members of the Paris Bar
 residing at 21/23 rue Balzac – 75008 Paris
 Tel: 01 70 75 58 00 - Toque: K0151
thomas.rouhette@signaturelitigation.com
ela.barda@signaturelitigation.com

And for Incorporated Lawyers: SELARL Dabiens & Demaegdt – Avocats & Associés
 represented by Frédéric Dabiens
 Member of the Montpellier Bar
 residing at Parc d'Activités Jean Mermoz - 235 rue Hélène Boucher
 34170 Castelnau Le Lez
 Tel: 04 67 42 19 10
fd@dabiens-avocats.fr

- 2 -

I,

THE UNDERSIGNED COMMISSIONER OF JUSTICE

HAVE THE HONOUR TO INFORM:

Mr. Peter D. Protopapas, a lawyer, of US nationality, domiciled at 2110 N Beltline Blvd, Columbia SC 29204, United States of America, claiming to be receiver of Cape Intermediate Holdings Limited,

That suit has been filed against him for the reasons set out below before the **MONTPELLIER CIVIL COURT** located place Pierre Flottes, 34040 Montpellier, for this hearing to be held on **December 1, 2025 at 9 am, courtroom Frédéric Bazille**.

VERY IMPORTANT

Within 15 days of the date of this deed, you are required to instruct a lawyer to be represented before this court. Failure to do so may result in a judgment being rendered against you based solely on the information provided by your opponent.

In accordance with article 643 of the French Code of Civil Procedure, when the claim is brought before a court based in mainland France, the time limits for appearance, appeal, opposition, third-party opposition in the event provided for in article 586 paragraph 3, appeal for review and appeal to the French Supreme Court are increased by two months for persons residing abroad.

You are reminded of the following provisions, taken from law no. 71-1130 of December 31, 1971 on the reform of certain judicial and legal professions, which are applicable here:

Article 5: "Lawyers shall provide their services and may appear in court with no geographic restriction before all courts and judicial or disciplinary bodies, subject to the conditions set out in Article 4. They may file proceedings in all the courts of justice within the jurisdiction of the Court of Appeal in which they have established their professional residence and to the said Court of Appeal.

As an exception to paragraph two, lawyers may not file proceedings before a court other than that with which their address for professional purposes has been registered in the context of procedures for the seizure, division and sale at public auction of real estate assets or on the basis of legal aid or in cases in which they are not responsible for the matter and also tasked with appearing in court".

Article 5-1: "As an exception to Article 5-2, lawyers registered with the bar of one of the Courts of Justice of Paris, Bobigny, Créteil or Nanterre may file proceedings before each of these courts. They may file proceedings before the Court of Appeal of Paris when they have first filed proceedings before the Courts of Justice of Paris, Bobigny or Créteil, or before the Court of Appeal of Versailles when they have first filed proceedings before the Civil Court of Justice of Nanterre. The exception set out in the final paragraph of Article 5 is applicable to such lawyers."

You are also reminded of the following articles of the French Code of Civil Procedure:

Article 641: "Where a period is expressed in days, the day of the service of deed, event, decision or service of process marking the start point of this period is not taken into account. Where a period is expressed in months or years, it will expire on the day of the final month or year bearing the same date as the day of the deed, event, decision or service of process marking the start point of the period. If there is no identical date, the period expires on the last day of the month. If a period is expressed in months and days, the months are counted first and then the days".

Article 642: "All periods expire on the final day at midnight. Any fixed period that would normally end on a Saturday, a Sunday or a public holiday or non-working day will be extended until the following working day".

Article 642-1: "The provisions of Articles 640 and 642 apply likewise to periods within which registration and other formalities of publication must be made".

Article 643: "Where the application is filed with a court in mainland France, the periods for appearance, lodging an appeal, lodging an objection, third party-proceedings provided for in article 586 (3), appeal for review or appeal to the French Supreme Court will be extended by: 1. One month for those residing in Guadeloupe, French Guiana, Martinique, Réunion, Mayotte, Saint-Barthélemy, Saint Martin, Saint Pierre and Miquelon, French Polynesia, Wallis and Futuna Islands, New Caledonia and the French Southern and Antarctic Territories; 2. Two months for those residing abroad."

Art. 644 : "When the application is filed before a court based in Guadeloupe, French Guiana, Martinique, La Réunion, Mayotte, Saint-Barthélemy, Saint-Martin, Saint-Pierre-et-Miquelon and the Wallis and Futuna Islands, the time limits for appearing, appealing, opposition, third-party opposition in the case provided for in article 586 paragraph 3, and application for review are increased by one month for persons who do not reside in the territorial community within whose jurisdiction the court has its seat, and by two months for persons who reside abroad".

Lastly, it is hereby indicated, in application of Article 752 of the French Code of Civil Procedure, that the plaintiff does not consent to the proceedings taking place without a hearing, in application of Article L. 212-5-1 of the French Code of Judicial Organization.

TABLE OF CONTENTS

1.	FACTS AND PROCEEDINGS	6
1.1	Presentation of the parties	6
1.1.1	The Altrad Group	6
1.1.2	Mr. Protopapas	6
1.2	The contentious context: proceedings improperly initiated in South Carolina by Mr. Protopapas	7
1.2.1	Particularity of asbestos litigation in South Carolina	7
1.2.2	The Park case	8
1.2.3	The Tibbs case	9
1.2.4	AIA's and Mr. Altrad's defenses in the U.S. proceedings.....	11
1.3	The English decision on Mr. Protopapas' lack of authority and its recognition in France	12
1.3.1	Referral to the <i>High Court</i> by the true legal representatives of Cape Plc and CIHL.....	13
1.3.2	The High Court's non-recognition of Mr. Protopapas' appointment as CIHL's receiver and the injunction to cease acting in the name and on behalf of CIHL.....	13
1.3.3	Exequatur of the English decision in France.....	15
1.3.4	The consequences in South Carolina of the English and French proceedings	15
2.	DISCUSSION	19
2.1	As a preliminary point: International jurisdiction and applicable law	19
2.1.1	French courts have jurisdiction to rule on the present dispute.....	19
2.1.2	French law is applicable to the dispute	19
2.2	Mr. Protopapas must be held liable for pursuing manifestly abusive proceedings against AIA and Mr. Altrad.....	20
2.2.1	Mr. Protopapas's abusive actions in South Carolina constitute a fault that gives rise to tort liability.	20
a)	The basis of Mr. Protopapas' actions is manifestly irregular.....	20
b)	Mr. Protopapas' conduct of the South Carolina proceedings is unfair and misleads the American courts.....	23
c)	Mr. Protopapas is acting against AIA and Mr. Altrad in South Carolina, in breach of the English Decision, which is enforceable in France.....	27
2.2.2	Mr. Protopapas's abusive actions in South Carolina against AIA and Mr. Altrad have caused significant damage.	27
2.3	Claim for legal costs	29

SUBJECT-MATTER OF THE CLAIM

1. Altrad Investment Authority ("AIA") and Mr. Mohed Altrad have been involved in proceedings pending in South Carolina by Mr. Protopapas, claiming to act as receiver of Cape Intermediate Holdings Limited ("CIHL"), a subsidiary of the Cape group acquired in 2017 by AIA.

AIA and Mr. Altrad have been implicated in these proceedings even though they have no connection whatsoever with the disputed facts. Above all, Mr. Protopapas is acting on the basis of a court order made under manifestly irregular conditions and in defiance of English law, which is exclusively applicable to the autonomy of CIHL, a company established in England.

2. On November 22, 2024, the High Court of Justice of England and Wales (hereinafter the "**High Court**") ruled that the appointment of Mr. Peter Protopapas as CIHL's receiver was irregular ("**English Decision**"). It therefore ordered him to:

- cease acting or claiming to act as CIHL's receiver in England, South Carolina and worldwide;
- cease and desist from pursuing any action to implead Mr. Altrad and AIA as third-party defendants in the U.S. proceedings.

3. The English Decision is a decision recognized and enforceable in France, pursuant to the judgment rendered by this court on April 8, 2025 (the "**Exequatur Judgment**").

4. However, Mr. Protopapas is currently pursuing proceedings against Mr. Altrad and AIA in South Carolina, despite the terms of the Injunction issued.

Mr. Protopapas' abusive pursuit of his actions against AIA and Mr. Altrad, and in particular the unfair manoeuvres perpetrated by the defendant throughout the proceedings, constitute a fault likely to engage his tort liability.

5. Following a review of the facts and the various procedures involved in this dispute **(1)**, Mr. Altrad and AIA will demonstrate that Mr Protopapas should be ordered to pay compensation for the damage they have suffered as a result of the defendant's actions in South Carolina **(2)**.

1. FACTS AND PROCEEDINGS

1.1 Presentation of the parties

1.1.1 The Altrad Group

6. The Altrad Group was founded in 1985 in Montpellier by Mr. Mohed Altrad, co-plaintiff herein.

Mr. Altrad is the majority stockholder and chairman of AIA, co-plaintiff, the parent company of the Altrad Group, registered in Béziers since 2010 (**Exhibit no. 1**).¹

A world leader in the provision of services to industry, the Altrad Group designs and deploys high value-added solutions in the petrochemical, energy, power generation and construction sectors. By 2024, it had consolidated sales of over €5 billion and had more than 60,000 employees worldwide, including at least 7,500 in France.

7. In September 2017, the Altrad Group acquired the Cape Group.

The Cape Group was formed in 1893 from the English company "*The Cape Asbestos Company Ltd*", now known as Cape Intermediate Holdings Limited ("**CIHL**"). Its head office was located in Appleton, Warrington, England (**Exhibit no. 2**)³. Over the course of its existence, CIHL has changed its name several times, as follows:

- The Cape Asbestos Company Ltd (1893-1974)
- Cape Industries Ltd (1974-1981)
- Cape Industries Plc (1981-1989)
- Cape Plc (1989-2011)
- Cape Intermediate Holding Plc (2011-2013)
- Cape Intermediate Holdings Limited (since 2013).

Cape Plc is the current holding company of the Cape Group. It has been registered in Jersey since 2011 (**Exhibit no. 3**).⁵

Nowadays, the Cape Group is a major provider of services and equipment to industry in the petrochemical and energy sectors. Its main customers operate in the oil, nuclear and gas industries.

8. As part of its activities, the Cape Group distributed asbestos fibers until the 1970s, notably through a US subsidiary, North American Asbestos Corporation ("**NAAC**"), which was dissolved in 1978.

In the United States, and more particularly in South Carolina, plaintiffs brought actions against Cape Group companies, claiming that Cape Plc / CIHL was liable for the activities of the former NAAC subsidiary prior to 1978.

1.1.2 Mr. Protopapas

9. Mr. Peter Protopapas is an American lawyer practicing in South Carolina. He is particularly active in asbestos litigation.

For several years now, in the context of legal proceedings initiated by asbestos victims, he has been regularly appointed by a South Carolina judge, Ms. Jean Hoefer Toal ("**Judge Toal**"), as receiver of the defendant companies.

¹ Exhibit no. 1: Incorporation certificate of Altrad Investment Authority

³ Exhibit no. 2: Certificate of registration of CIHL (with a translation for information purposes only)

⁵ Exhibit no. 3: Certificate of registration of Cape Plc (with a translation for information purposes only)

By order dated March 16, 2023 (see §15 below), Mr. Protopapas was appointed by Judge Toal as receiver of "Cape Plc" (Exhibit no. 4).⁷

1.2 The contentious context: proceedings improperly initiated in South Carolina by Mr. Protopapas

10. Mr. Protopapas was appointed as receiver of "Cape Plc" in a case brought in South Carolina in 2021 by the Park couple (the "Park Case"). Granting himself full powers on the basis of the appointment order (Exhibit no. 4)⁸, issued under manifestly irregular conditions, Mr. Protopapas involved Mr. Altrad and AIA on behalf of Cape Plc (a subsidiary of the Altrad Group), in proceedings separate from the Park Case, for asbestos exposure in the 1960s. Mr Altrad and AIA have thus been improperly involved in proceedings abroad, even though they have no connection whatsoever with the contentious facts.

1.2.1 Particularity of asbestos litigation in South Carolina

11. In South Carolina, a local practice in asbestos-related litigation is to reactivate companies that have long been devoid of legal existence, by appointing a receiver.

In this state, all asbestos-related litigation is heard by Judge Toal. Mr. Protopapas is regularly appointed by Judge Toal as receiver of these dissolved companies or other entities affiliated to these companies, allegedly responsible for asbestos-related activities, in order to call in the relevant insurance policies, realize the assets of these companies and, thus, compensate the plaintiffs.

Mr. Protopapas recovers a significant portion of the amounts awarded to the plaintiffs by the South Carolina courts as success fees.

12. The methods of Mr. Protopapas and Judge Toal have been criticized in the trade press:

"Armed with subpoena power and a contingency-fee agreement awarding him a third of whatever he recovers, Peter Protopapas has used the receiver power granted to him by Toal to take control of more than 20 dissolved companies and sue their former insurers over old policies that he claims cover asbestos claims, scoring millions of dollars as the leader of these zombies" (Exhibit no. 5).⁹

"Judge Toal has often referred to Protopapas as an arm of the court, although he is a personal injury lawyer whom she has authorized to keep a third of any money he recovers" (Exhibit no. 6).¹⁰

"A South Carolina personal-injury attorney with a court-ordered commission to keep a third of whatever he recovers has placed tens of millions of dollars in Delaware partnerships that he controls, out of sight of the public and even the judge who allowed them to be established" (Exhibit no. 7).¹¹

⁷ Exhibit no. 4: Order from March 16, 2023 of Judge Toal appointing Mr. Protopapas as receiver of Cape Plc / CIHL (with a translation for information purposes only)

⁸ Exhibit no. 4: Order from March 16, 2023 of Judge Toal appointing Mr. Protopapas as receiver of Cape Plc / CIHL (with a translation for information purposes only)

⁹ Exhibit no. 5: Legal Newslne, *Zombies are on the loose in a Carolina courtroom. Can anyone stop them?*, September 23, 2024 (with a translation for information purposes only)

¹⁰ Exhibit no. 6: Legal Newslne, *'Slammed the door in my face': Key cog in South Carolina's asbestos court not at U.K. showdown*, October 15, 2024 (with a translation for information purposes only)

¹¹ Exhibit no. 7: Legal Newslne, *Secrecy shrouds asbestos money in South Carolina, but insurer makes play for records*, October 23, 2024 (with a translation for information purposes only)

1.2.2 The Park case

13. On June 4, 2021, Cape Plc and CIHL were sued as defendants before the Richland County Court of Common Pleas in South Carolina by Ms. Isabella Park. The case was registered under number 2021-CP-40-02727 and heard by Judge Toal.

The summons were never served on Cape Plc and CIHL¹², who did not participate in the proceedings.

14. In an email dated June 3, 2022 (**Exhibit no. 8**)¹³, one of the parties' Counsel advised the Richland County Court that the Park Case was "*fully resolved*". The exact nature of this resolution is not known. However, it has been established that from that date onwards, no further diligence was carried out by the parties, no hearings were held and the Court never issued a decision on the merits of the case.¹⁴

15. However, on March 16, 2023, an order issued by Judge Toal, at the request of counsel for Ms. Park's rights-holders, appointed Mr. Protopapas as receiver of "Cape PLC", "*as the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) (...)*" (**Exhibit no. 4**).¹⁶

The order of March 16, 2023 does not specify the entity concerned by the appointment of Mr. Protopapas, and therefore seems to confuse (i) Cape Plc, the only entity of the group currently referred to as "Cape Plc", and (ii) CIHL, formerly referred to as "Cape plc" from 1989 to 2011.

As per this order, extensive powers were conferred on Mr. Protopapas, including "*the power and authority [to] fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cap and take any and all steps necessary to protect the interests of Cape whatever they may be*" (**Exhibit no. 4**, bold added).¹⁷

However, its scope was circumscribed to the Park Case, the proceeding registered under number 2021-CP-40-02727:

"this Court hereby appoints Peter Protopapas be and hereby is appointed Receiver in this case pursuant to the South Carolina Law" (**Exhibit no. 4**, emphasis added).¹⁸

16. Several irregularities appear to affect this one-pager order, which was issued without any adversarial debate, just 10 days after the submit of the request to that effect.¹⁹
17. In particular, Judge Toal's appointment of a receiver to head Cape Plc / CIHL (companies respectively established in Jersey and England under the laws of those States) appears to have been justified on the grounds that:

- Cape Plc / CIHL would establish a "presence" in South Carolina through NAAC, a former subsidiary of the Cape Group dissolved in 1978 (see §8 above).

¹² **Exhibit no. 21**: Judgment of the High Court of Justice of England and Wales, November 22, 2024 (certified copy with sworn translation), §42

¹³ **Exhibit no. 8**: Email from counsel for one of the parties in the Park case, June 3, 2022 (with a translation for information purposes only)

¹⁴ **Exhibit no. 21**: Judgment of the High Court of Justice of England and Wales, November 22, 2024 (certified copy with sworn translation), § 43

¹⁶ **Exhibit no. 4**: Order from March 16, 2023 of Judge Toal appointing Mr. Protopapas as receiver of Cape Plc / CIHL (with a translation for information purposes only))

¹⁷ **Exhibit no. 4**: Order from March 16, 2023 of Judge Toal appointing Mr. Protopapas as receiver of Cape Plc / CIHL (with a translation for information purposes only))

¹⁸ **Exhibit no. 4**: Order from March 16, 2023 of Judge Toal appointing Mr. Protopapas as receiver of Cape Plc / CIHL (with a translation for information purposes only))

¹⁹ **Exhibit no. 21**: Judgment of the High Court of Justice of England and Wales, November 22, 2024 (certified copy with sworn translation), §48

- 9 -

- Cape Plc / CIHL is said to have been dissolved. A provision of the South Carolina Code allows a South Carolina court to appoint a receiver for a bankrupt company.²¹

However :

- Neither Cape Plc nor CIHL has ever operated, directly or indirectly, in South Carolina or elsewhere in the United States. The Cape Group has no establishment or assets in this territory. This was confirmed by a final decision handed down by an English judge in 1989 (*Adams v. Cape Industries Plc* of July 27, 1989, see **Exhibit no. 9**)²³, which is the subject of a request for enforcement pending before this court: in particular, the English Court of Appeal recognized the autonomous legal personality of CIHL and the economic independence of its former subsidiary NAAC, so that no presence of CIHL on American territory could be established through NAAC.
- Cape Plc and CIHL are fully operational and in good standing, with governing bodies appointed in accordance with their articles of association (**Exhibit no. 2 and 3**).²⁵ They are not subject to any insolvency proceedings, neither in South Carolina, nor in England, nor in Jersey.

18. There have been no further procedural developments in the Park case since the order of March 16, 2023.

1.2.3 The Tibbs case

19. On April 5, 2023, a new liability action was brought against "Cape Plc" by the Tibbs couple. CIHL was not named as a defendant. This case is registered under number 2023-CP-40-01759 and is also being heard by Judge Toal.

In this case as well, Cape Plc was never served with the originating document.

In this second case, separate from the Park case, Judge Toal has never issued an order appointing Mr. Protopapas as receiver of "Cape Plc" or any other company in the Cape Group.

However, Mr. Protopapas has intervened in these proceedings in this capacity.

20. On June 12, 2023, as per an agreement between Mr. and Mrs. Tibbs and Mr. Protopapas (claiming to act on behalf of Cape Plc / CIHL), Mr. and Mrs. Tibbs withdrew their claim against Cape Plc. Neither Cape Plc nor CIHL were able to consult or intervene in the conclusion of this agreement, which is said to contain a "suspension" clause of the limitation period under which Cape Plc / CIHL would agree not to raise any plea relating to the limitation period in future litigation.²

In an email dated April 8, 2024 to the Richland County Court, the counsel of plaintiffs Tibbs confirmed that **the only defendant remaining in the proceedings was Asbestos Corp. Ltd.**³ (**Exhibit no. 10**).²⁹

²¹ Under Section 15-65-10 of the *South Carolina Code of Laws*: "A receiver may be appointed by a judge of the trial court, either in or out of court: (...) (4) when a corporation has been dissolved, is insolvent or in imminent danger of insolvency or has lost its corporate rights, and, in similar cases, for property located in this State of foreign corporations.

²³ **Exhibit no. 9**: Excerpts from the English Court of Appeal decision *Adams v. Cape Industries Plc* of 27 July 1989 (with a translation for information purposes only); see also **Exhibit no. 21**: Judgment of the High Court of Justice of England and Wales, November 22, 2024 (certified copy with sworn translation), §§18 and followings.

²⁵ **Exhibit no. 2**: Certificate of Registration of CIHL (with a translation for information purposes only)

² **Exhibit no. 21**: Judgment of the High Court of Justice of England and Wales, November 22, 2024 (certified copy with sworn translation), §52

³ A Canadian company with no connection to Cape Plc / CIHL

²⁹ **Exhibit no. 10**: Email from Counsel for the Tibbs plaintiffs to the Richland County Court, April 8, 2024 (with a translation for information purposes only)

The Richland County Court of Common Pleas was therefore in principle removed from the main action against Cape Plc.

21. However, on June 30, 2023, AIA and Mr. Altrad were summoned as third-party defendants in the Tibbs case by Mr. Protopapas, in his alleged capacity as receiver of "Cape Plc" (Exhibit no. 11)³¹. Under U.S. law, third-party practice implies that the principal defendant brings ancillary claims in the context of a main proceeding, in order to obtain recognition of the liability of a third party to the proceeding.

Under the terms of the summons dated June 30, 2023, Mr. Protopapas alleges that each of the third-party defendants is either a right-holder of "Cape Plc" and its subsidiaries and affiliates, or a beneficiary and active participant in an alleged scheme set up by "Cape Plc" to evade its obligations (Exhibit no. 11, § 119)³². Mr. Protopapas further alleges that the third-party defendants facilitated, caused or directed "Cape Plc's" asbestos distribution scheme in the United States, or acted as right-holder or beneficiaries of entities involved in that scheme (Exhibit no. 11 §§137-141)³⁴.

The tone of the summons is particularly surprising:

*"This lawsuit seeks to finally hold accountable three groups of Third-Party Defendants (including their predecessors in interest) who are responsible for the sale and use of asbestos or asbestos-containing products throughout the United States, including in South Carolina, and which caused or materially contributed to thousands of deaths from mesothelioma or other asbestos-related disease, and billions of dollars of past, present, and calculable future damages. For decades, certain of these Third-Party Defendants created sham transactions to feign exits of the asbestos industry in the United States, leaving shells and an absence of insurance coverage to account for their massive liability exposure. And also for decades, they hid behind (or within) byzantine collectives of limited liability and other holding companies internationally, avoiding responsibility while continuing to reap the profits from the sales of asbestos and asbestos-containing products throughout the United States, including in South Carolina. In sum, these three groups of Third-Party Defendants have wreaked havoc in the United States, padded their already massive coffers with blood money on top of blood money, and amused themselves with the supposed ingenuity of their scheme to avoid any responsibility. This lawsuit begins their reckoning." (Exhibit no. 11, bold added).*³⁵

Mr. Protopapas therefore requests that the third-party defendants, including AIA and Mr. Altrad, be declared liable for all the obligations of Cape Plc and CIHL, for alleged unjust enrichment and a liability avoidance scheme in connection with NAAC's distribution of asbestos fibers in the 1960s-70s (Exhibit no. 11 §§125-130)³⁶.

22. The hearing on the merits to rule on the third-party defendants' liability was initially scheduled for the week of February 3 to 7, 2025 (Exhibit no. 12)³⁷, but was finally postponed to a later date which is not yet known.

³¹ Exhibit no. 11: Third-party claim of June 30, 2023 (with a translation for information purposes only)

³² Exhibit no. 11: Third-party claim of June 30, 2023 (with a translation for information purposes only)

³⁴ Exhibit no. 11: Third-party claim of June 30, 2023 (with a translation for information purposes only)

³⁵ Exhibit no. 11: Third-party claim of June 30, 2023 (with a translation for information purposes only)

³⁶ Exhibit no. 11: Third-party claim of June 30, 2023 (with a translation for information purposes only)

³⁷ Exhibit no. 12: Order from October 1, 2024 of Judge Toal setting a procedural timetable (with a translation for information purposes only)

23. These proceedings are therefore taking place at a time when :

- the appointment of Mr. Protopapas as receiver of "Cape Plc", which appears irregular in view of the place of establishment and the law applicable to Cape Plc / CIHL, was circumscribed to the Park case;
- the principal plaintiffs had withdrawn their claim and action against Cape Plc / CIHL, under the terms of an agreement concluded by Mr. Protopapas himself;
- Mr. Altrad and AIA are totally unaware of the facts at the origin of the litigation, insofar as they stem from the activities of NAAC, which was liquidated in 1978, i.e. almost 40 years before the acquisition of the Cape Group by the Altrad Group.

1.2.4 AIA's and Mr. Altrad's defenses in the U.S. proceedings

24. AIA and Mr. Altrad have taken significant steps to defend their interests in the Tibbs proceedings.
25. On September 1, 2023, they first filed a motion with Judge Toal seeking, notably, to (i) dismiss Mr. Protopapas's claims on the grounds that there was no personal jurisdiction over them and (ii) to set aside the receivership over Cape Plc (Exhibit no. 13).³⁸

On October 18, 2023, Mr. Protopapas filed submissions in opposition to the third-party defendants' motions (Exhibit no. 14)⁴⁰. In these submissions, he commented in particular on the entity named in the receivership order ("Cape Plc", an entity created in 2010 in Jersey), claiming that this was a simple naming error, the true entity referred to actually being CIHL.

26. On December 6, 2023, under the terms of an order **drafted in full by Mr. Protopapas**⁴¹, adopted 24 hours after submitting the draft without any modification by the court, Judge Toal dismissed all the third-party defendants' motions (Exhibit no. 15).⁴³ In particular, it is stated that:
- The sole entity targeted by the receivership would be CIHL and not Cape Plc, this confusion resulting from a simple naming error, so that the proceedings deeds were not irregular.
 - The receivership was justified by evidence of CIHL's long-standing attempts to evade its creditors by refusing to appear in court in the United States. It is added that the appointment of a receiver in this case would reflect an ancient practice of equity and an important legal principle aimed at correcting injustices, particularly applicable to Cape given its efforts "to defeat [its] creditors by an act or course of conduct which indicates moral fraud — a conscious intent to defeat, delay, or hinder his creditors in the collection of their debts."
 - South Carolina courts would have jurisdiction over CIHL, given its relation with NAAC.
 - The South Carolina courts would have jurisdiction over AIA and Mr. Altrad, insofar as the third-party defendants' writ of summons contained sufficient evidence to suggest their participation in the scheme set up by CIHL to avoid liability for damage caused by asbestos products.

³⁸ Exhibit no. 13: Mr. Altrad and AIA's Motion dated September 1, 2023 (with a translation for information purposes only)

⁴⁰ Exhibit no. 14: Opposition brief of Mr. Protopapas dated October 18, 2023 (with a translation for information purposes only)

⁴¹ Exhibit no. 21: Judgment of the *High Court of Justice of England and Wales*, November 22, 2024 (certified copy with sworn translation), §65

⁴³ Exhibit no. 15: Judge Toal's Order of December 6, 2023 Denying Certain Thirdparty Defendants' Motions to Dissolve Receivership and Third-Party Defendants' Motions to Dismiss for Lack of Personal Jurisdiction (with a translation for information purposes only)

AIA and Mr. Altrad have appealed this order.

27. In the context of proceedings to bring third parties into the case, Mr. Protopapas submitted Discovery, Examination and Witness requests to AIA and Mr. Altrad. These requests covered :
- questioning relating to property owned by AIA and Mr. Altrad, their insurance policies and documents prepared for their defense, and
 - discovery requests of an extremely large scope covering a period of 40 years.

Mr. Protopapas' objective was clearly to disrupt Mr. Altrad's and AIA's defense by flooding them with excessive discovery requests. Mr. Altrad and AIA firmly opposed these requests.⁴⁵

28. On April 3, 2024, Mr. Protopapas filed a motion seeking sanctions against AIA and Mr. Altrad, in light of the latter's contestations to *Discovery* requests (**Exhibit no. 17**).⁴⁷

On May 23, 2024, Judge Toal granted the request for sanctions and :

- ordered AIA and Mr. Altrad to pay Mr. Protopapas' fees (more than \$2 million),
- recognized the existence of an adverse inference. In other words, the decision on the merits could be based solely on Mr. Protopapas' declarations and exhibits, without allowing an adversarial debate. Judge Toal thus admitted a number of factual observations unfavorable to AIA and Mr. Altrad, as put forward by Mr. Protopapas and without any possibility for the plaintiffs herein to contest their merits:

*"the Court draws the adverse inference that each of the Altrad Third-Party Defendants was at relevant times the alter ego of Cape, requiring piercing of the corporate veil. Likewise, each of the Altrad Third-Party Defendants is responsible for or has benefitted unjustly from Cape's liability-avoidance scheme" (Exhibit no. 18).*⁴⁸

AIA and Mr. Altrad also appealed this order.

However, the Court of Appeal ruled that AIA's and Mr. Altrad's appeals were inadmissible, considering that the merits of Judge Toal's orders could not be examined independently of the decision on the merits. Mr. Altrad and AIA appealed to the South Carolina Supreme Court. These appeals were also rejected by the Supreme Court in its decision of June 26, 2025 (see §43 *below*).

1.3 The English decision on Mr. Protopapas' lack of authority and its recognition in France

29. Cape Plc and CIHL turned to their natural judge, the English court, to have Mr. Protopapas' lack of authority declared.

⁴⁵ In a letter dated June 20, 2024, the Strategic Information and Economic Security Service (*Service de l'information stratégique et de la sécurité économiques*, SISSE) confirmed to AIA that the Discovery request documents against them in South Carolina was subject to Law no. 68-678 of July 26, 1968, known as the "Blocking Statute", prohibiting them from any spontaneous communication without going through the international mutual assistance channels applicable between France and the United States (**Exhibit no. 16**).

⁴⁷ **Exhibit no. 17**: Mr. Protopapas' motion for sanctions against AIA and Mr. Altrad of April 3, 2024 (with a translation for information purposes only)

⁴⁸ **Exhibit no. 18**: Judge Toal's order of May 23, 2024 Granting Motions for Sanctions and Adverse Inference (with a translation for information purposes only); pp. 29 and following.

1.3.1 Referral to the *High Court* by the true legal representatives of Cape Plc and CIHL

30. On September 9, 2024, Cape Plc and CIHL, represented by their true legal representatives in office, applied to the High Court to, notably, order that Mr. Protopapas (i) cease acting or claiming to act as receiver of Cape Plc and CIHL and (ii) cease assuming the status of legal representative of CIHL, not only in England and Wales but, more generally, throughout the world.

Mr. Protopapas has not filed any submissions or exhibits in these proceedings. On September 5, 2024, he had expressly indicated to the English counsel of Cape Plc and CIHL that he would not be appearing (Exhibits no. 19 and 20).⁴⁹

The oral hearing took place during the week of November 11, 2024. Mr. Protopapas neither appeared nor was represented.

1.3.2 The High Court's non-recognition of Mr. Protopapas' appointment as CIHL's receiver and the injunction to cease acting in the name and on behalf of CIHL.

31. In the English Decision handed down by Judge Mann, composed of the judgment of November 22, 2024 (Exhibit no. 21)⁵¹ and the order of the same day with the operative part (Exhibit no. 22)⁵¹, the High Court ruled that :
- The American order of March 16, 2023 under which Mr. Protopapas was appointed as receiver of CIHL *"is not recognised and has no legal effect in England and Wales or worldwide"*;
 - Mr. Protopapas has *"no power or authority to act on behalf of CIHL in England and Wales or worldwide"*;
 - The rights and duties of CIHL's directors are not affected by the appointment of Mr. Protopapas as CIHL's receiver under Judge Toal's order of March 16, 2023;
 - M. Protopapas has no power or authority to act on behalf of CIHL before the South Carolina court in the Park and Tibbs cases and to issue or pursue third party claims, including in the Tibbs case, against any of the third party defendants in those proceedings, *"including (i) Mohed Altrad, (ii) Altrad Investment Authority SAS, (iii) Altrad UK Ltd, (iv) Cape UK Holdings Newco Ltd, (v) Cape Industrial Services Group Ltd, (vi) Cape Holdco Ltd, (vii) Altrad Services Ltd"* (Exhibit no. 22).⁵²

Accordingly, the High Court ordered Mr. Protopapas to :

- cease acting or claiming to act as CIHL's receiver in England, Wales and worldwide ;
- cease *"appropriating, interfering with or usurping (in any way whatsoever) the lawful exercise of the rights and duties of the directors of CIHL"* in England, Wales and elsewhere;
- cease acting or claiming to act as CIHL's receiver in the Park and Tibbs cases in England, Wales and worldwide;

⁴⁹ Exhibit no. 19: Letter before action from Cape Plc and CIHL's Counsel to Mr. Protopapas dated August 30, 2024 (with a translation for information purposes only) and Exhibit no. 20: Letter from Cape Plc and CIHL's Counsel to Mr. Protopapas dated August 30, 2024 (with a translation for information purposes only)

⁵¹ Exhibit no. 21: Judgment of the High Court of Justice of England and Wales, November 22, 2024 (certified copy with sworn translation)

⁵¹ Exhibit no. 22: Order of the High Court of Justice of England and Wales dated November 22, 2024 (certified copy with sworn translation)

⁵² Exhibit no. 22: Order of the High Court of Justice of England and Wales of November 22, 2024 (certified copy with sworn translation), §§6-10

- 14 -

- cease to pursue any action to prosecute Mr. Altrad and AIA as third-party defendants in the Tibbs proceedings;
- cease "*purporting to act for CIHL in the claim brought in the South Carolina Court by a summons dated 11 November 2024 and with claim number C/A NO. 2024-CP-40-06639 or in any other legal proceedings issued against CIHL in the South Carolina Court or worldwide*" (Exhibit no. 22).⁵³

32. Indeed, the High Court considered in its Judgment of November 22, 2024 that Mr. Protopapas's actions qualified as abusive constituted a serious threat, justifying the issuance of such global injunctions:

"the powers given to the receiver are apparently very long-arm and would be capable of being exercised worldwide, including this jurisdiction. He has not disavowed any intention so to use them. They are oppressive and have already been used to the disadvantage of CIHL." (Exhibit no. 21).⁵⁵

It should be noted that the order of November 22, 2024 was issued in favor of CIHL only, since Mr. Protopapas, as well as Judge Toal in her decision of December 6, 2023, recognized that Cape Plc was not the target of the various actions initiated in South Carolina against "Cape Plc" (Exhibit no. 21).⁵⁶

Mr. Protopapas' lack of authority and capacity to act in the name and on behalf of CIHL was therefore judicially recognized by the High Court.

The English Decision was also accompanied by a Penal Notice under which Mr. Protopapas and any other person acting in breach of the order made by the English judge would be guilty of contempt of court and liable to criminal sanctions, including imprisonment (Exhibit no. 23).⁵⁷

33. The English Decision was served on Mr. Protopapas on November 22, 2024 (Exhibit no. 24)⁵⁸. It is now **enforceable and final**.

Indeed, under English procedural law, the unsuccessful party has a period of 21 days from the date of service of the decision on the parties to request leave to appeal.

In this case, Mr. Protopapas had 21 days from the date of notification of the English Decision by counsel of Cape Plc / CIHL to request leave to appeal, i.e. until December 13, 2024.

As the deadline has now expired without any request for leave to appeal having been made by Mr. Protopapas, the English Decision is no longer subject to appeal.

On March 31, 2025, the English judge also provisionally ordered Mr. Protopapas to reimburse Cape Plc / CIHL part of their legal costs, up to a total of £1,000,000. A decision is expected shortly on the final amount of Mr Protopapas' award.

- 34. However, Mr. Protopapas has continued the proceedings in South Carolina against AIA and Mr. Altrad, on behalf of Cape Plc / CIHL, without any regard for the injunctions issued against him by the English judge.**

⁵³ Exhibit no. 22: Order of the High Court of Justice of England and Wales of November 22, 2024 (certified copy with sworn translation), §§8-10

⁵⁵ Exhibit no. 21: Judgment of the High Court of Justice of England and Wales, November 22, 2024 (certified copy with sworn translation), §134

⁵⁶ Exhibit no. 21: Judgment of the High Court of Justice of England and Wales, November 22, 2024 (certified copy with sworn translation), §140

⁵⁷ Exhibit no. 23: Penal Notice from the English judge (with a translation for information purposes only)

⁵⁸ Exhibit no. 24: Service on Mr. Protopapas of the Judgment and Order of the High Court of Justice of England and Wales dated November 22, 2024 (with proof of receipt by post) (with a translation for information purposes only)

1.3.3 Exequatur of the English decision in France

35. In order to protect themselves against the potentially very negative effects of a decision to be handed down in South Carolina, in the context of proceedings abusively pursued against them by Mr. Protopapas, Mr. Altrad and AIA were forced to initiate proceedings to have the English Decision recognized as enforceable on French territory.

By order dated December 20, 2024 (Exhibit no. 25)⁵⁹, Cape Plc, CIHL, AIA and Mr. Altrad were authorized to summon Mr. Protopapas on a fixed date for a hearing on February 11, 2025 before the Montpellier Civil Court, with a view to having the English Decision of November 22, 2024 declared enforceable in France.

Mr. Protopapas was personally served with the exequatur summons and the request for a fixed date summons on December 30, 2024 (Exhibit no. 26)⁶¹. However, Mr. Protopapas did not wish to appear in the proceedings:

"No lawyer has been appointed for Mr. Peter Protopapas, the summons having been delivered to his address on December 30, 2024, in accordance with the provisions and formalities set out in the Hague Convention of November 15, 1965, on the service of judicial and extrajudicial documents in the Member States" (Exhibit no. 27, p. 4).⁶²

- 36. In a judgment dated April 8, 2025 (Exhibit no. 27)⁶³, considering that all the conditions had been met, the Montpellier Civil Court granted exequatur and declared the English Decision enforceable in France.**

The Exequatur Judgment was personally served on Mr. Protopapas on May 20, 2025 (Exhibit no. 28).⁶⁴

1.3.4 The consequences in South Carolina of the English and French proceedings

37. In view of the proceedings initiated against him across the Atlantic, Mr. Protopapas made several attempts to intimidate and accelerate the course of the proceedings in South Carolina.

As soon as he was informed of Cape Plc's and CIHL's intention to apply to the English judge for recognition of his lack of power as receiver, Mr. Protopapas threatened Cape Plc's and CIHL's counsel with direct legal action against them in South Carolina (Exhibits no. 19 and 20)⁶⁵:

"Your letter solicits me to violate South Carolina law and is akin to extortion. Respectfully, I refuse to allow your tortious threats to guide my legal and ethical duties imposed on me as a court-appointed receiver. As a result, I am left with no choice but to sue your firm. Attached you will find a recently filed declaratory judgement action against Winston & Strawn LLP. I anticipate filing a Rule to Show Cause against your firm requiring your firm to explain its conduct to the Receivership Court. A sensible solution to this issue is for you to withdraw the Letter and undertake to not seek any relief in the English Courts or any other court than that seized of the jurisdiction in South Carolina and I will withdraw the Complaint and Rule to Show Cause" (Exhibit

⁵⁹ Exhibit no. 25: Order of the Presiding Judge of the Montpellier Civil Court of December 20, 2024 authorizing the plaintiffs to summon Mr. Protopapas on a fixed date.

⁶¹ Exhibit no. 26: Service of draft summons for exequatur on Mr. Protopapas on December 30, 2024

⁶² Exhibit no. 27: Exequatur Judgment of the Montpellier Civil Court of April 8, 2025

⁶³ Exhibit no. 27: Exequatur Judgment of the Montpellier Civil Court of April 8, 2025

⁶⁴ Exhibit no. 28: Service of the Exequatur Judgment on Mr. Protopapas on May 20, 2025

⁶⁵ Exhibit no. 19: Letter before action from Cape Plc and CIHL's Counsel to Mr. Protopapas dated August 30, 2024 (with a translation for information purposes only) and Exhibit no. 20: Letter from Cape Plc and CIHL's Counsel to Mr. Protopapas dated August 30, 2024 (with a translation for information purposes only)

no. 20, p. 5, emphasis added).⁶⁶

Winston & Strawn withdrew from the case following this letter, and Cape Plc and CIHL had to instruct new counsel as a matter of urgency.⁶⁷

38. Mr. Protopapas subsequently attempted to intimidate an expert ("Judge Wilkins"), commissioned by Cape Plc and CIHL in the English proceedings to give a legal opinion on issues of South Carolina law. Judge Mann in the English Decision notes the following on this subject:

"On 5th November the receiver issued a subpoena for a deposition, and made extensive demands for disclosure on the judge. That conduct looks intimidatory. Whether or not that is right, the judge thought it right to provide (apparently unbidden) a short further "report" saying that he did not intend to express a view as to whether and to what extent the law in his report applied to any case anywhere in the world, and that his involvement in such matters is now hereby "concluded". When one reads the report properly one can see that that is plainly the case - he did not trespass into the area of saying how it should have been applied in the present matter. After he provided that supplemental report the subpoena was withdrawn" (Exhibit no. 21).⁶⁸

39. Mr. Protopapas also filed a motion before Judge Toal asking her to enjoin the "Altrad Defendants" *"to terminate their improper action pending before the High Court of Justice of England and Wales seeking to enjoin the Receiver from performing his Court-ordered duties."* (the action in England was initiated by Cape Plc and CIHL). However, Judge Toal refused to grant this request (Exhibit no. 21).⁷⁰
40. On November 8, 2024, Mr. Protopapas filed a motion for summary judgment against AIA and Mr. Altrad in the Tibbs third-party defendant proceedings, although the hearing was scheduled less than three months later - on February 3, 2025 (Exhibit no. 21)⁷². In the end, the trial on the merits was suspended in view of the numerous constataions raised (quite rightly) by the third-party defendants. The date of the adjournment of the oral hearing is not yet known.
41. On December 13, 2024, notably in reaction to the English Decision and the notice of penalty attached to it⁴, Mr. Protopapas filed an "Emergency Motion for Supersedeas of Execution and Temporary Restraining Order" before the South Carolina Supreme Court (Exhibit no. 29).⁷⁵

In it, Mr. Protopapas claims that the actions taken by Cape Plc / CIHL in the United Kingdom, on the one hand, and the defenses raised by Mr. Altrad and AIA in South Carolina, on the other, with the legitimate aim of asserting their rights, is equivalent to threats and harassment. Moreover, Mr. Protopapas incorrectly presents the actions in the United Kingdom as having been initiated by AIA and Mr. Altrad:

"In light of the egregious and emergent nature of the actions by [Altrad] Petitioners and their counsel, both in the US and UK, Peter D. Protopapas, in his capacity as the court-appointed Receiver for Cape PLC, individually and as successor in interest to Cape

⁶⁶ Exhibit no. 20: Letter from Cape Plc and CIHL's Counsel to Mr. Protopapas dated August 30, 2024 (with a translation for information purposes only)

⁶⁷ Exhibit no. 21: Judgment of the High Court of Justice of England and Wales, November 22, 2024 (certified copy with sworn translation), §82

⁶⁸ Exhibit no. 21: Judgment of the High Court of Justice of England and Wales, November 22, 2024 (certified copy with sworn translation), §83

⁷⁰ Exhibit no. 21: Judgment of the High Court of Justice of England and Wales, November 22, 2024 (certified copy with sworn translation), §84

⁷² Exhibit no. 21: Judgment of the High Court of Justice of England and Wales, November 22, 2024 (certified copy with sworn translation), §84

⁴ The content of which Mr. Protopapas was reminded several times in letters sent by Cape Plc / CIHL's English counsel, asking him to cease his actions in breach of the English Decision.

⁷⁵ Exhibit no. 29: Mr. Protopapas' Emergency Motion for Supersedeas and Temporary Restraining Order dated December 13, 2024

Asbestos Company Limited, n/k/a Cape Intermediate Holdings Ltd. (the "Receiver"), hereby moves this Court on an emergency basis to issue a supersedeas to protect and enforce the Court's jurisdiction and a temporary restraining order against Petitioners enjoining Petitioners, their officers, directors, representatives, counsel, and agents from taking any action attempting to prevent the Receiver from fulfilling his court-appointed duties and participating in litigation in this Court and other courts in South Carolina and the United States. (...)

The UK litigation, the resulting purported injunction, and the submission of the documents to this Court are irregular attempts to harass the Receiver in an effort to collaterally attack this state's judicial orders after nearly a year of failed successive appeals and a failed removal to the South Carolina District Court. The Court should grant this Motion in order to protect and enforce its jurisdiction and enjoin Petitioners from attempting to utilize the unilateral foreign injunction to supersede and shut down a legitimate state-court receivership" (Exhibit no. 29, pages 5 to 7)⁷⁶.

42. In a motion dated January 9, 2025 (Exhibit no. 30)⁷⁷, in view of the exequatur proceedings initiated in France, Mr. Protopapas asked the South Carolina Supreme Court to stay all procedural deadlines, pending the court's consideration of his emergency motion. Mr. Protopapas again claims in his motion that he has been "threatened" by AIA and Mr. Altrad, and that the latter have filed criminal proceedings against him, which is untrue:

"Due to the highly unusual circumstances and the ongoing use of criminal and civil threats against the Receiver and his counsel, the Receiver is requesting a stay of all deadlines while the Court considers the Emergency Motion. (...)

Petitioners Mohed Altrad and Altrad Investment Authority S.A.S. (the "Altrad Petitioners") continue to threaten and are presently seeking to imprison, fine, and seize the assets of anyone who purports to act on behalf of the court-appointed Receiver, including the attorneys for the court-appointed Receiver. (...)

The joint Plaintiffs in the French action, Cape Plc, Cape Intermediate Holdings Limited (CIHL), Altrad Investment Authority (AIA), and Mr Mohed Altrad, are seeking to domesticate the UK judgment against the Receiver in France as a matter of "urgency" as well as additional relief" (Exhibit no. 30, page 3, emphasize added).⁷⁸

The motion to stay deadlines was rejected by the South Carolina Supreme Court in a decision dated January 16, 2025 (Exhibit no. 31).⁷⁹

43. On June 3, 2025, in reaction to the Exequatur Judgment served on him on May 20, 2025, Mr. Protopapas sought further sanctions against AIA and Mr. Altrad before the South Carolina Supreme Court (Exhibit no. 32)⁸⁰:

"Peter D. Protopapas, acting in his official capacity as the court-appointed Receiver for Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, n/k/a Cape Intermediate Holdings Ltd. (the "Receiver"), continues to be attacked relentlessly by the Appellants and their counsel for fulfilling his court-appointed obligations [...]

⁷⁶ Exhibit no. 29: Mr. Protopapas' Emergency Motion for Supersedeas and Temporary Restraining Order dated December 13, 2024

⁷⁷ Exhibit no. 30: Mr. Protopapas' Motion to Stay Deadlines dated January 9, 2025

⁷⁸ Exhibit no. 30: Mr. Protopapas' Motion to Stay Deadlines dated January 9, 2025, p. 3

⁷⁹ Exhibit no. 31: Decision of the South Carolina Supreme Court dated January 16, 2025

⁸⁰ Exhibit no. 32: Mr. Protopapas' Motion for Sanctions before the South Carolina Supreme Court, June 3, 2025

Armed with orders from these foreign courts, the Appellants continue to escalate their threats against the Receiver and his counsel" (Exhibit no. 32, pp. 2-3).

"Accordingly, the Receiver respectfully requests that the Court issue an order sanctioning Altrad Investment Authority S.A.S. and Mohed Altrad for their defiance of this Court in a manner that will end and deter this type of behavior and protect its court-appointed Receiver from the financial exposure that he has been burdened with personally, and the threat of criminal prosecution, as a direct result of the Appellants Altrad Owners' contemptuous behavior" (Exhibit no. 32, pp. 23-24).

44. In an order dated June 26, 2025 (Exhibit no. 33)⁸¹, the South Carolina Supreme Court partially responded to the numerous appeals and motions brought before it by the various parties involved in this case. On this occasion, it ruled on the powers of the receiver:
 - The Supreme Court first referred to a decision handed down by its own court a few weeks earlier in a separate case, *Welch v. Advance Auto Parts, Inc.* (Exhibit no. 34)⁸² of May 21, 2025, in which Mr. Protopapas had also been appointed receiver. In the *Welch* decision, the Supreme Court reiterated that the powers of the receiver are not unlimited in that (i) they are limited to marshalling the assets expressly designated in the order placing the company under receivership, and (ii) they do not in any way constitute authorization for the receiver to 'enter the boardroom' of a company and/or take control of its operations. (Exhibit no. 34, page 30)
 - Accordingly, in the Tibbs case, the Supreme Court reiterated that a receiver may **only** exercise his functions **on the basis of an order issued specifically in the context of the case in which he is supposed to intervene**, and that the receiver's powers must be limited by the said order. The Supreme Court therefore instructed Judge Toal to ensure compliance with these requirements in the Tibbs case.
45. **As a result, Mr. Protopapas is currently pursuing proceedings on behalf of Cape Plc / CIHL against Mr. Altrad and AIA, in South Carolina, in breach of (i) the terms of the injunction issued by the English judge, now enforceable in France, but also (ii) a decision of the South Carolina Supreme Court.**

It is in this context that the present summons are issued.

⁸¹ Exhibit no. 33: Order of the South Carolina Supreme Court dated June 26, 2025

⁸² Exhibit no. 34: Decision of the South Carolina Supreme Court *Welch v. Advance Auto Parts, Inc.* dated May 21, 2025

2. DISCUSSION

46. Mr. Altrad and AIA intend to argue in the present writ of summons that Mr. Protopapas should be held liable, so that the Plaintiffs can obtain compensation for the prejudice suffered as a result of the proceedings abusively initiated and pursued against them by Mr. Protopapas in South Carolina (2.2). They will also issue a claim for legal costs (2.3).

First, Mr. Altrad and AIA will demonstrate that the French courts have jurisdiction and that French law is applicable to the present dispute (2.1).

2.1 As a preliminary point: International jurisdiction and applicable law

2.1.1 French courts have jurisdiction to rule on the present dispute

47. Mr. Protopapas is an American citizen domiciled in the United States.
48. In the absence of an international convention applicable between France and the United States concerning international jurisdiction, reference should be made to domestic provisions.

Article 14 of the French Civil Code states that: *"A foreigner, even one not residing in France, may be summoned before the French courts for the performance of obligations contracted by him in France with a French citizen; he may be brought before the French courts for obligations contracted by him in a foreign country with French citizens"*.

49. Mr. Altrad is a French citizen.

AIA's head office is located in Béziers, France.

- 50. The French courts therefore have jurisdiction to hear the liability action brought by Mr. Altrad and AIA against Mr. Protopapas, for the abusive proceedings brought by Mr. Protopapas against them in South Carolina.**

2.1.2 French law is applicable to the dispute

51. In the absence of a contractual relationship between Mr. Altrad, AIA and Mr. Protopapas, the action brought in this case is a tort action.

Regulation (EC) no. 864/2007 on the law applicable to non-contractual obligations (the "**Rome II Regulation**") is applicable insofar as the French courts are seized of the dispute.

Article 4 of the Rome II Regulation states that *"the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur"*.

52. In this case, the damage suffered by Mr Altrad and AIA is located in France:
- the actions abusively pursued by Mr. Protopapas in South Carolina involved a major mobilization of internal resources for AIA, whose head office and most of its assets are located in France,
 - this mobilization of resources had an impact on AIA's commercial activity in France,
 - the bank accounts from which the legal and other costs incurred by Mr. Altrad and AIA for the South Carolina proceedings were drawn are held by French banks,

- 20 -

- Mr. Altrad, domiciled in France, has suffered significant moral prejudice as a result of the abusive proceedings brought against him personally, and threatening the image and future of a company he founded and to which he has devoted his life,
- in view of Mr. Protopapas' pursuit of proceedings in South Carolina against Mr. Altrad and AIA, in breach of the English Decision handed down on November 22, 2024, the Plaintiffs have been forced to incur additional legal costs in France in order to obtain the exequatur of the English Decision and thus protect themselves from the potentially very negative effects of a sentencing decision to be handed down in South Carolina,
- Mr. Protopapas' pursuit of the proceedings in South Carolina is a direct breach of a French court decision, namely the Exequatur Judgment of the English Decision.

53. French law is therefore applicable to the present dispute.

2.2 Mr. Protopapas must be held liable for pursuing manifestly abusive proceedings against AIA and Mr. Altrad

54. Under article 1240 of the French Civil Code, "any act of man, which causes damage to another, obliges the person by whose fault it occurred to repair it".

In the case at hand, Mr. Protopapas' abusive procedural behavior in South Carolina and his persistent refusal to take into account the decisions of the English and French judges (2.2.1) have caused significant prejudice to the Plaintiffs (2.2.2). Mr. Protopapas should therefore be ordered to pay full compensation for these losses, on the basis of article 1240 of the French Civil Code.

2.2.1 Mr. Protopapas's abusive actions in South Carolina constitute a fault that gives rise to tort liability.

a) The basis of Mr. Protopapas' actions is manifestly irregular

55. In this case, Mr. Protopapas is suing AIA and Mr. Altrad in the South Carolina courts, allegedly on behalf of their subsidiary CIHL, under the terms of an order issued under manifestly irregular conditions:

- The order of March 16, 2023 (**Exhibit no. 4**) was issued in the context of a case that had apparently been "fully resolved" - in accordance with the e-mail sent to the court by counsel for one of the parties on June 3, 2022 (**Exhibit no. 8**) - and which in fact has been inactive since that date, without any decision on the merits having been handed down.
- This order was issued without a hearing or adversarial debate, and only 10 days after the filing of the motion requesting the appointment of Mr. Protopapas as receiver.
- This order was issued in disregard of (i) English law, which is exclusively applicable to the autonomy of a company established in England, and (ii) the exclusive jurisdiction of English courts to appoint a receiver for a company established on its territory, as this court rightly pointed out in its Exequatur Judgment:

"Cape Pic and CIHL are two English companies, the former registered in Jersey, a British island, and the latter in Appleton, Warrington, England.

*To defend their interests in the dispute with Mr. Peter Protopapas, appointed in South Carolina in the United States as receiver, **in defiance of English law and the applicable rules of jurisdiction**, they have turned to the English judge on the*

grounds that their principal place of business, their assets and their governing bodies are located in England" (Exhibit no. 27, page 6, bold added).⁸³

Indeed :

- CIHL is a fully operational company and in good standing, with governing bodies appointed in accordance with its articles of incorporation (**Exhibit no. 2**)⁸⁵. It is not the subject of any insolvency proceedings, neither in South Carolina nor in England. Its placement under receivership is therefore manifestly irregular under English law, which is exclusively applicable to it, and which was not examined in deciding on the measure.
- Judge Toal justified her jurisdiction on the grounds that Cape Plc / CIHL had established a "presence" in South Carolina through NAAC, a former subsidiary of the Cape Group dissolved in 1978 (see §17 above). In other words, Cape Plc / CIHL would be the right-holder and *alter ego* of NAAC, and should therefore be considered as established in the United States through NAAC. However, neither Cape Plc nor CIHL have ever carried out any activities, directly or indirectly, in South Carolina or elsewhere in the United States. The Cape Group has no establishment or assets in this territory.

This was so ruled by a final decision handed down by an English judge in 1989 (**Exhibit no. 9**), which is the subject of a request for enforcement pending before this court: in *Adams v. Cape Industries Plc* of July 27, 1989, the English Court of Appeal ruled, in the context of an extremely well-reasoned decision (the oral hearings lasted 17 days) on the jurisdiction of the American judge who had sentenced CIHL (formerly known as Cape Industries Plc) because of the activities carried out by its former subsidiary NAAC.

Adams v. Cape deals in detail with the question of the control exercised by CIHL over NAAC, and in particular the issue of the alter ego and autonomy of NAAC's legal entity. The English Court of Appeal concluded that NAAC was not CIHL's alter ego, that there was no need to lift NAAC's corporate veil and that, consequently, CIHL's presence in the United States had not been established, so that the American judge did not have jurisdiction.

The appointment of Mr. Protopapas as CIHL's receiver is therefore in direct contradiction with this decision, as the High Court pointed out in the English Decision:

"The defendant, as receiver, has been launching claims in the US purportedly on behalf of CIHL which involve claims and assertions that are directly contrary to the factual case successfully advanced by CIHL in Adams v Cape." (Exhibit no. 21).⁸⁷

"The fundamental factual basis for appointing the receiver was the fact that "Cape" was operating through NAAC and CPC in the US, without any reference to the detailed findings of the English courts" (Exhibit no. 21)⁸⁸.

Thus, Judge Toal had no jurisdiction to take such decision, which fell within the exclusive power of the English courts.

⁸³ Exhibit no. 27: Exequatur Judgment of the Montpellier Civil Court of April 8, 2025

⁸⁵ Exhibit no. 2: CIHL Certificate of Registration (with a translation for Information purposes only)

⁸⁷ Exhibit no. 21: Judgment of the High Court of Justice of England and Wales, November 22, 2024 (certified copy with sworn translation), §20

⁸⁸ Exhibit no. 21: Judgment of the High Court of Justice of England and Wales, November 22, 2024 (certified copy with sworn translation), §47

56. Irrespective of the irregularity affecting the order of her appointment, Mr. Protopapas' action on behalf of CIHL against AIA and Mr. Altrad in the Tibbs case is itself irregular:

- Mr. Protopapas acted on behalf of CIHL in the Tibbs case pursuant to an order circumscribed to the Park case:

"this Court hereby appoints Peter Protopapas be and hereby is appointed Receiver in this case pursuant to the South Carolina Law" (Exhibit no. 4, emphasis added).⁸⁹

This irregularity was noted:

- (i) In the Exequatur Judgment of April 8, 2025:

"Despite the absence of an order pronounced in this last case, and consequently the absence of appointment of a receiver for Cape Plc or another company of the Cape Group, Mr. Peter Protopapas nevertheless intervened in these proceedings in this capacity of receiver."

- (ii) By the Supreme Court of South Carolina in its order of June 26, 2025 (Exhibit no. 33), in which it recalled that a receiver *"is not to be authorized to conduct work as to a case in which no receiver appointment order has been filed"* (emphasize added).⁹⁰

- The entity appointed in the order of March 16, 2023 is "Cape Plc", the group's current holding company established in Jersey in 2010. Mr. Protopapas later admitted that it was in fact CIHL that was the target of the receivership order, without ever taking any steps to rectify this fundamental irregularity.

Indeed, in his brief of October 18, 2023 in opposition to the motion filed by AIA and Mr. Altrad to contest Judge Toal's jurisdiction (Exhibit no. 14), Mr. Protopapas presents this error as a "simple naming error" with no prejudicial consequences. The question of which entity is concerned by a measure of judicial administration and, more generally, by judicial proceedings is, however, crucial, if only to ensure compliance with obligations to serve procedural documents.

- In this respect, the Tibbs plaintiffs' document initiating proceedings refers exclusively to Cape Plc. CIHL was never summoned, nor was it served with any procedural documents, so that even supposing that Mr. Protopapas could act on behalf of CIHL, he could not do so on behalf of a company which is not even a party to the proceedings in the Tibbs case.
- The third-party defendants' summons of June 30, 2023 (Exhibit no. 11) came after the Tibbs case had (like the Park case) been settled on June 12, 2023 between the Tibbs plaintiffs and Mr. Protopapas (on behalf of Cape Plc / CIHL) (Exhibit no. 10)⁹². Mr. Protopapas therefore acted in a matter that had in principle been resolved.

This was also noted by the present court in its Exequatur Judgment.

"On June 12, 2023, under the terms of an agreement between the Tibbs couple and Mr. Peter Protopapas, the Tibbs couple withdrew their case and action against Cape Plc: the trial court in Richland County, South Carolina, USA, was thus relieved of the main action against Cape Plc."

⁸⁹ Exhibit no. 4: Order from March 16, 2023 of Judge Toal appointing Mr. Protopapas as receiver of Cape Plc / CIHL (with a translation for information purposes only)

⁹⁰ Exhibit no. 33: Order of the South Carolina Supreme Court dated June 26, 2025, p. 4

⁹² Exhibit no. 10: Email from Counsel for the Tibbs plaintiffs to the Richland County Court, April 8, 2024 (with a translation for information purposes only)

Even so, on June 30, 2023, AIA and Mr. Mohed Altrad were summoned as "third-party defendants" in the Tibbs case by Mr. Peter Protopapas, in his capacity as receiver of Cape Plc" (Exhibit no. 27 page 5, emphasis added).⁹³

57. Thus, in view of the numerous irregularities referred to above, of which Mr. Protopapas clearly could not have been unaware, the pursuit of his actions against Mr. Altrad and AIA in South Carolina constitutes a fault engaging his liability. Above all, Mr. Protopapas' maneuvers largely contributed to, if not provoked, the irregularities affecting the American proceedings.

b) Mr. Protopapas' conduct of the South Carolina proceedings is unfair and misleads the American courts

58. In his actions against AIA and Mr. Altrad, Mr. Protopapas has been particularly disloyal, misleading the U.S. court by presenting truncated facts and unfounded allegations, and by concealing elements that should necessarily have been brought to its attention.
59. First of all, it should be reminded that Mr. Protopapas' mission in the context of his appointment as CIHL's receiver was, in principle, to *"take any and all steps necessary to protect the interests of Cape whatever they may be"* (Exhibit no. 4).⁹⁴

However, Mr. Protopapas never acted in accordance with his mission.

60. In particular, the third-party defendants' summons (Exhibit no. 11), purportedly on behalf of CIHL, contains a number of allegations that are highly unfavorable to CIHL, equivalent to total admissions of its liability for the disputed facts in the Tibbs case, and which are therefore manifestly contrary to its interests. However, according to Mr. Protopapas' developed argument, admitting CIHL's liability is tantamount to admitting the liability of AIA and Mr. Altrad. Mr. Protopapas' conduct in his role as CIHL's receiver is therefore aimed solely at serving his interests in seeing the third-party defendants condemned, and is therefore directly detrimental to AIA and Mr. Altrad. In particular:

- with regard to the allegations of unjust enrichment, Mr. Protopapas states that it would be unfair for the third-party defendants to retain any benefit resulting from the liability of "Cape Plc", (Exhibit no. 11, §§ 125-130),
- with regard to the allegations of liability under the alter ego theory and the lifting of the corporate veil, Mr. Protopapas argues that, in the interests of justice, the South Carolina Court can exercise personal jurisdiction over the third-party defendants and impose liability on them for the acts of "Cape Plc", that the third-party defendants are liable for having dominated, controlled, facilitated or benefited from the success of "Cape Plc's" asbestos activities and its liability avoidance scheme (Exhibit no. 11, §§ 137 to 141).

The High Court also noted Mr. Protopapas' disloyal behavior in the English Decision:

"(c) He is a receiver one of whose functions is apparently to protect the interests of CIHL over which he has been appointed. Yet he has demonstrated that he is not fulfilling that obligation. and is indeed apparently doing the opposite. He has made admissions in relation to asbestos claims. and advanced a positive case. which are positively damaging to the interests of CIHL." (Exhibit No. 21, §115).

61. More generally, Mr. Protopapas is granting himself full powers on the basis of his designation order, acting far beyond his mission in a case for which he was not designated, by summoning any foreign

⁹³ Exhibit no. 27: Exequatur Judgment of the Montpellier Civil Court of April 8, 2025

⁹⁴ Exhibit no. 4: Order from March 16, 2023 of Judge Toal appointing Mr. Protopapas as receiver of Cape Plc / CIHL (with a translation for information purposes only)

entity that has any connection with Cape Plc / CIHL / NAAC (including AIA and Mr. Altrad). However, the Supreme Court of South Carolina reminded in its *Welch* decision of May 21, 2025 (**Exhibit no. 34**, see §43 above) that the powers of the receiver **are not unlimited** in that they are limited to marshalling the assets expressly designated in the order appointing the receiver.

62. In addition, Mr. Protopapas constantly makes false allegations against CIHL, AIA and Mr. Altrad, without any supporting evidence. Yet, these allegations were all admitted by Judge Toal:

- on the one hand, as per the order of December 6, 2023 (**Exhibit no. 15**)⁹⁵ rejecting Mr. Altrad's and AIA's motion to raise the Tribunal's lack of jurisdiction and to cancel the judicial administration measure, as the order was drafted in full by Mr. Protopapas without any changes made by the court (see §26 above), and
- on the other hand, in the order of May 23, 2024 (**Exhibit no. 18**)⁹⁶ granting Mr. Protopapas' requests for sanctions following AIA's and Mr. Altrad's refusal to participate in the Discovery.

As a reminder, Mr. Protopapas' requests for the production of documents were excessively important and covered a period of more than 40 years, the aim clearly being to disrupt Mr. Altrad's and AIA's defense by drowning them in an unworkable Discovery (see §27 above).

In any case, it was legally impossible for Mr. Altrad and AIA to comply with these requests, given that the Blocking Statute forbade them to communicate documents or information spontaneously, without going through the international channels of mutual assistance applicable between France and the United States established by the Hague Convention of March 18, 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. This was expressly confirmed by the SISSE in a letter dated June 20, 2024 (**Exhibit no. 16**).⁹⁷

Thus, as a result of the abusive Discovery initiated by Mr. Protopapas, which was materially and legally impossible to comply with for Mr Altrad and AIA , the latter were condemned to a measure of adverse inference under which Judge Toal admitted a total of 46 false allegations made by Mr. Protopapas, without any possibility for AIA and Mr. Altrad to contest their merits under the terms of an adversarial debate:

"As to the Altrad Third-Party Defendants (inclusive of both the "Altrad Owners" and "Altrad Sparrows" groups), the Court draws the adverse inference that each of the Altrad Third-Party Defendants was at relevant times the alter ego of Cape, requiring piercing of the corporate veil. Likewise, each of the Altrad Third-Party Defendants is responsible for or has benefitted unjustly from Cape's liability-avoidance scheme. In order to reach that inference, the following inferences are made against each of the respective Altrad Third-Party Defendants:

Inferences as to AIA and Mohed Altrad

(...) 3. In 2022, Mohed Altrad was convicted of corruption offenses in France, punished by the imposition of an 18-month suspended jail term.

4. Mohed Altrad has been convicted of a crime involving dishonesty or false statement.

⁹⁵ **Exhibit no. 15:** Judge Toal's Order of December 6, 2023 Denying Certain Thirdparty Defendants' Motions to Dissolve Receivership and Third-Party Defendants' Motions to Dismiss for Lack of Personal Jurisdiction (with a translation for information purposes only)

⁹⁶ **Exhibit no. 18:** Judge Toal's order of May 23, 2024 Granting Motions for Sanctions and Adverse Inference (with a translation for information purposes only)

⁹⁷ **Exhibit no. 16:** Letter from SISSE to AIA dated June 20, 2024

(...) Inferences as to Altrad and Cape

(...) 12. AIA and Mohed Altrad were aware of Cape's asbestos-related liabilities and liability-avoidance scheme prior to the acquisition of Cape.

13. AIA and Mohed Altrad acquired Cape with the intent to continue Cape's liability-avoidance scheme and refusal to respond to litigation in the United States.

(...) 18. AIA and Mohed Altrad are responsible for Cape's continued failure to respond to litigation against Cape in the United States.

(...) Inferences as to All Altrad Third-Party Defendants

(...) 31. The Altrad Third-Party Defendants intentionally designed complexity into their corporate relationships in order to obfuscate those relationships and ownership interests while minimizing Cape's and/or their own liability risks, including for asbestos.

(...) 36. The Altrad Third-Party Defendants have done nothing to address Cape's massive unpaid responsibility for the death and illness caused by Cape's asbestos products in South Carolina and elsewhere in the United States.

(...) 38. The Altrad Third-Party Defendants have destroyed corporate records and publicly misrepresented the nature of Cape's business and liability-avoidance scheme in the United States.

General Inferences as to Alter Ego Liability

(...) 43. The Altrad Third-Party Defendants—with Cape—have acted with bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of legal distinctions among the Altrad Third-Party Defendants, and that inequitable consequences and fundamental unfairness have been caused from such blurring of legal distinctions and their activities and assertions of corporate separateness, including in an attempt to shield fraud, evasion of existing obligations circumvention of statutes, criminal conduct, and the like with respect to the Cape liability-avoidance scheme, and that adherence to the fiction of separate corporate identities would defeat justice." (Exhibit no. 18).⁹⁸

These findings are obviously all wrong.

63. More recently, in the motions filed by Mr. Protopapas before the South Carolina Supreme Court on December 13, 2024 (Exhibit no. 29)⁹⁹, January 9, 2025 (Exhibit no. 30)¹⁰⁰ and June 3, 2025 (Exhibit no. 32)¹⁰¹, in reaction to the English Decision and the Exequatur Judgment (see §§40 to 42 above), Mr. Protopapas persists with his lies aimed at misleading the American court. He claims that Mr. Altrad and AIA are threatening him, harassing him and seeking to have him "imprisoned", even though the only action brought by Mr. Altrad and AIA in France was an application for exequatur. Mr. Protopapas deliberately maintains the confusion surrounding the legal personality

⁹⁸ Exhibit no. 18: Judge Toal's order of May 23, 2024 Granting Motions for Sanctions and Adverse Inference (with a translation for information purposes only), pp. 29 et seq.

⁹⁹ Exhibit no. 29: Mr. Protopapas' Emergency Motion for Supersedeas and Temporary Restraining Order dated December 13, 2024

¹⁰⁰ Exhibit no. 30: Mr. Protopapas' Motion to Stay Deadlines dated January 9, 2025, p. 3

¹⁰¹ Exhibit no. 32: Mr. Protopapas' Motion for Sanctions before the South Carolina Supreme Court, June 3, 2025

and autonomy of the entities of the Cape group, presenting the actions taken by the latter in the United Kingdom as emanating directly from AIA and Mr. Altrad.

64. **In addition**, Mr. Protopapas voluntarily refrained, in his numerous submissions, from informing Judge Toal of the fundamental *Adams v. Cape Industries Plc* decision of July 27, 1989 (see §55 above), even though the Common Law rules of procedure require him to do so.

The issue of CIHL's control of NAAC decided by the Court of Appeal in *Adams v. Cape* is at the heart of the claims against Mr. Altrad and AIA in South Carolina.

Although Mr. Altrad and AIA have never carried out any activity in the asbestos industry, their liability is sought on the basis of the alter ego theory and the lifting of the corporate veil. The (erroneous) reasoning developed by Mr. Protopapas is twofold:

- firstly, it is alleged that CIHL took the decision to dissolve NAAC in 1978 and then became its successor in interests. Following this logic, tort liability arising from NAAC's former activities would fall to CIHL.
- secondly, it is alleged, *inter alia*, that Mr. Altrad and AIA are CIHL's "alter egos" by virtue of their capital control, so that CIHL's alleged faults are imputable to them.

It was therefore essential in this case to bring to Judge Toal's attention the findings of the English judge in *Adams v. Cape*, which Mr. Protopapas could not ignore, as the High Court rightly noted in the English Decision:

"For present purposes it should be noted that the three arguments advanced by the claimant [in Adams v. Cape] (a) are all advanced, in various forms, by the receiver in the South Carolina proceedings (and by others who have commenced proceedings, presumably on the basis of the receiver's stance), and (b) were all comprehensively rejected by Scott J and the Court of Appeal on the facts and as a matter of law. While Mr Protopapas must have known this for some time, if not from the outset of the receivership, it is not apparent from the material available to the CIHL and Cape Jersey that this vital material has ever been drawn to the attention of Chief Justice Toal" (Exhibit no. 21, §26)

*"(f) The receiver's whole litigation approach on presence in South Carolina (which, as I understand it, underpins his appointment) seems to ignore and indeed contradict the careful findings of two English courts. I accept that it might be said that the South Carolina court is not necessarily bound by these findings, **but they are at least relevant and, as a person apparently charged with (inter alia) protecting the interests of CIHL, one would have thought he ought to be propounding that decision, not setting it at naught.***

*(g) There is nothing to suggest that this decision was drawn to the attention of the South Carolina court. One would have thought it would be at least relevant to its determinations. I would not presume to say whether it would have made any difference to Chief Justice Toal's decisions. That is obviously a matter for her. But at the moment **the apparent failure (if that is what there was) to draw attention to it is a matter of serious concern"** (Exhibit no. 21, §115, bold and underlining added).*

65. **Last but not least**, Mr. Protopapas displayed an aggressive and threatening attitude, engaging in several attempts to intimidate anyone taking a position that did not serve his interests (see §§ 37 and following above). In particular :

- his threats against the court officers appointed by Cape Plc and CIHL in the English proceedings,

- its attempts to intimidate AIA and Mr. Altrad from acting across the Atlantic,
- its repeated and abusive requests for sanctions, which present the actions of AIA and Mr. Altrad in a truncated and misleading manner, with the sole aim of dissuading them from legitimately asserting their rights in South Carolina.

The High Court also underlined the abusive attitude of Mr. Protopapas in the English Decision:

"(e) There is nothing wrong with an office-holder acting with vigour to protect his office, and in carrying out his functions, but his attacks, or attempted attacks, on those who would seek to support or assist a challenge to his position, to English eyes, overstep the mark. I refer to the motion against solicitors/attorneys who wrote a perfectly justified letter before action, his attempt (which failed) to get CIHL's holding companies to stop the present English action, and his steps taken against the CIHL's expert in this case. It may be that those steps are all part of litigation tactics in US litigation, and I say nothing about that, but to English eyes (which are the eyes with which I view this matter), they smack of a very aggressive approach, which is surprising. They give rise to a justifiable fear of unpredictability in future steps" (Exhibit no. 21, §115).

66. The lies, attempts at intimidation and other unfair maneuvers perpetrated by Mr. Protopapas constitute a fault likely to engage his liability.

- c) Mr. Protopapas is acting against AIA and Mr. Altrad in South Carolina, in breach of the English Decision, which is enforceable in France.

67. Last but not least, Mr. Protopapas is acting in direct breach of a court decision recognized and enforceable in the French legal system.

In the English Decision, the High Court ordered Mr. Protopapas to :

- cease acting or claiming to act as CIHL's receiver in England, South Carolina and worldwide;
- **cease and desist from pursuing the action to involve Mr. Altrad and AIA as third-party defendants in the Tibbs case (Exhibit no. 22).**¹⁰²

68. The present court granted the exequatur of the English Decision in its judgment of April 8, 2025 (Exhibit no. 27). The Exequatur Judgment was served on Mr. Protopapas on May 20, 2025 (Exhibit no. 28).¹⁰³

However, Mr. Protopapas continues to pursue his actions against AIA and Mr. Altrad in South Carolina, in defiance of the decisions of the English and French judges.

69. As a result, and in view of the foregoing, Mr. Protopapas will necessarily be held liable in tort for the damages suffered by AIA and Mr. Altrad, and hence condemned to compensate this damage.

2.2.2 Mr. Protopapas's abusive actions in South Carolina against AIA and Mr. Altrad have caused significant damage.

70. The abusive actions of Mr. Protopapas in the proceedings that have been ongoing in South Carolina for almost two years now have caused significant damage to AIA and Mr. Altrad, which should be fully compensated.

¹⁰² Exhibit no. 22: Order of the High Court of Justice of England and Wales of November 22, 2024 (certified copy with sworn translation), §§6-10

¹⁰³ Exhibit no. 28: Service of the Exequatur Judgment on Mr. Protopapas on May 20, 2025

- (i) Mr. Altrad and AIA have been sued in South Carolina for facts that they have nothing to do with, as they have never been involved in the asbestos industry and only acquired the Cape Group in 2017. The proceedings against them, orchestrated by Mr. Protopapas under the irregular conditions described above, have forced them to incur significant costs to defend their interests.

Mr. Protopapas should therefore be ordered to reimburse in full the legal fees and costs incurred in the United States, Great Britain and France in connection to the actions wrongfully brought and pursued by Mr Protopapas.

These costs, temporarily set as of 31 May 2025, amount to 7,612,062.32 Euros, according to the report drawn up by AIA's auditors, Ernst & Young Audit, in Exhibit no. 35.¹⁰⁵

In addition, the actions abusively pursued by Mr. Protopapas in South Carolina involved a significant mobilization of internal resources for AIA, which necessarily had a negative impact on its commercial activity that can be estimated at 1,000,000 Euros.

AIA therefore requests that Mr. Protopapas is ordered to pay damages amounting to 8,612,062.32 Euros as compensation for his economic and financial loss.

- (ii) The false and defamatory allegations made publicly by Mr. Protopapas in the South Carolina proceedings are clearly detrimental to the image and reputation of AIA and Mr. Altrad.

Moreover, these accusations make AIA and Mr. Altrad fear that other lawsuits will be filed against them in South Carolina or elsewhere, based on the erroneous theses put forward by Mr. Protopapas.

In this respect, Mr. Protopapas should be ordered to pay AIA and Mr. Altrad, jointly and severally, damages of 10,000,000 Euros, as compensation for their loss of image and reputation.

- (iii) Mr. Altrad has suffered significant moral damage as a result of abusive proceedings brought against him personally, and threatening the image and future of a company he founded in 1985 and to which he has devoted most of his life.

The actions, and in particular the attempts at intimidation, of Mr. Protopapas, whose powers in the South Carolina proceedings seem to know no bounds, are a source of uncertainty and legitimate fears for Mr. Altrad as to the outcome of these actions.

The Altrad Group employs nearly 65,000 people worldwide. However, the lawsuits against AIA in South Carolina might lead to extremely high fines, which would necessarily result in budget cuts for the Group, and thus to possible redundancies.

Mr Altrad is particularly attached to his teams. The fears linked to the future consequences of Mr. Protopapas' abusive lawsuits against himself and his company have been a source of anxiety and continuous and considerable stress for him, for almost two years now.

In addition, the allegations made by Mr. Protopapas at §62 of these summons constitute a breach of the presumption of innocence.

Mr. Protopapas should therefore be ordered to pay Mr. Altrad damages amounting to 5,000,000 Euros, as compensation for his moral prejudice.

¹⁰⁵ Exhibit no. 35: AIA auditors' report issued on 31 July 2025

- (iv) Finally, it is settled case law that a legal entity may also obtain compensation for moral prejudice, which may be distinct from damage to image and reputation¹⁰⁸. This prejudice is characterized in particular by damage to the values that the company in question wishes to embody.¹⁰⁹

In the case at hand, Mr Protopapas' abusive actions and his unfounded and false allegations have the effect of portraying AIA in legal proceedings as a dishonest company actively involved in fraudulent schemes designed to prevent victims of asbestos exposure, particularly those affected in the course of their employment, from obtaining compensation.

However, the Altrad Group is making significant efforts to offer its teams the best possible working conditions and to treat them with respect, honesty and consideration. The Altrad Group website states:

*"We accept our responsibilities, both as a group and as individuals, to **prevent situations that would jeopardize the health and safety of everyone in the workplace**. We treat people with consideration, regardless of their position. We conduct our business in accordance with exemplary standards of transparency, integrity and honesty. **Our responsibility towards all our employees and our working environment is particularly important to us**" (Exhibit no. 36)¹¹⁰*

The Altrad Group is also particularly attached to the values of solidarity, courage and humility.¹¹¹

Mr. Protopapas' actions thus directly undermine the values embodied by the Altrad Group worldwide.

Mr. Protopapas should therefore be ordered to pay AIA damages amounting to 5,000,000 Euros, as compensation for moral damage.

2.3 Claim for legal costs

71. In view of the circumstances of this case, it would be particularly unfair to make the Plaintiffs bear the legal costs of these proceedings.
72. In addition to the costs of legal representation, the Plaintiffs have incurred substantial translation expenses (into and from English). The amount of legal costs incurred by the Plaintiffs is justified by the invoices issued by AIA's and Mr Altrad's Counsel from March to May 2025, communicated at **Exhibit no. 37**.

The Court is therefore asked to order Mr. Protopapas to pay compensation of 200,000 Euros under article 700 of the French Code of Civil Procedure.

¹⁰⁸ See, in particular, Exhibit no. J-1: CA Paris, Sept. 3, 2010, no. 08/12822, *eBay c/ Guerlain, Kenzo Parfums, Parfums Christian Dior, Parfums Givenchy*: "Considering that the respondents are also well-founded in seeking compensation for their moral prejudice distinct from image prejudice".

¹⁰⁹ Exhibit no. J-2: CA Paris, Sept. 3, 2010, no. 08/12821, *eBay c/ Christian Dior Couture*

¹¹⁰ Exhibit no. 36 : Altrad Group website (<https://www.altrad.com/fr/nos-valeurs.html>)

¹¹¹ Exhibit no. 36 : Altrad Group website (<https://www.altrad.com/fr/nos-valeurs.html>)

ON THESE GROUNDS

In view of article 1240 of the French Civil Code,

The Civil Court of Montpellier is asked to

- **ORDER** Mr. Peter D. Protopapas to pay, by way of damages:
 - o to Altrad Investment Authority, the amount of **8,612,062.32 Euros** in compensation for economic and financial loss,
 - o Altrad Investment Authority and Mr. Mohed Altrad, jointly and severally, the amount of **10,000,000 Euros** as compensation for undermining their image and reputation,
 - o to Mr. Mohed Altrad, the amount of **5,000,000 Euros** in compensation for moral damage,
 - o Altrad Investment Authority the amount of **5,000,000 Euros** in compensation for moral damage.
- **REMIND** that provisional execution is mandatory,
- **ORDER** Mr. Peter D. Protopapas to pay the costs of the proceedings, which will be paid to Maître Frédéric Dabliens, attorney at law before the Montpellier Bar, in accordance with the provisions of article 699 of the French Code of Civil Procedure;
- **ORDER** Mr. Peter D. Protopapas to pay Altrad Investment Authority and Mr. Mohed Altrad, jointly and severally, 50,000 Euros article 700 of the French Code of Civil Procedure.

LIST OF EXHIBITS

Exhibit mentioned under reference "Exhibit no. X":

- Exhibit no. 1 :** Incorporation certificate of Altrad Investment Authority
- Exhibit no. 2 :** Certificate of registration of CIHL (with a translation for information purposes only)
- Exhibit no. 3 :** Certificate of registration of Cape Plc (with a translation for information purposes only)
- Exhibit no. 4 :** Order from March 16, 2023 of Judge Toal appointing Mr. Protopapas as receiver of Cape Plc / CIHL (with a translation for information purposes only)
- Exhibit no. 5 :** Legal Newslane, *Zombies are on the loose in a Carolina courtroom. Can anyone stop them?*, September 23, 2024 (with a translation for information purposes only)
- Exhibit no. 6 :** Legal Newslane, *'Slammed the door in my face': Key cog in South Carolina's asbestos court not at U.K. showdown*, October 15, 2024 (with a translation for information purposes only)
- Exhibit no. 7 :** Legal Newslane, *Secrecy shrouds asbestos money in South Carolina, but insurer makes play for records*, October 23, 2024 (with a translation for information purposes only)
- Exhibit no. 8 :** Email from counsel for one of the parties in the Park case, June 3, 2022 (with a translation for information purposes only)
- Exhibit no. 9 :** Excerpts from the English Court of Appeal decision Adams v. Cape Industries Plc of 27 July 1989 (with a translation for information purposes only)
- Exhibit no. 10 :** Email from Counsel for the Tibbs plaintiffs to the Richland County Court, April 8, 2024 (with a translation for information purposes only)
- Exhibit no. 11 :** Third-party claim of June 30, 2023 (with a translation for information purposes only)
- Exhibit no. 12 :** Order from October 1, 2024 of Judge Toal setting a procedural timetable (with a translation for information purposes only)
- Exhibit no. 13 :** Mr. Altrad and AIA's Motion dated September 1, 2023 (with a translation for information purposes only)
- Exhibit no. 14 :** Opposition brief of Mr. Protopapas dated October 18, 2023 (with a translation for information purposes only)
- Exhibit no. 15 :** Judge Toal's Order of December 6, 2023 Denying Certain Thirdparty Defendants' Motions to Dissolve Receivership and Third-Party Defendants' Motions to Dismiss for Lack of Personal Jurisdiction (with a translation for information purposes only)
- Exhibit no. 16 :** Letter from SISSE dated June 20, 2024
- Exhibit no. 17 :** Mr. Protopapas' motion for sanctions against AIA and Mr. Altrad of April 3, 2024 (with a translation for information purposes only)

- 32 -

- Exhibit no. 18 :** Judge Toal's order of May 23, 2024 Granting Motions for Sanctions and Adverse Inference (with a translation for information purposes only)
- Exhibit no. 19 :** Letter before action from Cape Plc and CIHL's Counsel to Mr. Protopapas dated August 30, 2024 (with a translation for information purposes only)
- Exhibit no. 20 :** Letter from Cape Plc and CIHL's Counsel to Mr. Protopapas dated August 30, 2024 (with a translation for information purposes only)
- Exhibit no. 21 :** Judgment of the *High Court of Justice of England and Wales*, November 22, 2024 (certified copy with sworn translation)
- Exhibit no. 22 :** Order of the *High Court of Justice of England and Wales* dated November 22, 2024 (certified copy with sworn translation)
- Exhibit no. 23 :** Penal Notice from the English judge (with a translation for information purposes only)
- Exhibit no. 24 :** Service on Mr. Protopapas of the Judgment and Order of the High Court of Justice of England and Wales dated November 22, 2024 (with proof of receipt by post) (with a translation for information purposes only)
- Exhibit no. 25 :** Order of the Presiding Judge of the Montpellier Civil Court of December 20, 2024 authorizing the plaintiffs to summon Mr. Protopapas on a fixed date.
- Exhibit no. 26 :** Service of draft summons for exequatur on Mr. Protopapas on December 30, 2024
- Exhibit no. 27 :** Exequatur Judgment of the Montpellier Civil Court of April 8, 2025
- Exhibit no. 28 :** Service of the Exequatur Judgment on Mr. Protopapas on May 20, 2025
- Exhibit no. 29 :** Mr. Protopapas' Emergency Motion for Supersedeas and Temporary Restraining Order dated December 13, 2024
- Exhibit no. 30 :** Mr. Protopapas' Motion to Stay Deadlines dated January 9, 2025
- Exhibit no. 31 :** Decision of the South Carolina Supreme Court dated January 16, 2025
- Exhibit no. 32 :** Mr. Protopapas' Motion for Sanctions before the South Carolina Supreme Court, June 3, 2025
- Exhibit no. 33 :** Order of the South Carolina Supreme Court dated June 26, 2025
- Exhibit no. 34 :** Decision of the South Carolina Supreme Court *Welch v. Advance Auto Parts, Inc.* dated May 21, 2025
- Exhibit no. 35 :** AIA auditors' report issued on 31 July 2025
- Exhibit no. 36 :** Altrad Group website (<https://www.altrad.com/fr/nos-valeurs.html>)

Exhibits mentioned under reference "Exhibit no. J-X":

- Exhibit no. J-1 :** CA Paris, September 3, 2010, n° 08/12822, *eBay c/ Guerlain, Kenzo Parfums, Parfums Christian Dior, Parfums Givenchy*

Exhibit no. J-2 : CA Paris, September 3, 2010, no. 08/12821, *eBay c/ Christian Dior Couture*

WARNING AVERTISSEMENT

Identity and address of the addressee

Identité et adresse du destinataire

M. Peter D. Protopapas

2110 N Bellline Blvd, Columbia SC 29204, Etats-Unis d'Amérique

IMPORTANT

THE ENCLOSED DOCUMENT IS OF A LEGAL NATURE AND MAY AFFECT YOUR RIGHTS AND OBLIGATIONS. THE 'SUMMARY OF THE DOCUMENT TO BE SERVED' WILL GIVE YOU SOME INFORMATION ABOUT ITS NATURE AND PURPOSE. YOU SHOULD HOWEVER READ THE DOCUMENT ITSELF CAREFULLY. IT MAY BE NECESSARY TO SEEK LEGAL ADVICE.

IF YOUR FINANCIAL RESOURCES ARE INSUFFICIENT YOU SHOULD SEEK INFORMATION ON THE POSSIBILITY OF OBTAINING LEGAL AID OR ADVICE EITHER IN THE COUNTRY WHERE YOU LIVE OR IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED.

ENQUIRIES ABOUT THE AVAILABILITY OF LEGAL AID OR ADVICE IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED MAY BE DIRECTED TO:

TRÈS IMPORTANT

LE DOCUMENT CI-JOINT EST DE NATURE JURIDIQUE ET PEUT AFFECTER VOS DROITS ET OBLIGATIONS. LES « ÉLÉMENTS ESSENTIELS DE L'ACTE » VOUS DONNENT QUELQUES INFORMATIONS SUR SA NATURE ET SON OBJET. IL EST TOUTEFOIS INDISPENSABLE DE LIRE ATTENTIVEMENT LE TEXTE MÊME DU DOCUMENT. IL PEUT ÊTRE NÉCESSAIRE DE DEMANDER UN AVIS JURIDIQUE.

SI VOS RESSOURCES SONT INSUFFISANTES, RENSEIGNEZ-VOUS SUR LA POSSIBILITÉ D'OBTENIR L'ASSISTANCE JUDICIAIRE ET LA CONSULTATION JURIDIQUE, SOIT DANS VOTRE PAYS, SOIT DANS LE PAYS D'ORIGINE DU DOCUMENT.

LES DEMANDES DE RENSEIGNEMENTS SUR LES POSSIBILITÉS D'OBTENIR L'ASSISTANCE JUDICIAIRE OU LA CONSULTATION JURIDIQUE DANS LE PAYS D'ORIGINE DU DOCUMENT PEUVENT ÊTRE ADRESSÉES À :

SARL LEGRAIN CESCA et Associés

Commissaires de Justice

66, avenue des Champs Elysées 75008 PARIS

+33 1 55 74 69 60

etude@legrain-cesca.fr

It is recommended that the standard terms in the notice be written in English and French and where appropriate also in the official language, or in one of the official languages of the State in which the document originated. The blanks could be completed either in the language of the State to which the document is to be sent, or in English or French.

Il est recommandé que les mentions imprimées dans cette note soient rédigées en langue française et en langue anglaise et le cas échéant, en outre, dans la langue ou l'une des langues officielles de l'État d'origine de l'acte. Les blancs pourraient être remplis, soit dans la langue de l'État où le document doit être adressé, soit en langue française, soit en langue anglaise.

SUMMARY OF THE DOCUMENT TO BE SERVED

ÉLÉMENTS ESSENTIELS DE L'ACTE

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, signed at The Hague, the 15th of November 1965 (Article 5, fourth paragraph).

Convention relative à la signification et à la notification à l'étranger des actes judiciaires ou extrajudiciaires en matière civile ou commerciale, signée à La Haye le 15 novembre 1965 (article 5, alinéa 4).

Name and address of the requesting authority: Nom et adresse de l'autorité requérante :	SARL LEGRAIN CESCA et Associés Commissaires de Justice 66, avenue des Champs Elysées 75008 PARIS +33 1 55 74 69 60 etude@legrain-cesca.fr
---	---

Particulars of the parties*: Identité des parties* :	La société Altrad Investment Authority (AIA), 16 avenue de la Gardie, Florensac (34510) M. Mohed Altrad, 150 rue Le Pérugin à Montpellier (34000) c/ M. Peter D. Protopapas, 2110 N Beltline Blvd, Columbia SC 29204, Etats-Unis d'Amérique
--	--

* If appropriate, identity and address of the person interested in the transmission of the document
 S'il y a lieu, identité et adresse de la personne intéressée à la transmission de l'acte

☒ **JUDICIAL DOCUMENT****
ACTE JUDICIAIRE**

Nature and purpose of the document: Nature et objet de l'acte :	ASSIGNATION
Nature and purpose of the proceedings and, when appropriate, the amount in dispute: Nature et objet de l'instance, le cas échéant, le montant du litige :	
Date and Place for entering appearance**: Date et lieu de la comparution** :	1er décembre 2025 à 9 heures, salle Frédéric Bazille, TRIBUNAL JUDICIAIRE DE PARIS
Court which has given judgment**: Juridiction qui a rendu la décision** :	
Date of judgment**: Date de la décision** :	
Time limits stated in the document**: Indication des délais figurant dans l'acte** :	

** if appropriate / s'il y a lieu

☐ **EXTRAJUDICIAL DOCUMENT****
ACTE EXTRAJUDICIAIRE**

Nature and purpose of the document: Nature et objet de l'acte :	
Time-limits stated in the document**: Indication des délais figurant dans l'acte** :	

** If appropriate / s'il y a lieu

ASSIGNATION DEVANT LE TRIBUNAL JUDICIAIRE DE MONTPELLIER

L'AN DEUX MILLE VINGT-CINQ ET LE

A LA DEMANDE DE :

La société Altrad Investment Authority (AIA), société par actions simplifiée, dont le siège social est situé au 16 avenue de la Gardie, Florensac (34510), immatriculée au RCS de Béziers sous le numéro 529 222 879, prise en la personne de son représentant légal, domicilié en cette qualité audit siège,

ET

M. Mohed Altrad, dirigeant de sociétés, de nationalité française, né le 9 mars 1948 et domicilié au 150 rue Le Pérugin à Montpellier (34000),

Ayant pour Avocat plaident : Le cabinet Signature Litigation AARPI
représenté par Maîtres Thomas Rouhette & Ela Barda
Avocats au Barreau de Paris
demeurant 21/23 rue Balzac – 75008 Paris
Tél. : 01 70 75 58 00 - Toque : K0151
thomas.rouhette@signaturelitigation.com
ela.barda@signaturelitigation.com

Et pour Avocat constitué : Le cabinet SELARL Dabiens & Demaegdt – Avocats & Associés
représenté par Maître Frédéric Dabiens
Avocat au Barreau de Montpellier
demeurant Parc d'Activités Jean Mermoz – 235 rue Hélène Boucher
34170 Castelnau Le Lez
Tél. : 04 67 42 19 10
fd@dabiens-avocats.fr

- 2 -

J'AI

COMMISSAIRE DE JUSTICE SOUSSIGNE

L'HONNEUR D'INFORMER :

M. Peter D. Protopapas, avocat, de nationalité américaine, domicilié au 2110 N Beltline Blvd, Columbia SC 29204, Etats-Unis d'Amérique, se revendiquant administrateur judiciaire de la société Cape Intermediate Holdings Limited,

Qu'un procès lui est intenté pour les raisons ci-après exposées devant le **TRIBUNAL JUDICIAIRE DE MONTPELLIER** sis place Pierre Flottes, 34040 Montpellier, pour son audience qui se tiendra le **1^{er} décembre 2025 à 9 heures, salle Frédéric Bazille**.

TRÈS IMPORTANT

Dans un délai de 15 jours à compter de la date du présent acte, vous êtes tenu de constituer avocat pour être représenté devant ce tribunal. A défaut vous vous exposez à ce qu'un jugement soit rendu contre vous sur les seuls éléments fournis par votre adversaire.

Conformément à l'article 643 du Code de procédure civile, lorsque la demande est portée devant une juridiction qui a son siège en France métropolitaine, les délais de comparution, d'appel, d'opposition, de tierce opposition dans l'hypothèse prévue à l'article 586 alinéa 3, de recours en révision et de pourvoi en cassation sont augmentés de deux mois pour les personnes qui demeurent à l'étranger.

Il vous est rappelé les dispositions suivantes, tirées de la loi n° 71-1130 du 31 décembre 1971 portant réforme de certaines professions judiciaires et juridiques, et qui sont ici applicables :

Art. 5 : « Les avocats exercent leur ministère et peuvent plaider sans limitation territoriale devant toutes les juridictions et organismes juridictionnels ou disciplinaires, sous les réserves prévues à l'article 4. Ils peuvent postuler devant l'ensemble des tribunaux judiciaires du ressort de la cour d'appel dans lequel ils ont établi leur résidence professionnelle et devant ladite cour d'appel.

Par dérogation au deuxième alinéa, les avocats ne peuvent postuler devant un autre tribunal que celui auprès duquel est établie leur résidence professionnelle ni dans le cadre des procédures de saisie immobilière, de partage et de licitation, ni au titre de l'aide juridictionnelle, ni dans des instances dans lesquelles ils ne seraient pas maîtres de l'affaire chargés également d'assurer la plaidoirie ».

Art. 5-1 : « Par dérogation au deuxième alinéa de l'article 5, les avocats inscrits au barreau de l'un des tribunaux judiciaires de Paris, Bobigny, Créteil et Nanterre peuvent postuler auprès de chacune de ces juridictions. Ils peuvent postuler auprès de la cour d'appel de Paris quand ils ont postulé devant l'un des tribunaux judiciaires de Paris, Bobigny et Créteil, et auprès de la cour d'appel de Versailles quand ils ont postulé devant le tribunal judiciaire de Nanterre. La dérogation prévue au dernier alinéa du même article 5 leur est applicable ».

Il vous est par ailleurs rappelé les articles suivants du Code de procédure civile :

Art. 641 : « Lorsqu'un délai est exprimé en jours, celui de l'acte, de l'événement, de la décision ou de la notification qui le fait courir ne compte pas. Lorsqu'un délai est exprimé en mois ou en années, ce délai expire le jour du dernier mois ou de la dernière année qui porte le même quantième que le jour de l'acte, de l'événement, de la décision ou de la notification qui fait courir le délai. A défaut d'un quantième identique, le délai expire le dernier jour du mois. Lorsqu'un délai est exprimé en mois et en jours, les mois sont d'abord décomptés, puis les jours ».

Art. 642 : « Tout délai expire le dernier jour à vingt-quatre heures. Le délai qui expirerait normalement un samedi, un dimanche ou un jour férié ou chômé est prorogé jusqu'au premier jour ouvrable suivant ».

Art. 642-1 : « Les dispositions des articles 640 à 642 sont également applicables aux délais dans lesquels les inscriptions et autres formalités de publicité doivent être opérées ».

Art. 643 : « Lorsque la demande est portée devant une juridiction qui a son siège en France métropolitaine, les délais de comparution, d'appel, d'opposition, de tierce opposition dans l'hypothèse prévue à l'article 586 alinéa 3, de recours en révision et de pourvoi en cassation sont augmentés de : 1. Un mois pour les personnes qui demeurent en Guadeloupe, en Guyane, à la Martinique, à La Réunion, à Mayotte, à Saint-Barthélemy, à Saint-Martin, à Saint-Pierre-et-Miquelon, en Polynésie française, dans les îles Wallis et Futuna, en Nouvelle-Calédonie et dans les Terres australes et antarctiques françaises ; 2. Deux mois pour celles qui demeurent à l'étranger ».

Art. 644 : « Lorsque la demande est portée devant une juridiction qui a son siège en Guadeloupe, en Guyane, à la Martinique, à La Réunion, à Mayotte, à Saint-Barthélemy, à Saint-Martin, à Saint-Pierre-et-Miquelon et dans les îles Wallis et Futuna, les délais de comparution, d'appel, d'opposition de tierce opposition dans l'hypothèse prévue à l'article 586 alinéa 3, et de recours en révision sont augmentés d'un mois pour les personnes qui ne demeurent pas dans la collectivité territoriale dans le ressort de laquelle la juridiction a son siège et de deux mois pour les personnes qui demeurent à l'étranger ».

Il est enfin indiqué, en application de l'article 752 du Code de procédure civile, que les parties demanderesses ne sont pas d'accord pour que la procédure se déroule sans audience, en application de l'article L. 212-5-1 du Code de l'organisation judiciaire.

TABLE DES MATIERES

1.	RAPPEL DES FAITS ET DES PROCEDURES	6
1.1	Présentation des parties.....	6
1.1.1	Le Groupe Altrad	6
1.1.2	M. Protopapas.....	6
1.2	Le contexte litigieux : les procédures engagées abusivement en Caroline du Sud par M. Protopapas	7
1.2.1	Particularité du contentieux de l'amiante en Caroline du Sud	7
1.2.2	L'affaire Park.....	8
1.2.3	L'affaire Tibbs	9
1.2.4	Les moyens de défense d'AIA et de M. Altrad dans la procédure américaine	11
1.3	La décision anglaise sur le défaut de pouvoir de M. Protopapas et sa reconnaissance en France	13
1.3.1	La saisine de la <i>High Court</i> par les véritables représentants légaux de Cape Plc et CIHL	13
1.3.2	La non-reconnaissance par la <i>High Court</i> de la nomination de M. Protopapas en qualité d'administrateur judiciaire de CIHL et l'injonction de cesser d'agir au nom et pour le compte de celle-ci.....	13
1.3.3	L'exequatur en France de la Décision Anglaise.....	15
1.3.4	Les répercussions en Caroline du Sud des procédures anglaise et française.....	16
2.	DISCUSSION	20
2.1	A titre préliminaire : la compétence internationale et la loi applicable	20
2.1.1	Les juridictions françaises sont compétentes pour statuer sur le présent litige.....	20
2.1.2	La loi française est applicable au fond du litige.....	20
2.2	La responsabilité de M. Protopapas doit être engagée pour avoir poursuivi des procédures manifestement abusives à l'encontre d'AIA et de M. Altrad	21
2.2.1	Les procédures menées abusivement par M. Protopapas en Caroline du Sud constituent une faute de nature à engager sa responsabilité délictuelle.....	21
a)	Le fondement des actions de M. Protopapas est manifestement irrégulier.....	21
b)	La conduite de la procédure en Caroline du Sud par M. Protopapas est déloyale et induit la juridiction américaine en erreur	24
c)	M. Protopapas agit à l'encontre d'AIA et de M. Altrad en Caroline du Sud en violation de la Décision Anglaise, rendue exécutoire sur le territoire français.....	29
2.2.2	Les procédures menées abusivement par M. Protopapas en Caroline du Sud à l'encontre d'AIA et de M. Altrad sont à l'origine de préjudices significatifs	29
2.3	Demande au titre des frais irrépétibles	31

OBJET DE LA DEMANDE

1. La société Altrad Investment Authority (« **AIA** ») et M. Mohed Altrad ont été attirés dans le cadre d'une procédure en cours en Caroline du Sud par M. Protopapas, prétendant agir en qualité d'administrateur judiciaire de la société Cape Intermediate Holdings Limited (« **CIHL** »), filiale du groupe Cape acquis en 2017 par AIA.

AIA et M. Altrad ont été impliqués dans cette procédure alors même qu'ils n'ont strictement aucun lien avec les faits litigieux. Surtout, M. Protopapas agit sur la base d'une ordonnance d'administration judiciaire prise dans des conditions manifestement irrégulières et au mépris du droit anglais, exclusivement applicable à l'autonomie de CIHL, société établie en Angleterre.

2. En effet, la *High Court of Justice of England and Wales* (ci-après la « **High Court** ») a jugé le 22 novembre 2024 (« **la Décision Anglaise** ») que la désignation de M. Peter Protopapas en qualité d'administrateur judiciaire de CIHL est irrégulière. Elle lui a par conséquent fait injonction de :

- cesser d'agir ou de prétendre agir en qualité d'administrateur judiciaire de CIHL en Angleterre, en Caroline du Sud et dans le monde ;
- cesser de poursuivre l'action visant à attirer M. Altrad et AIA en tant que tiers-défendeurs à l'instance dans le cadre de procédures américaines.

3. La Décision Anglaise est une décision reconnue et exécutoire en France, conformément au jugement rendu par la présente juridiction le 8 avril 2025 (le « **Jugement d'Exequatur** »).

4. Toutefois, M. Protopapas poursuit actuellement la procédure à l'encontre de M. Altrad et d'AIA en Caroline du Sud, malgré les termes de l'injonction prononcée.

La poursuite abusive par M. Protopapas de ses actions à l'encontre d'AIA et de M. Altrad, et notamment les manœuvres déloyales perpétrées par le défendeur tout au long de la procédure, constituent une faute de nature à engager sa responsabilité civile.

5. Ainsi, après un rappel des faits et des différentes procédures liées à ce litige (1), M. Altrad et AIA démontreront que M. Protopapas doit être condamné à indemniser les préjudices qu'ils ont subi du fait des agissements du défendeur en Caroline du Sud (2).

1. RAPPEL DES FAITS ET DES PROCEDURES

1.1 Présentation des parties

1.1.1 Le Groupe Altrad

6. Le Groupe Altrad a été fondé en 1985 à Montpellier par M. Mohed Altrad, co-demandeur aux présentes.

M. Altrad est l'actionnaire majoritaire et le président d'AIA, co-demanderesse, société mère du Groupe Altrad immatriculée à Béziers depuis 2010 (Pièce n° 1)¹.

Leader mondial dans la prestation de services à l'industrie, le Groupe Altrad conçoit et déploie des solutions à haute valeur ajoutée dans les secteurs de la pétrochimie, de l'énergie, de la production d'électricité et de la construction. En 2024, il a réalisé un chiffre d'affaires consolidé de plus de 5 milliards d'euros et compte plus de 60.000 employés dans le monde, dont au moins 7.500 en France.

7. En septembre 2017, le Groupe Altrad a fait l'acquisition du Groupe Cape.

Le Groupe Cape est issu de la création, en 1893, de la société de droit anglais « *The Cape Asbestos Company Ltd* », aujourd'hui dénommée Cape Intermediate Holdings Limited ("**CIHL**"). Son siège social se situe à Appleton, Warrington, en Angleterre (Pièce n° 2)². Au cours de son existence, CIHL a changé de dénomination à plusieurs reprises comme suit :

- The Cape Asbestos Company Ltd (1893-1974)
- Cape Industries Ltd. (1974-1981)
- Cape Industries Plc (1981-1989)
- Cape Plc (1989-2011)
- Cape Intermediate Holding Plc (2011-2013)
- Cape Intermediate Holdings Limited (depuis 2013).

La société "**Cape Plc**" est l'actuelle holding du Groupe Cape. Elle est immatriculée à Jersey depuis 2011 (Pièce n° 3)³.

Le Groupe Cape est aujourd'hui un important fournisseur de services et d'équipements à l'industrie dans les secteurs de la pétrochimie et de l'énergie. Ses principaux clients opèrent dans l'industrie pétrolière, nucléaire et gazière.

8. Dans le cadre de ses activités, le Groupe Cape a distribué des fibres d'amiante jusque dans les années 1970, notamment par le biais d'une filiale américaine dissoute en 1978, North American Asbestos Corporation (« **NAAC** »).

Aux Etats-Unis, et plus particulièrement en Caroline du Sud, des demandeurs ont intenté des actions à l'encontre de sociétés du Groupe Cape, en se prévalant d'une prétendue responsabilité de Cape Plc / CIHL pour les activités de l'ancienne filiale NAAC antérieures à 1978.

1.1.2 M. Protopapas

9. M. Peter Protopapas est un avocat américain exerçant en Caroline du Sud. Il y est particulièrement actif dans le domaine du contentieux de l'amiante.

¹ Pièce n° 1 : Kbis de la société Altrad Investment Authority

² Pièce n° 2 : Certificat d'enregistrement de CIHL (avec une traduction libre)

³ Pièce n° 3 : Certificat d'enregistrement de Cape Plc (avec une traduction libre)

Depuis plusieurs années, dans le cadre de procédures judiciaires initiées par des victimes de l'amiante, il est régulièrement désigné par une juge de Caroline du Sud, Mme Jean Hoefer Toal (la « **Juge Toal** »), en qualité d'administrateur judiciaire des sociétés défenderesses.

Par ordonnance du 16 mars 2023 (cf. *infra*, §15), M. Protopapas a été désigné par la juge Toal en qualité d'administrateur judiciaire de « Cape Plc » (Pièce n° 4)⁴.

1.2 Le contexte litigieux : les procédures engagées abusivement en Caroline du Sud par M. Protopapas

10. M. Protopapas a été désigné en qualité d'administrateur judiciaire de la société « Cape Plc » dans le cadre d'une affaire intentée en Caroline du Sud en 2021 par les époux Park (l'« **Affaire Park** »). S'octroyant tous pouvoirs sur la base de l'ordonnance de désignation (Pièce n° 4)⁵, rendue dans des conditions manifestement irrégulières, M. Protopapas a attiré M. Altrad et AIA au nom de Cape Plc (filiale du Groupe Altrad), dans une procédure distincte de l'Affaire Park, pour des faits d'exposition à l'amiante dans les années 1960. M. Altrad et AIA ont ainsi été impliqués abusivement dans une procédure à l'étranger, alors même qu'ils n'ont strictement aucun lien avec les faits litigieux.

1.2.1 Particularité du contentieux de l'amiante en Caroline du Sud

11. En Caroline du Sud, dans le cadre de contentieux liés à l'amiante, une pratique locale consiste à réactiver des sociétés dépourvues d'existence juridique de longue date par la désignation d'un administrateur judiciaire.

Dans cet Etat, l'ensemble du contentieux lié à l'amiante est instruit par la Juge Toal. M. Protopapas est régulièrement désigné par la Juge Toal en qualité d'administrateur judiciaire de ces sociétés dissoutes ou d'autres entités affiliées à ces sociétés, prétendument responsables d'activités liées à l'amiante, afin d'appeler les polices d'assurance concernées, de réaliser les actifs de ces sociétés et, ainsi, indemniser les demandeurs.

M. Protopapas récupère une partie significative des montants alloués aux demandeurs par les tribunaux de Caroline du Sud à titre d'honoraires de résultat.

12. Les méthodes de M. Protopapas et de la Juge Toal ont pu être critiquées dans la presse spécialisée :

« Armé d'un pouvoir d'assignation et d'un accord d'honoraires conditionnels lui accordant un tiers de tout ce qu'il récupère, Peter Protopapas a utilisé le pouvoir d'administrateur judiciaire qui lui a été accordé par Toal pour prendre le contrôle de plus de 20 sociétés dissoutes et poursuivre leurs anciens assureurs au titre d'anciennes polices qui, selon lui, couvrent les réclamations liées à l'amiante, gagnant ainsi des millions de dollars en tant que chef de ces zombies » (Pièce n° 5)⁶.

« La juge Toal a souvent qualifié Protopapas de bras droit du tribunal, bien qu'il s'agisse d'un avocat spécialisé dans les dommages corporels qu'elle a autorisé à conserver un tiers de toute somme qu'il récupère » (Pièce n° 6)⁷.

« Un avocat de Caroline du Sud spécialisé dans les dommages corporels, qui a reçu l'ordre du tribunal de conserver un tiers de tout ce qu'il récupère, a placé des dizaines

⁴ Pièce n° 4 : Ordonnance du 16 mars 2023 de la Juge Toal désignant M. Protopapas en tant qu'administrateur judiciaire (receiver) de Cape Plc / CIHL (avec une traduction libre)

⁵ Pièce n° 4 : Ordonnance du 16 mars 2023 de la Juge Toal désignant M. Protopapas en tant qu'administrateur judiciaire (receiver) de Cape Plc / CIHL (avec une traduction libre)

⁶ Pièce n° 5 : Legal Newsline, *Zombies are on the loose in a Carolina courtroom. Can anyone stop them?*, 23 septembre 2024 (avec une traduction libre)

⁷ Pièce n° 6 : Legal Newsline, *'Slammed the door in my face': Key cog in South Carolina's asbestos court not at U.K. showdown*, 15 octobre 2024 (avec une traduction libre)

de millions de dollars dans des sociétés de personnes du Delaware qu'il contrôle, à l'abri des regards du public et même du juge qui a autorisé leur création » (Pièce n° 7)⁸.

1.2.2 L'affaire Park

13. Le 4 juin 2021, Cape Plc et CIHL ont été attraites en qualité de défenderesses devant le Tribunal de première instance (*Court of Common Pleas*) du comté de Richland en Caroline du Sud par Mme Isabella Park. L'affaire a été enrôlée sous le numéro 2021-CP-40-02727 et instruite par la Juge Toal.

Il est précisé que l'assignation n'a jamais été signifiée à Cape Plc et CIHL⁹, qui n'ont pas participé à la procédure.

14. Par email du 3 juin 2022 (Pièce n° 8)¹⁰, le conseil de l'une des parties a indiqué au Tribunal du comté de Richland que l'Affaire Park était « *entièrement résolue* ». La nature exacte de cette résolution n'est pas connue. Toutefois il est établi qu'à compter de cette date plus aucune diligence n'a été accomplie par les parties, aucune audience n'a eu lieu et le Tribunal n'a jamais rendu de décision sur le fond de cette affaire¹¹.
15. Pourtant, le 16 mars 2023, une ordonnance rendue par la Juge Toal, à la requête du conseil des ayants-droit de Mme Park, a désigné M. Protopapas en qualité d'administrateur judiciaire (*receiver*) de « *Cape PLC* », « *en tant qu'ayant droit de Cape Industries Ltd. (anciennement dénommée Cape Asbestos Company Ltd.) (...)* » (Pièce n° 4)¹².

L'ordonnance du 16 mars 2023 est imprécise quant à l'entité concernée par la nomination de M. Protopapas tant elle semble opérer une confusion entre (i) Cape Plc, seule entité du groupe actuellement dénommée « Cape Plc », et (ii) CIHL, anciennement dénommée « Cape plc » de 1989 à 2011.

Aux termes de cette ordonnance, des pouvoirs étendus ont été conféré à M. Protopapas, notamment « *le pouvoir et l'autorité [d']administrer pleinement tous les actifs de Cape, d'accepter des significations au nom de Cape, d'engager des avocats au nom de Cape et de prendre toutes les mesures nécessaires pour protéger les intérêts de Cape, quels qu'ils soient* » (Pièce n° 4, gras ajouté)¹³.

Toutefois, sa portée était circonscrite à l'Affaire Park, soit l'instance enrôlée sous le numéro 2021-CP-40-02727 :

« *Le Tribunal nomme Peter Protopapas ès qualité d'administrateur judiciaire dans cette affaire, conformément au droit de Caroline du Sud* » (Pièce n° 4, gras ajouté)¹⁴.

⁸ Pièce n° 7 : Legal Newswire, *Secrecy shrouds asbestos money in South Carolina, but insurer makes play for records*, 23 octobre 2024 (avec une traduction libre)

⁹ Pièce n° 21 : Jugement de la *High Court of Justice of England and Wales* du 22 novembre 2024 (copie certifiée avec la traduction assermentée), §42

¹⁰ Pièce n° 8 : Email du conseil d'une des parties à l'affaire Park du 3 juin 2022 (avec une traduction libre)

¹¹ Pièce n° 21 : Jugement de la *High Court of Justice of England and Wales* du 22 novembre 2024 (copie certifiée avec la traduction assermentée), § 43

¹² Pièce n° 4 : Ordonnance du 16 mars 2023 de la Juge Toal désignant M. Protopapas en tant qu'administrateur judiciaire (receiver) de Cape Plc / CIHL (avec une traduction libre)

¹³ Pièce n° 4 : Ordonnance du 16 mars 2023 de la Juge Toal désignant M. Protopapas en tant qu'administrateur judiciaire (receiver) de Cape Plc / CIHL (avec une traduction libre)

¹⁴ Pièce n° 4 : Ordonnance du 16 mars 2023 de la Juge Toal désignant M. Protopapas en tant qu'administrateur judiciaire (receiver) de Cape Plc / CIHL (avec une traduction libre)

16. Plusieurs irrégularités semblent affecter cette ordonnance, qui tient sur une page et qui a été rendue sans débat contradictoire, 10 jours seulement après le dépôt de la requête en ce sens¹⁵.
17. En particulier, la désignation par la Juge Toal d'un administrateur judiciaire à la tête de Cape Plc / CIHL (sociétés respectivement établies à Jersey et en Angleterre selon les droits de ces Etats) semble avoir été justifiée aux motifs que :

- Cape Plc / CIHL établirait une "présence" en Caroline du Sud par l'intermédiaire de NAAC, ancienne filiale du Groupe Cape dissoute en 1978 (cf. *supra*, §8).
- Cape Plc / CIHL aurait été dissoute. Une disposition du Code de Caroline du Sud permet en effet à un tribunal de cet Etat de nommer un administrateur judiciaire pour une société en faillite¹⁶.

Or :

- Ni Cape Plc ni CIHL n'ont jamais exercé, directement ou indirectement, d'activités en Caroline du Sud ou ailleurs aux Etats-Unis. Le Groupe Cape n'a aucun établissement ni aucun actif sur ce territoire. Il en a été jugé ainsi par une décision définitive rendue par le juge anglais en 1989 (*Adams v. Cape Industries Plc* du 27 juillet 1989, cf. **Pièce n° 9**)¹⁷, qui fait l'objet d'une requête en exequatur pendante devant la présente juridiction : en particulier, la Cour d'appel anglaise a reconnu l'autonomie de la personnalité morale de CIHL et l'indépendance économique de son ancienne filiale NAAC, de sorte qu'aucune présence de CIHL sur le territoire américain ne pouvait être établie par l'intermédiaire de NAAC.
- Cape Plc et CIHL sont des sociétés parfaitement opérationnelles et *in bonis*, dotées d'organes de gouvernance désignés conformément à leurs statuts (**Pièce n° 2 et Pièce n° 3**)¹⁸. Elles ne font l'objet d'aucune procédure d'insolvabilité, ni en Caroline du Sud, ni en Angleterre, ni à Jersey.

18. Aucun autre développement procédural n'est intervenu dans l'affaire Park depuis l'ordonnance du 16 mars 2023.

1.2.3 L'affaire Tibbs

19. Le 5 avril 2023, une nouvelle action en responsabilité a été engagée contre « Cape Plc » par les époux Tibbs. CIHL, pour sa part, n'est pas citée en tant que défenderesse. Cette instance est enrôlée sous le numéro 2023-CP-40-01759 et est également instruite par la Juge Toal.

Ici encore, l'acte introductif d'instance n'a jamais été signifié à Cape Plc.

Dans cette seconde affaire distincte de l'affaire Park, la Juge Toal n'a jamais rendu d'ordonnance nommant M. Protopapas en qualité d'administrateur judiciaire de « Cape Plc » ou d'une autre société du Groupe Cape.

M. Protopapas est pourtant intervenu dans cette procédure en cette qualité.

20. Le 12 juin 2023, aux termes d'un accord conclu entre les époux Tibbs et M. Protopapas (prétendant agir au nom de Cape Plc / CIHL), les époux Tibbs se sont désistés d'instance et d'action contre

¹⁵ **Pièce n° 21** : Jugement de la *High Court of Justice of England and Wales* du 22 novembre 2024 (copie certifiée avec la traduction assemblée), §48

¹⁶ Aux termes de la Section 15-65-10 du *South Carolina Code of Laws* : « Un administrateur judiciaire peut être nommé par un juge du tribunal de première instance, soit dans le cadre ou en dehors de l'instance : (...) (4) lorsqu'une société a été dissoute, est insolvable ou en danger imminent d'insolvabilité ou a perdu ses droits sociaux, et, dans des cas similaires, pour les biens situés dans cet Etat de sociétés étrangères (traduction libre).

¹⁷ **Pièce n° 9** : Extraits de la décision de la Cour d'appel anglaise *Adams v. Cape Industries Plc* du 27 juillet 1989, v. aussi **Pièce n° 21** : Jugement de la *High Court of Justice of England and Wales* du 22 novembre 2024 (copie certifiée avec la traduction assemblée), §§18 et s.

¹⁸ **Pièce n° 2** : Certificat d'enregistrement de CIHL (avec une traduction libre)

Cape Plc. Ni Cape Plc ni CHIL n'ont pu consulter ni intervenir à la conclusion cet accord, qui contiendrait une clause de « suspension » du délai de prescription au titre de laquelle Cape Plc / CIHL accepterait de ne pas soulever de moyen relatif à la prescription dans le cadre de contentieux futurs¹⁹.

Dans un email du 8 avril 2024 adressé au Tribunal du comté de Richland, le conseil des demandeurs Tibbs a confirmé que **le seul défendeur restant dans la procédure était la société Asbestos Corp. Ltd.**²⁰ (Pièce n° 10)²¹.

Le tribunal de première instance du comté de Richland a donc en principe été dessaisi de l'action principale dirigée contre Cape Plc.

21. Pourtant, **le 30 juin 2023**, AIA et M. Altrad ont été attirés en tant que « tiers-défendeurs » (*third party defendants*) dans l'affaire Tibbs par M. Protopapas, en sa prétendue qualité d'administrateur judiciaire de « Cape Plc » (Pièce n° 11)²². En droit américain, la *third party practice* consiste, pour le défendeur principal, à former des demandes accessoires dans le cadre d'une instance principale aux fins de faire reconnaître la responsabilité d'une personne tierce à l'instance.

Aux termes de l'assignation du 30 juin 2023, M. Protopapas allègue que chacun des tiers-défendeurs est soit un ayant-droit de « Cape Plc » et de ses filiales et entités affiliées, soit un bénéficiaire et participant actif à un prétendu stratagème mis en place par « Cape Plc » pour se soustraire à ses obligations (Pièce n° 11, §119)²³. M. Protopapas prétend encore que les tiers-défendeurs auraient facilité, causé ou dirigé le système de distribution d'amiante de « Cape Plc » aux États-Unis, ou agi en tant que successeurs ou bénéficiaires d'entités impliquées dans ce système (Pièce n° 11, §§137-141)²⁴.

Le ton de l'assignation est particulièrement surprenant :

« Cette action en justice vise à enfin tenir pour responsables trois groupes de tiers-défendeurs (y compris leurs prédécesseurs en droit) qui sont responsables de la vente et de l'utilisation d'amiante ou de produits contenant de l'amiante à travers les États-Unis, y compris en Caroline du Sud, et qui ont causé ou contribué de manière significative à des milliers de décès dus au mésothéliome ou à d'autres maladies liées à l'amiante, ainsi qu'à des milliards de dollars de dommages passés, présents et calculables pour l'avenir. Pendant des décennies, certains de ces tiers-défendeurs ont mis en place des opérations fictives pour feindre leur retrait de l'industrie de l'amiante aux États-Unis, laissant derrière eux des coquilles vides et une absence de couverture d'assurance pour faire face à leur énorme responsabilité. Et pendant des décennies également, ils se sont cachés derrière des (ou au sein de) collectifs opaques de sociétés à responsabilité limitée et d'autres sociétés holding internationales, échappant ainsi à leurs responsabilités tout en continuant à engranger les bénéfices de la vente d'amiante et de produits contenant de l'amiante à travers les États-Unis, y compris en Caroline du Sud. En résumé, ces trois groupes de tiers-défendeurs ont semé le chaos aux États-Unis, ont rempli leurs coffres déjà bien garnis avec l'argent du sang, et se sont amusés de la prétendue ingéniosité de leur stratagème pour échapper à toute responsabilité. Ce procès marque le début de leur reddition de comptes » (Pièce n° 11, p. 10, gras ajouté)²⁵.

¹⁹ Pièce n° 21 : Jugement de la *High Court of Justice of England and Wales* du 22 novembre 2024 (copie certifiée avec la traduction assermentée), §52

²⁰ Une société canadienne sans aucun lien avec Cape Plc / CIHL

²¹ Pièce n° 10 : Email du conseil des demandeurs Tibbs au Tribunal du comté de Richland du 8 avril 2024 (avec une traduction libre)

²² Pièce n° 11 : Assignation des tiers-défendeurs du 30 juin 2023 (avec une traduction libre)

²³ Pièce n° 11 : Assignation des tiers-défendeurs du 30 juin 2023 (avec une traduction libre)

²⁴ Pièce n° 11 : Assignation des tiers-défendeurs du 30 juin 2023 (avec une traduction libre)

²⁵ Pièce n° 11 : Assignation des tiers-défendeurs du 30 juin 2023 (avec une traduction libre)

M. Protopapas sollicite dès lors que les tiers-défendeurs, dont AIA et M. Altrad, soient déclarés responsables de toutes les obligations de Cape Plc et CIHL, au titre d'un prétendu enrichissement injustifié (*unjust enrichment*) et d'un concert frauduleux destiné à échapper à toute condamnation aux Etats-Unis (*liability avoidance scheme*) en lien avec la distribution de fibres d'amiante par NAAC dans les années 1960-70 (Pièce n° 11, §§125-130)²⁶.

22. L'audience au fond pour statuer sur la responsabilité des tiers-défendeurs était initialement prévue pour la semaine du 3 au 7 février 2025 (Pièce n° 12)²⁷, mais a finalement été reportée à une date ultérieure qui n'est pas connue à ce jour.

23. Cette instance intervient donc alors même que :

- la désignation de M. Protopapas en qualité d'administrateur judiciaire de « Cape Plc », qui apparaît au demeurant irrégulière au regard du lieu d'établissement et du droit applicable à Cape Plc / CIHL, était circonscrite à l'affaire Park ;
- les demandeurs principaux s'étaient désistés d'instance et d'action à l'égard de Cape Plc / CIHL, aux termes d'un accord conclu par M. Protopapas lui-même ;
- M. Altrad et AIA sont totalement étrangers aux faits à l'origine du litige, dans la mesure où ceux-ci découlent des activités de la société NAAC liquidée en 1978, soit près de 40 ans avant l'acquisition du Groupe Cape par le Groupe Altrad.

1.2.4 Les moyens de défense d'AIA et de M. Altrad dans la procédure américaine

24. AIA et M. Altrad ont engagé des moyens importants pour défendre leurs intérêts dans la procédure Tibbs.
25. Le 1er septembre 2023, ils ont tout d'abord saisi la Juge Toal d'une requête visant notamment à (i) débouter M. Protopapas de ses demandes en raison du défaut de compétence *ratione personae* du tribunal à leur égard et (ii) annuler la mesure d'administration judiciaire sur Cape Plc (Pièce n° 13)²⁸.

Le 18 octobre 2023, M. Protopapas a régularisé des écritures en opposition aux requêtes des tiers-défendeurs (Pièce n° 14)²⁹. Dans ces écritures il se prononce notamment sur l'entité désignée dans l'ordonnance de mise sous administration judiciaire (« Cape Plc », entité créée en 2010 à Jersey), prétendant qu'il s'agissait d'un simple erreur de dénomination, la véritable entité visée étant en réalité CIHL.

26. Le 6 décembre 2023, aux termes d'une ordonnance **intégralement rédigé par M. Protopapas**³⁰, adoptée 24h après le dépôt du projet sans aucune modification apportée par la juridiction, la Juge Toal a rejeté toutes les requêtes des tiers-défendeurs (Pièce n° 15)³¹. Il est notamment déclaré que :

- L'unique entité visée dans le cadre de la mesure d'administration judiciaire serait bien CIHL et non Cape Plc, cette confusion procédant d'une simple erreur de dénomination de sorte que les actes de procédure n'étaient pas irréguliers.

²⁶ Pièce n° 11 : Assignation des tiers-défendeurs du 30 juin 2023 (avec une traduction libre)

²⁷ Pièce n° 12 : Ordonnance du 1er octobre 2024 de la Juge Toal fixant un calendrier procédural (avec une traduction libre)

²⁸ Pièce n° 13 : Requête de M. Altrad et AIA du 1^{er} septembre 2023 (avec une traduction libre)

²⁹ Pièce n° 14 : Ecritures en opposition de M. Protopapas du 18 octobre 2023 (avec une traduction libre)

³⁰ Pièce n° 21 : Jugement de la *High Court of Justice of England and Wales* du 22 novembre 2024 (copie certifiée avec la traduction assermentée), §65

³¹ Pièce n° 22 : Ordonnance du 6 décembre 2023 de la Juge Toal rejetant les requêtes en annulation de la désignation de M. Protopapas (avec une traduction libre)

- 12 -

- La mesure d'administration judiciaire serait justifiée par la preuve des manœuvres perpétrées de longue date par CIHL dans l'intention de se soustraire à ses créanciers en refusant de comparaître aux États-Unis. Il est ajouté que la désignation d'un administrateur judiciaire refléterait en l'espèce une pratique ancienne d'équité et un principe juridique important visant à corriger les injustices, particulièrement applicable à Cape compte tenu de ses efforts « *pour se soustraire à ses créanciers par un acte ou un comportement indiquant une fraude morale - une intention délibérée de se soustraire, de retarder ou d'entraver ses créanciers dans le recouvrement de leurs créances* ».
- Les tribunaux de Caroline du Sud seraient compétents à l'égard de CIHL, compte tenu de ses liens avec la société NAAC.
- Les tribunaux de Caroline du Sud seraient compétents à l'égard d'AIA et de M. Altrad, dans la mesure où l'assignation des tiers-défendeurs ferait état d'éléments suffisants pour suggérer leur participation au stratagème mis en place par CIHL visant à se soustraire à sa responsabilité pour les dommages causés par les produits à base d'amiante.

AIA et M. Altrad ont interjeté appel de cette ordonnance.

27. Dans le cadre de la procédure aux fins d'attirer les tiers défendeurs, M. Protopapas a soumis à AIA et M. Altrad des demandes de production de documents (*Discovery*), d'interrogatoires et de comparution de témoins. Ces demandes couvraient :

- des interrogatoires relatifs aux biens détenus par AIA et M. Altrad, à leurs polices d'assurance et aux documents préparés pour leur défense, et
- des demandes de production de documents excessivement larges et couvrant une période de 40 ans.

L'objectif de M. Protopapas était manifestement de perturber la défense de M. Altrad et d'AIA en les noyant sous des demandes de communication de pièces excessives. M. Altrad et AIA s'y sont fermement opposés³².

28. Le 3 avril 2024, M. Protopapas a déposé une requête sollicitant des sanctions à l'encontre d'AIA et de M. Altrad, compte tenu des contestations élevées par ces derniers à l'égard des demandes de *Discovery* (*Pièce n° 17*)³³.

Le 23 mai 2024, la Juge Toal a fait droit à la demande de sanctions et a :

- condamné AIA et M. Altrad au paiement des honoraires de M. Protopapas (à hauteur de plus de 2 millions de dollars),
- reconnu l'existence d'une *adverse inference*. En d'autres termes, la décision au fond pourra être fondée sur les seules déclarations et pièces de M. Protopapas, sans permettre un débat contradictoire. La Juge Toal a ainsi admis un certain nombre de constatations factuelles défavorables à AIA et M. Altrad, telles qu'elles ont été avancées par M. Protopapas et sans possibilité pour les demanderesse aux présentes d'en contester le bien-fondé :

« le Tribunal tire la conclusion défavorable que chacun des Tiers Défendeurs Altrad était à tout moment pertinent l'alter ego de Cape, ce qui doit donner lieu à

³² Dans une lettre du 20 juin 2024, le Service de l'information stratégique et de la sécurité économiques (SISSE) a d'ailleurs confirmé à AIA que la demande de production de documents à leur encontre en Caroline du Sud était soumise à la Loi n° 68-678 du 26 juillet 1968 dite "Loi de Blocage", leur interdisant toute communication spontanée sans passer par les canaux d'entraide internationaux applicables entre la France et les États-Unis (*Pièce n° 16*).

³³ *Pièce n° 17* : Requête de M. Protopapas du 3 avril 2024 sollicitant des sanctions à l'encontre d'AIA et de M. Altrad (avec une traduction libre)

la levée du voile social. De même, chacun des Tiers Défendeurs Altrad est responsable ou a bénéficié injustement du régime d'évitement de la responsabilité de Cape » (Pièce n° 18)³⁴.

AIA et M. Altrad ont également interjeté appel de cette ordonnance.

La Cour d'appel a toutefois jugé irrecevables les différents appels d'AIA et de M. Altrad, considérant que le bien-fondé des ordonnances de la Juge Toal ne pouvait être examiné indépendamment de la décision au fond à intervenir. M. Altrad et AIA ont à ce titre formé des recours devant la Cour Suprême de Caroline du Sud. Ces recours ont également été rejetés par la Cour Suprême dans sa décision du 26 juin 2025 (cf. *infra* §43).

1.3 La décision anglaise sur le défaut de pouvoir de M. Protopapas et sa reconnaissance en France

29. Cape Plc et CIHL se sont tournées vers leur juge naturel, le juge anglais, pour faire constater le défaut de pouvoir de M. Protopapas.

1.3.1 La saisine de la *High Court* par les véritables représentants légaux de Cape Plc et CIHL

30. Le 9 septembre 2024, Cape Plc et CIHL, représentées par leurs véritables représentants légaux en exercice, ont saisi la *High Court* afin, notamment, qu'elle ordonne à M. Protopapas de (i) cesser d'agir ou prétendre agir en qualité d'administrateur judiciaire de Cape Plc et CIHL et (ii) cesser de s'arroger la qualité de représentant légal de CIHL, non seulement en Angleterre et au Pays de Galles mais, plus généralement, dans le monde entier.

M. Protopapas n'a pas régularisé d'écritures ni de pièces dans le cadre cette procédure. Il avait expressément fait valoir le 5 septembre 2024 aux conseils anglais de Cape Plc et CIHL qu'il ne comparaitrait pas (Pièce n° 19 et Pièce n° 20)³⁵.

L'audience de plaidoiries s'est tenue au cours de la semaine du 11 novembre 2024. M. Protopapas n'a pas comparu ni été représenté.

1.3.2 La non-reconnaissance par la *High Court* de la nomination de M. Protopapas en qualité d'administrateur judiciaire de CIHL et l'injonction de cesser d'agir au nom et pour le compte de celle-ci

31. Dans la Décision Anglaise rendue par le Juge Mann, composée du jugement du 22 novembre 2024 (Pièce n° 21)³⁶ et de l'ordonnance du même jour comprenant le dispositif (Pièce n° 22)³⁷, la *High Court* a jugé que :
- L'ordonnance américaine du 16 mars 2023 en vertu de laquelle M. Protopapas a été désigné en qualité d'administrateur judiciaire de CIHL « *n'est pas reconnue et n'a aucun effet juridique en Angleterre et au Pays de Galles et dans le monde entier* » ;
 - M. Protopapas n'a « *aucun pouvoir ou capacité pour agir au nom de CIHL en Angleterre et au Pays de Galles ou dans le monde entier* » ;

³⁴ Pièce n° 18 : Ordonnance de la Juge Toal du 23 mai 2024 prononçant des sanctions à l'encontre des tiers-défendeurs (avec une traduction libre), pp. 29 et s.

³⁵ Pièce n° 19 : Lettre des conseils de Cape Plc et CIHL à M. Protopapas du 30 août 2024 (avec une traduction libre) et Pièce n° 20 : Lettre en réponse de M. Protopapas aux conseils de Cape Plc et CIHL du 5 septembre 2024 (avec une traduction libre).

³⁶ Pièce n° 21 : Jugement de la *High Court of Justice of England and Wales* du 22 novembre 2024 (copie certifiée avec la traduction assermentée)

³⁷ Pièce n° 22 : Ordonnance de la *High Court of Justice of England and Wales* du 22 novembre 2024 (copie certifiée avec la traduction assermentée)

- Les droits et obligations des administrateurs de CIHL ne sont pas affectés par la nomination de M. Protopapas en tant qu'administrateur judiciaire de CIHL en vertu de l'ordonnance de la Juge Toal de 16 mars 2023 ;
- M. Protopapas n'a aucun pouvoir ou capacité à agir au nom de CIHL devant le tribunal de Caroline du Sud dans le cadre des affaires Park et Tibbs et de former ou de poursuivre des actions visant à attirer des parties tierces, notamment dans l'affaire Tibbs, contre l'un des tiers défendeurs dans cette procédure, « y compris (i) Mohed Altrad, (ii) Altrad Investment Authority SAS, (iii) Altrad UK Ltd, (iv) Cape UK Holdings Newco Ltd, (v) Cape Industrial Services Group Ltd, (vi) Cape Holdco Ltd, (vii) Altrad Services Ltd » (Pièce n° 22)³⁸.

En conséquence, la *High Court* a fait injonction à M. Protopapas de :

- cesser d'agir ou de prétendre agir en qualité d'administrateur judiciaire de CIHL en Angleterre, au Pays de Galles et dans le monde ;
- cesser « de s'approprier, d'interférer avec ou d'usurper (de quelque manière que ce soit) l'exercice licite des droits et devoirs des administrateurs de CIHL » en Angleterre, au Pays de Galles et dans le monde ;
- cesser d'agir ou de prétendre agir en qualité d'administrateur judiciaire de CIHL dans le cadre des affaires Park et Tibbs en Angleterre, au Pays de Galles et dans le monde ;
- cesser de poursuivre l'action visant à attirer M. Altrad et AIA notamment en tant que tiers-défendeurs à l'instance Tibbs ;
- cesser de « prétendre agir pour CIHL dans la réclamation introduite devant le Tribunal de Caroline du Sud par une assignation en date du 11 novembre 2024 portant le numéro de demande C/A NO. 2024-CP-40-06639 ou dans toute autre procédure judiciaire engagée contre CIHL devant le Tribunal de Caroline du Sud ou dans le monde entier » (Pièce n° 22)³⁹.

32. La *High Court* a en effet considéré dans son Jugement du 22 novembre 2024 que les agissements qualifiés d'abusifs de M. Protopapas constituaient une menace sérieuse, justifiant le prononcé de telles injonctions globales :

« Les pouvoirs conférés à l'administrateur judiciaire sont en apparence très étendus et pourraient être exercés dans le monde entier, y compris dans cette juridiction. Il n'a pas nié avoir l'intention de les utiliser. Ils sont abusifs et ont déjà été utilisés au détriment de CIHL » (Pièce n° 21)⁴⁰.

Il est précisé que l'ordonnance du 22 novembre 2024 a été rendue au profit de CIHL uniquement puisque M. Protopapas, ainsi que la Juge Toal dans sa décision du 6 décembre 2023, ont reconnu que Cape Plc n'était pas visée par la mesure d'administration judiciaire à l'encontre de « Cape Plc » (Pièce n° 21)⁴¹.

Le défaut de pouvoir et de capacité de M. Protopapas à agir au nom et pour le compte de CIHL a donc été judiciairement reconnu par la *High Court*.

³⁸ Pièce n° 22 : Ordonnance de la *High Court of Justice of England and Wales* du 22 novembre 2024 (copie certifiée avec la traduction assermentée), §§6-10

³⁹ Pièce n° 22 : Ordonnance de la *High Court of Justice of England and Wales* du 22 novembre 2024 (copie certifiée avec la traduction assermentée), §§6-10

⁴⁰ Pièce n° 21 : Jugement de la *High Court of Justice of England and Wales* du 22 novembre 2024 (copie certifiée avec la traduction assermentée), §134

⁴¹ Pièce n° 21 : Jugement de la *High Court of Justice of England and Wales* du 22 novembre 2024 (copie certifiée avec la traduction assermentée), §140

La Décision Anglaise a d'ailleurs été assortie d'un avis de sanction (*Penal Notice*) en vertu duquel M. Protopapas et toute personne agissant en violation de l'ordonnance prononcée par le juge anglais se rend coupable d'outrage au tribunal (*contempt of court*) et s'expose à des sanctions pénales, notamment des peines d'emprisonnement (**Pièce n° 23**)⁴².

33. La Décision Anglaise a été signifiée dès le 22 novembre 2024 à M. Protopapas (**Pièce n° 24**)⁴³. Elle est aujourd'hui **exécutoire et définitive**.

En effet, en vertu du droit procédural anglais, la partie qui succombe dispose d'un délai de 21 jours à compter de la date de la remise de la décision aux parties pour demander l'autorisation d'interjeter appel.

En l'espèce, M. Protopapas disposait de 21 jours à compter de la notification de la Décision Anglaise par les conseils de Cape Plc / CIHL pour demander l'autorisation d'interjeter appel, soit jusqu'au 13 décembre 2024.

Le délai étant désormais expiré sans qu'aucune demande d'interjeter appel n'ait été formulée par M. Protopapas, la Décision Anglaise n'est plus susceptible de recours.

Le 31 mars 2025, le juge anglais a également condamné M. Protopapas, à titre provisoire, à rembourser à Cape Plc / CIHL une partie de leurs frais de justice, à hauteur de £1.000.000. Une décision devrait intervenir prochainement sur le montant final de la condamnation de M. Protopapas à ce titre.

- 34. M. Protopapas a toutefois poursuivi les procédures en cours en Caroline du Sud à l'encontre d'AIA et de M. Altrad, au nom de Cape Plc / CIHL, sans aucune considération pour les injonctions prononcées à son encontre par le juge anglais.**

1.3.3 L'exequatur en France de la Décision Anglaise

35. Afin de se prémunir contre les effets potentiellement très négatifs d'une décision à intervenir en Caroline du Sud, dans le cadre de la procédure poursuivie abusivement à leur encontre par M. Protopapas, M. Altrad et AIA ont été contraints d'engager une procédure afin que la Décision Anglaise soit reconnue exécutoire sur le territoire français.

Par ordonnance du 20 décembre 2024 (**Pièce n° 25**)⁴⁴, Cape Plc, CIHL, AIA et M. Altrad ont été autorisés à assigner M. Protopapas à jour fixe à l'audience du 11 février 2025 devant le Tribunal judiciaire de Montpellier, aux fins d'exequatur en France de la Décision Anglaise du 22 novembre 2024.

L'assignation en exequatur et la requête aux fins d'assigner à jour fixe ont été signifiés à M. Protopapas en personne le 30 décembre 2024 (**Pièce n° 26**)⁴⁵. M. Protopapas n'a toutefois pas souhaité comparaître dans le cadre de cette procédure :

« Aucun avocat ne s'est constitué pour M. Peter Protopapas, l'assignation ayant été délivrée à son adresse le 30 décembre 2024, selon les dispositions et formalités prévues par la Convention de la Haye du 15 novembre 1965, relatives à la signification et à la notification des actes judiciaires et extrajudiciaires dans les États membres »
(**Pièce n° 27**, p. 4)⁴⁶.

⁴² **Pièce n° 23** : Avis de sanction (*Penal Notice*) du juge anglais (avec une traduction libre)

⁴³ **Pièce n° 24** : Signification à M. Protopapas du Jugement et de l'Ordonnance de la *High Court of Justice of England and Wales* du 22 novembre 2024 (avec preuve de réception par voie postale) (avec une traduction libre)

⁴⁴ **Pièce n° 25** : Ordonnance du Président du Tribunal judiciaire de Montpellier du 20 décembre 2024 autorisant les demandeurs à assigner M. Protopapas à jour fixe

⁴⁵ **Pièce n° 26** : Signification de l'assignation en exequatur à M. Protopapas du 30 décembre 2024

⁴⁶ **Pièce n° 27** : Jugement d'exequatur du Tribunal judiciaire de Montpellier du 8 avril 2025

36. **Par un jugement du 8 avril 2025 (Pièce n° 27)⁴⁷, considérant que l'ensemble des conditions étaient satisfaites, le Tribunal judiciaire de Montpellier a prononcé l'exequatur et déclaré la Décision Anglaise exécutoire en France.**

Le Jugement d'Exequatur a été signifié à personne à M. Protopapas le 20 mai 2025 (Pièce n° 28)⁴⁸.

1.3.4 Les répercussions en Caroline du Sud des procédures anglaise et française

37. Compte tenu des procédures initiées à son encontre outre-Atlantique, M. Protopapas s'est livré à plusieurs tentatives d'intimidation et a tenté d'accélérer le cours de la procédure en Caroline du Sud.

Dès qu'il a été informé de l'intention de Cape Plc et CIHL de saisir le juge anglais afin de faire reconnaître son absence de pouvoir en qualité d'administrateur judiciaire, M. Protopapas a menacé les conseils de Cape Plc et CIHL d'engager des poursuites à leur encontre directe en Caroline du Sud (Pièce n° 19 et Pièce n° 20)⁴⁹ :

« Votre lettre me demande de violer le droit de Caroline du Sud et s'apparente à de l'extorsion. Je refuse respectueusement que vos menaces délictueuses guident les obligations légales et éthiques qui m'incombent en tant qu'administrateur judiciaire désigné par le tribunal. En conséquence, je n'ai d'autre choix que de poursuivre votre cabinet en justice. Vous trouverez ci-joint une action en jugement déclaratoire récemment déposée contre Winston & Strawn, LLP. Je prévois de déposer une Règle de comparution et d'exposé des motifs contre votre cabinet exigeant que votre cabinet explique sa conduite au tribunal en charge de mise sous administration judiciaire. Une solution raisonnable à cela serait que vous retiriez la Lettre et que vous vous engagiez à ne demander aucune décision devant les Tribunaux anglais ou tout autre tribunal que celui saisi de la juridiction de Caroline du Sud et je retirerai la plainte et la Règle de comparution et d'exposé des motifs » (Pièce n° 20, p. 5, soulignements ajoutés)⁵⁰.

Le cabinet Winston & Strawn s'est désisté de son mandat à la suite de ce courrier et Cape Plc et CIHL ont dû instruire de nouveaux conseils en urgence⁵¹.

38. M. Protopapas a par la suite tenté d'intimider un expert (le "Juge Wilkins"), mandaté par Cape Plc et CIHL dans le cadre de la procédure anglaise pour donner un avis juridique sur des questions de droit de Caroline du Sud. Le Juge Mann dans la Décision Anglaise relève ce qui suit à ce sujet :

*« Le 5 novembre, l'administrateur judiciaire a émis une assignation à comparaître pour une déposition et a présenté de nombreuses demandes de divulgation au juge. **Ce comportement s'apparente à de l'intimidation.** Que cela soit correct ou non, le juge a estimé qu'il était juste de fournir (apparemment spontanément) un bref « rapport » supplémentaire indiquant qu'il n'avait pas l'intention d'exprimer une opinion sur la question de savoir si, et dans quelle mesure, la loi dans son rapport s'appliquait à n'importe quel cas n'importe où dans le monde, et que son implication dans de telles questions est maintenant « conclue ». (...) Après avoir fourni ce rapport supplémentaire, l'assignation à comparaître a été retirée » (Pièce n° 21)⁵².*

⁴⁷ Pièce n° 27 : Jugement d'exequatur du Tribunal judiciaire de Montpellier du 8 avril 2025

⁴⁸ Pièce n° 28 : Signification du Jugement d'exequatur à M. Protopapas du 20 mai 2025

⁴⁹ Pièce n° 19 : Lettre des conseils de Cape Plc et CIHL à M. Protopapas du 30 août 2024 (avec une traduction libre) et Pièce n° 20 : Lettre en réponse de M. Protopapas aux conseils de Cape Plc et CIHL du 5 septembre 2024 (avec une traduction libre).

⁵⁰ Pièce n° 20 : Lettre en réponse de M. Protopapas aux conseils de Cape Plc et CIHL du 5 septembre 2024 (avec une traduction libre).

⁵¹ Pièce n° 21 : Jugement de la High Court of Justice of England and Wales du 22 novembre 2024 (copie certifiée avec la traduction assermentée), §82

⁵² Pièce n° 21 : Jugement de la High Court of Justice of England and Wales du 22 novembre 2024 (copie certifiée avec la traduction assermentée), §83

39. M. Protopapas a également déposé une requête auprès de la Juge Toal lui demandant d'enjoindre aux "défendeurs Altrad" « de mettre fin à leur action irrégulière en instance devant la Haute Cour de justice d'Angleterre et du Pays de Galles visant à enjoindre à l'administrateur judiciaire de s'acquitter de ses fonctions ordonnées par la Cour » (l'action en Angleterre a été initiée par Cape Plc et CIHL). La Juge Toal a toutefois refusé de faire droit à cette demande (**Pièce n° 21**)⁵³.
40. Le 8 novembre 2024, M. Protopapas a déposé une demande de jugement sommaire contre AIA et M. Altrad dans la procédure relative aux tiers-défendeurs de l'affaire Tibbs, bien que l'audience ait été prévue moins de trois mois plus tard – le 3 février 2025 (**Pièce n° 21**)⁵⁴. Le procès sur le fond a finalement été suspendu compte tenu des nombreuses contestations soulevées (à juste titre) par les tiers-défendeurs. La date de report de l'audience de plaidoiries n'est pas connue à ce jour.
41. Le 13 décembre 2024, en réaction notamment à la Décision Anglaise et à l'avis de sanction dont elle est assortie⁵⁵, M. Protopapas a déposé une "requête d'urgence sollicitant une suspension d'exécution et une ordonnance de restriction temporaire" devant la Cour Suprême de Caroline du Sud (**Pièce n° 29**)⁵⁶.

M. Protopapas y prétend que les action engagées par Cape Plc / CIHL au Royaume-Uni, d'une part, et les moyens de défense soulevés par M. Altrad et AIA en Caroline du Sud, d'autre part, dans le but légitime de faire valoir leurs droits, s'apparenteraient à des menaces et à du harcèlement. M. Protopapas présente d'ailleurs de manière erronée les actions au Royaume-Uni comme ayant été initiées par AIA et M. Altrad :

« Compte tenu de la gravité et du caractère urgent des mesures prises par les requérants [Altrad] et leurs avocats, tant aux États-Unis qu'au Royaume-Uni, Peter D. Protopapas, en sa qualité d'administrateur judiciaire nommé par le tribunal pour Cape PLC, à titre individuel et en tant que successeur en droit de Cape Asbestos Company Limited, désormais dénommée Cape Intermediate Holdings Ltd. (l'« administrateur judiciaire»), demande à la Cour, à titre d'urgence, de rendre une ordonnance de suspension afin de protéger et de faire respecter la compétence de la Cour et d'émettre une ordonnance de restriction temporaire à l'encontre des requérants, interdisant à ces derniers, à leurs dirigeants, administrateurs, représentants, avocats et agents de prendre toute mesure visant à empêcher l'administrateur judiciaire d'exercer les fonctions qui lui ont été confiées par le tribunal et de participer au litige devant la présente Cour et d'autres tribunaux de Caroline du Sud et des États-Unis. (...)

*Le litige au Royaume-Uni, la prétendue injonction qui en résulte et la soumission des documents à la présente Cour constituent des tentatives irrégulières visant à harceler l'administrateur judiciaire dans le but d'attaquer indirectement les ordonnances judiciaires de cet État après près d'un an d'appels successifs infructueux et un renvoi infructueux devant la Cour de district de Caroline du Sud. La Cour devrait accueillir cette requête afin de protéger et de faire respecter sa compétence et d'interdire aux requérants de tenter d'utiliser l'injonction étrangère unilatérale pour remplacer et mettre fin à une mise sous administration judiciaire légitime prononcée par un tribunal d'État » (**Pièce n° 29**, pp. 5 à 7)⁵⁷.*

⁵³ **Pièce n° 21** : Jugement de la High Court of Justice of England and Wales du 22 novembre 2024 (copie certifiée avec la traduction assermentée), §84

⁵⁴ **Pièce n° 21** : Jugement de la High Court of Justice of England and Wales du 22 novembre 2024 (copie certifiée avec la traduction assermentée), §84

⁵⁵ Dont la teneur a été rappelée plusieurs fois à M. Protopapas, dans le cadre de lettres adressées par les conseils anglais de Cape Plc / CIHL, lui demandant de cesser ses actions en violation de Décision Anglaise.

⁵⁶ **Pièce n° 29** : Requête d'urgence de M. Protopapas sollicitant une suspension d'exécution et une ordonnance de restriction temporaire du 13 décembre 2024 (avec une traduction libre)

⁵⁷ **Pièce n° 29** : Requête d'urgence de M. Protopapas sollicitant une suspension d'exécution et une ordonnance de restriction temporaire du 13 décembre 2024 (avec une traduction libre)

42. Dans une requête du 9 janvier 2025 (Pièce n° 30)⁵⁸, compte tenu de la procédure d'exequatur initiée en France, M. Protopapas a sollicité auprès de la Cour Suprême de Caroline du Sud la suspension de tous les délais de procédure, dans l'attente de l'examen de sa requête d'urgence par la juridiction. M. Protopapas prétend à nouveau dans sa requête qu'il ferait l'objet de « menaces » de la part d'AIA et de M. Altrad et que ces derniers auraient engagé des poursuites pénales à son encontre, ce qui est faux :

« En raison des circonstances très inhabituelles et des menaces pénales et civiles dont font l'objet l'administrateur judiciaire et son avocat, l'administrateur judiciaire demande la suspension de tous les délais pendant que la Cour examine la requête d'urgence. (...) »

Les requérants Mohed Altrad et Altrad Investment Authority S.A.S. (les « requérants Altrad ») continuent de menacer et cherchent actuellement à faire emprisonner, condamner à une amende et saisir les biens de toute personne qui prétend agir au nom de l'administrateur judiciaire nommé par le tribunal, y compris les avocats de l'administrateur judiciaire nommé par le tribunal. (...) »

Les demandeurs conjoints dans l'action française, Cape Plc, Cape Intermediate Holdings Limited (CIHL), Altrad Investment Authority (AIA) et M. Mohed Altrad, cherchent à faire reconnaître en France le jugement rendu au Royaume-Uni contre l'administrateur judiciaire à titre « d'urgence » ainsi que des mesures supplémentaires » (Pièce n° 30, p. 3)⁵⁹

La requête sollicitant la suspension des délais de procédure a été rejetée par la Cour Suprême de Caroline du Sud dans une décision du 16 janvier 2025 (Pièce n° 31)⁶⁰.

43. Le 3 juin 2025, en réaction au Jugement d'Exequatur qui lui a été signifié le 20 mai 2025, M. Protopapas a sollicité de nouvelles sanctions à l'encontre d'AIA et de M. Altrad devant la Cour Suprême de Caroline du Sud (Pièce n° 32)⁶¹:

« Peter D. Protopapas, agissant en sa qualité officielle d'administrateur judiciaire nommé par le tribunal pour Cape PLC, à titre individuel et en tant que successeur en droit de Cape Asbestos Company Limited, désormais dénommée Cape Intermediate Holdings Ltd. (l'« Administrateur judiciaire »), continue d'être attaqué sans relâche par les Appelants et leur avocat pour avoir rempli les obligations qui lui ont été confiées par le tribunal. [...] »

Armés des ordonnances rendues par ces tribunaux étrangers, les appelants continuent d'intensifier leurs menaces à l'encontre de l'administrateur judiciaire et de ses avocats » (Pièce n° 32, pp. 2-3).

« En conséquence, l'administrateur judiciaire demande respectueusement à la Cour de rendre une ordonnance sanctionnant Altrad Investment Authority S.A.S. et Mohed Altrad pour leur mépris envers cette Cour, de manière à mettre fin à ce type de comportement et à dissuader les auteurs de tels actes, ainsi qu'à protéger l'administrateur judiciaire nommé par le tribunal contre le risque financier qui pèse sur lui à titre personnel et contre la menace de poursuites pénales, qui sont la

⁵⁸ Pièce n° 30 : Requête de M. Protopapas sollicitant la suspension des délais de procédure du 9 janvier 2025 (avec une traduction libre)

⁵⁹ Pièce n° 30 : Requête de M. Protopapas sollicitant la suspension des délais de procédure du 9 janvier 2025 (avec une traduction libre), p. 3

⁶⁰ Pièce n° 31 : Décision de la Cour Suprême de Caroline du Sud du 16 janvier 2025 (avec une traduction libre)

⁶¹ Pièce n° 32 : Requête de M. Protopapas devant la Cour Suprême de Caroline du Sud du 3 juin 2025 (avec une traduction libre)

conséquence directe du comportement méprisant des appelants Altrad » (Pièce n° 32, pp. 23-24)

44. Dans une ordonnance du 26 juin 2025 (Pièce n° 33)⁶², la Cour Suprême de Caroline du Sud a partiellement répondu aux nombreux recours et requêtes dont elle a été saisie par les différentes parties en cause dans cette affaire. A cette occasion, elle s'est prononcée sur les pouvoirs de l'administrateur judiciaire :
- La Cour Suprême fait tout d'abord référence à une décision rendue par sa propre juridiction quelques semaines auparavant dans une affaire distincte, *Welch v. Advance Auto Parts* (Pièce n° 34)⁶³, Inc., du 21 mai 2025, dans laquelle M. Protopapas avait également été désigné en qualité d'administrateur judiciaire. Dans la décision *Welch* la Cour Suprême a en effet rappelé que les pouvoirs de l'administrateur judiciaire **ne sont pas illimités** en ce que (i) ils sont circonscrits à la réalisation des actifs expressément désignés dans l'ordonnance de mise sous administrateur judiciaire, et (ii) ils ne constituent en aucun cas une autorisation pour l'administrateur judiciaire de siéger au conseil d'administration d'une société et/ou de prendre le contrôle de ses opérations (Pièce n° 34, p. 30).
 - En conséquence, la Cour Suprême rappelle notamment, s'agissant de l'affaire Tibbs, que l'administrateur judiciaire ne peut exercer ses fonctions **que sur la base d'une ordonnance rendue spécifiquement dans le cadre de l'affaire pour laquelle il est supposé intervenir**, et que les pouvoirs de l'administrateur judiciaire doivent être limités par ladite ordonnance. La Cour Suprême a par conséquent enjoint à la Juge Toal de s'assurer du respect de ces exigences dans le cadre de l'affaire Tibbs. .
45. Ainsi, M. Protopapas poursuit actuellement ses procédures au nom de Cape Plc / CIHL à l'encontre de M. Altrad et AIA, en Caroline du Sud, en violation (i) des termes de l'injonction prononcée par le juge anglais, désormais exécutoire en France, mais également (ii) d'une décision de la Cour Suprême de Caroline du Sud.

C'est dans ce contexte qu'intervient la présente assignation.

⁶² Pièce n° 33 : Ordonnance de la Cour Suprême de Caroline du Sud du 26 juin 2025 (avec une traduction libre)

⁶³ Pièce n° 34 : Décision de la Cour Suprême de Caroline du Sud *Welch v. Advance Auto Parts, Inc.*, du 21 mai 2025 (avec une traduction libre)

2. DISCUSSION

46. M. Altrad et AIA entendent faire valoir dans le cadre de la présente assignation que la responsabilité civile de M. Protopapas doit être engagée, afin que les Demandeurs puissent obtenir réparation des préjudices subis du fait des procédures abusivement engagées et poursuivies à leur encontre par M. Protopapas en Caroline du Sud (2.2). Ils formuleront par ailleurs une demande au titre des frais irrépétibles (2.3).

Au préalable, M. Altrad et AIA démontreront que les juridictions françaises sont compétentes et que le droit français est applicable au présent litige (2.1).

2.1 A titre préliminaire : la compétence internationale et la loi applicable

2.1.1 Les juridictions françaises sont compétentes pour statuer sur le présent litige

47. M. Protopapas est de nationalité américaine et est domicilié aux Etats-Unis.
48. En l'absence de convention internationale applicable entre la France et les Etats-Unis quant à la compétence juridictionnelle internationale, il convient de se référer aux dispositions internes.

L'article 14 du Code civil dispose que : « *L'étranger, même non résidant en France, pourra être cité devant les tribunaux français, pour l'exécution des obligations par lui contractées en France avec un Français ; il pourra être traduit devant les tribunaux de France, pour les obligations par lui contractées en pays étranger envers des Français* ».

49. M. Altrad est de nationalité française.

Le siège social d'AIA est situé à Béziers, en France.

50. **Dès lors, les juridictions françaises sont compétentes pour connaître de l'action en responsabilité contre M. Protopapas engagée par M. Altrad et AIA, pour les procédures abusivement poursuivies par M. Protopapas à leur encontre en Caroline du Sud.**

2.1.2 La loi française est applicable au fond du litige

51. En l'absence de relation contractuelle entre M. Altrad, AIA et M. Protopapas, l'action intentée en l'espèce est de nature délictuelle.

Le Règlement (CE) n° 864/2007 sur la loi applicable aux obligations non contractuelles (le « **Règlement Rome II** ») est applicable, dès lors que les juridictions françaises sont saisies du litige.

L'article 4 du Règlement Rome II prévoit que « *la loi applicable à une obligation non contractuelle résultant d'un fait dommageable est celle du pays où le dommage survient, quel que soit le pays où le fait générateur du dommage se produit et quels que soient le ou les pays dans lesquels des conséquences indirectes de ce fait surviennent* ».

52. En l'espèce, les dommages subis par M. Altrad et AIA sont localisés en France :
- les actions poursuivies abusivement par M. Protopapas en Caroline du Sud ont impliqué une importante mobilisation des ressources en interne pour AIA, dont le siège social et l'essentiel des actifs sont localisés en France,
 - cette mobilisation des ressources a eu un impact sur l'activité commerciale développée par AIA en France,

- les comptes bancaires sur lesquels ont été prélevés les frais d'avocats et autres frais de justice dépensés par M. Altrad et AIA pour la procédure en Caroline du Sud, sont tenus par des banques françaises,
- M. Altrad, domicilié en France, a subi un important préjudice moral du fait des procédures abusives menées d'une part à son encontre personnelle, et d'autre part menaçant l'image et la pérennité d'une entreprise qu'il a fondée et à laquelle il a consacré sa vie,
- compte tenu de la poursuite par M. Protopapas de la procédure en Caroline du Sud à l'encontre de M. Altrad et AIA, en violation de la Décision Anglaise rendue le 22 novembre 2024, les Demandeurs ont été contraints d'engager des frais de justice supplémentaires en France afin d'obtenir l'exequatur de la Décision Anglaise et ainsi se prémunir des effets potentiellement très négatifs d'une décision de condamnation à intervenir en Caroline du Sud,
- la poursuite par M. Protopapas de la procédure en Caroline du Sud intervient en violation directe d'une décision de justice française, à savoir le Jugement d'Exequatur de la Décision Anglaise.

53. La loi française est dès lors applicable au présent litige.

2.2 La responsabilité de M. Protopapas doit être engagée pour avoir poursuivi des procédures manifestement abusives à l'encontre d'AIA et de M. Altrad

54. En vertu de l'article 1240 du Code civil, « *tout fait quelconque de l'homme, qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé à le réparer* ».

En l'espèce, le comportement procédural abusif de M. Protopapas en Caroline du Sud et son refus persistant de prendre en compte les décisions des juges anglais et français (2.2.1) sont à l'origine de préjudices significatifs pour les Demandeurs (2.2.2). M. Protopapas devra dès lors être condamné à réparer l'intégralité de ces préjudices, sur le fondement de l'article 1240 du Code civil.

2.2.1 Les procédures menées abusivement par M. Protopapas en Caroline du Sud constituent une faute de nature à engager sa responsabilité délictuelle

a) Le fondement des actions de M. Protopapas est manifestement irrégulier

55. En l'espèce, M. Protopapas agit devant les tribunaux de Caroline du Sud à l'encontre d'AIA et de M. Altrad, prétendument au nom de leur filiale CIHL, aux termes d'une ordonnance rendue dans des conditions manifestement irrégulières :

- L'ordonnance du 16 mars 2023 (**Pièce n° 4**) a été rendue dans le cadre d'une affaire qui avait apparemment été « *entièrement résolue* » - conformément au courriel adressé à la juridiction par le conseil de l'une des parties le 3 juin 2022 (**Pièce n° 8**) - et qui de fait n'est depuis cette date plus active, sans qu'aucune décision sur le fond n'ait été rendue.
- Cette ordonnance a été rendue sans audience, sans débat contradictoire, 10 jours seulement après le dépôt de la requête sollicitant la désignation de M. Protopapas en qualité d'administrateur judiciaire.
- Cette ordonnance a été rendue au mépris (i) du droit anglais exclusivement applicable à l'autonomie d'une société établie en Angleterre, (ii) de la compétence exclusive des juridictions anglaises pour désigner un administrateur judiciaire à la tête d'une société établie sur son territoire, tel que l'a justement souligné la présente juridiction dans son Jugement d'Exequatur :

« La société Cape Pic et la société CIHL sont deux sociétés de droit anglais, respectivement enregistrées à Jersey, île britannique, pour la première, et pour la seconde à Appleton, Warrington en Angleterre.

Pour la défense de leurs intérêts dans le litige qui les oppose à M. Peter Protopapas, - désigné en Caroline du Sud aux Etats-Unis en qualité d'administrateur judiciaire, **et ce au mépris du droit anglais et des règles de compétence applicables** - elles se sont adressées au juge anglais au motif que leur principal établissement, leurs actifs et leurs organes de gouvernance sont localisés en Angleterre » (Pièce n° 27, p. 6, gras ajouté)⁶⁴.

En effet :

- CIHL est une société parfaitement opérationnelle et *in bonis*, dotée d'organes de gouvernance désignés conformément à ses statuts (Pièce n° 2)⁶⁵. Elle ne fait l'objet d'aucune procédure d'insolvabilité, ni en Caroline du Sud, ni en Angleterre. Sa mise sous administration judiciaire est dès lors manifestement irrégulière en vertu du droit anglais qui lui est exclusivement applicable, et qui n'a d'ailleurs pas été examiné pour décider de la mesure.
- La Juge Toal justifie sa compétence par le fait que Cape Plc / CIHL établirait une "présence" en Caroline du Sud par l'intermédiaire de NAAC, ancienne filiale du Groupe Cape dissoute en 1978 (cf. *supra*, §17). En d'autres termes, Cape Plc / CIHL serait l'ayant-droit et l'*alter ego* de NAAC et devrait dès lors être considérée comme établie aux Etats-Unis au travers de NAAC. Or, ni Cape Plc ni CIHL n'ont jamais exercé, directement ou indirectement, d'activités en Caroline du Sud ou ailleurs aux Etats-Unis. Le Groupe Cape n'a aucun établissement ni aucun actif sur ce territoire.

Il en a été jugé ainsi par une décision définitive rendue par le juge anglais en 1989 : dans la décision *Adams v. Cape Industries Plc* du 27 juillet 1989 (Pièce n° 9), qui fait l'objet d'une requête en exequatur pendante devant la présente juridiction, la Cour d'appel anglaise s'est prononcée, dans le cadre d'une décision extrêmement motivée (les audiences de plaidoiries ont duré 17 jours) sur la compétence du juge américain ayant condamné CIHL (anciennement dénommée Cape Industries Plc) en raison des activités exercées par son ancienne filiale NAAC.

Adams v. Cape tranche de manière détaillée la question du contrôle exercé par CIHL sur NAAC et notamment la problématique de l'*alter ego* et de l'autonomie de la personne morale de NAAC. La Cour d'appel anglaise en a conclu que NAAC n'était pas l'*alter ego* de CIHL, qu'il n'y avait pas lieu de lever le voile social de NAAC et que, par voie de conséquence, aucune présence de CIHL aux Etats-Unis n'était établie, de sorte que le juge américain n'était pas compétent.

La désignation de M. Protopapas en qualité d'administrateur judiciaire de CIHL est dès lors en contradiction directe avec cette décision, tel que l'a souligné la *High Court* dans la Décision Anglaise :

« Le Défendeur, en tant qu'administrateur judiciaire, a présenté des réclamations aux États-Unis prétendument au nom de CIHL qui impliquent des réclamations et des affirmations qui sont directement contraires à l'affaire

⁶⁴ Pièce n° 27 : Jugement d'exequatur du Tribunal judiciaire de Montpellier du 8 avril 2025

⁶⁵ Pièce n° 2 : Certificat d'enregistrement de CIHL (avec une traduction libre)

factuelle avancée avec succès par CIHL dans l'affaire Adams c. Cape » (Pièce n° 21)⁶⁶.

« La base factuelle fondamentale pour la nomination de l'administrateur judiciaire était le fait que « Cape » menait ses activités par l'intermédiaire de NAAC et de CPC aux États-Unis, sans aucune référence aux conclusions détaillées des tribunaux anglais » (Pièce n° 21)⁶⁷.

Ainsi, la Juge Toal n'avait pas compétence pour prendre une telle mesure, qui relevait du pouvoir exclusif des juridictions anglaises.

56. Indépendamment de l'irrégularité affectant l'ordonnance de sa désignation, l'action de M. Protopapas au nom de CIHL à l'encontre d'AIA et de M. Altrad dans le cadre de l'affaire Tibbs est en elle-même irrégulière :

- M. Protopapas a agi au nom de CIHL dans l'affaire **Tibbs** en vertu d'une ordonnance circonscrite à l'affaire **Park** :

« Le Tribunal nomme Peter Protopapas ès qualité d'administrateur judiciaire dans cette affaire, conformément au droit de Caroline du Sud » (Pièce n° 4, gras ajouté)⁶⁸.

Cette irrégularité a été relevée :

- (i) Dans le Jugement d'Exequatur du 8 avril 2025 :

« Nonobstant l'absence d'ordonnance prononcée dans cette dernière affaire, et par conséquent l'absence de désignation d'administrateur judiciaire pour Cape Pic ou d'une autre société du Groupe Cape, M. Peter Protopapas est pourtant intervenu dans cette procédure en cette qualité d'administrateur judiciaire.

- (ii) Par la Cour Suprême de Caroline du Sud dans le cadre de l'ordonnance du 26 juin 2025 (Pièce n° 33), dans laquelle elle rappelle qu'un administrateur judiciaire « **n'est pas autorisé à exercer ses fonctions dans le cadre d'une affaire pour laquelle aucune ordonnance de nomination d'un administrateur n'a été rendue** »⁶⁹.

- L'entité désignée dans l'ordonnance du 16 mars 2023 est « Cape Plc », actuelle holding du groupe créée à Jersey en 2010. M. Protopapas a admis plus tard que c'est en réalité CIHL qui était visée par l'ordonnance de mise sous administration judiciaire, sans jamais prendre la moindre mesure pour rectifier cette irrégularité fondamentale.

En effet, dans ses écritures du 18 octobre 2023 en opposition à la requête déposée par AIA et M. Altrad pour contester la compétence de la Juge Toal (Pièce n° 14), M. Protopapas présente cette erreur comme une « simple erreur de dénomination » sans conséquences préjudiciables. La question de savoir quelle entité est concernée par une mesure d'administration judiciaire et plus généralement par des procédures judiciaires est pourtant capitale, ne serait-ce que pour assurer le respect des obligations de signification et de notification des actes de procédure.

⁶⁶ Pièce n° 21 : Jugement de la High Court of Justice of England and Wales du 22 novembre 2024 (copie certifiée avec la traduction assermentée), §20

⁶⁷ Pièce n° 21 : Jugement de la High Court of Justice of England and Wales du 22 novembre 2024 (copie certifiée avec la traduction assermentée), §47

⁶⁸ Pièce n° 4 : Ordonnance du 16 mars 2023 de la Juge Toal désignant M. Protopapas en tant qu'administrateur judiciaire (receiver) de Cape Plc / CIHL (avec une traduction libre)

⁶⁹ Pièce n° 33 : Ordonnance de la Cour Suprême de Caroline du Sud du 26 juin 2025

- A ce titre d'ailleurs, l'acte introductif d'instance des demandeurs Tibbs désigne exclusivement Cape Plc. CIHL n'a jamais été citée et aucun acte de procédure ne lui a été signifié, de sorte que même à supposer que M. Protopapas puisse agir au nom de CIHL, il ne pouvait le faire au nom d'une société qui n'est même pas partie à l'instance dans le cadre de l'affaire Tibbs.
- L'assignation des tiers-défendeurs du 30 juin 2023 (Pièce n° 11) est intervenue alors que l'affaire Tibbs avait (comme l'affaire Park) fait l'objet d'une transaction conclue le 12 juin 2023 entre les demandeurs Tibbs et M. Protopapas (au nom de Cape Plc / CIHL) (Pièce n° 10)⁷⁰. M. Protopapas a donc agi dans le cadre d'une affaire qui avait en principe était résolue.

Ceci a également été constaté par la présente juridiction dans son Jugement d'Exequatur

« Le 12 juin 2023, aux termes d'un accord conclu entre les époux Tibbs et M. Peter Protopapas, les époux Tibbs se sont désistés de leur instance et action contre "Cape Pic" : le tribunal de première instance du comté de Richland de Caroline du Sud au Etats-Unis a été ainsi dessaisi de l'action principale dirigée contre la société Cape Pic.

Pourtant, le 30 juin 2023, la société AIA et M. Mohed Altrad ont été assignés en tant que "tiers-défendeurs" dans l'affaire Tibbs par M. Peter Protopapas, en qualité d'administrateur judiciaire de Cape Pic » (Pièce n° 27, p. 5, soulignement ajouté)⁷¹.

57. Ainsi, compte tenu des nombreuses irrégularités précitées que M. Protopapas ne pouvait de toute évidence ignorer, la poursuite de ses actions à l'encontre de M. Altrad et d'AIA en Caroline du Sud constitue une faute de nature à engager sa responsabilité. Surtout, les manœuvres de M. Protopapas ont largement contribué, si ce n'est provoqué, les irrégularités affectant les procédures américaines.

b) La conduite de la procédure en Caroline du Sud par M. Protopapas est déloyale et induit la juridiction américaine en erreur

58. Dans le cadre de ses actions à l'encontre d'AIA et de M. Altrad, M. Protopapas fait preuve d'une particulière déloyauté, induisant la juridiction américaine en erreur en présentant des faits tronqués, des allégations infondées et en occultant des éléments qui auraient nécessairement dus être portés à sa connaissance.
59. Il convient tout d'abord de rappeler que la mission de M. Protopapas dans le cadre de sa désignation en tant qu'administrateur judiciaire de CIHL était en principe de « *prendre toutes les mesures nécessaires pour protéger les intérêts de Cape, quels qu'ils soient* » (Pièce n° 4)⁷².

Or, M. Protopapas n'a jamais agi conformément à sa mission.

60. En particulier, l'assignation des tiers-défendeurs (Pièce n° 11), prétendument au nom de CIHL, contient un certain nombre d'allégations très défavorables à CIHL, qui s'apparentent à des admissions totales de sa responsabilité quant aux faits litigieux de l'affaire Tibbs, et qui sont donc manifestement contraires à ses intérêts. Or, selon la thèse développée par M. Protopapas, admettre la responsabilité de CIHL équivaut à admettre la responsabilité d'AIA et de M. Altrad. La conduite de M. Protopapas dans le cadre de sa mission d'administrateur judiciaire de CIHL vise donc uniquement à servir ses intérêts pour voir condamnés les tiers-défendeurs, et est donc directement préjudiciable à AIA et M. Altrad. Ainsi notamment :

⁷⁰ Pièce n° 10 : Email du conseil des demandeurs Tibbs au Tribunal du comté de Richland du 8 avril 2024 (avec une traduction libre)

⁷¹ Pièce n° 27 : Jugement d'exequatur du Tribunal judiciaire de Montpellier du 8 avril 2025

⁷² Pièce n° 4 : Ordonnance du 16 mars 2023 de la Juge Toal désignant M. Protopapas en tant qu'administrateur judiciaire (receiver) de Cape Plc / CIHL (avec une traduction libre)

- au titre des allégations d'enrichissement sans cause, M. Protopapas indique qu'il serait inéquitable que les tiers-défendeurs conservent tout avantage résultant de la responsabilité de « Cape Plc », (Pièce n° 11, §§ 125-130),
- s'agissant des allégations de responsabilité au titre de la théorie de l'*alter ego* et de la levée du voile social, M. Protopapas avance que, dans l'intérêt de la justice, le Tribunal de Caroline du Sud peut exercer une compétence personnelle sur les tiers-défendeurs et leur imposer une responsabilité pour les actes de « Cape Plc », que les tiers-défendeurs sont responsables d'avoir dominé, contrôlé, facilité ou bénéficié du succès des activités de « Cape Plc » dans le domaine de l'amiante et de son système d'évitement de la responsabilité (Pièce n° 11, §§ 137 à 141).

La *High Court* a également relevé le comportement déloyal de M. Protopapas dans la Décision Anglaise :

« (c) C'est un administrateur judiciaire dont l'une des fonctions est apparemment de protéger les intérêts de CIHL pour laquelle il a été nommé. Pourtant, il a démontré qu'il ne remplissait pas cette obligation et qu'il faisait apparemment le contraire. Il a fait des aveux concernant des réclamations liées à l'amiante et a présenté un cas positif, ce qui nuit véritablement aux intérêts de CIHL » (Pièce n° 21, §115).

61. **Plus généralement**, M. Protopapas s'octroie tous pouvoirs sur la base de son ordonnance de désignation, agissant bien au-delà de sa mission dans le cadre d'une affaire pour laquelle il n'a pas été désigné, en assignant toute entité étrangère qui aurait de près ou de loin un lien avec Cape Plc / CIHL / NAAC (dont AIA et M. Altrad). Or, la Cour Suprême de Caroline du Sud a rappelé dans sa décision *Welch* du 21 mai 2025 (Pièce n° 34, cf. supra §44) que les pouvoirs de l'administrateur judiciaire ne sont pas illimités en ce qu'ils sont circonscrits à la réalisation des actifs expressément désignés dans l'ordonnance de mise sous administrateur judiciaire.
62. **Par ailleurs**, M. Protopapas ne cesse dans ses écritures de développer des allégations mensongères à l'égard de CIHL, d'AIA et de M. Altrad, sans aucune preuve à l'appui. Or, ces allégations ont toutes été admises par la Juge Toal :
 - d'une part, aux termes de l'ordonnance du 6 décembre 2023 (Pièce n° 15)⁷³ rejetant la requête de M. Altrad et AIA visant à soulever l'incompétence du Tribunal et à annuler la mesure d'administration judiciaire, puisque le projet d'ordonnance a été intégralement rédigé par M. Protopapas sans aucune modification apportée par la juridiction (cf. supra, §26), et
 - d'autre part, dans le cadre de l'ordonnance du 23 mai 2024 (Pièce n° 18)⁷⁴ faisant droit aux demandes de sanctions de M. Protopapas pour le refus d'AIA et de M. Altrad de participer à la *Discovery*.

Pour rappel, les demandes de production de pièces de M. Protopapas étaient excessivement larges et couvraient un période de plus de 40 ans, l'objectif étant manifestement de perturber la défense de M. Altrad et d'AIA en les noyant sous une *Discovery* irréalisable (cf. supra, §27).

Il était de toute façon légalement impossible pour M. Altrad et AIA de faire droit à ces demandes, compte tenu de la Loi de Blocage leur interdisant toute communication de documents ou d'informations spontanée, sans passer par les canaux d'entraide internationaux applicables entre la France et les Etats-Unis instaurés par la Convention de la Haye du 18 mars 1970 sur l'obtention des preuves à l'étranger en matière civile ou

⁷³ Pièce n° 15 : Ordonnance du 6 décembre 2023 de la Juge Toal rejetant les requêtes en annulation de la désignation de M. Protopapas (avec une traduction libre)

⁷⁴ Pièce n° 18 : Ordonnance de la Juge Toal du 23 mai 2024 prononçant des sanctions à l'encontre des tiers-défendeurs (avec une traduction libre)

commerciale. Ceci leur a été expressément confirmé par le SISSE dans une lettre du 20 juin 2024 (Pièce n° 16)⁷⁵.

Ainsi, en raison de la *Discovery* abusive initiée par M. Protopapas, à laquelle il était matériellement et légalement impossible d'accéder pour M. Altrad et AIA, ces derniers se sont vus condamnés à une mesure d'*adverse inference* au titre de laquelle la Juge Toal a admis un total de 46 allégations mensongères de M. Protopapas, sans possibilité pour AIA et M. Altrad d'en contester le bien-fondé aux termes d'un débat contradictoire :

« le Tribunal tire la conclusion défavorable que chacun des Tiers Défendeurs Altrad était à tout moment pertinent l'alter ego de Cape, ce qui doit donner lieu à la levée du voile corporatif. De même, chacun des Tiers Défendeurs Altrad est responsable ou a bénéficié injustement du régime d'évitement de la responsabilité de Cape. Afin de parvenir à cette conclusion, les conclusions suivantes ont été tirées à l'encontre de chacun des Tiers Défendeurs Altrad respectifs :

Conclusions relatives à AIA et Mohed Altrad

(...) 3. En 2022, Mohed Altrad a été reconnu coupable de corruption en France, un délit passible d'une peine de 18 mois de prison avec sursis.

4. Mohed Altrad a été reconnu coupable d'un délit découlant d'un manquement à la probité ou d'un dol.

(...) Conclusions concernant Altrad et Cape

(...) 12. AIA et Mohed Altrad étaient au courant des responsabilités liées à l'amiante et du stratagème d'évitement de la responsabilité de Cape avant l'acquisition de Cape.

13. AIA et Mohed Altrad ont acquis Cape dans l'intention de poursuivre le stratagème d'évitement de la responsabilité de Cape et de refuser d'intervenir dans le contentieux aux États-Unis.

(...) 18. AIA et Mohed Altrad sont responsables de l'absence persistante de réaction de Cape aux litiges intentés à l'encontre de Cape aux États-Unis.

(...) Conclusions concernant tous les Tiers Défendeurs Altrad

(...) 31. Les Tiers Défendeurs Altrad ont intentionnellement conçu la complexité de leurs relations d'entreprise de manière à dissimuler ces relations et structures de propriété tout en minimisant l'exposition de Cape et/ou leur propre exposition, y compris en ce qui concerne l'amiante.

(...) 36. Les Tiers Défendeurs Altrad n'ont rien fait pour remédier à la responsabilité massive et non honorée de Cape au titre des décès et maladies causés par les produits à base d'amiante de Cape en Caroline du Sud et ailleurs aux États-Unis.

(...) 38. Les Tiers Défendeurs Altrad ont détruit les registres d'entreprise et ont donné publiquement une image dénaturée du stratagème d'entreprise et d'évitement de responsabilité de Cape aux États-Unis.

⁷⁵ Pièce n° 16 : Lettre du SISSE du 20 juin 2024

Conclusions générales quant à la responsabilité au titre de la doctrine de l'*alter ego*

(...) 43. Les Tiers Défendeurs Altrad (ainsi que Cape) ont agi de mauvaise foi et se sont rendus coupables d'abus, de fraudes, d'actes répréhensibles ou d'injustices résultant de la confusion entre les personnalités juridiques des différents Tiers Défendeurs Altrad, et des conséquences inévitables et une injustice fondamentale ont été causées par un tel brouillage des distinctions juridiques et par leurs activités et affirmations de séparation des sociétés, y compris dans le cadre d'une tentative de dissimuler la fraude, l'évasion des obligations existantes, le contournement des lois, la conduite criminelle et autre dans le cadre du stratagème d'évitement de la responsabilité de Cape, et l'adhésion à cette fiction de sociétés distinctes irait à l'encontre de la justice » (Pièce n° 18)⁷⁶.

Ces constatations sont évidemment toutes erronées.

63. Plus récemment, dans le cadre des requêtes déposée par M. Protopapas devant la Cour Suprême de Caroline du Sud les 13 décembre 2024 (Pièce n° 29)⁷⁷, 9 janvier 2025 (Pièce n° 30)⁷⁸ et 3 juin 2025 (Pièce n° 32)⁷⁹, en réaction à la Décision Anglaise et au Jugement d'Exequatur (cf. *supra*, §§41 à 42), M. Protopapas persiste dans ses mensonges visant à induire la juridiction américaine en erreur. Il y prétend en effet que M. Altrad et AIA le menaceraient, le harcèleraient et chercheraient à le faire « emprisonner », alors même que l'unique action intentée par M. Altrad et AIA en France était une demande d'exequatur. M. Protopapas entretient en effet volontairement la confusion autour de la personnalité morale et l'autonomie juridique des entités du groupe Cape, présentant les actions entreprises par ces dernières au Royaume-Uni comme émanant directement d'AIA et de M. Altrad.
64. En outre, M. Protopapas s'est volontairement abstenu, dans le cadre de ses nombreuses écritures, de porter à la connaissance de la Juge Toal la décision fondamentale *Adams v. Cape Industries Plc* du 27 juillet 1989 (cf. *supra*, §55), bien que les règles de procédure de *common law* lui impose de le faire.

La question du contrôle de NAAC par CIHL tranchée par la Cour d'appel dans *Adams v. Cape* est en effet au cœur des demandes à l'encontre de M. Altrad et AIA en Caroline du Sud.

Alors que M. Altrad et AIA n'ont jamais exercé la moindre activité dans l'industrie de l'amiante, leur responsabilité est recherchée sur le fondement de la théorie de l'*alter ego* et de la levée du voile social. Le raisonnement (erroné) développé par M. Protopapas tient en deux temps :

- dans un premier temps, il est allégué que CIHL a pris la décision de dissoudre NAAC en 1978 et en est ensuite devenue l'ayant-droit. Suivant cette logique, la responsabilité civile découlant des anciennes activités de NAAC incomberait à CIHL.
- dans un second temps, il est allégué, entre autres, que M. Altrad et AIA seraient des « alter egos » de CIHL du fait de leur contrôle capitalistique, de sorte que les prétendues fautes de CIHL leur seraient imputables.

Il était donc fondamental, dans cette affaire, de porter à la connaissance de la Juge Toal les constatations du juge anglais dans *Adams v. Cape*, que M. Protopapas ne pouvait ignorer ainsi que l'a très justement relevé la *High Court* dans la Décision Anglaise :

⁷⁶ Pièce n° 18 : Ordonnance de la Juge Toal du 23 mai 2024 prononçant des sanctions à l'encontre des tiers-défendeurs (avec une traduction libre), pp. 29 et s.

⁷⁷ Pièce n° 29 : Requête d'urgence de M. Protopapas sollicitant une suspension d'exécution et une ordonnance de restriction temporaire du 13 décembre 2024 (avec une traduction libre)

⁷⁸ Pièce n° 30 : Requête de M. Protopapas sollicitant la suspension des délais de procédure du 9 janvier 2025 (avec une traduction libre)

⁷⁹ Pièce n° 32 : Requête de M. Protopapas devant la Cour Suprême de Caroline du Sud du 3 juin 2025 (avec une traduction libre)

« il convient de noter que les trois arguments avancés par la demanderesse [dans l'affaire Adams v. Cape] (a) sont tous avancés, sous différentes formes, par l'administrateur judiciaire dans la procédure de Caroline du Sud (et par d'autres qui ont engagé une procédure, probablement sur la base de la position de l'administrateur judiciaire), et (b) ont tous été complètement rejetés par le juge Scott et la Cour d'appel sur les faits et en vertu du droit. **Bien que M. Protopapas doive le savoir depuis un certain temps, sinon dès le début de la mise sous administration judiciaire, il ne ressort pas des documents dont disposent CIHL et Cape Jersey que ces documents essentiels aient jamais été portés à l'attention du Juge en chef Toal** » (Pièce n° 21, §26)

« (f) Toute l'approche contentieuse de l'administrateur judiciaire sur la présence en Caroline du Sud (qui, si je comprends bien, sous-tend sa nomination) semble ignorer et même contredire les conclusions prudentes de deux tribunaux anglais. J'admets que l'on pourrait dire que le tribunal de Caroline du Sud n'est pas nécessairement lié par ces conclusions, mais elles sont au moins pertinentes et, en tant que personne apparemment chargée (entre autres) de protéger les intérêts de CIHL, on aurait pensé qu'il devrait proposer cette décision, et non la réduire à néant.

(g) Rien ne permet de penser que cette décision a été portée à l'attention du tribunal de Caroline du Sud. On aurait pu penser qu'elle serait au moins pertinente pour ses déterminations. Je n'oserais pas dire si cela aurait eu une incidence sur les décisions du Juge en chef Toal. Cela lui incombe évidemment. Mais pour le moment, **l'échec apparent (si c'est ce qu'il y avait) à attirer l'attention est un sujet de préoccupation sérieux** » (Pièce n° 21, §115, gras et soulignement ajoutés).

65. M. Protopapas a **enfin et surtout** fait preuve d'une attitude agressive et menaçante, se livrant à plusieurs tentatives d'intimidations contre toute personne adoptant une position qui ne servirait pas ses intérêts (cf. *supra*, §§37 et s.). Notamment :

- ses menaces contre les auxiliaires de justice mandatés par Cape Plc et CIHL dans le cadre de la procédure anglaise,
- ses tentatives d'intimidation à l'égard d'AIA et de M. Altrad visant à les empêcher d'agir outre-Atlantique,
- ses demandes de sanctions abusives et répétées qui présentent les actions d'AIA et de M. Altrad de manière tronquée et mensongère, dans l'unique but de les dissuader de faire légitimement valoir leurs droits en Caroline du Sud.

La High Court a également souligné l'attitude abusive de M. Protopapas dans la Décision Anglaise :

« (e) Il n'y a rien de mal à ce qu'un titulaire de charge agisse avec vigueur pour protéger son poste et dans l'exercice de ses fonctions, mais ses attaques, ou tentatives d'attaques, contre ceux qui chercheraient à soutenir ou à l'aider dans le cadre d'une contestation de sa position, d'un point de vue anglais, dépassent les bornes. Je me réfère à la requête contre les avocats qui ont écrit une lettre préalable à l'action en justice parfaitement justifiée, à sa tentative (qui a échoué) de faire en sorte que les sociétés holding de CIHL mettent fin à la présente action en justice anglaise, et aux mesures qu'il a prises contre l'expert de CIHL dans cette affaire. Il se peut que ces mesures fassent toutes partie des tactiques de litige dans les litiges américains, et je ne dis rien à ce sujet, mais d'un point de vue anglais (à savoir mon point de vue dans cette affaire), leur approche est très agressive, ce qui est surprenant. Elles suscitent une crainte légitime d'imprévisibilité dans les étapes futures » (Pièce n° 21, §115).

66. Les mensonges, tentatives d'intimidation et autres manœuvres déloyales perpétrées par M. Protopapas constituent une faute de nature à engager sa responsabilité.

c) M. Protopapas agit à l'encontre d'AIA et de M. Altrad en Caroline du Sud en violation de la Décision Anglaise, rendue exécutoire sur le territoire français

67. Enfin et surtout, M. Protopapas agit en violation directe d'une décision de justice reconnue et exécutoire dans l'ordre juridique français.

Dans la Décision Anglaise, la *High Court* a notamment fait injonction à M. Protopapas de :

- cesser d'agir ou de prétendre agir en qualité d'administrateur judiciaire de CIHL en Angleterre, en Caroline du Sud et dans le monde ;
- cesser de poursuivre l'action visant à attirer M. Altrad et AIA en tant que tiers-défendeurs à l'instance dans l'affaire Tibbs (Pièce n° 22)⁶⁰.

68. La présente juridiction a accordé l'exequatur de la Décision Anglaise dans son jugement du 8 avril 2025 (Pièce n° 27). Le Jugement d'Exequatur a été signifié à M. Protopapas le 20 mai 2025 (Pièce n° 28)⁶¹.

Or, M. Protopapas poursuit ses actions à l'encontre d'AIA et de M. Altrad en Caroline du Sud, au mépris des décisions des juges anglais et français.

69. Par conséquent, et compte tenu de tout ce qui précède, la responsabilité délictuelle de M. Protopapas devra nécessairement être engagée afin qu'il soit condamné à réparer les préjudices subis par AIA et M. Altrad.

2.2.2 Les procédures menées abusivement par M. Protopapas en Caroline du Sud à l'encontre d'AIA et de M. Altrad sont à l'origine de préjudices significatifs

70. Les agissements abusifs de M. Protopapas dans le cadre de la procédure en cours en Caroline du Sud depuis maintenant près de deux ans, sont à l'origine de préjudices importants pour AIA et M. Altrad, qu'il convient de réparer intégralement.

(i) M. Altrad et AIA ont été attirés dans le cadre d'une procédure en Caroline du Sud au titre de faits litigieux auxquels ils sont totalement étrangers, n'ayant jamais exercé la moindre activité dans l'industrie de l'amiante et n'ayant acquis le groupe Cape qu'en 2017. Les poursuites à leur encontre, orchestrées par M. Protopapas dans les conditions irrégulières décrites ci-dessus, les ont contraints à engager des frais significatifs pour assurer la défense de leur intérêts.

Dès lors, il convient de condamner M. Protopapas à rembourser l'intégralité des honoraires et frais de conseils exposés aux Etats-Unis, en Grande-Bretagne et en France face aux actions abusivement engagées et poursuivies par M. Protopapas .

Ces coûts, provisoirement arrêtés au 31 mai 2025, s'élèvent à un total de 7.612.062,32 euros, selon le rapport établi par les commissaires aux comptes d'AIA, Ernst & Young Audit, en Pièce n° 35⁶².

⁶⁰ Pièce n° 22 : Ordonnance de la *High Court of Justice of England and Wales* du 22 novembre 2024 (copie certifiée avec la traduction assermentée), §§6-10

⁶¹ Pièce n° 28 : Signification du Jugement d'exequatur à M. Protopapas du 20 mai 2025.

⁶² Pièce n° 35 : Rapport des commissaires aux comptes d'AIA établi le juillet 2025.

Par ailleurs, les actions poursuivies abusivement par M. Protopapas en Caroline du Sud ont impliqué une importante mobilisation des ressources en interne pour AIA, qui a nécessairement eu un impact négatif sur son activité commerciale qu'il est permis d'évaluer à 1.000.000 euros.

AIA sollicite donc la condamnation de M. Protopapas au paiement de dommages-intérêts à hauteur de 8.612.062,32 euros en réparation de son préjudice économique et financier.

- (ii) Les allégations mensongères et diffamatoires développées publiquement par M. Protopapas dans le cadre de la procédure en Caroline du Sud sont manifestement préjudiciables à l'image et à la réputation d'AIA et de M. Altrad.

Ces accusations font par ailleurs craindre à AIA et M. Altrad que d'autres poursuites soient engagées à leur encontre en Caroline du Sud ou ailleurs, sur la base des thèses erronées avancées par M. Protopapas.

A ce titre, il conviendra de condamner M. Protopapas à payer à AIA et M. Altrad, *in solidum*, des dommages-intérêts à hauteur 10.000.000 euros, en réparation de leur préjudice d'image et réputationnel.

- (iii) M. Altrad a subi un important préjudice moral du fait des procédures abusives menées, d'une part à son encontre personnelle, et d'autre part menaçant l'image et la pérennité d'une entreprise qu'il a fondée en 1985 et à laquelle il a consacré la majeure partie de sa vie.

Les agissements et notamment les tentatives d'intimidation de M. Protopapas, dont les pouvoirs dans le cadre de la procédure en Caroline du Sud ne semblent connaître aucune limite, sont sources d'incertitudes et de craintes légitimes pour M. Altrad quant à l'issue de ces actions.

Le groupe Altrad emploie près de 65.000 personnes à travers le monde. Or, les actions dirigées contre AIA en Caroline du Sud font peser des risques de condamnation à des montants extrêmement élevés, qui entraîneraient nécessairement des réductions budgétaires pour le groupe et ainsi d'éventuels licenciements économiques.

M. Altrad est particulièrement attaché à ses équipes. Les craintes liées aux conséquences à venir des poursuites abusives par M. Protopapas à son encontre personnelle et à l'encontre de son entreprise constituent une source d'anxiété et de stress continu et considérable pour lui, depuis maintenant près de deux ans.

En outre, les allégations de M. Protopapas citées au §62 de la présente assignation constituent une violation de la présomption d'innocence.

A ce titre, il conviendra de condamner M. Protopapas à payer à M. Altrad des dommages-intérêts à hauteur de 5.000.000 euros, en réparation de son préjudice moral.

- (iv) Enfin, il est de jurisprudence constante qu'une personne morale peut également obtenir réparation de son préjudice moral, qui peut être distinct de son préjudice d'image et d'atteinte à la réputation⁸³. Ce préjudice est notamment caractérisé par l'atteinte aux valeurs que la société en cause souhaite incarner⁸⁴.

En l'espèce, les actions abusives de M. Protopapas et ses allégations infondées et mensongères ont pour effet qu'AIA soit considérée dans le cadre d'une procédure judiciaire comme une entreprise malhonnête, participant activement à des stratagèmes frauduleux

⁸³ V. notamment à ce titre Pièce n° J-1 : CA Paris, 3 septembre 2010, n° 08/12822, *eBay c/ Guerlain, Kenzo Parfums, Parfums Christian Dior, Parfums Givenchy* : "Considérant que les intimées sont en outre bien fondées à solliciter la réparation de leur préjudice moral distinct du préjudice d'image".

⁸⁴ Pièce n° J-2 : CA Paris, 3 septembre 2010, n° 08/12821, *eBay c/ Christian Dior Couture*

destinés à entraver la réparation des victimes d'exposition à l'amiante, et notamment celles ayant été impactées dans le cadre de leur emploi.

Or, le groupe Altrad engage des efforts significatifs pour offrir les meilleures conditions de travail possibles à ses équipes et les traiter avec respect, honnêteté et considération. On peut notamment lire ce qui suit sur le site internet du groupe Altrad :

*« Nous acceptons nos responsabilités, à la fois en tant que groupe et en tant qu'individus, pour prévenir les situations qui mettraient en péril la santé et la sécurité de chacun sur son lieu de travail. Nous traitons les personnes avec considération, indépendamment de leur position. Nous menons nos activités conformément aux normes exemplaires de transparence, d'intégrité et d'honnêteté. **Notre responsabilité envers l'ensemble de nos collaborateurs et de notre environnement de travail est particulièrement importante à nos yeux** » (Pièce n° 36)⁸⁵.*

Le groupe Altrad est également particulièrement attaché aux valeurs de solidarité, de courage et d'humilité⁸⁶.

Les agissements de M. Protopapas portent ainsi directement atteinte aux valeurs incarnées par le groupe Altrad à travers le monde.

A ce titre, il conviendra de condamner M. Protopapas à payer à AIA des dommages-intérêts à hauteur de 5.000.000 euros, en réparation de son préjudice moral.

2.3 Demande au titre des frais irrépétibles

71. Au vu des circonstances de l'espèce, il serait particulièrement inéquitable de faire supporter les frais irrépétibles de cette instance aux Demandeurs.

Outre les frais de représentation en justice, les Demandeurs ont engagé des dépenses conséquentes de traduction (vers ou depuis la langue anglaise).

C'est pourquoi, il est demandé au Tribunal de condamner M. Protopapas au paiement d'une indemnité de 200.000 euros au titre de l'article 700 du Code de procédure civile.

⁸⁵ Pièce n° 36 : Page du site internet du groupe Altrad (<https://www.altrad.com/fr/nos-valeurs.html>)

⁸⁶ Pièce n° 36 : Page du site internet du groupe Altrad (<https://www.altrad.com/fr/nos-valeurs.html>)

PAR CES MOTIFS

Vu l'article 1240 du Code civil,

Il est demandé au Tribunal judiciaire de Montpellier de :

- **CONDAMNER** M. Peter D. Protopapas à payer, à titre de dommages-intérêts :
 - o à la société Altrad Investment Authority, la somme de **8.612.062,32 euros** en réparation de son préjudice économique et financier,
 - o à la société Altrad Investment Authority et à M. Mohed Altrad, *in solidum*, la somme de **10.000.000 euros** en réparation de leur préjudice d'image et d'atteinte à la réputation,
 - o à M. Mohed Altrad, la somme de **5.000.000 euros** en réparation de son préjudice moral,
 - o à la société Altrad Investment Authority, la somme de **5.000.000 euros** en réparation de son préjudice moral.
- **RAPPELER** que l'exécution provisoire est de droit,
- **CONDAMNER** M. Peter D. Protopapas aux dépens, dont distraction au profit de Maître Frédéric Dabiens, Avocat au Barreau de Montpellier, conformément aux dispositions de l'article 699 du Code de procédure civile ;
- **CONDAMNER** M. Peter D. Protopapas à payer à la société Altrad Investment Authority et à M. Mohed Altrad, *in solidum*, une indemnité de 200.000 euros au titre de l'article 700 du Code de procédure civile.

LISTES DES PIÈCES

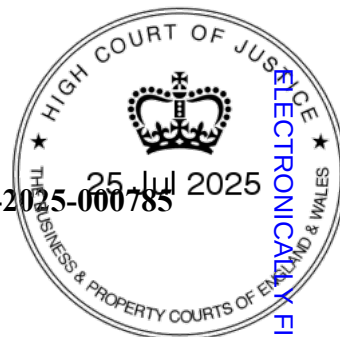
Pièces citées sous référence « Pièce n° X » :

- Pièce n° 1** Kbis de la société Altrad Investment Authority
- Pièce n° 2** Certificat d'enregistrement de CIHL (avec une traduction libre)
- Pièce n° 3** Certificat d'enregistrement de Cape Plc (avec une traduction libre)
- Pièce n° 4** Ordonnance du 16 mars 2023 de la Juge Toal désignant M. Protopapas en tant qu'administrateur judiciaire (receiver) de Cape Plc / CIHL (avec une traduction libre)
- Pièce n° 5** Legal Newslane, *Zombies are on the loose in a Carolina courtroom. Can anyone stop them?*, 23 septembre 2024 (avec une traduction libre)
- Pièce n° 6** Legal Newslane, *'Slammed the door in my face': Key cog in South Carolina's asbestos court not at U.K. showdown*, 15 octobre 2024 (avec une traduction libre)
- Pièce n° 7** Legal Newslane, *Secrecy shrouds asbestos money in South Carolina, but insurer makes play for records*, 23 octobre 2024 (avec une traduction libre)
- Pièce n° 8** Email du conseil d'une des parties à l'affaire Park du 3 juin 2022 (avec une traduction libre)
- Pièce n° 9** Extraits de la décision de la Cour d'appel anglaise *Adams v. Cape Industries Plc* du 27 juillet 1989 (avec une traduction libre)
- Pièce n° 10** Email du conseil des demandeurs Tibbs au Tribunal du comté de Richland du 8 avril 2024 (avec une traduction libre)
- Pièce n° 11** Assignation des tiers-défendeurs du 30 juin 2023 (avec une traduction libre)
- Pièce n° 12** Ordonnance du 1er octobre 2024 de la Juge Toal fixant un calendrier procédural (avec une traduction libre)
- Pièce n° 13** Requête de M. Altrad et AIA du 1er septembre 2023 (avec une traduction libre)
- Pièce n° 14** Ecritures en opposition de M. Protopapas du 18 octobre 2023 (avec une traduction libre)
- Pièce n° 15** Ordonnance du 6 décembre 2023 de la Juge Toal rejetant les requêtes en annulation de la désignation de M. Protopapas (avec une traduction libre)
- Pièce n° 16** Lettre du SISSE du 20 juin 2024
- Pièce n° 17** Requête de M. Protopapas du 3 avril 2024 sollicitant des sanctions à l'encontre d'AIA et de M. Altrad (avec une traduction libre)
- Pièce n° 18** Ordonnance de la Juge Toal du 23 mai 2024 prononçant des sanctions à l'encontre des tiers-défendeurs (avec une traduction libre)
- Pièce n° 19** Lettre des conseils de Cape Plc et CIHL à M. Protopapas du 30 août 2024 (avec une traduction libre)
- Pièce n° 20** Lettre en réponse de M. Protopapas aux conseils de Cape Plc et CIHL du 5 septembre 2024 (avec une traduction libre)

- Pièce n° 21** Jugement de la *High Court of Justice of England and Wales* du 22 novembre 2024 (copie certifiée avec la traduction assermentée)
- Pièce n° 22** Ordonnance de la *High Court of Justice of England and Wales* du 22 novembre 2024 (copie certifiée avec la traduction assermentée)
- Pièce n° 23** Avis de sanction (*Penal Notice*) du juge anglais (avec une traduction libre)
- Pièce n° 24** Signification à M. Protopapas du Jugement et de l'Ordonnance de la *High Court of Justice of England and Wales* du 22 novembre 2024 (avec preuve de réception par voie postale) (avec une traduction libre)
- Pièce n° 25** Ordonnance du Président du Tribunal judiciaire de Montpellier du 20 décembre 2024 autorisant les demandeurs à assigner M. Protopapas à jour fixe
- Pièce n° 26** Signification de l'assignation en exequatur à M. Protopapas du 30 décembre 2024
- Pièce n° 27** Jugement d'exequatur du Tribunal judiciaire de Montpellier du 8 avril 2025
- Pièce n° 28** Signification du jugement d'exequatur à M. Protopapas du 20 mai 2025
- Pièce n° 29** Requête d'urgence de M. Protopapas sollicitant une suspension d'exécution et une ordonnance de restriction temporaire du 13 décembre 2024 (avec une traduction libre)
- Pièce n° 30** Requête de M. Protopapas sollicitant la suspension des délais de procédure du 9 janvier 2025 (avec une traduction libre)
- Pièce n° 31** Décision de la Cour Suprême de Caroline du Sud du 16 janvier 2025 (avec une traduction libre)
- Pièce n° 32** Requête de M. Protopapas devant la Cour Suprême de Caroline du Sud du 3 juin 2025 (avec une traduction libre)
- Pièce n° 33** Ordonnance de la Cour Suprême de Caroline du Sud du 26 juin 2025 (avec une traduction libre)
- Pièce n° 34** Décision de la Cour Suprême de Caroline du Sud *Welch v. Advance Auto Parts, Inc.*, du 21 mai 2025 (avec une traduction libre)
- Pièce n° 35** Rapport des commissaires aux comptes d'AIA établi le 31 juillet 2025
- Pièce n° 36** Page du site internet du groupe Altrad (<https://www.altrad.com/fr/nos-valeurs.html>)

Pièces citées sous référence « Pièce n° J-X » :

- Pièce n° J-1** CA Paris, 3 septembre 2010, n° 08/12822, *eBay c/ Guerlain, Kenzo Parfums, Parfums Christian Dior, Parfums Givenchy*
- Pièce n° J-2** CA Paris, 3 septembre 2010, n° 08/12821, *eBay c/ Christian Dior Couture*



Claim No.: BL-2025-000785

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)**

**BEFORE MR JUSTICE TROWER
25 July 2025**

BL-2025-000785

BETWEEN:

- (1) ALTRAD INVESTMENT AUTHORITY SAS
(2) ALTRAD UK LIMITED
(3) CAPE UK HOLDINGS NEWCO LIMITED
(4) CAPE INDUSTRIAL SERVICES GROUP LIMITED
(5) CAPE HOLDCO LIMITED
(6) ALTRAD SERVICES LIMITED
(7) MR MOHED ALTRAD

Claimants

and

- (1) PETER D. PROTOPAPAS
(2) CAPE INTERMEDIATE HOLDINGS LIMITED
(3) CAPE PLC (a company incorporated under the laws of Jersey)

Defendants

ORDER

UPON THE CLAIM brought by the Claimants against Cape Intermediate Holdings Limited, Cape plc, and Peter D Protopapas (“**Mr Protopapas**”) by a Part 8 claim form dated 24 June 2025 with claim number BL-2025-000785 (the “**Claim**”)

AND UPON the orders of Master Pester (25 June 2025 and 2 July 2025) giving the Claimants permission to serve Mr Protopapas out of the jurisdiction at his professional address in South Carolina, USA

AND UPON the Claimants having served the Claim on Mr Protopapas out of the jurisdiction at his professional address in South Carolina, USA on 2 July 2025

AND UPON the Claimants having served the Claim on Cape Intermediate Holdings Limited, Cape plc by service on their instructed solicitors on 10 July 2025

AND UPON THE APPLICATION by the Claimants dated 14 July 2025 for an expedited listing of the final hearing of the Claim and for a direction that the final hearing of the Claim be heard and determined by a High Court Judge (the “**Expedition Application**”)

AND UPON the Claimants having given notice of the Expedition Application to the Defendants

AND UPON reading the evidence, being the Second Witness Statement of James Timothy Forbes Leader dated 14 July 2025

AND UPON hearing Counsel for the Claimants, Derrick Dale KC and Angus Groom

IT IS ORDERED THAT

1. The Expedition Application be granted as set out below.
2. The final hearing of the Claim shall be listed, on an expedited basis, to be heard in a 5-day window beginning on Monday 22 September 2025, with a time estimate of 2 days (and with a further 1 day set aside for judicial pre-reading).
3. The final hearing of the Claim shall be allocated to a High Court Judge if possible, or to a section 9 Judge if a High Court Judge is not available.
4. The parties have permission to file and serve further evidence by 4pm on Friday 12 September 2025.
5. The Claimants shall file and serve a bundle for the hearing, agreed if possible, by 4pm on Monday 15 September 2025.
6. The parties shall file and serve skeleton arguments by 12pm on Wednesday 17 September 2025.
7. The Claimants shall have permission to apply for further directions if they consider it necessary.
8. The Claimants shall serve this order on the Defendants.
9. The costs of the Expedition Application are in the Claim.

Service of this order

The Court has provided a sealed copy of this order to the solicitors for the Claimants, Enyo Law LLP, One Tudor Street, London EC4Y 0AH (reference: JTL/ALT1.1)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
BUSINESS LIST (ChD)

Claim No: BL-2025-000785

BETWEEN:

(1) ALTRAD INVESTMENT AUTHORITY SAS
 (2) ALTRAD UK LIMITED
 (3) CAPE UK HOLDINGS NEWCO LIMITED
 (4) CAPE INDUSTRIAL SERVICES GROUP LIMITED
 (5) CAPE HOLDCO LIMITED
 (6) ALTRAD SERVICES LIMITED
 (7) MR MOHED ALTRAD

Claimants

and

(1) PETER D. PROTOPAPAS
 (2) CAPE INTERMEDIATE HOLDINGS LIMITED
 (3) CAPE PLC (a company incorporated under the laws of Jersey)

Defendants

HEARING BUNDLE

For the final hearing of Part 8 Claim
 To be heard in the window beginning 22 September 2025

Tab	Document	Date	Pages
SECTION A – Claim Documents			
	Claim Form	24 June 2025	
	Details of Part 8 Claim	24 June 2025	
	Claim Draft Order	-	
SECTION B – Claim Evidence			
	First Witness Statement of Richard Michael Alcock	23 June 2025	
	First Witness Statement of Ran Oren	23 July 2025	
	[Any further evidence served on 12 September 2025]	TBC	

SECTION C – Core Documents			
	Altrad Group Structure Chart	5 July 2024	
	Receivership Order, Park v Armstrong International, Inc. et al., State of South Carolina, County of Richland, In the Court of Common Pleas for the Fifth Judicial Circuit	16 March 2023	
	Summons and Third-Party Complaint, Tibbs v. 3M Company et al., State of South Carolina, County of Richland, In the Court of Common Pleas for the Fifth Judicial Circuit	30 June 2023	
	Approved Judgment of Mr Justice Mann	22 November 2024	
	Penal Notice & Order of Mr Justice Mann	22 November 2024	
	Settlement Agreement	11 April 2025	
	Letter before Action sent by Enyo to Mr Protopapas together with attachments	2 June 2025	
	Letter before Action sent by Enyo to Signature Litigation LLP together with attachment	2 June 2025	
	Letter from Signature Litigation LLP to Enyo Law LLP together with attachments	17 June 2025	
	[any further SC documents]		
SECTION D – Service out of the jurisdiction documents			
	Service Out Application Notice	24 June 2025	
	Service Out Draft Order	-	
	First Witness Statement of James Timothy Forbes Leader	24 June 2025	
	Service Out Order	24 June 2025	
	Further Service Out Application Notice	30 June 2025	
	Further Service Out Application Draft Order	-	
	Further Service Out Order	2 July 2025	
SECTION E – Expedition application documents			
	Application Notice	14 July 2025	
	Expedition Draft Order	-	
	Second Witness Statement of James Timothy Forbes Leader	14 July 2025	

	Letter from Signature Litigation LLP	23 July 2025	
	Expedition Order	25 July 2025	
	Transcript of Expedition hearing before Trower J	25 July 2025	
SECTION F – <i>Witness Statement Exhibits</i> (Section F is contained in a separate pdf document)			
	Exhibit RMA1	23 June 2025	
	Exhibit RO1	23 July 2025	
	[any further exhibits accompanying witness statements served on 12 September 2025]	TBC	

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

BEFORE THE HON MR JUSTICE MARCUS SMITH

30 SEPTEMBER 2025

BETWEEN:

- (1) ALTRAD INVESTMENT AUTHORITY SAS
- (2) ALTRAD UK LIMITED
- (3) CAPE UK HOLDINGS NEWCO LIMITED
- (4) CAPE INDUSTRIAL SERVICES GROUP LIMITED
- (5) CAPE HOLDCO LIMITED
- (6) ALTRAD SERVICES LIMITED
- (7) MR MOHED ALTRAD

Claimants

and

- (1) PETER D. PROTOPAPAS
- (2) CAPE INTERMEDIATE HOLDINGS LIMITED
- (3) CAPE PLC (a company incorporated under the laws of Jersey)

Defendants

ORDER

PENAL NOTICE

IF YOU, PETER D. PROTOPAPAS, DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED.

ANY PERSON WHO KNOWS OF THIS ORDER AND DISOBEYS THIS ORDER OR DOES ANYTHING WHICH HELPS OR PERMITS ANY PERSON TO WHOM THIS ORDER APPLIES TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)**

Claim No.: BL-2025-000785



BEFORE THE HON MR JUSTICE MARCUS SMITH

BL-2025-000785

30 SEPTEMBER 2025

BETWEEN:

- (1) ALTRAD INVESTMENT AUTHORITY SAS**
- (2) ALTRAD UK LIMITED**
- (3) CAPE UK HOLDINGS NEWCO LIMITED**
- (4) CAPE INDUSTRIAL SERVICES GROUP LIMITED**
- (5) CAPE HOLDCO LIMITED**
- (6) ALTRAD SERVICES LIMITED**
- (7) MR MOHED ALTRAD**

Claimants

and

- (1) PETER D. PROTOPAPAS**
- (2) CAPE INTERMEDIATE HOLDINGS LIMITED**
- (3) CAPE PLC (a company incorporated under the laws of Jersey)**

Defendants

ORDER

UPON THE CLAIM brought by the Claimants against Cape Intermediate Holdings Limited (“CIHL”) and Cape plc (“Cape Jersey”, and together with CIHL, the “Cape Parties”) and Peter D Protopapas (“Mr Protopapas”) by a Part 8 claim form dated 24 June 2025

AND UPON the Court noting that, on 16 March 2023, the Court of Common Pleas for the Fifth Judicial Circuit of the State of South Carolina, County of Richland (the “South Carolina Court”) made an order appointing Mr Protopapas as a receiver over CIHL (the “Receivership Order”)

AND UPON Mr Protopapas having (purportedly in the name of CIHL) brought third party proceedings in the claim brought in the South Carolina Court by John A. Tibbs and Margaret B. Tibbs with claim number C/A No. 2023-CP-40-01759 by a summons and complaint first

issued on 30 June 2023 (the “**Third-Party Complaint**”, brought as third-party proceedings in the “**Tibbs Claim**”)

AND UPON the Cape Parties having brought a claim by a Part 8 claim form dated 6 September 2024 and with claim number BL-2024-001337 against Mr Protopapas

AND UPON the judgment and order in those proceedings of Mr Justice Mann, sitting in retirement, on 22 November 2024

AND UPON various parties, including the Claimants and the Cape Parties having entered into a settlement agreement dated 11 April 2025 (the “**Settlement Agreement**”)

AND UPON the Court noting that the Settlement Agreement contains a jurisdiction clause under which the Courts of England and Wales have exclusive jurisdiction in respect of any dispute or issue in any way arising from or relating to the Settlement Agreement

IT IS DECLARED THAT

1. The Settlement Agreement has been entered into by lawfully authorised officers of the Claimants and of the Cape Parties and is lawfully binding on the parties to it.
2. The terms and legal effect of the Settlement Agreement are such that it releases and settles any claims (whether known or unknown) that the Cape Parties have against the Claimants related to or arising (i) from the claims and allegations made in the Tibbs Claim (including in the Third-Party Complaint made within it) and (ii) from any other claims made after the date of the Settlement Agreement in any asbestos-related personal injury claims that may be asserted in the USA based in part or in whole upon the Claimants’ alleged liability for the acts and/or omissions of CIHL (all such claims together, being “**Settled Claims**”) (and for the avoidance of doubt it also releases and settles any judgments (and any claims based on or related to any judgments) obtained pursuant to the making of any such claims).
3. Pursuant to the terms of the Settlement Agreement, the Claimants have no liability to the Cape Parties for any Settled Claims and the Cape Parties have no lawful claims against any of the Claimants arising out of or in relation to any Settled Claims.

AND IT IS DECLARED THAT

4. The powers and lawful authority of the directors of CIHL are unaffected by the Receivership Order (which is not recognised and has no legal effect in England and Wales and worldwide).
5. Mr Protopapas has and had no power or lawful authority to take any steps or acts for, on behalf of, or in the name of CIHL, including (but without prejudice to the generality of the foregoing) in any Settled Claims.

AND IT IS ORDERED THAT

6. Mr Protopapas be restrained from taking any further step in the Third-Party Complaint (or in relation to any proceedings, including but not limited to any Settled Claims) against the Claimants in the name of or on behalf of CIHL.
7. Mr Protopapas shall forthwith take all and any steps to effect a final and with prejudice dismissal of the Third-Party Complaint against the Claimants with immediate effect and, in any event, Mr Protopapas is to have effected such a dismissal of the Third-Party Complaint against the Claimants within 14 days of the date of this order.

Liberty to apply

8. The parties shall have liberty to apply for further or related relief if necessary.

Costs

9. The Claimants, Mr Protopapas and the Cape Parties shall (if so advised) file and serve written submissions on the issue of costs by 4pm on Tuesday 7 October 2025.

Service

10. The Claimants shall serve this order and the judgment of the Court (the “**Order and Judgment**”) on the Defendants.
11. The Claimants may serve the Order and Judgment on Mr Protopapas by email to pdp@rplegalgroup.com or otherwise in accordance with the service orders of Master Pester dated 25 June 2025 and 2 July 2025, and service by any of these methods shall

be regarded as valid and sufficient service for all matters of English law and procedure
(but without prejudice to the position as a matter of South Carolina law and procedure).

The Court has provided a sealed copy of this order to the solicitors for the Claimants, Enyo
Law LLP, One Tudor Street, London EC4Y 0AH (reference: JTL/ALT1.1)



NEUTRAL CITATION NUMBER: [2025] 2470 (Ch)

Case No: BL-2025-000785

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: 30 September 2025

Before:
MR JUSTICE MARCUS SMITH

Between:

- (1) ALTRAD INVESTMENT AUTHORITY SAS**
- (2) ALTRAD UK LIMITED**
- (3) CAPE UK HOLDINGS NEWCO LIMITED**
- (4) CAPE INDUSTRIAL SERVICES GROUP LIMITED**
- (5) CAPE HOLDCO LIMITED**
- (6) ALTRAD SERVICES LIMITED**
- (7) MR MOHED ALTRAD**

Claimants

-and-

- (1) PETER D PROTOPAPAS**
- (2) CAPE INTERMEDIATE HOLDINGS LIMITED**
- (3) CAPE PLC**

Defendants

Heard on 23 and 24 September 2025

Mr Derrick Dale, KC and Angus Groom (instructed by Enyo Law LLP) for the Claimants
Mr William Willson (instructed by Signature Litigation LLP) for the Second and Third Defendants

The First Defendant was not represented and did not appear

Approved Judgment

MR JUSTICE MARCUS SMITH

A. Introduction

1. This Judgment disposes of a Part 8 Claim issued by the Claimants on 24 June 2025. The trial of the claim was expedited by order of Trower J on 25 July 2025, and was heard by me on 23 and 24 September 2025.
2. The matters before me are closely related to a Part 8 Claim heard by and disposed of by Mann J (sitting in retirement) in Cape Intermediate Holdings Ltd v. Protopapas [2024] EWHC 2999 (Ch) in a judgment dated 22 November 2024, which I shall refer to as the “Mann J Judgment”. The terms and abbreviations used in this Judgment, including this term just used, are set out and defined in Annex 1 to this Judgment.
3. As was the case in the Mann J Judgment, the matters before me concern the relationship between proceedings in the courts of South Carolina, USA and the courts in this jurisdiction. By these proceedings, the Claimants seek various declarations and injunctive relief. These are described and ruled upon below. But before I come to the substance of the matters before me, it is necessary to begin with a description of the relevant proceedings and events, both in South Carolina and here. Sections B to N of this Judgment, accordingly, set out and (where necessary) make findings in relation to events and proceedings taking place in the US and the UK, not merely over the last months, but over the last decades. It is only at Section O that the substance of the matters at issue can directly be addressed, so dependent are they on the prior history. The substance of the Part 8 Claim before me is addressed in Sections O to U. Section V describes how I dispose of the matters before me.

B. The Park Proceedings (proceedings commenced in South Carolina)

4. On 4 June 2021 a claim was issued by Ms Isabella Park in South Carolina against a large number of companies. Ms Park claimed to have sustained asbestos-related injuries derived from her husband, who had worked with asbestos: Mann J Judgment/[42]. I shall refer to these proceedings as the “Park Proceedings”. One of the many defendants named in the Park Proceedings was “Cape plc”.
5. On 17 November 2021, the complaint in the Park Proceedings (now being pursued by Ms Park’s son as her personal representative) was amended to add a further party, Cape Intermediate Holdings Ltd or “CIHL”: Mann J Judgment/[42].

C. The “Cape” defendants to the Park Proceedings

6. “Cape plc” is the Third Defendant in these proceedings and Cape Intermediate Holdings Ltd – CIHL – the Second Defendant. They were the only Claimants in the proceedings before Mann J. The Mann J Judgment provides a description of the corporate personalities relevant to the proceedings before him, which I gratefully adopt, and summarise in the following sub-paragraphs:

- i) The Cape group is a group of companies that was formerly involved in asbestos mining and distribution. Those activities have now ceased, and the business of the group centres on the provision of critical industrial services focused on the energy and natural resources sectors. The group employs 12,800 employees across 17 countries. In the year ended 31 August 2023, the group had recorded revenue of £848.4m and a profit of £62.6m: Mann J Judgment/[8].
- ii) CIHL was incorporated in December 1893 under the name “The Cape Asbestos Company”. The Cape group has, historically, been involved in the mining and manufacture of asbestos until the group started to curtail those activities when the associated health risks became more widely known. Originally, CIHL conducted all of the business, but (over time) parts of its business were devolved to other companies in the group: Mann J Judgment/[9].
- iii) By 1961, CIHL was essentially a holding company. In May 1974, it changed its name to “Cape Industries Ltd” and changed it again to “Cape Industries plc” when it re-registered as a public company. There was a further name change to Cape plc in July 1989. In June 2011, the company’s name was changed once more to “Cape Intermediate Holdings plc” and then – on de-registration as a public company in December 2013 – to “Cape Intermediate Holdings Ltd”: Mann J Judgment/[10]. I shall use the term CIHL to refer indifferently to this company whatever name it may have used over its long history.
- iv) Cape plc was – as I have described – a former name of CIHL, abandoned as long ago as June 2011: see [6(iii)]. There is a Cape plc within the Cape group, but this is a company incorporated in Jersey in 2011: (Mann J Judgment/[1]). Mann J referred to this company as “Cape Jersey”) in preference to the term Cape plc (Mann J Judgment/[1]) because it appears that there is no intention, in the South Carolina proceedings, to bring claims against Cape Jersey, and that the reference to Cape plc is a reference to CIHL, but by an older (and now inaccurate) name: Mann J Judgment/[1], [138].
- v) Because of the confusion surrounding the constitution of the South Carolina proceedings, it is necessary (i) to say something about Cape Jersey and (ii) to stress that it was entirely right and proper that Cape Jersey was a claimant in the proceedings before Mann J and is now a defendant before me. The uncertainties in the constitution of the South Carolina proceedings render it necessary that the protection of the English courts (to the extent that such protection is appropriate) be considered not merely in relation to CIHL but also in relation to Cape Jersey.
- vi) Cape Jersey was formed in 2011. By virtue of a scheme of arrangement in that year it became the holding company of the Cape group, and has remained so ever since. It was incorporated in Jersey, but listed on the London Stock Exchange, with a tax residence in Jersey and Singapore: Mann J Judgment/[11].

- vii) In 2017, the share capital of Cape Jersey was acquired by Altrad UK Ltd (the Second Claimant), an English company which is part of the Altrad group. That group is a very substantial group, employing over 60,000 employees worldwide. Its parent company is Altrad Investment Authority SAS (the First Claimant in these proceedings), incorporated in France. The founder and President of the Altrad group is Mr Mohed Altrad (the Seventh Claimant in these proceedings): Mann J Judgment/[11].

D. Constitution of the Park Proceedings in South Carolina

7. As I have noted (at [6(iv)]), the reference to Cape plc in the Park Proceedings appears to be an erroneous reference to CIHL. The matter is not completely clear, because the manner in which “Cape plc” is said to be liable is not clearly articulated in the Park Proceedings, and the naming of the parties in those (and other proceedings) is much less clear than it ought to be. Nevertheless, the First Defendant to these proceedings – Mr Protopapas, whose role I shall come to describe – has indicated that the reference to “Cape plc” is intended to refer to CIHL. Of course, Mr Protopapas cannot actually speak for the plaintiffs in either the Park Proceedings or any other proceedings originated against the Cape group in the US.
8. I proceed on the basis that Cape Jersey has been joined to these proceedings (as it was to the proceedings before Mann J) for the avoidance of doubt because of the uncertainties in the constitution of the South Carolina proceedings. Cape Jersey has never been served in those proceedings and (again for the avoidance of any doubt) has not submitted to South Carolina jurisdiction.
9. So far as CIHL is concerned, (i) it is contended that the Park Proceedings have been properly served on CIHL, (ii) which contention is disputed by CIHL, but (iii) in any event CIHL has never responded to the process and has never submitted to the jurisdiction: Mann J Judgment/[42].

E. Apparent conclusion of the Park Proceedings

10. Chief Justice Toal is a retired Chief Justice in the State of South Carolina, but she retains her title. Like Mr Justice Mann (Mann J Judgment/[3]), I will refer to the judge by her title as Chief Justice Toal.
11. By an order of Chief Justice Toal dated 1 December 2021, the Park Proceedings were listed for trial on 20 June 2022. However, on 3 June 2022, the court was informed by counsel that the Park Proceedings had been fully resolved. The terms of that resolution are unknown to CIHL, which was not involved. There has been no trial of the Park Proceedings in the South Carolina Courts, and it is difficult to understand how (as they clearly are: see the receivership order considered further below) the Park Proceedings are continuing in the South Carolina Courts: Mann J Judgment/[43].

F. The receivership application in the South Carolina courts

12. On 6 March 2023, the plaintiff in the Park Proceedings issued a “Receivership Motion” seeking to appoint a receiver over CIHL: Mann J Judgment/[44]. According to the terms of the South Carolina Code (set out by Mann J at Mann J Judgment/[46]), “a receiver may be appointed (i) when a corporation has been dissolved, is insolvent or in imminent danger of insolvency or has forfeited its corporate rights and, in like cases, of the property within this State of foreign corporations and/or (ii) in such other cases as are provided by law or may be in accordance with the existing practice”.
13. The jurisdictional basis for the receivership motion against CIHL was said to be the presence and operation in the US of an entity referred to as “NAAC”. On that basis, the appointment of a receiver over CIHL was justified for all purposes, including but not limited to marshalling available assets of CIHL and its subsidiaries, successors and assigns: Mann J Judgment/[45]. NAAC stands for the “North American Asbestos Corporation”, a directly and wholly owned subsidiary of CIHL established by CIHL in October 1953. NAAC was incorporated in the State of Illinois in the US to assist in the marketing of asbestos in the US, to act as a liaison between Egnep Pty Ltd (the principal asbestos mining company in the Cape Group until 1979: Mann J Judgment/[9]) and another Cape company (Casap) on the one hand and US purchasers of asbestos on the other, and to purchase and re-sell asbestos into the US market on its own account: Mann J Judgment/[12].
14. From the early 1970s, NAAC was the defendant in numerous product liability claims. It eventually ran out of insurance cover and was liquidated and then dissolved in 1978. It has never been restored: Mann J Judgment/[13].
15. Continental Productions Corporation or “CPC” took over from NAAC on its liquidation: Mann J Judgment/[32(ii)].
16. In the Mann J Judgment/[47], Mann J recorded:
 - i) That the fundamental factual basis for appointing a receiver was the assertion that CIHL was operating through NAAC and CPC in the US. The Mann J Judgment refers to the confusion in the South Carolina proceedings regarding the entities within the Cape Group that are implicated in the Receivership Motion. It seems to me clear that the Receivership Motion can only (in the first instance) be directed to CIHL and not any other Cape group entity, including in particular Cape Jersey. That is because: (i) NAAC was a subsidiary of CIHL and not of Cape Jersey; (ii) Cape Jersey was incorporated (in 2011: see [6(iv)]) after NAAC was dissolved (in 1978: see [14]). Accordingly, I shall refer to CIHL from hereon, but any orders or declarations that I make will have to reflect the confusing way in which the South Carolina proceedings have been framed.
 - ii) That the receivership was not merely sought against CIHL, but also over (i) its subsidiaries and global affiliates; and (ii) its successors and assigns, with an objective of “marshalling” the assets of CIHL: see

Mann J Judgment/[47]. Thus, although the nexus between NAAC and CIHL is the initial basis for the Receivership Motion, the Receivership Motion then builds on that relationship to stretch to many other entities in the Cape group.

17. The receivership order sought in the Park Proceedings was made on 16 March 2023, without a hearing and without any substantive judgment stating the reasons for the making of the order: Mann J Judgment/[48]. I shall refer to it as the “Receivership Order”. The order is appended to the Mann J Judgment.
18. Mr Peter Protopapas (the First Defendant in these proceedings) was appointed the receiver by way of the Receivership Order.

G. Exorbitant nature of the Receivership Order

19. As I shall come to describe, for the reasons given in the Mann J Judgment, Mann J declined to recognise the Receivership Order. This is an important holding for the purposes of this Judgment, and for that reason it will be necessary is summarise below (hopefully at not too great a length) the terms of the Mann J Judgment in this regard. Of course, the Mann J Judgment stands and should be read in its own right, but a summary is nevertheless necessary and appropriate in this Judgment. Of course, nothing in this Judgment can or is intended to detract from anything said by Mann J in the Mann J Judgment.
20. Mann J also observed that the Receivership Order – leaving on one side the question of recognition – was a remarkably wide one for any court to make:
 - i) It would appear from the terms of the Receivership Order itself and from what Mr Protopapas had said that the Receivership Order has a “long-arm” effect, that is to say it can apply extra-territorially beyond the South Carolina territorial jurisdiction. Mann J observed (Mann J Judgment/[134]):

...The powers given to the receiver are apparently very long-arm and would be capable of being exercised worldwide, including this jurisdiction. He has not disavowed any intention so to use them. They are oppressive and have already been used to the disadvantage of CIHL. CIHL could seek to challenge them in South Carolina, but is, for very good reason, not willing to do acts which would, or might, amount to a submission to the jurisdiction when it laboured long and hard 35 years ago to demonstrate that it was not subject to it...

Receivership orders generally without more do not have extraterritorial effect, as has been recognized in e.g. Re Whitaker Clark & Daniels Inc (a decision of the US Court of Appeals (Third Circuit)); Re Asbestos Corporation Ltd (a decision of the Superior Court in the Province of Quebec, Canada); and Masri v. Consolidated Contractors International (UK) Ltd (No 2) [2008] EWCA Civ 303 at [28] (Court of Appeal, England). The approach of most jurisdictions is that receiverships operate locally and where a receiver seeks to take steps in a foreign jurisdiction, (i) the receivership order must expressly so state and (ii)

the receiver will have no power to act even so unless their title to act has been recognized by the foreign jurisdiction in question: see, e.g., Robinson and Walton, Kerr & Hunter on Receivership and Administration, 21st ed (2020), chapter 7.

- ii) Mann J expressed the view that Mr Protopapas, at least, was seeking to deploy the Receivership Order “with the object of marshalling assets in some sort of less than complete insolvency proceedings”: Mann J Judgment/[135]. If this is the way the Receivership Order is intended by Mr Protopapas to operate, then it runs contrary to generally accepted rules of corporate insolvency, which would indicate (i) an English jurisdiction (for CIHL is incorporated in England and this is where it has its centre of business) and (ii) that South Carolina is an inappropriate jurisdiction (because not only is CIHL not incorporated there, it does no business there either).

H. Mr Protopapas as the First Defendant in these proceedings

21. It is convenient, at this point, to deal with this court’s jurisdiction over Mr Protopapas. Mr Protopapas is the First Defendant in these proceedings. The Part 8 Claim initiating these proceedings was issued on 24 June 2025, permission for service out of the jurisdiction on Mr Protopapas was granted by Master Pester on an expedited basis by orders dated 25 June 2025 and 2 July 2025, and service was duly effected on Mr Protopapas on 2 July 2025.
22. Mr Protopapas has not acknowledged service nor filed any evidence. Nor has he sought to contest jurisdiction in these proceedings or to aver, in these proceedings, that this court has no jurisdiction over him.
23. I therefore hold that this court has personal jurisdiction over Mr Protopapas.
24. There is one point that (had he appeared before me on the question of jurisdiction) Mr Protopapas might have deployed, which is the provision at the end of the Receivership Order which provides:

The Court further orders that, as the Receiver Court, that the Receiver or Cape may not be sued outside this Court without obtaining the Receiver’s consent or an order of this Court prior to doing so.

25. Properly, the Claimants in these proceedings drew this provision to my attention. Clearly, Mr Protopapas has not consented to these proceedings being brought against himself (or, for that matter, CIHL). The provision in the Receivership Order reflects the doctrine articulated in Barton v. Barbour, 104 US 126 (1881)), on which Mr Protopapas would doubtless rely. The Claimants contended, and I agree, that this “Barton” provision in the Receivership Order does not assist Mr Protopapas for reasons given by Mann J (Mann J Judgment/[124]):

One of the points that he [Mr Protopapas, in the South Carolina proceedings] takes is that the “Barton doctrine” requires that the permission of the court be obtained before suing a receiver in respect of his acts, and that therefore no

action can be taken against him without the permission of the South Carolina court. Judge Wilkins [a US-law expert retained by the Claimants before Mann J] has given his opinion on the extent of the application of this doctrine, and his report is uncertain on the extent of its application. However, assuming it does apply in South Carolina, I consider that it does not stand in the way of the present proceedings because the present proceedings are governed by English law, and the whole premise of the proceedings is that the receiver has no recognition under English law. Accordingly it does not recognize the office which would otherwise give him protection. It is therefore not a bar to the relief claimed against him in these proceedings.

26. As I shall come to describe, Mann J held that the Receivership Order was not capable of recognition in this jurisdiction. That being the case, this non-recognition is a complete answer to the “Barton” provision. Accordingly, the “Barton” provision cannot affect my holding at [23] as to this court’s personal jurisdiction over Mr Protopapas.

I. The Tibbs Proceedings

27. On 5 April 2023, a Mr and Mrs Tibbs commenced proceedings in the South Carolina courts (the “Tibbs Proceedings”). The claims advanced are similar to those made in the Park Proceedings and a similarly broad, scattergun, approach has been taken to the naming of defendants. One of these defendants is “Cape plc”: Mann J Judgment/[51]. Precisely the same confusion as to defendant identity arises here. For the reasons I have given, it is appropriate to refer to CIHL as the primary Cape group target, and not Cape Jersey.
28. The Tibbs Proceedings have, apparently, been dismissed by consent: Mann J Judgment/[52]-[53]. Like the Park Proceedings, it is thus difficult to understand how the Tibbs Proceedings can continue. Yet (as I shall describe) that is what appears to be happening.

J. Third party claims

29. Relying upon the Receivership Order made in the Park Proceedings, Mr Protopapas, on 30 June 2023, initiated (by way of a “summons”) third party proceedings on behalf of CIHL within the Tibbs Proceedings (the “Third Party Claim”). The Third Party Claim is advanced (to quote from the Mann J Judgment/[54]) “...against a number of companies, including a number of Cape group companies...The Cape related companies included Altrad companies (the group that had acquired the Cape group in 2017), and the Sparrows entities that were brought within the group much more recently (despite its being hard to see how they can be held responsible for acts done before they were brought into the group). Mr Mohed Altrad, founder of the Altrad group, is also sued personally...”.
30. A number of points need to be made in relation to the Third Party Claim:
- i) Subsequent to the Mann J Judgment, Mr Protopapas produced a draft amended Third Party Claim, to which I propose to refer. A motion to amend the Third Party Claim is due to be heard by Chief Justice Toal

at a pre-trial hearing due to take place on 6 October 2025: see the Notice of Pretrial Hearing in the Tibbs Proceedings.

- ii) It is the Third Party Claim that provides the basis for my statements (in [11] and [28]) that both the Park Proceedings and the Tibbs Proceedings are (in some way) on-going, contrary to the plaintiffs in those proceedings not actually pursuing their claims. The Park Proceedings are on-going because Mr Protopapas is, in the Tibbs Proceedings, deploying the Receivership Order made in the Park Proceedings. To the eyes of an English lawyer this would appear to be irregular, but this is a matter of South Carolina procedural law on which I cannot and do not comment further.
- iii) Self-evidently, by virtue of the Third Party Claim, the Tibbs Proceedings are progressing, but again in what would appear to be an irregular way. Whilst this is again a procedural matter for the South Carolina courts, it is a matter that is of some relevance to the matters before me in these proceedings, and it is therefore necessary to say more.
- iv) Receivers are agents of the company in respect of which they are appointed, and they have a basic duty “to act in its proper interests” (Mann J Judgment/[120]). In this case, Mr Protopapas appears to be doing the very reverse of this. As I have described, the plaintiffs in the Tibbs Proceedings do not have a judgment in their favour against CIHL, and do not appear to be pursuing their claims against CIHL. The Tibbs Proceedings have been dismissed by consent (Mann J Judgment/[52]). The trial before Chief Toal is not the trial of the plaintiff’s allegations in the Tibbs Proceedings, but the trial of the Third Party Claim. It is – self-evidently – extremely odd for a third party claim to be tried in advance of the main action. This is very much “putting the cart before the horse”.
- v) What is more, the “defence” pleaded by Mr Protopapas on behalf of CIHL in the Tibbs Proceedings contains a denial in these terms (Mann J Judgment/[53]):

To the extent that it is not inconsistent with the allegations of the Third Party Complaint, Cape hereby denies each and every allegation contained in the Amended Complaint.

Since the Third Party Claim effectively accepts that CIHL is liable to the plaintiffs in the Tibbs Proceedings and seeks to reflect those allegations or pass them on to the defendants to the Third Party Claim the “defence” of CIHL is no defence at all, but in fact a disguised set of admissions made contrary to the interests of CIHL in circumstances where the plaintiffs to the action are not pursuing their claims. It is to be inferred that Mr Protopapas is seeking to hide the fact that he is acting in disregard of his duties as receiver, for the allegations made in the Third Party Claim are extreme and extremely damaging to CIHL (as well as to the Claimants in these proceedings). Thus, by way of

example, the opening paragraph of the unamended Third Party Claim states:

This lawsuit seeks to finally hold accountable three groups of Third Party Defendants (including their predecessors in interest) who are responsible for the sale and use of asbestos or asbestos containing products throughout the United States, including South Carolina, and which caused or materially contributed to thousands of deaths from mesothelioma or other asbestos-related disease, and billions of dollars of past, present, and calculable future damages. For decades, certain of these Third Party Defendants created sham transactions to feign exits of the asbestos industry in the United States, leaving shells and an absence of insurance coverage to account for their massive liability exposure. And also for decades, they hid behind (or within) byzantine collectives of limited liability and other holding companies internationally, avoiding responsibility while continuing to reap the profits from the sales of asbestos and asbestos-containing products throughout the United States including South Carolina. In sum, these three groups of Third Party Defendants have wreaked havoc in the United States, padding their already massive coffers with blood money on top of blood money, and amused themselves with the supposed ingenuity of their scheme to avoid any responsibility. This lawsuit is their reckoning.

Perhaps belatedly recognizing that this immoderation is inconsistent with a receiver's duties, Mr Protopapas now seeks to delete this passage from the Third Party Claim and to substitute for it language that is less (but nevertheless still) immoderate.

- vi) Mann J's conclusions as to Mr Protopapas' conduct is one in which I respectfully concur (Mann J Judgment/[120]):

This is a case where the law of England and Wales, where CIHL is incorporated, plainly will not recognise the receivership. It is also quite apparent that the receiver will not himself recognise that fact, and that he is pursuing his receivership vigorously and beyond what one would normally expect of a receiver. He has purported to make admissions, and to run a positive case, which is positively damaging to the legitimate interests of the company over whose assets he has been appointed, despite the fact that one of his obligations is to act in its proper interests. Instead, he has been utilising his appointment as a vehicle which some of the Third Party Defendants have aptly described as a "crusade". All this is without the consent of the legitimately appointed board of CIHL and, for the reasons given above, is potentially and unjustifiably damaging to the legitimate interests of the company...

K. **“Single economic unit”: the factual basis for the Receivership Order and the Third Party Claim**

31. The various parties in what can loosely be called the Cape group were described at [6] (including in particular the status and position of CIHL) and [13]-[16] (dealing with NAAC and CPC). An understanding of the legal and factual relationship between CIHL and NAAC (and, to a limited extent, CPC) is critical to understanding the basis for both the Receivership Order and the Third Party Claim. The basis for making of the Receivership Order was briefly described in [16(i)]. It is now necessary to expand on this, and to explain how the same point drives the Third Party Claim.
32. Both the Receivership Order and the Third Party Claim are founded upon a theory that NAAC is part of a “single economic unit” that includes not only CIHL but later acquirers of the Cape group like Altrad UK Ltd (the Second Claimant), Altrad Investment Authority SAS (the First Claimant) and Mr Altrad (the Seventh Claimant).
33. These parties, and their acquisition of the share capital in Cape Jersey in 2017, were described in [6(vii)]. It is now appropriate, before coming to the single economic unit point, to describe the nature of the acquisition of Cape Jersey in greater detail. This is best done by quoting from the evidence of Mr Alcock in “Alcock 1”/[63]-[69]:

[63] In 2017, Altrad UK acquired Cape Jersey through a public tender offer, which resulted in Cape Jersey becoming a wholly owned subsidiary of Altrad UK.

[64] In late 2016 the Altrad Group entered discussions with the board of directors of Cape Jersey about a potential acquisition of the Cape Group.

[65] The acquisition process, including due diligence, began in early 2017, ending in mid-2017 when a public tender offer (“PTO”) was made – reflecting the fact that Cape Jersey was a publicly listed company on the London Stock Exchange. The terms of the PTO are set out in a Bid Conduct Agreement dated 7 July 2017. In this regard, the PTO stated that:

[65.1] The cash offer for each share in Cape plc was 265 pence, which valued the entire issued share capital at £332.3 million.

[65.2] The cash consideration would be financed by acquisition debt provided by BNP Paribas SA.

[66] As part of the Bid Conduct Agreement, the Altrad Group confirmed an intention to procure that each member of the Cape Group honours its obligations under, or in connection with, the Cape Scheme.

[67] The offer was conditional upon, among other matters, obtaining the required number of votes cast in favour of the acquisition. Subsequently, over 90% of the votes were cast in favour of the acquisition and Altrad UK was able to proceed to purchase 100% of the issued share capital of Cape Jersey

(the 90% trigger entitled Altrad to complete a “squeeze out” of the minority who either did not consent or did not respond).

[68] As a result of this transaction, Altrad UK purchased Cape Jersey (and so the Cape Group as a whole) in an arm’s length transaction and at an arm’s length price.

[69] In operational terms, the companies within the Cape Group have their own boards of directors and corporate governance.

34. I was shown a great deal more evidence than this summary, including in particular the rest of Alcock 1 and also “Oren 1” and “Alcock 2”, as well as voluminous exhibits to these statements. On the basis of this evidence – which is helpfully encapsulated in the paragraphs quoted at [33] – I make the following findings of fact:
- i) The Altrad group has itself had no involvement in the sale or distribution of asbestos or asbestos-related products in any part of the world, including in particular in the US. That is implicit in Alcock 1, but is explicitly stated in Oren 1/[54].
 - ii) The acquisition of the shares in Cape Jersey by Altrad UK Ltd was on an arms’ length basis, where a commercial or market price for those shares was agreed between a willing buyer and willing sellers (or at least 90% willing sellers, based on Alcock 1/[67] as quoted above).
 - iii) The value paid by Altrad UK Ltd reflected or took into account the Cape group’s exposure to asbestos claims. Every arms’ length corporate acquisition involves an assessment (as part of the due diligence process) of the liabilities (actual and potential) of the to-be-acquired company. Altrad UK Ltd’s acquisition of the shares in Cape Jersey expressly involved an evaluation of the Cape group’s exposure to asbestos claims, which had been the subject of significant (and binding on me) judicial consideration in England. It will be necessary in due course to refer to and describe (i) the decision of Scott J and the Court of Appeal in Adams v. Cape Industries [1990] Ch 433 (“Adams v. Cape”), (ii) the “Cape Scheme” referred to in Alcock 1/[68] and (iii) the sanctioning of the Cape Scheme by David Richards J in an order dated 9 June 2006 (the “David Richards J Order”). For the present I confine myself to finding that the acquisition of the shares in Cape Jersey and the price that was paid for those shares was informed by each of Adams v. Cape, the Cape Scheme and the David Richards J Order. Doubtless there were many other factors informing the decisions of Altrad UK Ltd, but these three factors were all (both individually and in the aggregate) material to the decisions of Altrad UK Ltd and the wider Altrad group.
35. The basis for the making of the Receivership Order against CIHL was its corporate relationship with NAAC. Thus, the Receivership Motion states (at 4-5):

After the onset of asbestos-related product liability litigation in the 1970s, Cape became especially concerned with its own liability. Thus, Cape Asbestos went through tortured machinations to make it *appear* it was reducing oversight over NAAC, but in reality, NAAC continued to operate as a mere division or instrumentality under Cape's domination and control.

In addition, Cape began to engage in a campaign of litigation avoidance by refusing to accept process or appear in any proceedings in the United States, including failing to respond to the Second Amended Summons in this action, as properly served pursuant to Article 10 of the Hague Convention on March 8, 2022. According to Cape executives, this strategy was warranted because they "really cannot be said to have a moral responsibility [to respond to the suits] and are simply victims of [a] US product liability cult."

36. The basis for the allegations against the various "Cape" defendants in the Third Party Claim is similarly NAAC. Referring to the proposed draft amendments to the Third Party Claim (which represent the latest expression of Mr Protopapas' thinking, albeit unapproved by the court as yet):

Today, the assets of Cape are effectively with others. This case seeks declarations to establish that the historical entities intertwined with Cape – Anglo American plc, ESAB, Altrad, and certain De Beers entities – are together responsible for the historical and ongoing fraud perpetrated on the US market. Such a finding will allow the Receiver to administer the full assets of Cape, including all insurance coverage for these amalgamated entities. This litigation, squarely within the Receiver's charge, ultimately will marshal assets for the payment of legitimate claims brought by US workers against Cape. This Receivership, and particularly this third party action, represents the last opportunity for these entities to be held to account for their fraud on the US market. [at 8-9]

...

23. Specifically, on information and belief, each of the third party defendants is subject to this Court's jurisdiction because each entity is part of an amalgamation with, part of a single business enterprise with, or an alter ego of North American Asbestos Company ("NAAC"), over which this court has personal jurisdiction. NAAC purposefully availed itself of the South Carolina market through direct sales of asbestos fiber into South Carolina...

37. The basis for the alleged liability of the Claimants in these proceedings who are defendants to the Third Party Claim is the same as the basis on which the Receivership Order was made: namely the operation of NAAC in the US. This conclusion accords with the similar conclusion of Mann J: Mann J Judgment/[55]. Although Mr Protopapas uses a variety of labels to tie CIHL and the Claimants in these proceedings to NAAC ("amalgamation with", "single business enterprise", "alter ego") I shall use the label "single economic unit" compendiously to describe the various ways in which the operations of

NAAC in the US are used as a device to ensnare in US litigation CIHL and the Claimants in these proceedings.

L. Declarations and orders made by Mann J in the proceedings before him

38. The trial of the Part 8 Claim before Mann J sought declaratory and injunctive relief as to Mr Protopapas' status as receiver as a matter of English law. As Mann J noted (Mann J Judgment/[6]), "...it is not part of my function to sit as some sort of appellate court from the South Carolina judge, and overrule her decisions...". Mann J's duty was to consider the position under English law and (as appropriate) ensure that the claimants before him (CIHL and Cape Jersey) received due process and justice according to the laws of this jurisdiction.
39. By an order dated 22 November 2024 (the "Mann J Order"), Mann J made the following declarations and orders:

IT IS DECLARED THAT

1. The receivership order of the Court of Common Pleas for the Fifth Judicial Circuit of the State of South Carolina, County of Richmond ("the South Carolina Court") dated 16 March 2023 appointing Mr Peter Protopapas ("Mr Protopapas") as a receiver over CIHL ("the Receivership Order") is not recognised and has no legal effect in England and Wales and worldwide.
2. Mr Protopapas has and had no power or authority to act on behalf of CIHL in England and Wales or worldwide and has no power to or authority in respect of CIHL in England and Wales or worldwide to carry out the acts referred to in paragraphs 6-10 below.
3. The rights and duties of the directors of CIHL remain unaffected by the appointment of Mr Protopapas as receiver of CIHL pursuant to the Receivership Order.
4. Mr Protopapas has and had no power or authority on behalf of CIHL to act for or to bind CIHL in the South Carolina Court in respect of Park Claim and the Tibbs Claim...and has or had no power or authority on behalf of CIHL to issue or pursue third party claims including in the Tibbs claim against any of the third party defendants in those proceedings ("the 3P Complaint"), including (i) Mohed Altrad, (ii) Altrad Investment Authority SAS, (iii) Altrad UK Ltd, (iv) Cape UK Holdings Newco Ltd, (v) Cape Industrial Services Group Ltd, (vi) Cape Holdco Ltd, (vii) Altrad Services Ltd.
5. Mr Protopapas has and had no power or authority to accept service on behalf of CIHL in the claim brought in the South Carolina Court by a summons dated 11 November 2024 with claim number C/A No 2024-CP-40-06639 or any other legal proceedings issued against CIHL in the South Carolina Court or worldwide

AND IT IS ORDERED THAT

6. Mr Protopapas be restrained in England and Wales and worldwide from acting or purporting to act as agent or otherwise on behalf of CIHL pursuant to the Receivership Order.
 7. Mr Protopapas be restrained in England and Wales and worldwide from appropriating, interfering with or usurping (in any way whatsoever) the lawful exercise of the rights and duties of the directors of CIHL.
 8. Mr Protopapas be restrained from acting or purporting to act on behalf of CIHL in the Park Claim and the Tibbs Claim...
 9. Mr Protopapas be restrained from continuing to prosecute the 3P Complaint...
 10. Mr Protopapas be restrained from purporting to act of CIHL in the claim brought in the South Carolina Court by a summons dated 11 November 2024 and with claim number C/A No 2024-CP-40-06639 or in any other legal proceedings issued against CIHL in the South Carolina Court or worldwide.
40. The reasons for the Mann J Order are fully set out in the Mann J Judgment. That Judgment stands for itself and it would be inappropriate for me to repeat Mann J's reasoning in any detail. However, a summary is both appropriate and necessary for the purposes of this Judgment:
- i) The basis for making the Receivership Order against CIHL was the operation of NAAC (and possibly CPC) in the US in circumstances where CIHL was operating through NAAC and CPC.
 - ii) This precise question was brought before the English courts and resolved by them in Adams v. Cape when a Mr Adams sought to enforce a default judgment in his favour obtained in the Federal Courts of Texas based on injuries said to have been caused by asbestos. One of the defendants against whom Mr Adams sought to enforce was CIHL: Mann J Judgment/[18].
 - iii) A court of a foreign country (here: the Texas courts) has jurisdiction to give a judgment in personam capable of enforcement or recognition as against the person against whom it was given where (in the only case relevant here: Mann J Judgment/[19]) the person against whom the judgment was given was, at the time the proceedings were instituted, present in the foreign country. For a natural person, this requires physical presence in the territory, and for a legal person it requires a fixed place of business in the territory: Mann J Judgment/[18].
 - iv) After a trial on the merits, Scott J held in Adams v. Cape that CIHL did not have a fixed place of business in the US, whether by itself or through the operations of NAAC or CPC: Mann J Judgment/[32]. As a consequence, there was no basis upon which Mr Adams could enforce

his judgment in default against CIHL. It is to be stressed that these findings were findings of fact made by an English court of competent jurisdiction after an extensive trial on the merits. None of these factual findings was successfully challenged by Mr Adams in the Court of Appeal: Mann J Judgment/[33].

- v) Mann J identified a fundamental inconsistency between the (unreasoned) Receivership Order and the (evidence and merits-based) decision in Adams v. Cape (Mann J Judgment/[90]):

...At the heart of the receiver's case in his Third Party proceedings, and underpinning his appointment, is the proposition that NAAC and CPC were essentially to be treated as being one with CIHL for the purposes of founding liability and getting into the rest of the group. That encapsulation is flat contrary to the findings of the courts in Adams v. Cape when they found that they were not effectively one entity, there was no justification for piercing the corporate veil and that CIHL did not operate through NAAC or CPC. CIHL did not control NAAC in any meaningful sense, and the participation of CPC was not a ruse or a sham. The receiver (and the applicant for the receivership, who may well have been motivated and prompted by the receiver) simply ignores this and advances the opposite case.

- vi) All matters concerning the constitution of a corporation are governed by the law of the place of incorporation: Mann J Judgment/[93]. That in the case of CIHL is England. But the question before Mann J was not whether an English court could appoint a receiver over CIHL, but whether and to what extent a foreign receiver, such as Mr Protopapas, will be recognised in this jurisdiction: Mann J Judgment/[93]. In order to recognise a foreign receivership, the English court must be satisfied of a sufficient connection between the company and the jurisdiction in which the foreign receiver was appointed so as to justify recognition of the foreign court's order, on English conflict principles, as having effect outside such jurisdiction: Mann J Judgment/[94], citing Schemmer v. Property Resources Ltd [1975] 1 Ch 273.

- vii) Mann J held (Mann J Judgment/[98]):

Applying the "sufficient connection" principle, it is quite clear that the South Carolina receivership would not, should not and could not be recognised here for all the reasons which led to the US judgment in Adams v. Cape not being enforceable here. All the facts which led to the conclusion that CIHL did not have a presence in the US in that case mean that there is no sufficient connection for the purposes of recognition of the receivership. As a matter of private international law, CIHL did not have a presence in South Carolina (or anywhere in the United States) at the time which was relevant in Adams v. Cape and it has not had one since. Nothing in the facts alleged in any of the court documents relating to the receivership demonstrate a change in the facts between then and now. They tend to ignore the facts as found at great length in Adams v. Cape.

41. Mann J concluded (Mann J Judgment/[100]:

...in the present case, the receiver is not currently seeking recognition of his receivership in this jurisdiction, so this decision is not in the nature of an actual refusal of recognition. Rather, mine is a decision at a higher level to the effect that the receivership is not capable of recognition in this jurisdiction with the consequence that the receiver's acts should not be recognised for English law purposes. This goes to the question of the relief that should be afforded to the claimant, which I deal with in a later section of this judgment. As will appear, the fact that the receiver is not seeking recognition in this jurisdiction does not mean that this judgment is pointless.

42. Mann J then explained why the orders I have set out at [39] were appropriate in this case. I do not need to set out his reasoning in this regard, which appears at Mann J Judgment/[113] ff.

43. Drawing the threads together:

- i) Recognition of a foreign receivership such as that made in the Receivership Order requires a “sufficient connection” between the company over whom a receiver has been appointed and the jurisdiction in which the appointment is made.
- ii) In this case for the reasons articulated by Mann J in Mann Judgment/[101] ff (on what may loosely be called “judicial estoppel”) the facts found in Adams v. Cape were binding on CIHL and Mr Protopapas (as *soi-disant* receiver) – see Mann Judgment/[110].
- iii) Applying the law (i.e. the “sufficient connection” test) to the facts (i.e. the absence of a connection between NAAC and CIHL found in Adams v. Cape) Mann J was compelled to conclude that there was no sufficient connection to justify the recognition of the Receivership Order.

M. The Cape Scheme and the David Richards J Order

44. The judgment in Adams v. Cape – after a hearing on the merits, and affirmed on appeal before the Court of Appeal – is that the Cape group had so structured its corporate affairs as to ring-fence the rest of the group from the conduct, in selling asbestos in the US, of its US subsidiaries. The effect was that only NAAC and CPC were liable as defendants in the US. NAAC has long since closed its doors (see [14]) – and I anticipate the same is true of CPC.
45. It is worth noting that various plaintiffs in the US successfully recovered from NAAC in regard to asbestos-related claims. The payments made by NAAC to such plaintiffs are described by Scott J in Adams v. Cape at [1990] Ch 433 at 446-449. To the extent that Mr Protopapas insinuates that US plaintiffs have been deprived of all compensation, that is wrong. NAAC has paid significant monies (including to the exhaustion of its insurance cover) to such plaintiffs.

The problem for such US plaintiffs is that NAAC has run out of money and was dissolved long ago (see [14]).

46. Mr Protopapas chooses to characterise this shortfall in the assets of NAAC as a form of “moral fraud”, but in reality it is no such thing. The question of whether a parent is liable for the acts of its subsidiary is a question of fact and law, and one with which the US courts are very familiar. On 3 December 1984, over 500,000 people in the vicinity of the Union Carbide India Ltd pesticide plant in Bhopal, India were exposed to the toxic gas methyl isocyanate. The accident caused around 16,000 deaths and over half a million injuries. The Indian company responsible for the accident was majority-owned by a US corporation, the Union Carbide Corporation. Although civil cases seeking compensation were filed in the US, they were dismissed by the US courts on the basis that the Indian company was a separate entity and that there was no “single economic unit” to enable US proceedings against US parents.
47. It was precisely this question that was before the English courts in Adams v. Cape. As I have described, Mr Adams was seeking to enforce a judgment in default obtained in his favour against NAAC in Texas against CIHL in England. The Court of Appeal held that NAAC (and indeed CPC) were not a “single economic unit” and that Mr Adams’ enforcement action must therefore fail. In dismissing Mr Adams’ appeal, the Court of Appeal said this in Adams v. Cape ([1990] Ch 433 at 544:

Mr Morison [leading counsel for Mr Adams] submitted that the court will lift the corporate veil where a defendant by the device of a corporate structure attempts to evade (i) limitations imposed on his conduct by law; (ii) such rights of relief against him as third parties already possess; and (iii) such rights of relief as third parties may in the future acquire. Assuming that the first and second of these three conditions will suffice in law to justify such a course, neither of them apply in the present case. It is not suggested that the arrangements involved any actual or potential illegality or were intended to deprive anyone of their existing rights. Whether or not such a course deserves moral approval, there was nothing illegal as such in Cape arranging its affairs (whether by the use of subsidiaries or otherwise) so as to attract the minimum publicity to its involvement in the sale of Cape asbestos in the United States of America. As to condition (iii), we do not accept as a matter of law that the court is entitled to lift the corporate veil as against a defendant company which is the member of a corporate group merely because the corporate structure has been used so as to ensure that the legal liability (if any) in respect of particular future activities of the group (and correspondingly the risk of enforcement of that liability) will fall on another member of the group rather than the defendant company. Whether or not this is desirable, the right to use a corporate structure in this manner is inherent in our corporate law. Mr Morison urged on us that the purpose of the operation was in substance that Cape would have the practical benefit of the group’s asbestos trade in the United States of America without the risks of tortious liability. This may be so. However, in our judgment, Cape was in law entitled to organise the group’s affairs in that manner and (save in the case of AMC to which special considerations apply)

tom expect that the court would apply the principle of Saloman v. A Saloman & Co Ltd [1897] AC 22 in the ordinary way.

The plaintiffs submitted (paragraph 7 of their notice of appeal) that the motive of the defendants in setting up the arrangements regarding NAAC, AMC and CPC as revealed in the documentary evidence were “consistent only with an acceptance by Cape that they were present in the United States through NAAC and CPC”. We think there is no substance in this point. These arrangements at most indicated an apprehension on the part of the defendants that they might be held to be so present and a desire that they should not be. They involved no admission or acceptance of such presence.

48. It is worth stressing (as Mann J did – Mann J Judgment/[39]) that the Court of Appeal reached this conclusion after a careful consideration of the facts that had been before the trial judge (Scott J):

The Adams v. Cape notice of appeal listed 25 findings of fact (some of them multiple) which it was said Scott J should have made but did not make, and which were said to go to the main questions in the case. The Court of Appeal dealt with that part of the appellant’s case in a separate Appendix to its judgment, again not published in the report. The Appendix runs to 40 pages and I will not reproduce it here. It can appropriately be summarised by saying it is a thorough consideration of each of the “facts” in question, and it either accepts them as being true but not affecting the decisions on the main points or rejects them as being inconsistent with actual findings of Scott J as being unsustainable on the evidence. Overall it shows the comprehensiveness of the case advanced by Mr Adams, the comprehensiveness of its consideration and the clarity and firmness of the rejection of that case. When put together with the first instance and appeal judgments, it effectively covers the same ground as the claims as to the effect of relationships and trade made in South Carolina and firmly rejects them on the facts and the attempt to tie the claims to the US in terms of jurisdiction.

49. The unequivocal position (i) under English law (ii) on the facts of this case (iii) as found on the merits by a competent court of record in this jurisdiction and affirmed on appeal is that US plaintiffs are confined in their remedies to claims against NAAC as opposed to the wider Cape group.
50. The Cape Scheme described by Mann J in Mann J Judgment/[14]-[17] is predicated on the correctness and bindingness of the Court of Appeal’s decision in Adams v. Cape. As a direct result of the decision in Adams v. Cape the Cape Scheme is limited to the compensation of UK claims against UK entities like CIHL.
51. The “Scheme of Arrangement” by which the Cape Scheme was implemented is very clear on this point. There is no need to set out the Scheme in detail. It is sufficient to refer to the definition, in the Scheme of Arrangement, of “Asbestos Personal Injury Claim”, which means:

...any claim (not being an Asbestos Contribution Claim or an Excluded Claim) against one or more of the Scheme Companies, whenever brought, of

which the governing law is the law of any of England and Wales, Scotland or Northern Ireland brought either:

- (a) by an individual resident in the United Kingdom on the Record Date; or
- (b) by an individual not resident in the United Kingdom on the Record Date but whose claim is attributable or is alleged to be attributable to his exposure to Asbestos in the United Kingdom in the course of his employment by any Scheme Company or any Additional Company,

in either case for debt, damages or other relief in respect of death or personal injury or in respect of a Financial Dependency Claim arising out of or connected in any way with exposure to Asbestos attributable, or alleged to be attributable, wholly or in part to any act or omission on the part of any Scheme Company (or for which any Scheme Company is liable or is alleged to be liable) occurring prior to the Record Date...

- 52. To be clear, neither NAAC nor CPC is a "Scheme Company" within the meaning of the Scheme of Arrangement. The Scheme of Arrangement articulating the Cape Scheme was approved by the David Richards J Order.
- 53. The Scheme of Arrangement is still running (Mann J Judgment/[14]). Indeed, it remains subject to the supervision of this Court, and (as I have described) the Altrad group committed to supporting the Cape Scheme when the group acquired Cape Jersey.

N. The Settlement Agreement

- 54. Proceedings and procedural steps based upon the Receivership Order continue in the US. The adverse effects of these steps as described by Mann J (Mann J Judgment/[113] ff) thus continue, notwithstanding the Mann J Order (which has been disregarded by Mr Protopapas).
- 55. On 11 April 2025, a "Settlement Agreement" was concluded between (i) the targets of the litigation in the US, as evinced by the Park Proceedings and the Tibbs Proceedings), namely CIHL and (for the avoidance of doubt) Cape Jersey and (ii) various the defendants to the Third Party Claim brought by Mr Protopapas. The parties to the Settlement Agreement are (without differentiation) referred to by me as the "Parties".
- 56. Following a series of detailed recitals (which I do not set out) the Settlement Agreement provides for the compromise and release of any and all disputes subsisting between the Parties and to dismiss all proceedings in respect of the "Allegations". The Allegations are broadly defined as meaning:

...both (i) the claims asserted in the Tibbs claim (including in the Third-Party Complaint made within it), and (ii) any claims made in the future in any asbestos-related personal injury claims that may be asserted in the USA based in part or in whole upon alleged liability for the acts of CIHL, and in either case including but not limited to the claim that each of the Parties is, or is a successor in interest to an entity that was, the alter ego of or part of a single

business enterprise with CIHL and any claim on the right to pierce the corporate veil of CIHL.

57. The Settlement Agreement is governed by English law and there is an exclusive jurisdiction clause in favour of England.

O. The claims in the present proceedings

58. By this Part 8 Claim, the Claimants and the Second and Third Defendants seek the following declarations and orders. I quote from the draft order that was prepared by these parties, as presented to me before the commencement of oral submissions as a convenient way to set out what orders are sought. Whether I am prepared to make these orders is, of course, an altogether different matter. The operative parts of the draft order read as follows:

IT IS DECLARED THAT

1. The Settlement Agreement has been entered into by lawfully authorised officers of the Claimants and of the Cape Parties and is lawfully binding on the parties to it.
2. The terms and legal effect of the Settlement Agreement are such that it releases and settles any claims (whether known or unknown) that the Cape Parties have against the Claimants related to or arising (i) from the claims and allegations made in the Tibbs Claim (including in the Third-Party Complaint made within it) and (ii) from any other claims made after the date of the Settlement Agreement in any asbestos-related personal injury claims that may be asserted in the USA based in part or in whole upon the Claimants' alleged liability for the acts and/or omissions of CIHL (all such claims together being "Settled Claims") (and for the avoidance of doubt it also releases and settles any judgments (and any claims based on or related to any judgments) obtained pursuant to the making of any such claims).
3. Pursuant to the terms of the Settlement Agreement, the Claimants have no liability to the Cape Parties for any Settled Claims and the Cape Parties have no lawful claims against any of the Claimants arising out of or in relation to any Settled Claims.

AND IT IS DECLARED THAT

4. The powers and lawful authority of the directors of CIHL are unaffected by the Receivership Order (which is not recognised and has no legal effect in England and Wales and worldwide).
5. Mr Protopapas has and had no power or lawful authority to take any steps or acts for, on behalf of, or in the name of CIHL, including (but without prejudice to the generality of the foregoing) in any Settled Claims.

AND IT IS ORDERED THAT

6. CIHL shall not take any step in the proceedings in the Third-Party Complaint (or in relation to any Settled Claims).
 7. Mr Protopapas be restrained from taking any further step in the Third-Party Complaint (or in relation to any proceedings, including but not limited to any Settled Claims) in the name of or on behalf of CIHL.
 8. Mr Protopapas shall forthwith take all and any steps to effect a final and with prejudice dismissal of the Third-Party Complaint against the Claimants with immediate effect and, in any event, Mr Protopapas is to have effected such a dismissal of the Third-Party Complaint against the Claimants within 14 days of the date of this order.
59. The orders and declarations sought in this draft can be grouped under the following heads:
- i) Declarations as to the effect of the Settlement Agreement: see paragraphs 1 to 3 of the draft order.
 - ii) Declarations as to the status or powers vesting in (respectively) CIHL and Mr Protopapas so far as their power to act for CIHL is concerned: see paragraphs 4 and 5 of the draft order.
 - iii) Orders obliging a party (either CIHL or Mr Protopapas) to do or not do something: see paragraphs 6 to 8 of the draft order.
60. I shall consider these groups of orders and declarations in the order set out above, beginning with the declarations as to the effect of the Settlement Agreement.

P. The power in this court to make declarations

61. This court has a discretionary jurisdiction to grant declaratory relief under section 19 of the Senior Courts Act 1981 and rule 40.20 of the English Civil Procedure Rules or “CPR”. In Rolls Royce plc v. Unite the Union [2009] EWCA Civ 387 at [120], the Court of Appeal summarised the approach to be taken in regard to the granting of declarations as follows:
- i) The power of the court to grant declaratory relief is discretionary.
 - ii) There must, in general, be a real and present dispute between the parties before the court as to the existence or extent of a legal right between them. However, the claimant does not need to have a present cause of action against the defendant.
 - iii) Each party must, in general, be affected by the court’s determination of the issues concerning the legal right in question.
 - iv) The fact that the claimant is not a party to the relevant contract in respect of which a declaration is sought is not fatal to an application for a declaration, provided that it is directly affected by the issue.

- v) The court will be prepared to give declaratory relief in respect of a “friendly action” or where there is an “academic question” if all parties so wish, even on “private law” issues. This may particularly be so if it is a “test case”, or it may affect a significant number of other cases, and it is in the public interest to decide the issue concerned.
- vi) However, the court must be satisfied that all sides of the argument will be fully and properly put. It must, therefore, ensure that all those affected are either before it or will have their arguments put before the court.
- vii) In all cases, assuming that the other tests are satisfied, the court must ask: is this the most effective way of resolving the issues raised? In answering that question it must consider the other options of resolving this issue.

I shall refer to these points as Rolls Royce Principles (i) to (vii).

Q. Is this a case where it is appropriate for this court to consider making declarations?

(i) The effect of the declarations (if granted)

- 62. Generally speaking, a court will consider whether the declarations sought are correct in law before turning to consider whether the court should exercise its discretion to make those declarations. In this case, because the declarations are so intrusive into the processes of a foreign court, it is appropriate to consider the question of whether the court should exercise its discretion to make declarations at all first.
- 63. The first declaration sought (paragraph 1 of the draft order: the Settlement Agreement has been lawfully entered into) can be regarded as merely an articulation of a specific consequence of the Mann J Judgment and the Mann J Order. That is not the case so far as the second declaration sought (paragraph 2 of the draft order: the claims on which the Third Party Claim rests have been compromised/released/settled) nor of the third declaration sought (paragraph 3 of the draft order: the Claimants are under no liability in respect of the Third Party Claim) are concerned. Quite clearly, the declarations have the effect of extinguishing the very subject-matter of the dispute that will be considered by Chief Justice Toal at the trial of Third Party Claim. Given that the declarations have such an effect on proceedings in another jurisdiction, they must be closely considered and be justifiable as a matter of international law, and having due regard to questions of comity.
- 64. Although there are considerations that point in different directions, I have reached the firm conclusion that (assuming the points of law articulated by the Claimants are correct) it is appropriate for me to make the declarations sought. I set out the various factors that have informed this conclusion in the paragraphs below.

(ii) The absence of Mr Protopapas

65. The fact that Mr Protopapas failed to appear before me is a relevant factor against the granting of declarations, but one of limited weight. As I have described (see Section H), Mr Protopapas is properly before the court (i.e. this court has personal jurisdiction over him). Mr Protopapas has not sought to challenge this court's jurisdiction.
66. Of course, I have not had the benefit of argument from Mr Protopapas, but I have a very good sense of the points that Mr Protopapas would make if he were before me from my consideration of the papers in the South Carolina proceedings, in particular (but not limited to) the Receivership Motion, the Receivership Order and the Third Party Claim. The Claimants and the Second and Third Defendants have been assiduous in putting before me the sort of points that Mr Protopapas might be inclined to take. I am satisfied (see Rolls Royce Principle (vi)) that all sides of the argument have been fully and properly put in the written and oral submissions that I have received.

(iii) A "friendly action"

67. Mr Protopapas' absence does mean that the hearing before me had aspects of a "friendly action" (Rolls Royce Principle (v)). The Claimants and the Second and Third Defendants were united in urging that I make the declarations sought. As Rolls Royce makes clear, there is no reason why a declaration may not be given in a "friendly action". What matters are the reasons why the declarations are sought. I will be coming to such considerations in due course. I consider the fact that these proceedings might be classed as a "friendly action" to be entirely neutral as to whether the declarations should or should not be made.

(iv) Comity

68. The strongest indicator against declaratory relief is the fact that the declarations (as I have described) are materially interfering with the processes of a foreign court. The reaction in the US to the Mann J Order has been strong. In Welch v. Advance Auto Parts, the Supreme Court of South Carolina said (of the Mann J Order):

...The English court went so far as to issue an injunction against the Receiver, purporting to bar him from action even in South Carolina.

The English court reasoned that English law may restrain a foreign court to prevent "injustice". It quoted a decree that gave as an example a foreign court whose standard for personal jurisdiction was so wide as to be against accepted international law principles. The English court then proceeded to note that the powers given to the Receiver stretched worldwide. It reasoned that the English company could not risk fighting its case in South Carolina because it would then be submitting to the jurisdiction here.

Shocking to American eyes, the English court enjoined the Receiver “from acting or purporting to act for or on behalf of” the English company in default, even in a South Carolina court.

We appreciate that the laws of different countries may differ, even countries that have a special relationship with each other. Our respect and spirit of commit – not to mention our duty to follow the law – does not permit us to enjoin a court of another sovereign nation from interfering with our rulings on the propriety of a Receivership. As it would with any court, such a ruling by us would be in the words of Lord Scarman, a *brutum fulmen* (an empty noise).

69. English courts do not interfere lightly with the jurisdiction of foreign courts. Although the law in this area has mainly been stated in the context of anti-suit injunctions, the points made in these cases have as much force in the case of a declaration that interferes with the processes of a foreign court. Thus, in a statement that has been approved many times in the English courts, Hoffmann J said this in Re Maxwell Communications Corp plc (No 2) [1992] BCC 757 at 762:

In the last 20 years, however, there has been a shift in the attitude of the English court to foreign jurisdictions...Today the normal assumption is that an English court has no superiority over a foreign court in deciding what justice between the parties requires and in particular that both comity and common sense suggest that the foreign judge is usually the best person to decide whether in his own court he should accept or decline jurisdiction, stay proceedings or allow them to continue. The principle, as Lord Scarman said in Laker...is that:

“[The] equitable right not to be sued abroad arises only if the inequity is such that the English court must intervene to prevent injustice.” (emphasis added)

In other words, there must be a good reason why the decision to stop the foreign proceedings should be made here rather than there. Although the injustice which can justify an anti-suit injunction must inevitably be judged according to English notions of justice, it will usually be assumed that a similar quality of justice is available in the foreign court. So the fact that the proceedings would, if brought in England, be struck out as vexatious or oppressive in the domestic sense, will not ordinarily in itself justify the grant of an injunction to restrain their prosecution in a foreign court. The defendant will be left to avail himself of the foreign procedure for dealing with vexation or oppression: Midland Bank plc v. Laker Airlines Ltd [1986] 1 QB 689 per Lawton LJ at 700.

It is the exceptional cases in which justice requires the English court to intervene which cannot be categorised or restricted. But a theme common to certain recent decisions is that the foreign court is, judged by its own jurisprudence, likely to assert a jurisdiction so wide either as to persons or to subject-matter that to English notions it appears contrary to accepted principles of international law. In such cases the English court has sometimes felt it necessary to intervene by injunction to protect a party from the injustice of having to litigate in a jurisdiction with which he had little, if any,

connection, or in relation to subject-matter which had insufficient contact with that jurisdiction, or both. Since the foreign court is per hypothesi likely to accept jurisdiction, this is a decision which has to be made here if it is to be made at all. These are cases in which the judicial or legislative policies of England and the foreign court are so at variance the comity is overridden by the need to protect British national interests or prevent what it regards as a violation of the principles of customary international law.

70. Applying these considerations by analogy to the discretion that I have in regard to declarations, it is incumbent upon me to set out why I must, in this case, set aside the important question of comity and (assuming they are well founded) make the declarations sought.
- (v) Reasons why the South Carolina proceedings must be interfered with: interests of the Claimants and the Second and Third Defendants
71. The shock expressed by the Supreme Court of South Carolina in Welch v. Advance Auto Parts at the infringement of comity apparently committed by the Mann J Order would (in my judgment) abate on a proper understanding of the facts and matters lying behind the Mann J Order. These facts and matters, in my judgment, entirely justify the Mann J Order. They also – together with other facts and matters relevant to these proceedings – justify the jurisdiction to make declarations that I am minded to exercise, provided of course the declarations sought are otherwise sound in law.
72. The Receivership Order is (for the reasons stated in [19]-[20]) exorbitant in nature. It has a “long-arm” effect that is highly unusual in receivership orders. Indeed, the Receivership Order appears to be more like a half-baked form of insolvency process, operating in clear disregard of internationally accepted standards of corporate insolvency. The reference in the draft amended Third Party Claim (see [36]) to administering and marshalling the full assets of Cape is particularly troubling.
73. Mr Protopapas has asserted a connection between NAAC and CIHL so as to justify the making of the Receivership Order in terms which are both bombastic and immoderate and very far from the objective parsing of the facts that a court is entitled to expect. The Receivership Motion (see [35]) makes sweeping and subjective allegations in regard to this connection.
74. It is a matter of serious concern that Mr Protopapas has failed to draw to the attention of Chief Justice Toal (or, if he has, Chief Justice Toal has failed to consider the point) the significance of the decision of the English Court of Appeal in Adams v. Cape. It appears to be common ground between the English and the South Carolina jurisdictions that some form of connection must exist between the company over which a receiver is appointed and the jurisdiction ordering the receivership. That being the case, a decision on the merits of a court of competent jurisdiction deciding this very issue of “connection” ought to have been placed before Chief Justice Toal by Mr Protopapas. The decision of the Court of Appeal in Adams v. Cape could then have received the careful and respectful consideration by the South Carolina court at the outset. That would have afforded the opportunity at the relevant

time (i.e. when the Receivership Order was made) to have considered the comity issues involved in this case.

75. In these circumstances, one can see exactly why CIHL and Cape Jersey took the view that the court in South Carolina was purporting to exercise a jurisdiction so wide as to be an affront to notions of comity between courts of cognate jurisdiction. For the reasons outlined in the Mann J Judgment, and summarised in this Judgment, the Mann J Order was entirely justified and (if I may respectfully say so) the only order that Mann J could have made in these circumstances.
76. Moreover, there are a number of procedural concerns in regard to the conduct of the South Carolina receivership (in addition to the failure properly to consider the question of “connection”) so as to justify CIHL and Cape Jersey in applying to the English courts for protection. They are clearly described in the Mann J Judgment and I have summarised them in this Judgment. Specifically:
- i) Mr Protopapas appears to be acting in breach of the basic duties of a receiver: see [30(iv)]. Indeed, Mr Protopapas is expressing himself with an immoderation that is regrettable, to say the least: see the content of the Third Party Complaint set out at [30(vi)].
 - ii) Mr Protopapas is litigating the Third Party Claim without having established whether any liability exists against CIHL. Neither the claim in the Park Proceedings nor the claim in the Tibbs Proceedings has resulted in any judgment on the merits as against CIHL: see [11] and [28].
 - iii) Mr Protopapas is not properly defending proceedings brought against CIHL. I have referred to the disingenuous “defence” of CIHL in the Tibbs Proceedings at [30(v)]. This is no defence, but rather a conduit by which the immoderate assertions made in the Third Party Claim can operate as disguised admissions by CIHL vis-à-vis the plaintiffs in the Tibbs Proceedings: see [30(vi)].
 - iv) It is not understood how the Receivership Order made in the Park Proceedings can be deployed in the Tibbs Proceedings: see [30(ii)].
77. The Mann J Order has not been respected in South Carolina: instead, it has been characterised as a *brutum fulmen*, an empty noise: see [68]. Thus, it is no surprise that Mr Protopapas is pressing on with the Third Party Claim and that the courts in South Carolina are indulging him in this regard. This is quite plainly the sort of exceptional case considered in Re Maxwell Communications Corp plc (No 2) (see [69]) where the English court must intervene.
78. The progression of the Third Party Claim is doing real harm to the Claimants. They are faced with a claim – the Third Party Claim – which overtly threatens their financial standing, makes reputationally damaging (and unfounded) allegations, and threatens the Cape Scheme by which a class of victims of

asbestosis related disease are being compensated. This is a case where there is a real and present dispute which the proposed declarations will assist to resolve (Rolls Royce Principle (ii)), where all of the parties before the court will be affected by the court's determination (Rolls Royce Principle (iii)) and where all are party to the relevant contract (viz, the Settlement Agreement, Rolls Royce Principle (iv)).

79. I consider the declarations sought to be an extremely effective way of controlling the conduct of Mr Protopapas: for the declarations, if made, will have the effect of extinguishing the very claims Mr Protopapas seeks to advance by way of the Third Party Claim. I bear in mind that – as yet – the Claimants have received no protection from the English court. I consider that if the declarations can properly be made, they should for this reason alone be made. Although the Second and Third Defendants have the benefit of the Mann J Order, I consider that the declarations, if made, will confer substantial and necessary additional protection on these parties.
80. For these reasons, I conclude that if they can appropriately be made, I should exercise my discretion to give the declarations sought, notwithstanding the interference with the South Carolina proceedings that those declarations would give rise to.
81. So far, I have been considering the important need to protect the position of the Claimants and of the Second and Third Defendants. There is, however, an even weightier consideration in favour of exercising the discretion to make the declarations (if they can appropriately be made), to which I now turn.

(vi) Protecting the integrity of the English jurisdiction

82. One of the justifications for the grant of an anti-suit injunction is that such an injunction can serve to protect the jurisdiction of the English court. That justification applies with equal force to the declarations sought in the present case. This rationale in support of anti-suit injunctions is well-established in English law: see, for example, Raphael, The Anti-Suit Injunction, 2nd edition at [5.32]-[5.34].
83. The liability issues raised by the Third Party Claim constitute a collateral attack on the decision of the Court of Appeal in Adams v. Cape. As I have described, the question of “single economic unit” that lies at the heart of the Third Party Claim, whereby it is alleged that the Claimants and CIHL can be dragged into US proceedings by virtue of their connection with NAAC, is a matter that has already been decided by the English Court of Appeal in Adams v. Cape. The Third Party Claim thus constitutes the clearest possible collateral attack on a prior decision of a court of competent jurisdiction and thus constitutes a clear abuse of court process: see e.g. the decisions in Hunter v. Chief Constable of the West Midlands Police [1982] AC 529; Arthur JS Hall & Co v. Simons [2002] 1 AC 615; Secretary of State for Trade and Industry v. Birstow [2003] EWCA Civ 321; Laing v. Taylor Walton (a firm) [2007] EWCA Civ 1147; Allsop v. Banner Jones Limited [2021] EWCA Civ 7. Although these cases concerned collateral attacks by the bringing of later English cases by a party, the anti-suit jurisdiction shows that the same

principle operates where the collateral attack arises out the bringing of foreign proceedings.

84. The Court of Appeal not only articulated the law in regard to “single economic unit” but (much more importantly for present purposes) decided on the facts that NAAC and CIHL were not part of the same “single economic unit”. That point remains true of CIHL, and is a fortiori so far as subsequent joiners of the group (such as the Altrad parties) are concerned. The effect of the factual decision in Adams v. Cape is that liability for US claims for asbestos related disease begins and ends with NAAC. The re-litigation of this factual point in South Carolina is an attack on the English jurisdiction which the declarations sought will, if granted, protect.

(vii) Conclusion

85. I conclude that (i) if they are soundly based and (ii) subject to reviewing the drafting, the declarations sought by the Claimants should be granted. I now turn to the logically anterior question of whether the declarations sought are soundly based in law. Obviously, I can only make the declarations if I find them to be properly and soundly based.

R. Are the declarations properly and soundly based?

(i) General points as to validity

86. A settlement agreement is a contract, and so the ordinary principles of contract law apply. Consideration must exist. The agreement must be complete and certain. The parties to the contract must intend to create legal relations. Having considered the Settlement Agreement, it clear (as a matter of English law) that consideration exists in the mutual releases and other promises (going in all directions between the parties) made. The Settlement Agreement is formally drafted, clear on its face, and expressed to be entire. It is thus complete, and certain and intended to create legal relations.
87. I have dealt with these points quickly because (i) they are obvious (far greater detail on the law appears in the written submissions of the Claimants, which I accept) and (ii) because although Mr Protopapas has asserted that “no consideration” was given for this “farcical and self-dealing agreement”, the assertion is unparticularised and unevidenced. The mutuality of the releases in the Settlement Agreement clearly (as a matter of English law) constitutes consideration. I reject the suggestion that the Settlement Agreement is ineffective for any of the (unparticularised) reasons advanced by Mr Protopapas.

(ii) Points taken by Mr Protopapas

88. It is more important to focus on the points that Mr Protopapas would take had he chosen to appear before me. There are three such points:
- i) First, and most obviously, Mr Protopapas would contend that the Settlement Agreement was concluded without authority because the

Receivership Order deprived CIHL of any power or authority to enter into the Settlement Agreement. It is very possible that he would assert that, in concluding the Settlement Agreement, the board of CIHL was usurping his functions.

- ii) Secondly and thirdly, Mr Protopapas has asserted in the South Carolina proceedings that the Settlement Agreement is both a “sham” and a “fraudulent device”. In their written submissions, the Second and Third Defendants summarise Mr Protopapas’ position in the following terms (D2/D3 Written Submissions/[89]):

In his recent court filings, Mr Protopapas has “doubled-down” on his previous position and has made a series of further allegations about the Cape Parties which are simply inaccurate...By way of example:

- (1) First, he maintains that the commencement of the CIHL Declaratory Claim (and the proceedings/judgment arising out of it [which resulted in the Mann J Judgment] are a further example of “moral fraud” (which justify the continuance of the Receivership Order). This is misconceived (and seriously misunderstands/misstates the clear legal principles and purpose upon which the Mann Judgment is based).
- (2) Second, he alleges that CIHL is a “shell” company which acts as a mere conduit (or “pass through entity”) to channel dividends/profits to its ultimate parent, AIA SAS (which is registered/located in France) – such that it is insolvent/at imminent risk of insolvency (such that it should be the subject of an insolvent receivership). Again, this is completely misplaced. The risk to the Cape Parties’ financial position – and any potential cause of their insolvency -is Mr Protopapas (and his unprincipled/unreasonable conduct, and any other claims which his conduct has encouraged).

He asserts, based on these sorts of points, but without any particularity, that the Settlement Agreement is both a “device” and a “sham”. I will consider these three points in turn below.

(iii) Authority to conclude the Settlement Agreement

89. I do not understand Mr Protopapas to be contending that absent the Receivership Order the Settlement Agreement was concluded without proper authority. However, the Parties in the evidence before me demonstrated that the Settlement Agreement – apart from the question of the Receivership Order, to which I will come – was duly and properly concluded by persons with the authority to do so: see the Claimants’ written submissions/[145]-[151]; the written submissions of the Second and Third Defendants/[82]-[87], as well as the references to the evidence set out in these paragraphs, which I accept.
90. The significance of the Receivership Order on those otherwise authorised to enter into the Settlement Agreement is shortly dealt with. The Mann J

Judgment and the Mann J Order make clear, in a manner binding on me, that the Receivership Order is not capable of recognition in this jurisdiction. As is plain from the detailed consideration I have given to the Mann J Judgment and the Mann J Order in this Judgment, I should say (to the extent that it matters) that I am completely satisfied that the Mann J Order was correctly made.

(iv) Sham

91. In Snook v. London and West Riding Investments Ltd [1967] 2 QB 786 at 802, Diplock LJ defined a “sham” as “acts done or documents executed by the parties to the “sham” which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create”.
92. I do not consider it to be seriously arguable that the Settlement Agreement is a “sham” in this sense. I am in no doubt that the Parties’ intentions are exactly in line with the effect of the Settlement Agreement, namely to extinguish the causes of action on which the Third Party Claim relies. I am sure that the Parties’ intentions are exactly in line with what the Settlement Agreement in fact and in law achieves.
93. If, as I rather suspect, Mr Protopapas is using the term “sham” to make the point that the Settlement Agreement is done without authority because of the Receivership Order, the “sham” point makes more sense. But, for the reasons I have given, the point is a bad one. The Receivership Order is entirely ineffective before this court, applying (as it must) the relevant law, which is English law as the law determining CIHL’s corporate functions and operation.

(v) Device

94. Mr Protopapas is obviously using this term pejoratively, to suggest that the Settlement Agreement is a part of the “moral fraud” whereby persons entitled to compensation from the Cape group are having that compensation illegitimately taken away. This is no more than another example of the collateral attack being made on Adams v. Cape. The fact is that the Cape group is properly compensating those entitled by way of the Cape Scheme. It is Mr Protopapas who is – through his conduct in the US – causing prejudice to CIHL, the Cape group, the Altrad group and anyone seeking to claim under the Cape Scheme.
95. I reject any suggestion that the Settlement Agreement is an illegitimate device. It is in fact an attempt by the Parties to mitigate the consequences of Mr Protopapas’ conduct in the US.

(vi) Other points

96. It is difficult to prove a negative. The Claimants assert (see their written Submissions/[152] ff) that there is no other basis for seeking to impeach the Settlement Agreement. I have considered the matter, and for what it is worth,

can identify no arguable basis for contending that the Settlement Agreement is of no effect.

97. I hold that the Settlement Agreement has the effect of extinguishing the claims articulated on behalf of CIHL in the Third Party Claim.

S. Conclusion in relation to declaratory relief

98. I conclude that declarations along the lines of those set out at paragraphs 1 to 3 of the draft order (see [58]) can and should be made.

T. Declarations at paragraphs 4 and 5 of the draft order

99. I can deal with these two declarations (set out at [58]) very quickly in light of the foregoing analysis:

- i) For the reasons that I have given, it is appropriate to exercise this court's power to make declarations, even though they have (and are intended to have) extraterritorial effect and interfere (and are intended to interfere) with the processes of a court in another jurisdiction. The courts of this jurisdiction – like the US courts – place an extremely high value on comity between courts of different jurisdictions. However, those considerations are comprehensively outweighed by the need to ensure that (i) the interests of this jurisdiction, (ii) the interests of the Parties, the Claimants, the First and Second Defendants and those of the wider Cape and Altrad groups and (iii) the interests of existing and future claimants under the Cape Scheme are protected.
- ii) The declarations at paragraphs 4 and 5 of the draft order really do no more than articulate the consequences of the Mann J Judgment and the Mann J Order. The proceedings before Mann J involved only CIHL and Cape Jersey, and only they have the benefits of the Mann J Order. It is appropriate, given their interests, that the benefits of the Mann J Order extend to the Claimants, and I can see no harm in these declarations being repeated in the case of CIHL and Cape Jersey.

100. Accordingly, I am prepared to make declarations along the lines of these framed at paragraphs 4 and 5 of the draft order.

U. The injunctions at paragraph 6, 7 and 8 of the draft order

101. I would be prepared to make the order at paragraph 6 of the draft order, save for the prudential considerations that I raised with the Parties during the course of the hearing, and which they accepted. Paragraph 6 seeks to enjoin CIHL, preventing it from taking any step in the proceedings in the Third Party Claim.
102. To be clear, I consider that I have the jurisdiction to make an order of this sort, but it seems to me that the draft order at paragraph 6 should not be made, for pragmatic reasons. Mr Protopapas has shown a disregard of comity between nations, failing even to draw the implications of the anterior Cape litigation (specifically Adams v. Cape, the Cape Scheme and the David Richard J Order)

to the proper attention of the South Carolina courts. I have every expectation that Mr Protopapas will continue in this conduct, and there is every risk that he will cause CIHL to take steps in the proceedings in South Carolina. Were that to occur, there would be a potential for arguing that CIHL was in breach of the very order that I am being invited to make by the Claimants. The capacity for mischief is considerable. Whilst I have every sympathy for the parties before me, this is an order I am not prepared to make, but for this reason only.

103. Paragraphs 7 and 8 seek to enjoin Mr Protopapas from taking steps in the South Carolina proceedings. The effect of these orders is (at least indirectly) to inform the courts in South Carolina as to what is now required of Mr Protopapas. Mr Protopapas is, after all, the beneficiary of the Receivership Order, and there is obviously an expectation in the South Carolina courts that he act pursuant to that receivership. This is, therefore, a highly unusual form of anti-suit injunction because it is maintained not against an ordinary litigant but against a receiver appointed by a foreign court. Nevertheless, it is my conclusion that these orders should be made:

- i) Mr Protopapas is properly before this court – although he has chosen not to exercise his right to be heard. Notwithstanding his choice in this regard, this court has personal jurisdiction over him.
- ii) I do not need to rehearse the reasons why an anti-suit injunction is appropriate in this case, because those reasons are exactly the same as the remedy of the declarations at paragraphs 1-3 of the draft order. I refer to my earlier consideration.
- iii) Whereas the declarations regarding the Settlement Agreement extinguish the subject-matter of the Third Party Claim, the injunctions at paragraphs 7 and 8 merely personally restrain Mr Protopapas from continuing with a claim that actually has no substance, because it has been extinguished by the Settlement Agreement.

That is why these orders are less aggressive than the orders I have already stated I am prepared to make. I have considered whether – pragmatically – it is pointful to make these orders in support of the other orders I am prepared to make. It seems to me that these orders do appropriately reinforce each other, and so I conclude that these orders too ought to be made along the lines of those articulated in the draft order at [58].

- iv) Mr Protopapas is properly before this court – although he has not chosen to exercise his right to be heard. Notwithstanding his choice in this regard, this court has personal jurisdiction over him.
- v) I do not need to rehearse the reasons why an anti-suit injunction is appropriate in this case, because those reasons are exactly the same as the somewhat more aggressive remedy of the declarations at paragraphs 1-3 of the draft order. I refer to my earlier consideration.
- vi) Whereas the declarations regarding the Settlement Agreement extinguish the subject-matter of the Third Party Claim, the injunctions

at paragraphs 7 and 8 merely personally restrain Mr Protopapas from continuing with a claim that actually has no substance, because it has been extinguished by the Settlement Agreement.

- vii) That is why these orders are less aggressive than the orders I have already stated I am prepared to make. I have considered whether – pragmatically – it is pointful to make these orders in support of the other orders I am prepared to make. It seems to me that these orders do appropriately reinforce each other, and so I conclude that these orders too ought to be made along the lines of those articulated in the draft order at [58].

V. Disposition

104. For the reasons, I have given, I am going to make an order along the lines of the draft order, except for paragraph 6 of the draft.

Annex 1

TERMS AND ABBREVIATIONS USED IN THE JUDGMENT

([2] of the Judgment)

Adams v. Cape	The decision of Scott J and the English Court of Appeal in <u>Adams v. Cape Industries</u> [1990] Ch 433	[34(iii)]
Alcock 1	Evidence of Mr Alcock in these proceedings.	[33]
Alcock 2	Evidence of Mr Alcock in these proceedings.	[34]
Allegations	A term of art defined in the Settlement Agreement.	[57]
Cape Jersey	Another – and better – reference to Cape plc.	[6(iv)]
Cape plc	A claimant in the proceedings before Mann J and the Second Defendant in the proceedings before me. For reasons given in [6(iv)], Cape plc is better referred to as Cape Jersey.	[6]
Cape Scheme	A compensation scheme based upon the findings and holdings made in <u>Adams v. Cape</u> .	[34(iii)]
CIHL	The England-incorporated company, whose full title is Cape Intermediate Holdings Ltd. CIHL was a claimant in the proceedings before Mann J and the Second Defendant in the proceedings before me.	[5]
CPC	A company whose full title is Continental Productions Corporation.	[15]
CPR	The English Civil Procedure Rules.	[61]

David Richards J Order	An order of David Richards J approving the scheme of arrangement whereby the Cape Scheme is implemented.	[34(iii)]
Mann J Judgment	Judgment of Mann J (sitting in retirement) dated 22 November 2024 in <u>Cape Intermediate Holdings Ltd v. Protopapas</u> [2024] EWHC 2999 (Ch).	[2]
Mann J Order	Mann J's order dated 22 November 2024, made consequential on the Mann J Judgment.	[39]
NAAC	An Illinois-incorporated company and former subsidiary of CIHL, whose full title is North American Asbestos Corporation.	[13]
Oren 1	Evidence of Mr Oren in these proceedings.	[34]
Park Proceedings	Proceedings commenced in the courts of South Carolina by Ms Isabella Park.	[4]
Parties	The parties to the Settlement Agreement.	[55]
Receivership Motion	A motion made by the plaintiffs in the Park Proceedings seeking the appointment of a receiver over "Cape plc".	[12]
Receivership Order	The order made by Chief Justice Toal consequential upon the Receivership Motion.	[17]
Rolls Royce Principles	Principles as to the granting of declarations stated in the decision of <u>Rolls Royce plc v. Unite the Union</u> [2009] EWCA Civ 387.	[61]
Scheme of Arrangement	The scheme of arrangement implementing the Cape Scheme	[51]
Settlement Agreement	An agreement between the Claimants and the Second and Third Defendants in these proceedings causing the causes of action relied upon in the Third Party Claim to be extinguished.	[55]
Third Party Claim	A claim initiated by summons by Mr Protopapas in the Tibbs Proceedings, relying upon the Receivership Order made in the Park Proceedings.	[29]
Tibbs Proceedings	Proceedings commenced by Mr and Mrs Tibbs in the South Carolina courts.	[27]



Case No: BL-2025-000785

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

Before: Mr Justice Marcus Smith
Dated: 30 September 2025

BL-2025-000785

Between:

- (1) ALTRAD INVESTMENT AUTHORITY SAS
(2) ALTRAD UK LIMITED
(3) CAPE UK HOLDINGS NEWCO LIMITED
(4) CAPE INDUSTRIAL SERVICES GROUP
LIMITED
(5) CAPE HOLDCO LIMITED
(6) ALTRAD SERVICES LIMITED
(7) MR MOHED ALTRAD

Claimants

-and-

- (1) PETER D PROTOPAPAS
(2) CAPE INTERMEDIATE HOLDINGS
LIMITED
(3) CAPE PLC

Defendants

Reasoned Order

UPON the Court's Judgment dated 30 September 2025

AND UPON the order of the Court consequential upon Judgment

AND UPON the parties' written submissions (the First Defendant having made no submissions)

AND UPON the Court considering it appropriate to determine the question of costs on the papers

AND UPON considering the papers

IT IS ORDERED THAT

1. The First Defendant do pay the Claimants' costs on the standard basis, summarily assessed in the amount of £350,000.
2. The First Defendant do pay the Second and Third Defendants' costs on the standard basis, summarily assessed in the amount of £150,000.

3. The First Defendant do pay these costs by no later than 4:00pm on 28 November 2025.
4. This order be served in the manner directed by the Court's order dated 30 September 2025.

Reasons

- (1) The Claimants are entitled to their costs, having been successful in the Part 8 Claim. The Second and Third Defendants, although defendants, were only nominally so, and supported the Claimants' position in order to protect their own. It was appropriate that they appear, and there jurisdiction make a "Sanderson order". In this case, that jurisdiction should be exercised.
- (2) Both the Claimants and the Second and Third Defendants sought to have their costs summarily assessed on the indemnity basis. Although it is appropriate that the costs be assessed summarily, and I propose to do so, I decline to make an order that the costs be assessed on the indemnity basis. This is an international jurisdictional dispute of some complexity and sensitivity. No court in this jurisdiction would have made the order sought without hearing careful argument. The non-participation of the First Defendant and his failure to co-operate or comply with the prior order of Mann J (in retirement) do not, as it seems to me, weigh particularly heavily in favour of indemnity costs. Furthermore, if one views the actions of the First Defendant through an international lens, it seems to me that standard costs is the better basis for assessment.
- (3) I assess the costs at £350,000 (Claimants) and £150,000 (Second and Third Defendants). This represents a significant, but not excessive discount to the costs incurred, and reflects my views as to proportionality. I was considerably assisted by the parties in their helpful submissions (both written and oral), but the First Defendant ought to be obliged only to pay proportionate costs.



numéro de répertoire
2025/
date de la prononciation
11 septembre 2025
numéro de rôle
25/1724/B

☐ ne pas présenter à l'inspecteur

ORU – OP

N°

expédition

délivrée à	délivrée à	délivrée à
le € BUR	le € BUR	le € BUR

Tribunal de première instance francophone de Bruxelles, Section Civile

Ordonnance (exequatur)

9^{ème} chambre
affaires civiles

présenté le
ne pas enregistrer



Mises en danger

Le pouvoir judiciaire est un des trois piliers de l'Etat.
Aujourd'hui, il s'effondre en raison d'un sous-financement chronique,
structurel et répété.
Ces atteintes entravent le bon fonctionnement de la justice et menacent
l'attractivité des fonctions judiciaires.
Les magistrats et le personnel judiciaire ne peuvent plus rester silencieux...

a25c – recours : tierce opposition req. unilat.

Exequatur

Ordonnance définitive. Annexe : une requête

EN CAUSE DE :

1. la société Cape PLC, dont le siège est sis Old street, 5-6, Osprey House, 1^{er} étage, à Saint-Héliér, JE2 3RG (Jersey) ;

2. la société Altrad Investment Authority SAS, dont le siège est sis avenue de la Gardie, 16 à 34510 Florensac (France) ;

3. Monsieur Mohamed ALTRAD, domicilié rue Le Pérugin, 150 à 34000 Montpellier (France),

ayant élu domicile au cabinet de leur conseil, M^e Joanna Kolbert, avocat, dont le cabinet est établi rue de la Régence, 52 à 1000 Bruxelles
(joanna.kolber@strelia.com),

Vu la requête ci-annexée, reçue au greffe le 8 juillet 2025 ;

Attendu que les requérants invitent le tribunal à déclarer qu'un jugement américain n'est pas reconnu en Belgique et qu'un jugement anglais doit, lui, être reconnu ;

Qu'aux termes de l'article 22, § 2, *in fine*, du code de droit international privé, il est possible de s'adresser préventivement au pouvoir judiciaire pour empêcher qu'un jugement rendu à l'étranger soit reconnu en Belgique ; qu'il y va en l'espèce, suivant la requête, du jugement prononcé par la *Court of common pleas* du comté de Richmond le 16 mars 2024, mais qu'il faut préciser que les pièces du dossier révèlent que cette décision a en réalité été prononcée le 16 mars 2023 (qu'on se reporte à la copie en anglais ou à sa traduction) ;

Que, pour le surplus, les pièces requises ont été fournies et qu'il n'y a aucune raison de s'opposer à la demande ; que, toutefois, la question des droits de mise au rôle doit être abordée ;

Attendu, en effet, qu'aux termes de l'article 269/2, § 1^{er}, alinéa 2, 1^o, du code des droits d'enregistrement, d'hypothèque et de greffe, ce droit doit être mis à charge du défendeur qui succombe ; qu'en l'espèce, l'objet de la démarche n'est pas, comme c'est généralement le cas en matière d'exequatur, de mettre à exécution en Belgique un jugement obtenu à l'étranger, ce qui permet d'identifier un potentiel défendeur, mais, de manière générale, de faire obstacle à la reconnaissance d'un jugement et de permettre d'en invoquer un autre ;

Qu'ainsi, la présente ordonnance est susceptible d'être opposée *erga omnes*, en sorte qu'il n'y a pas de défendeur nommément désigné ; que, dès lors, le droit de mise au rôle sera laissé aux demandeurs ;

PAR CES MOTIFS

Et vu la loi du 15 juin 1935 concernant l'emploi des langues en matière judiciaire,

le Tribunal,

Reçoit la requête et la dit fondée ;

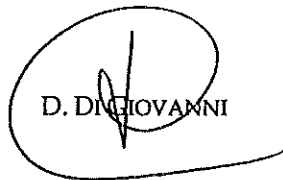
Dit pour droit que :

- 1) le jugement rendu le 16 mars 2023 par la *Court of common pleas* du comté de Richmond (Caroline du Sud, Etats-Unis d'Amérique), dans la cause numéro 2021-CP-40-02727, n'est pas reconnu en Belgique ;
- 2) le jugement de la *High Court of Justice* d'Angleterre et du Pays de Galles, rendu le 22 novembre 2024 dans la cause numéro BL-2024-001337, est reconnu en Belgique ;

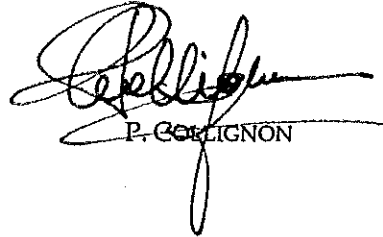
Condamne les requérants aux dépens, liquidés à 165 € (rôle) pour l'Etat belge, et non liquidés pour le surplus à défaut de relevé.

Fait en la chambre du conseil de la 9^{ème} chambre du tribunal civil, le 11 septembre 2025, où étaient présents et siégeaient :

- M. P. COLLIGNON, vice-président ;
- M^{me} D. DI GIOVANNI, greffier délégué.



D. DI GIOVANNI



P. COLLIGNON

08 JUL. 2025

N° 25/1724/03

REQUETE EN NON-RECONNAISSANCE D'UN JUGEMENT ETRANGER

Art. 22, §2 CDIP – Art. 1025 à 1034 CJ

POUR : CAPE PLC, société de droit jersiais, dont le siège est établi à
Osprey House, 1^{er} étage, 5-6 Old Street, St. Helier, JE2 3RG, Jersey

Ci-après « Cape Jersey »

CAPE INTERMEDIATE HOLDINGS LTD, société de droit anglais
dont le siège est établi au 6-7 Lyncastle Way Barleycastle Lane,
Appleton, Warrington, W – A4 4 ST, Royaume-Uni

Ci-après « CIHL »

ALTRAD INVESTMENT AUTHORITY SAS, société de droit
français dont le siège est établi au 16 avenue de la Gardie, 34510
Florensac, France

Ci-après « AIA »

Monsieur Mohed ALTRAD, administrateur de sociétés, né le 9
mars 1948 et domicilié au 150 rue Le Pérugin, 34000 Montpellier,
France

Faisant chacun élection de domicile au cabinet de leur conseil
conformément à l'article 23, § 3 CDIP

Requérants

Avocat : Joanna Kolber
Rue de la Régence 52
1000 Bruxelles
E : joanna.kolber@strelia.com

Tribunal de première instance francophone de Bruxelles

Table des matières

I.	Introduction	3
1.	Contexte général.....	3
2.	Objet de la requête	4
2.1.	Non-reconnaissance du Jugement Américain	4
2.2.	Reconnaissance du Jugement Anglais.....	6
2.3.	Objectif concret des requérants	7
II.	Les faits	8
1.	Le groupe Cape.....	8
2.	Le groupe Altrad	9
3.	Acquisition du groupe Cape par le groupe Altrad.....	9
4.	Les procédures intentées aux Etats-Unis (Affaires « Park » et « Tibbs »)	9
4.1.	L’Affaire Park et la désignation de M. Protopapas comme administrateur judiciaire de « Cape PLC »	10
4.2.	L’Affaire Tibbs.....	14
4.3.	Résumé de la situation.....	15
5.	La procédure menée devant les juridictions anglaises par CIHL et Cape.....	15
III.	Discussion.....	17
1.	Non-reconnaissance du Jugement Américain.....	17
1.1.	Introduction – recevabilité – procédure	17
1.2.	Premier moyen – à titre principal : l’effet du Jugement Américain serait contraire à l’ordre public international belge.....	19
1.3.	Deuxième moyen – à titre principal : les droits de la défense de CIHL et de Cape ont été violés.....	23
1.4.	Quatrième moyen – à titre principal : le Jugement Américain est fondé sur des éléments inconciliables avec une autre décision étrangère rendue préalablement.....	24
1.5.	Cinquième moyen – à titre principal : CIHL et Cape n’ont jamais eu la moindre présence aux Etats-Unis	25
2.	Reconnaissance du Jugement Anglais	26

1. INTRODUCTION

1. CONTEXTE GÉNÉRAL

1. Cette requête intervient dans le contexte de litiges introduits aux Etats-Unis en matière d'indemnisation de victimes de maladies causées par l'amiante.
2. Depuis plusieurs années, ce contentieux a le vent en poupe dans l'état de Caroline du Sud en particulier. Une pratique locale s'y est en effet développée, par laquelle des sociétés liquidées parfois depuis plusieurs dizaines d'années se voient « ressuscitées » par la désignation de *receivers* (administrateurs judiciaires), à qui les tribunaux locaux donnent mandat est de rechercher des actifs, généralement sous la forme de couvertures d'assurance, permettant d'indemniser les plaignants.
3. C'est ainsi que, dans l'affaire qui sous-tend la présente requête, un *receiver* fut désigné en Caroline du Sud, avec le pouvoir « d'administrer » les requérantes CIHL et/ou Cape, en leur qualité de prétendus « successeurs » de la société North American Asbestos Company (« NAAC »), ancienne filiale américaine du groupe Cape, liquidée dans les années 1970.
4. A la différence, toutefois, de la pratique décrite au § 2 ci-dessus, le *receiver* désigné dans le cadre de cette affaire obtint des tribunaux de Caroline du Sud le pouvoir d'agir au nom et pour le compte de Cape Jersey et/ou de CIHL, c.à.d. de sociétés étrangères, qui n'ont pas été dissoutes et qui n'ont jamais eu la moindre présence ni activité en Caroline du Sud ou même aux Etats-Unis.
5. Ce *receiver*, décida ensuite, de manière manifestement contraire aux intérêts des sociétés qu'il « représente », de ne pas s'opposer aux demandes d'indemnisation introduites contre Cape Jersey et/ou CIHL devant les tribunaux de Caroline du Sud. Au contraire, le *receiver* décida d'adopter fait et cause pour les plaignants et d'appeler en garantie les requérants AIA et M. Mohed Altrad, en argumentant que ces tiers seraient tenus d'indemniser les plaignants sur la base de différentes théories (fumeuses), devant justifier leur responsabilité vis-à-vis de personnes qui étaient entrées en contact avec des produits à base d'amiante fabriqués et commercialisés des décennies plus tôt, par les clients américains de NAAC. Ces théories incluent notamment des allégations d'enrichissement injuste, de percée du (propre) voile social de CIHL, etc.
6. Le groupe Altrad n'a pourtant fait l'acquisition du groupe Cape qu'en 2017, alors que ce dernier avait toute forme de commerce de l'amiante depuis 40 ans et qu'aucune des sociétés impliquées dans la procédure américaine n'ont jamais eu la moindre présence aux Etats-Unis.
7. La désignation de ce *receiver* est intervenue en violation des droits les plus élémentaires de CIHL et de Cape Jersey, notamment en raison du fait que ni les actes introductifs des instances américaines, ni la demande de désignation du *receiver* ne