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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
In the Court of Common Pleas
For the Fifth Judicial Circuit
The Honorable Jean H. Toal,
Acting Circuit Court Judge

Civil Action No. 2023-CP-40-01759

Appellate Case Nos. 2025-002120 and 2025-002121

John A. Tibbs and Margaret B. Tibbs,

Plaintiffs / Respondents

v.

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

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

Defendants,

and

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

Third-Party Plaintiff / Respondent

v.

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

Third-Party Defendants,

of which

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

Petitioners.

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VOL III**

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1 estate. But it was a nullity at the time.

2 So there's actually nobody on the
3 plaintiff's side that has standing or authority
4 or capacity to actually argue in favor of the
5 void Park order. That carries over into Tibbs.

6 And so the same thing. I don't think it
7 would be appropriate for the arguments being
8 made by the receiver that are he's trying to
9 demonstrate at, you know, the cost of Cape or
10 the other entity why he should be able to
11 continue in the role as an appointed receiver of
12 the court.

13 THE COURT: Okay. Thank you, Mr. Rawl.

14 MR. RAWL: Your Honor, if I can just check
15 my notes and make sure I didn't miss anything.

16 Thank you, Your Honor.

17 THE COURT: All right, sir.

18 All right. Charter kind of got out of
19 order here in terms of the way I set this thing
20 up, but I'm certainly not going to hear those
21 arguments repeated again. But what it looks
22 like to me we are at right now is to go to the
23 receiver's side of this situation, which could
24 either be argued as opposition to the motion to
25 dismiss and dissolve, or as an affirmative

1 request that the appointment of the receiver be
2 confirmed.

3 Both those things are at issue. And
4 actually what Charter, ESAB, and Central Mining
5 did was to submit, in connection with receivers,
6 a report, which is really not something that's
7 pertinent to what we're doing right now and to
8 the motion to confirm.

9 So I guess we've gotten the cart ahead of
10 the horse a little bit in terms of Charter's
11 argument, but I'm sure not going to get it
12 repeated.

13 So I think I'll turn now to the receiver
14 and ask for argument with respect to both
15 opposition to the dismissal or the dissolution
16 of the receivership and request that the
17 receiver's motion appointment be confirmed.

18 Who's going to make those arguments?

19 MR. LAY: I think between me and Ms. McVey,
20 we'll be able to make those arguments. I've got
21 one request. I have to go for a comfort break,
22 if you don't mind.

23 THE COURT: Absolutely. All right. 3:30.
24 Let's take a 15-minute break. Court be in
25 recess.

1 - - -

2 (A recess transpired.)

3 - - -

4 THE COURT: All right. Mr. Lay, who's
5 recognized, we're still in Tibbs. And this is
6 Receiver's opposition to the motions to dissolve
7 the case receivership and dismiss the
8 third-party claims and concomitantly the
9 Receiver's motion to confirm the appointment.

10 You may proceed.

11 MR. LAY: Thank you, Your Honor. And thank
12 you for the brief break.

13 THE COURT: Yes, sir.

14 MR. LAY: I'm going to try to avoid being a
15 squirrel in the road because I'm responding to
16 three different folks, and I'm going to try to
17 make this as simple as I can. If I get off
18 track and you have concerns, please just let me
19 know. But I am having to respond to a lot of
20 different arguments that have been made.

21 I do want to start with what I think the
22 Court's got to do here today. Whether to
23 dismiss or strike the third-party action on the
24 theory that the receiver does not exist. He
25 does exist. They're saying it doesn't. We're

1 going to talk through that.

2 Whether Welch requires a Tibbs appointment
3 order in each case in which a receiver acts, you
4 have to be appointed receiver in each case in
5 which the receiver acts. And really there's
6 some nuance to that. You've got to make a
7 decision on whether you have to go through an
8 appointment process for a new receiver in each
9 case, or if there is an appointment order in
10 another case that encompasses the case that
11 you're doing work in and that's filed, is that
12 enough?

13 Or third, can you do a confirmation order
14 or a more elaborate order to address the
15 concerns of Welch, which I think that's what the
16 June 26 order did.

17 So I think that's what's in front of you.

18 Now, we have talked about this somewhat in
19 a vacuum, and I do want to very briefly talk
20 about what the case is, this third-party case,
21 and why these defendants are in the case.

22 And there is a significant historical,
23 actually fascinating, tragic but fascinating
24 historical background on all of this. And it
25 all started in South Africa. And I'm not going

1 to go back to the turn of the century, but I do
2 want to say this.

3 South Africa, at the turn of the century,
4 had a vacuum. They did not have a strong
5 government. It was a diffuse government. They
6 did not have regulations. And so to fill that
7 vacuum, they came up with this idea called a group
8 system. And the group system evolved.

9 It was a corporate, economic system that
10 really was driven in South Africa. It was
11 unique to South Africa. And it came about to
12 make sure that companies were able to handle
13 risks associated with not having the government,
14 to make sure that they controlled different
15 aspects of the economy, and to have total
16 control, vertical down, in all aspects of an
17 economy. And it started out with this -- it's
18 called the Corner House and it was mining
19 interest.

20 And the reason it was so important to have
21 this system that they developed was because it
22 cost a lot. It's a lot of capital that goes
23 into mining, and sometimes those mines pay off,
24 sometimes those mines don't pay off. They were
25 trying to attract European and American capital

1 into South Africa, but there were concerns about
2 the environment that they were in.

3 So they set up this system is a top-down
4 vertical system called a group system. And
5 we're not making it up. There is a lot that has
6 been written on it. And it's even been
7 litigated in the U.S. because the U.S.
8 authorities have tried to deal with some of the
9 group system companies that they thought were
10 acting as a monopoly.

11 And that is a way to look at the group
12 system. It is effectively a bunch of different
13 divisions under a head. And here, ultimately it
14 was called the Oppenheimer Group.

15 And Mr. Oppenheimer controlled about 15 to
16 20 percent of the GNP in South Africa because of
17 this group system. And this group system
18 controlled all aspects. It controlled mining,
19 it controlled labor, it controlled capital
20 investments, it controlled allocation of
21 resources.

22 They were even in situations where there
23 were providing equipment, providing resources to
24 the mines, to feed the miners. They had
25 everything covered. All of it was under one

1 umbrella, and that there was one decision maker.

2 So how did they control all of these
3 subsidiaries? And there are different ways that
4 it was done. But they did it through board
5 memberships and executive committee. And these
6 board members were friends of Mr. Oppenheimer,
7 and they were deployed in every one of these
8 companies where there were shared memberships,
9 board memberships where these guys would be on
10 30, 40, 50, a hundred different boards. And
11 they all answered to Mr. Oppenheimer, and they
12 all were part of the executive committee.

13 They also had something called secondants,
14 and what they would do is they would deploy
15 individuals that were part of the main group,
16 part of either the Oppenheimer Group or Anglo
17 American, and would deploy them to subsidiaries,
18 to run the subsidiaries.

19 They also did risk allocation so that if
20 there was a problem with the mine, where it
21 didn't pay off and it was a loss, they allocate
22 that loss across multiple subsidiaries. So the
23 mine didn't get hit. That there was --
24 everybody had to share in the loss.

25 They also had clearinghouses where they

1 would collect capital and deploy the capital
2 throughout the subsidiaries as well.

3 So it didn't operate as independent
4 companies. They didn't operate as independent
5 companies. They operated as one giant company.
6 And it is unique to South Africa. This could
7 not happen in the U.S. We have too much
8 regulation. It could not happen.

9 They also use management fees, preference
10 shares, directors of the subsidiaries were all
11 loyal. They were subservient to the Oppenheimer
12 Groups, subservient to Anglo.

13 What we have here with our theory on Cape,
14 Cape was involved in asbestos and in to mining.
15 They created resources. They created products
16 that were then sold in the U.S. They also
17 controlled the market in the U.S. 95 percent of
18 the blue asbestos in the United States came from
19 Cape.

20 65 to 70 percent of the brown asbestos came
21 from Cape. They had an almost complete monopoly
22 over brown and blue asbestos, which are two of
23 the most dangerous forms of asbestos.

24 So what we have here with this moral fraud,
25 and I do want to deal with the moral fraud that

1 is being discussed here. With the moral fraud,
2 you have this attempt -- this recognition by
3 Cape that -- and the people that were
4 controlling Cape, the companies, the parents
5 that were above Cape, there was recognition that
6 there was growing toward liability, it was
7 emanating from the United States. There was
8 growing concern that there were problems with
9 meso in connection to asbestos. Particularly
10 blue and brown asbestos. And they weren't
11 surprised by that because they knew about it.
12 And they had known about it for years and years.

13 But when they recognized that it was
14 potentially an existential threat to the mines,
15 they wanted to make sure that they escaped the
16 U.S. And I'm not making this up. They wrote it
17 all down. And Cape and, you know, the receiver
18 has to deal with the information that's provided
19 and presented.

20 So they knew it was an existential threat
21 and potentially an existential threat to Anglo
22 American, potentially an existential threat to
23 not just Cape but everyone above Cape, Charter
24 and Central, De Beers, which is a diamond
25 operation. All of those were in this group

1 system, and they knew that they had a problem.

2 So what are we going to do? Cape had a
3 subsidiary in Chicago that was really a one-man
4 operation, and that subsidiary really did phone
5 calls. They filled orders.

6 It was one guy who was primarily doing it,
7 and he had four or five secretaries that would
8 help with the paperwork. That was the NAAC
9 operation.

10 This idea that NAAC was acting as an
11 independent company is just completely and
12 utterly inaccurate. It wasn't. And there is
13 testimony that comes from the president of NAAC,
14 it comes from other employees in Cape, that NAAC
15 was acting and controlled by, dominated by Cape.
16 And we know that from sworn testimony.

17 We have put together documents that we have
18 presented that showed the moral fraud. And that
19 was presented to you before we were even
20 involved in the case. All of these documents.

21 Now, we have affidavits, and we've also got
22 an Excel spreadsheet that shows the
23 authentication to all these documents. Both
24 from business records, ancient document
25 exception. We have all of it authenticated.

1 We've got it all lined up for you. And I'm
2 going to give you a package to show all of those
3 documents in a form where they're admissible at
4 trial right now.

5 We don't have to -- there's no hearsay upon
6 hearsay. These are primary documents that
7 exist, including documents that we did not
8 deprive, but they're internal lawyer notes
9 that Lord Bissell had produced.

10 It was not something that the receiver was
11 depriving. It's documents that are out
12 there. Because it's been so long they've gotten
13 out. But the lawyers set up this idea with
14 Cape, primarily Cape individuals talking about
15 NAAC. They liquidated NAAC. We're going to get
16 out of the U.S. We got a subsidiary here, they
17 had selling. They've got customers. We got to
18 get out of Dodge. We need to go stay in the UK.

19 But we're making too much money by selling
20 asbestos and we don't want to give that up. So
21 what they did was, and this is what we're going
22 to have to live with, is they set up another
23 company. Changed its name, in the same place,
24 in the same building, same equipment, same
25 individual, same customer list. They started a

1 new NAAC overnight.

2 In fact, testimony is they made calls to
3 the customers to tell them about the new name
4 before the transition occurred.

5 The transition was effectively I turn the
6 light off one day -- NAAC one day, turn the
7 light off the next day, I turn the light back
8 on, and, boom, I'm another company. Everything
9 else is the same.

10 So then they set up another Cape-owned
11 entity in Luxembourg that owned this new
12 subsidiary and did not share with some of the
13 employees of NAAC that Cape actually owned the
14 Luxembourg subsidiary. It was just a simple
15 holding company in Luxembourg. They did that --
16 and we know this because they wrote it down.
17 They did that to put distance between the mines
18 and U.S. tort liability.

19 And on top of that, they made a decision
20 that we're not responding to U.S. litigation
21 anymore. Again, we know that because they wrote
22 it down. We're not responding anymore. We're
23 going to take defaults, and they're not going to
24 be able to execute on the defaults in the UK.

25 And that's what they've done for the last

1 50 years. This is not a one-off event. This is
2 an ongoing event that continues to this day
3 through different iterations and different
4 successors of these companies that I'm going to
5 point out just to give you some insight into why
6 some of these folks are in the case.

7 But they've been doing this for the last 50
8 years. There have been cases in the U.S. where
9 this is -- the U.S. courts have positively
10 responded to this alter ego theory. You have
11 the UK litigation, the Adams litigation that
12 they've talked about, which, I mean, I had
13 trouble sitting in my seat hearing the
14 description of the UK Adams litigation.

15 It was litigated in 1991. Preinternet, I
16 might say, which is very important here because
17 we've been able to gather a lot of the
18 information that's floating out there about what
19 went down in this situation.

20 But the UK case is not controlling here in
21 any way. The law on alter ego, the law on
22 successor liability is different in the UK.
23 It's sacrosanct. It's much more aggressive in
24 the U.S. Any suggestion that it's not is just
25 plain wrong.

1 The facts that were litigated in the UK are
2 not the facts that we have here, and they do not
3 have single business enterprise as a theory.

4 What you will see as you get more into what
5 the group system is, you could put an equal sign
6 from the single business enterprise equals group
7 system. The very definition of single business
8 enterprise is the group system. They all worked
9 in concert to try to escape asbestos liability
10 in the U.S. and try to run to the UK. And
11 they've gotten away with it for 60 years, these
12 companies that really were in control of Cape.

13 Cape's defense into this is to say, okay,
14 this information exists. I want to turn to the
15 people that have controlled me, dominated me,
16 caused this or were a part of it to deflect the
17 liability that Cape is going to be dealing with.

18 Cape has personal jurisdiction in this
19 state. We've got direct sales into this state.
20 We've got NAAC, again, dominated by Cape, direct
21 sales into this state. You've got a case, a
22 Barnwell County case that said Cape had --
23 there's jurisdiction in South Carolina.

24 You've got advertisement in these asbestos
25 magazines. You've got sales to companies that

1 were doing business in South Carolina. There's
2 profound contacts in South Carolina about Cape.

3 The idea that the UK court said there's no
4 presence in South Carolina. They did not have
5 available to them these direct sales and other
6 contacts with South Carolina. They availed
7 themselves of the South Carolina market, and
8 they escaped to the UK.

9 And what is remarkable about this, and I
10 don't want to -- I don't want to preach, but
11 what bothers me about this is during the life of
12 this case there's been all kind of articles,
13 magazine articles, even the U.S. Chambers have
14 articles about this court and how things have
15 been handled, suggesting that these companies
16 are -- something's wrong if these companies have
17 to deal with this.

18 I've even heard over and over again my
19 friend Mr. Carroll say this whole rotten mess.
20 Well, this is a whole rotten mess, but they're
21 looking at the wrong thing. What's a rotten
22 mess here is this attempt to escape the U.S.
23 All of these companies that were associated with
24 Cape to escape this liability and leave it to
25 South Carolina plaintiffs to have the deal with

1 what they're dealing with, with meso and
2 asbestosis.

3 And South Carolina companies are paying the
4 share of these companies that should have been
5 involved in the settlements of these cases for
6 the last 30, 40, 50 years. That's what's a
7 rotten mess here.

8 Now, what Cape knew and what the companies
9 that controlled them knew in the moment was not
10 just there had been sales and we got this
11 asbestos. They knew what they had been doing.
12 And what they had been doing, it rolls through
13 all of these companies, is that they were aware
14 before everyone else that asbestos, blue
15 asbestos particularly, was causing meso.

16 They had African miners that were getting
17 meso. You had people around the mines that were
18 getting meso. You had doctors that were talking
19 with Cape, and the people who controlled Cape
20 about meso causing -- being caused by
21 asbestosis -- or excuse me, by asbestos. They
22 knew it, they knew it, they knew it, and they
23 hid it.

24 They put pressure on doctors not to reveal
25 that these studies have been done. They buried

1 studies that show in fact that they had a
2 problem. And if think about their unique
3 position. All of these companies' unique
4 position in that moment.

5 That unique position was they controlled 95
6 percent of the blue asbestos coming into the
7 United States. They controlled 65 to 70 percent
8 of the brown asbestos that was coming into the
9 United States. Worldwide actually. Worldwide.

10 They had created many of the products and
11 were making products. They were a leader in the
12 asbestos industry with one of the biggest mining
13 operations in the world. They could have raised
14 their hands and said we've got a problem. You
15 can be safe.

16 They lied to one of their customers, and
17 we've got that evidence. They lied to Owens
18 Corning, I think, and said, no, this is not a
19 problem. And Owens Corning writes their
20 employees and said this is not a problem. When
21 they knew it. They had the study in their
22 hands.

23 If they had simply raised their hand in
24 that moment, which was years ago, 30 years plus,
25 40 years ago, many of the plaintiffs that we're

1 looking at that meso plaintiffs that go on on a
2 yearly basis wouldn't exist. If they had simply
3 raised their hand and said be careful, stop. We
4 need to do something about this. They didn't do
5 it. That's moral fraud.

6 That moral fraud continued with this
7 litigation scheme where you have a frontline
8 defendant in asbestos. It's the same as R.J.
9 Reynolds walking out of the U.S. and not paying
10 a dime in tobacco litigation. That's how
11 profound this was. And books have been written
12 about how profound this moment is where Cape and
13 the people who controlled Cape got away with
14 this.

15 And this lawsuit is to make sure that Cape
16 is not dealing with this alone but is talking to
17 the people that control them and dominated them.
18 This idea of self-piercing, look how terrible
19 that is. No, it's not. Self-piercing is
20 effectively -- and you can have self-piercing if
21 there's active participation. And every one of
22 these defendants we've got active participation,
23 or they are successors of companies that were
24 actively participating in this scheme.

25 And that is our defense to the overwhelming

1 problem we've got that blue and brown asbestos
2 caused meso, and most of the blue and brown
3 asbestos in the United States came from Cape.
4 And got to deal with that.

5 So you look at the people that dominated
6 you. That's moral fraud, and it's gone on over
7 and over again.

8 Now, in this case the moral fraud has been
9 continued in the light of litigation. And
10 it's -- we've had to deal with it. And that's
11 just part of the game. But here's some of
12 things that have been going on, and some of this
13 has been talked about. But the UK litigation
14 has been driven by Altrad and controls Cape.

15 And that litigation in the UK is not just,
16 oh, we're trying to get another court to help
17 us. It's been much more aggressive than that.
18 Your Honor knows that because we provided some
19 of the communications that we're receiving from
20 the lawyers in the UK, from the lawyers in
21 France.

22 Even copied on some of the correspondence
23 from Cape/Altrad itself talking to carriers
24 saying don't participate. Writing letters to
25 Mr. Protopapas telling him that he's got a

1 \$4 million judgment against him, telling him it
2 can be executed against -- suggesting that
3 they're criminal sanctions involved. And, yes,
4 you're right, he can't go to Europe. He can't
5 do it.

6 They have been provided service of the
7 motion for receivership. They were provided
8 service of a complaint. This is in the Park
9 case. They had an opportunity to come in and
10 say -- defend themselves. There shouldn't be a
11 receiver here. Or we will take care of
12 defending this case. Or whatever their defense
13 is. We didn't do it.

14 They could do whatever they want to, and
15 they didn't take advantage of that. They
16 ignored it, and they executed the plan that they
17 began in the 1970s, thumbed their nose at the
18 U.S. courts. We're not paying U.S. plaintiffs.
19 It's not our responsibility.

20 And there's even internal documents that
21 we're going to have to deal with where they say
22 we feel no moral obligation to U.S. plaintiffs.
23 This is part of the U.S. plaintiffs' lawyer
24 cult.

25 So that's what -- that's what's been going

1 on. They've also -- all of these companies now,
2 almost all of these companies that were viable,
3 operating companies over the last 50 years have
4 become molding company. I mean, one of
5 Mr. Rawl's clients decapitalized, got liquidated
6 in the last month and half. And we just found
7 out about this.

8 But Cape itself has been -- if you look at
9 the 2017, the Altrad Group purchased Cape. And
10 we've got the financial statements, 2020, 2021,
11 for example, and you can see a profound change
12 in the financial condition of Cape. It went
13 from a declaration in their disclosure
14 statements that we can handle all of our debts,
15 to the next year we can't handle the debts, but
16 we got Altrad who can cover it for us.

17 So there's a depletion -- a dissipation of
18 the assets that are occurring as late as the
19 2020s.

20 So, yeah, the scheme continues. They're
21 doing buybacks on buyouts of asbestos policies.
22 And I think you -- I think Mr. Protopapas
23 explained that well, but, I mean, it's a pretty
24 big deal when you have policies that can respond
25 to U.S. plaintiffs that are doing buybacks to

1 where they're paying the company -- the
2 insurance companies are paying a bunch of money
3 to just end those policies. And they're taking
4 that money, Cape and Altrad, because of this
5 transaction they entered into, and Altrad bought
6 Cape, and they're funding UK former Cape
7 employee settlement fund only. Excludes U.S.
8 plaintiffs.

9 So they're taking policies that could have
10 responded to U.S. plaintiffs, and they're
11 converting it, liquidating it so it just
12 responds in the UK.

13 We think that's what's going on. Part of
14 the problem we have is some of these folks
15 aren't participating at all. It's remarkable to
16 me to see people who are not participating in
17 the liquidation come in and factually dispute
18 some of the moral fraud when they're not giving
19 us their document. They're not participating.

20 It appears today for the first time they
21 are participating in the litigation. I hope
22 that's a good sign that they're going to start
23 doing that and get us information.

24 But that's the information that we have
25 now. And it looks like they have been moving

1 assets and doing things with insurance products
2 so it doesn't respond to U.S. litigation.

3 So, yes, this continues, and it continues
4 in the life of this litigation. It continued in
5 the years leading up to this litigation. It's
6 been going on for 50 years, the not responding.
7 That's what this case is about.

8 And very quickly, we've got three groups.
9 We got the Anglo folks, that is Mr. Elliott and
10 Mr. Balber are representing them. They have
11 been participating in some level.

12 And Anglo PLC is a successor. So you have
13 Anglo -- so you have Anglo American South Africa
14 merged with Minorco and became Anglo American
15 PLC. And we think they have successor
16 responsibility. We've gotten certain documents
17 that suggest -- in fact, one official document
18 from a transaction says that they are a
19 successor.

20 We haven't gotten the transaction
21 documents. We're in a fuss about that. We're
22 going to try to get that resolved. But we are
23 in a fuss about trying to get the transaction
24 documents we need to prove that up. But we
25 believe they're a successor.

1 Then you have De Beers, Consolidated Mines
2 who broke off into three different De Beers
3 groups. And we think that one or all or two of
4 the three have some sort of successor liability.
5 We need those documents to prove that. They're
6 in it for successor purposes.

7 Then you have Charter. And the way this
8 went was NAAC, Cape, Charter, Central Mining,
9 and then you had Anglo above that and then
10 Oppenheimer. But the big group was
11 Anglo American. And then below them Charter.
12 And then Charter is represented by Mr. Rawl.
13 They have gone off and they have now -- they
14 sold off Cape to Altrad. And then ESAB
15 succeeded Charter, and we think they have the
16 successor liability for Charter.

17 That's why so that you have a mixture of
18 bad actors and then successors to those bad
19 actors in all three groups. In all three
20 groups.

21 So every one of them, there's a rhyme and a
22 reason for their being included in this suit.
23 And they were all involved and had knowledge of
24 what was going down with trying to do something
25 about the potential exposure of Cape and the

1 mines to U.S. based litigation.

2 Now, how we got here. The Welch case and
3 the June 26 order. And I want to talk about
4 both of those.

5 The defendants in this case are misreading,
6 overreading, extending Welch in the June 26
7 order in ways that the Supreme Court never
8 thought that they would argue. And that's
9 clear. Welch limited an appointment order and
10 receivership action that was about insurance
11 only.

12 The suggestion that it's limiting to just
13 insurance assets, which has been made, they
14 don't seem to have made it much today, it's is
15 limited to just insurance assets is ridiculous.
16 The Welch appointment order specifically said
17 I'm appointing a receiver for insurance assets.

18 And then the scope of the authority
19 exceeded the insurance assets, and the only
20 thing the Welch court did, the Supreme Court did
21 in Welch, was just bring back the scope of
22 authority to insurance assets. That's all they
23 did. Because that was what the Welch order
24 said. The authority, the scope is defined by
25 the reason why the receiver is being appointed

1 and in that order it said insurance assets.

2 Now, it also -- there was an attack on
3 whether or not you could even have prejudgment
4 receivers. And there's no doubt that we can
5 have prejudgment receivers. And it's a rare,
6 moral fraud circumstance where it occurs. And
7 this is one of those rare occasions.

8 With Atlas Turner case, you can at least
9 give them some credit, though not much, but some
10 credit for initially participating. Here
11 there's a complete absence of participation and
12 continued thumbing their nose at the U.S. courts
13 and South Carolina courts about any of this.
14 That's worse. And it is much worse on what they
15 were doing.

16 Atlas Turner was a manufacturer. This is a
17 supplier of asbestos. These group of companies
18 supplied asbestos in the United States. The bad
19 stuff that caused a lot of damage. This is a
20 much more profound bad situation. The moral
21 fraud absolutely exists.

22 And it did confirm that the receiver could
23 institute actions beyond the case in which the
24 receiver is appointed. And how did they do
25 that? They did that by pointing to the fact

1 that we have out-of-state receivers that come
2 into South Carolina and we recognize their right
3 to sue. There's no appointment order ahead of
4 time. They're appointed in another court.

5 And they come into South Carolina and the
6 South Carolina Supreme Court says South Carolina
7 recognizes out-of-state receivers bringing
8 lawsuits.

9 They referenced a case in Welch where a
10 horse was brought out of state back to New York.
11 There's recognition in all of these cases that
12 have gone on to the Supreme Court and to the
13 Court of Appeals where there is litigation going
14 on. Whether third-party complaints going on or
15 independent stand alone.

16 The suggestion seems to be you can't do
17 third-party litigation, but maybe you could do
18 independent, stand-alone litigation. I don't
19 understand any logical public policy reason why
20 you would treat those two situations
21 differently.

22 A receiver, and I struggle to understand
23 how it's going to work, a receiver has to get
24 appointed in every case on the front end to
25 bring a piece of litigation? I was receiver in

1 the Murdaugh case. I'm not sure how that would
2 work. Our ability to go out and try to get
3 assets created at \$2 million fund in that
4 situation because we were able to either
5 threaten or bring independent actions. And what
6 we would do is exactly what we're asking you to
7 do here, is confirm, confirm the authority.

8 The authority here has already been brought
9 into the case. There is an order in the Park
10 case that has been filed in the Tibbs case.
11 It's been filed as an exhibit. An order exists.

12 The Welch case does not say -- and the
13 Welch opinion does not say that you have to go
14 through the receiver process, get a receiver
15 appointed. It could be a different receiver.
16 It could be the same receiver. But you have to
17 go through a receiver process, and then you can
18 do something in litigation. It just says that
19 you need to have an order showing you've got the
20 authority filed in the case. They use the word
21 filed. Filed in the case. We got that.

22 They also gave a process for you to come up
23 with another opinion. You can endorse what
24 we're doing. You have to ensure what we're
25 doing is right. You can endorse what we're

1 doing. You can add facts to what you're doing.
2 You can modify the order, limit it. None of
3 that is fatal to the receivership.

4 In fact, the Welch case recognized that
5 there could be modification. Because guess
6 what? They modified. That's what the order
7 said.

8 We're changing it. They don't say we're
9 changing it; therefore, everything that happened
10 before this moment is void. It's a nullity.
11 You can't even talk. That's not what it said.
12 It modified it. So if you've got concerns about
13 the breadth of the order in part, which has been
14 pulled over into Tibbs, you can do something
15 about it. You can modify it.

16 You can also confirm that we have the
17 authority. That's what we're asking you to do.
18 Confirm that we have got the authority to do the
19 things that we're doing. You simply confirm it.
20 It's not seeking self-appointment. What we're
21 doing is what you always do in the receivership
22 realm. We are the arm of the court.

23 Court, we think we need to do this to make
24 sure that we're protecting or pursuing the
25 claims. And Welch recognized that it could be

1 claims too. Not just assets but claims are
2 effectively assets.

3 You've got a right to pursue those claims.
4 And we have come to court, have it in hand, say
5 here's what we're thinking about doing, can we
6 do it? Or can we get this settlement approved?

7 We did it in the Park case, an order
8 confirming what we were doing in the Tibbs case
9 and had been doing in the case is proper. And
10 you said that it was.

11 So the authority exists. The overread by
12 the third-party defendants here that because it
13 does not exist with a case-specific process of
14 appointing a receiver and the receiver getting
15 appointed, it can be different than us. What
16 are we going to do? Compete with each other?
17 I'm not even sure how that would work. But
18 because that doesn't happen, everything is a
19 nullity? No.

20 The Court is looking for some indication
21 that we have a right to do what we did, and we
22 did. It's a Park order and it was filed in the
23 Tibbs case. We had the right to accept service.

24 THE COURT: Mr. Lay, you say the Park order
25 was filed in Tibbs. When was that done?

1 MR. LAY: It's an exhibit to the complaint.
2 When we filed the answer in the third-party
3 complaint.

4 THE COURT: When you filed a third-party
5 complaint, that is when the Tibbs order -- I
6 mean the Park order was filed in Tibbs?

7 MR. LAY: Yes. I think that was the date
8 it was filed in Tibbs and there were a lot of
9 other exhibits.

10 THE COURT: It was an exhibit to the
11 complaint.

12 MR. LAY: I think the complaint or some
13 filing.

14 THE COURT: I'm familiar with that.

15 MR. LAY: It's been put in the record. My
16 client tells me it could be after the
17 third-party complaint, but it's been put in the
18 record. It's been in the record for some time.
19 So it already exist in the Tibbs case.

20 But what is important --

21 THE COURT: What I'm trying to find out is
22 when it was put in.

23 MR. LAY: We'll get that answer for you.

24 So we have an order that allows us to
25 accept service. We have an order that allows us

1 to pursue claims. We've also got a confirmation
2 order that says that what we're doing is
3 appropriate.

4 And if any order -- if the Tibbs order
5 filed is not sufficient, you have the ability to
6 do a confirmation and do the findings of fact
7 the Court asks to verify that the authority
8 exists.

9 If there is a requirement that in every
10 case of a receivership that's prejudgment before
11 they can take any action, you've got to have a
12 specific receiver process before you can do it.
13 I think we would be the only state in the
14 country that had that requirement. I can't find
15 a case that says that other states are requiring
16 that. There's recognition that receivers get in
17 their scope of authority and can act on it and
18 can seek approval from the Court to make sure if
19 when they've acted, are we okay? We've done
20 that. So this is a profound overread of what
21 Welch was trying to do.

22 Now, a couple of other issues that I do
23 want to address. Give me just a second.

24 Whether there's requirement that there
25 should be some sort of moral fraud in the actual

1 case itself. This was -- the Welch opinion was
2 a very specific opinion dealing with very
3 specific facts. Where you had a litigant that
4 started acting badly, and that was one of the
5 bases for the striking of the answer which led
6 to the receiver.

7 But it also talked about the corporate
8 policy of Atlas Turner and the way they were
9 handling litigation in the United States. Let's
10 deal with personal jurisdiction. If we lose
11 that, then we're going to thumb our nose at it.
12 And we're not going to participate in 30(b)(6)s.
13 We're not going to be producing anything.

14 That was part of their corporate policy.
15 That big part of what they're talking about on
16 the moral fraud is what they were doing before
17 they were involved in litigation.

18 It just so happened in the Welch case, they
19 did it. They started doing bad Cape, and that
20 was another basis for striking the answer and
21 appointing the receiver. But you're still
22 looking at moral fraud.

23 THE COURT: Well, the moral fraud, though,
24 would have to affect the plaintiff in the first
25 Cape case, that it would have to affect

1 Ms. Park.

2 Now, Ms. McVey has done a pretty complete
3 job of talking about why the conduct with Cape
4 constituted moral fraud as it affects the Park
5 case. And so I really don't understand -- I
6 mean, there's this big, huge scope of things
7 you've argued, but the bottom line that's argued
8 is that both with respect to Ms. Park and with
9 respect to Mr. Tibbs, the hide-the-ball
10 contact -- conduct of Cape and its allied
11 entities and really the allied entities got more
12 focus on it in the Tibbs case than they do in
13 the Park case.

14 In the Park case, the focus was on Cape.
15 They were the defendant. That was the focus.

16 The focus expanded, when you've got the
17 Tibbs case, to include a lot of other
18 defendants. And you made your case that they
19 are all involved in this hide-the-ball scheme
20 and that being hiding the responsibility they
21 have for the torts committed in connection with
22 the distribution of Cape asbestos into the
23 United States and specifically into
24 South Carolina. I mean, that's the basis of it,
25 right?

1 MR. LAY: That is the basis.

2 THE COURT: Well ...

3 MR. LAY: So it's ongoing, continuing and
4 continues to this day.

5 THE COURT: Right. I mean, that's the
6 argument you're making.

7 MR. LAY: Yes, ma'am.

8 THE COURT: Now, back for a minute to the
9 arguments that are made in the Tibbs case about
10 the Park receivership. The creation of the
11 receivership in Park.

12 Of course, Ms. McVey and Mr. Protopapas
13 have covered that in the discussion of Park, but
14 the additional defendants in Tibbs make a much
15 more aggressive assault based on concepts of
16 service, concepts of what the probate code says,
17 and concepts of -- that relate to the lack of
18 any direct appointment in the Tibbs case. And I
19 want you to talk about that concept just a
20 little bit.

21 MR. LAY: Okay. Let me deal with each
22 issue and the service issue. You have dealt
23 with it. Right. You have dealt with it. And
24 what they've left out is that you dealt with it
25 by establishing because we had -- the

1 plaintiff's lawyer came in and demonstrated that
2 he had one document. It's a summons and
3 complaint together. And that the summons and
4 complaint was served on Cape.

5 As part of this 80-page order that you
6 signed, you went through that. We had a
7 full-day hearing on that. There's been briefing
8 out the wazoo on that. My goodness, that's been
9 dealt with. And they're revisiting those
10 service issues and acting like there's never
11 been service.

12 There was service of the summons and
13 complaint, and there was service of the motion
14 on the receivership and it was not responded to.
15 So that's been dealt with.

16 I'm going to leave to Ms. McVey to deal
17 with the probate issue.

18 On the appointment order, they're taking a
19 line in the June 26 order, the receiver's not
20 authorized to conduct work as to a case in which
21 no receivership order has been filed. So either
22 the Park appointment order gets filed in this
23 case, has been filed, or you do a confirmation
24 order. It does not say that it's fatal if it's
25 not done beforehand. They're reading words into

1 that statement.

2 We're authorized if you confirm that we
3 were authorized to do it. We've already got the
4 Park order. We've got a confirmation order from
5 you saying that we're allowed to do this and
6 that we need to have an order filed in this
7 case.

8 THE COURT: Well, you've got two things.
9 You -- and apparently Mr. Protopapas is maybe
10 going to give me that before he leaves here
11 today.

12 The averment is that in the Tibbs case, the
13 Park order was filed. And what I was hearing
14 was it was filed in connection with the
15 third-party action by the receiver. It was
16 filed in the Tibbs case.

17 MR. LAY: Either that or some other
18 exhibit. We're trying to find out exactly where
19 it was filed. We're going to get that to you.

20 THE COURT: So the contention you all are
21 making is that constitutes a filing that could
22 be a confirmation. That constitutes a filing.

23 In addition to that, this court has already
24 ruled on the service on these various entities
25 of the complaint. And that's the 80-page order.

1 And so your contention is the combination
2 of these things satisfies the requirements of
3 Welch and as well as the June 26 order.

4 MR. LAY: And, third, if there's any
5 debate, you have it within your purview to issue
6 an order granting the authority to the receiver
7 to make sure that we can move forward on this
8 case and to make sure that any authority that we
9 have and the scope of our authority complies
10 with Welch. You can issue an order that
11 confirms that.

12 There's nothing in the June 26 order that
13 suggests that you can't. In fact, it suggests
14 that you can.

15 Number three, to the extent that the Court
16 intends to authorize the work of the receiver
17 based on facts not found. You just make
18 specific findings of facts and conclusions.
19 There's nothing that suggests that it's over.
20 That it's a nullity. That you don't exist,
21 Receiver, if this is not in there. There's
22 nothing that says that in this order.

23 So I think we have it in every way that you
24 can have it, and it is an overread by the
25 defendants in this case that has led us to this

1 dramatic, breathless briefing that we've seen in
2 this case.

3 And I'm not trying to be pejorative, but
4 that's what it's been. By reading words into
5 the Welch opinion that do not exist, and by
6 reading those into the June 26 order that do not
7 exist, they put us into this situation where
8 you've got to have this hearing. That's not
9 what this litigation is about. But we've done
10 what we're supposed to do, and there's no
11 surprise here.

12 We had the authority. You can confirm
13 that. If you want to modify the order in Parks
14 as it applies to Tibbs, there are things that
15 you can do that deal with the claims that we --
16 that Cape has that are related to what we're
17 doing in this case. We're allowed to pursue
18 those. We're allowed to pursue the insurance
19 assets.

20 And anything else that causes concern, you
21 can take out. Opening mail. I think it was
22 opening mail was one of the acts. That's fine
23 to modify that. The receiver in this case has
24 never tried to enter the boardroom in any way.
25 We've been very specific. This deals with

1 South Carolina litigation, South Carolina
2 plaintiffs. That's what we're trying to handle
3 here.

4 That's what they haven't responded here.
5 That's the reason the receiver was appointed
6 here, to deal with South Carolina plaintiffs and
7 South Carolina litigation.

8 Modify the order, if you need to, to say
9 that specifically, but they're inviting you to
10 modify it and make findings and this conclusions
11 in this June 26 order.

12 THE COURT: All right, sir.

13 MR. LAY: I think Ms. McVey is going to
14 handle the other issue.

15 THE COURT: All right. Ms. McVey.

16 MS. PEAKE: Good afternoon, Your Honor.
17 Shanon Peake on behalf of the receiver along
18 with Mr. Lay.

19 There are two recent matters that I wanted
20 to keep the Court advised of. I believe that
21 whenever you're looking at the Tibbs remand
22 order and fulfilling the directives that the
23 Supreme Court issued to you, it's important for
24 the Court to have a full picture of the way that
25 the Welch issues are being raised across

1 receiverships.

2 There are two things I wanted to hand up to
3 Your Honor for your information. On August 6,
4 2025, Judge Brown in the federal court in the
5 Burlington receivership, which is under
6 Judge Nye's jurisdiction, issued a report and
7 recommendation recommending that the court grant
8 the receiver's motion to remand.

9 The parties in this case raised the Welch
10 issue so we wanted to give this to Your Honor
11 for your information.

12 The other issue is in the Starr Davis
13 receivership, Travelers had filed a petition for
14 writ of certiorari with the Supreme Court where
15 they have raised in that petition the propriety
16 of the Starr Davis receivership. And they have
17 stated to Welch to do that.

18 National Union has filed a motion for leave
19 to file an amicus brief due to their involvement
20 in the Payne & Keller receivership. And their
21 arguments that the Payne & Keller receivership
22 is not proper due to Welch.

23 So they've requested that the Supreme Court
24 grant them leave to file an amicus brief. The
25 receiver has opposed that motion. And so in

1 this binder, Your Honor, I have Travelers
2 petition for writ. National Union's motion for
3 leave to file an amicus brief. National Union's
4 proposed amicus brief. The receiver's return to
5 National Union's motion. National Union's reply
6 to the receiver's return. As well as the Court
7 of Appeals opinion affirming the Starr Davis
8 order that you issued that's in front of the
9 Supreme Court right now.

10 MR. BALBER: I'm sorry. Can we get a copy
11 as well?

12 MS. PEAKE: Yes, I can -- if you want to
13 look at this. I can email you a copy, but do
14 you want to look at --

15 MR. BALBER: I don't want to take up the
16 time. But usually I would get a copy of what's
17 being offered to the Court.

18 MS. PEAKE: I can email you a copy, but
19 would you like to take a look at?

20 MR. BALBER: No.

21 THE COURT: Well, let me just say this
22 before I invite any further comment by
23 Ms. McVey.

24 Another thing that is obviously occurring
25 in connection with this thing, and it's the

1 result of the directives of the Court to me in
2 the June 26 order directing that I make a report
3 to the Court. The last thing they said was to
4 make a report about the other receiverships.
5 And that has blossomed into an explosion of
6 other filings, challenging further all the other
7 receiverships, as I understand it. This is just
8 a tip of the iceberg.

9 I don't claim to deal with those things
10 until I get finished with this. I don't
11 think -- there are some that are in a posture
12 that they're before the Supreme Court. Whether
13 they are before the Supreme Court correctly or
14 incorrectly, I don't know right now.

15 But as far as I am able to understand, all
16 these receiverships are still open and on my
17 asbestos docket. I am going to deal with them
18 in that regard unless I'm told otherwise.
19 Particularly in light of the fact that the
20 Supreme Court itself told me to take a look at
21 these things and issue orders as I saw fit and
22 report to them as I saw fit. So that's all I
23 can tell you about that.

24 I sure hadn't got time to sit here now in
25 addition to having to parse the history of Cape

1 since the turn of the last century and also have
2 to sit here and go through all 21 of these
3 receiverships right now. I'm not doing that.

4 But I will certainly continue to understand
5 that I've got the authority in this despite what
6 filings have been made in the Court of Appeals
7 or the Supreme Court or anyplace else unless I'm
8 told otherwise by the Supreme Court. That's
9 about what I can tell you about it.

10 MS. PEAKE: Thank you, Your Honor.

11 THE COURT: I'm just looking at this
12 material you supplied me with, Ms. Peake.

13 Now there's one that's Mr. Protopapas for
14 Starr Davis against Travelers. That's the one
15 that was argued before the Court of Appeals,
16 right?

17 MS. PEAKE: Yes, Your Honor. It was argued
18 before the Court of Appeals, and the Court of
19 Appeals issued an opinion affirming your grant
20 of partial summary judgment.

21 THE COURT: Right. And now that's on
22 appeal to the Supreme Court, right?

23 MS. PEAKE: Yes, Your Honor.

24 THE COURT: Or take it back. Now that's
25 the subject of a petition for a writ of

1 certiorari to the Supreme Court. Has it been
2 granted?

3 MS. PEAKE: It has not, Your Honor. It's
4 still in the briefing stage.

5 THE COURT: Okay. So I guess this is
6 informational as far as I am concerned. I don't
7 know what I would do with this material one way
8 or another other than have it for information.

9 MS. PEAKE: Yes, Your Honor, just
10 informational.

11 THE COURT: Okay. And then same thing
12 would be true with National Union. This is an
13 amicus request.

14 MS. PEAKE: Yes, Your Honor.

15 THE COURT: And returns for National Union.
16 So this is for my information, I take it.
17 There's nothing I have to do with this right
18 now.

19 MS. PEAKE: Yes, Your Honor.

20 MS. MCVEY: And, Your Honor, just the
21 Starr Davis, we had mentioned at the last
22 hearing that was the one I was concerned about
23 where there was some accusation that Ms. Hill
24 had ex parted you in some way and that was --

25 THE COURT: Oh, those letters that came

1 in --

2 MS. MCVEY: That's just for your reference.

3 THE COURT: I think that's some more of the
4 chippy back-and-forth stuff that the
5 South Carolina Supreme Court said they didn't
6 want us to be doing that anymore. I'll take it
7 in that vein.

8 Now just explain to me one more time, you
9 all are so involved in all this stuff, you
10 assume that I know everything about it. But I
11 don't know a thing about this Burlington stuff
12 other than apparently you all were involved in
13 that hearing at some point when you couldn't get
14 what I was sending you.

15 But this is a recommendation by Judge Brown
16 that this matter, which this is similar to what
17 they did before in another case of trying to
18 take -- removed this thing from the federal
19 courts. And this is the magistrate's
20 recommendation that it be sent back to
21 South Carolina, correct?

22 MS. PEAKE: Yes, Your Honor.

23 MS. MCVEY: Under the Barton doctrine, I
24 believe.

25 THE COURT: All right. Yes, on the same

1 basis as the Barton doctrine.

2 Okay. All right. Well, that's interesting
3 information to have.

4 Okay. Ms. McVey.

5 MS. MCVEY: I thought you wanted a few more
6 notebooks, I think.

7 Your Honor, I would like to be super brief,
8 as you've heard this over and over again. The
9 first thing I want to just respond to in terms
10 of there was an argument that the receiver had
11 somehow given us privileged documents which I
12 used to bolster my moral fraud.

13 And just to so the Court is clear, of
14 course, every exhibit I referenced in our motion
15 to appoint the receiver was before the receiver
16 was ever filed. So none of those documents were
17 privileged. I don't know what that argument was
18 exactly about.

19 The receivership order in Park allowed for
20 Mr. Protopapas, as receiver, to accept service
21 of complaints. That's why he was served in
22 Tibbs.

23 And what Mr. Protopapas did in Tibbs,
24 instead of acting like Cape always does, is he
25 actually filed an answer in Tibbs thereby

1 protecting Cape from a default.

2 And in that answer he references the order
3 of appointment in Parks. The third-party
4 complaint against these fellas references the
5 order of appointment. And it's my understanding
6 that the actual order of appointment was filed
7 on October 26th of 2023, in the Tibbs matter.

8 THE COURT: And what was it filed in
9 connection with or what was it attached to?

10 MS. MCVEY: Your Honor, I'm going to let
11 Mr. Protopapas or Ms. Joyner because it was in
12 the third-party case, I believe.

13 MR. PROTOPAPAS: Yes, Your Honor. So we
14 reference the appointment order in multiple
15 motions and the answer in the third-party
16 complaint. My good friends on the other side
17 were kind enough to file it as part of their
18 filings in October.

19 So it is a document that has been well
20 cited to within Tibbs, put into the record. I
21 believe it's part of their motion to dissolve
22 the receivership on that order. It is not an
23 order that was unknown to me.

24 THE COURT: Right. And so but what you're
25 saying, the bottom line, easy answer is there is

1 a copy of the Park receivership order that's
2 been filed in other pleadings in the Tibbs
3 matter?

4 MR. PROTOPAPAS: Yes, Your Honor, as our
5 motions rather than --

6 THE COURT: Right. And the one that you
7 cite right now is one that was filed as part of
8 some of the defendants filings on October the
9 26, 2023?

10 MR. PROTOPAPAS: I believe so, Your Honor.
11 And this record is massive and voluminous. And
12 if it was filed someplace else, I will identify
13 it.

14 THE COURT: Yeah, tell me about it.

15 MR. PROTOPAPAS: Thank you, Your Honor.

16 THE COURT: Okay.

17 MS. MCVEY: Your Honor, just to reiterate
18 that the Supreme Court's June 26th order says
19 that the receivership order needs to be filed, not
20 entered. And those are two very different
21 words. And, of course, that makes perfect
22 sense.

23 But I would just go on to say that this
24 idea that the receiver has hurt Cape and what
25 they did in Tibbs is actually to protect Cape is

1 an interesting dichotomy.

2 Now, I have a lot of issues with the
3 representations made about how this estate was
4 handled or not handled to the extend anyone is
5 insinuating that the beneficiaries weren't aware
6 of this litigation or that they didn't get
7 they -- they weren't -- they didn't receive the
8 proceeds from the litigation. I hope that's not
9 the allegation being made, but certainly all the
10 beneficiaries were aware.

11 It's simply if you look at the filings --
12 I'm not going to give away any privileged,
13 confidential information between the
14 conversations with my client. -- they didn't
15 understand. You can see that. They knew there
16 was litigation. They checked the wrong box. I
17 didn't handle the probate. That was a mistake.
18 It's an honest mistake, which I've already
19 walked you, through allows us to ratify.

20 THE COURT: Well, your basic bottom-line
21 position is this: The probate judge in
22 Spartanburg accepted a successor or reopening of
23 the probate court. But the bottom line was
24 Mr. Keith Park was again appointed as a personal
25 representative.

1 And your further contention is that another
2 part of the probate code and another part of the
3 rules permits that successor probate filing or
4 reopening to allow in this case retroactive
5 activity by the receiver.

6 MS. MCVEY: That's right. Or by us to make
7 a motion.

8 THE COURT: On a point -- on the part -- on
9 behalf of the receiver.

10 MS. MCVEY: That's right. They were able
11 to ratify the action that had taken place. And
12 that's all the relevant times, the
13 jurisdictional piece that the cases the
14 defendants cite to are jurisdictional. At the
15 time the action is commenced, at the time the
16 Park action was commenced, the personal
17 representative, the first time, was in full
18 effect. Both at the time the amended complaint
19 was filed, at the time they were served, at the
20 time the answer was due, all of that, there was
21 a personal representative appointed.

22 THE COURT: Right.

23 MS. MCVEY: And I think we're covered on
24 moral fraud unless there's anything else you
25 want to talk about that.

1 THE COURT: No.

2 MS. MCVEY: Any other questions I could
3 answer?

4 THE COURT: No. You may take your seat.

5 MS. MCVEY: Thank you, ma'am.

6 THE COURT: My ordinary practice is to rule
7 from the bench. This has been a long day, and
8 this is a complicated matter. And I'm going to
9 cogitate about it. I will communicate with
10 everyone before the week is out as to how I want
11 to go from here in terms of proposed orders.

12 But there are a lot of possibilities that
13 have been suggested by each side as to how I
14 ought to handle this.

15 One of the things that's clear to me that
16 can be done is to isolate this Cape matter from
17 all the other matters that we've got under
18 consideration now, and I intend to do that. I'm
19 not going to get into all the other dilemmas and
20 details that have been thrown around about the
21 other receiverships. I'm going to try to focus
22 in on the Park case and the Tibbs case and make
23 my rulings in that context.

24 And, you know, what the defense, of course,
25 argues or what Mr. Balber argued to begin with

1 is treated that way and look at it as a one-off
2 and deal with Cape differently. Don't try to
3 make that fit whatever else has been done in the
4 other receiverships.

5 And I'm going to do that without regard to
6 how I end up ruling in this case. I don't think
7 I've got to right now answer every other
8 question that was raised in the order remanding
9 Tibbs. And I don't think the court expects
10 that. There are too many other complexities in
11 these other receiverships and interrelationships
12 between some of them that are on a request for
13 certiorari of the Supreme Court.

14 My kind of gross view of the thing is that
15 I don't know how long it's going to take to
16 straighten everything out, but I think finally
17 both the Court of Appeals and the Supreme Court
18 have got a pretty good grasp on what ought to be
19 appealed to them and what not ought to be
20 appealed to them.

21 Certain orders are not immediately
22 appealable. And I think that both courts, by
23 their rulings and by their opinions and by the
24 directives to me, have made it crystal clear
25 that they don't want to deal with these appeals

1 of nonappealable matters. They don't want to
2 handle these big issues in that way. Rather,
3 they want to handle them in a normal way that
4 appeals are handled. The final rulings are made
5 and then appeals are made and you go from there.
6 And I'm trying to fit myself within that
7 context.

8 Now, you know, I may very well end up
9 saying, yeah, Cape is a one-off and that one is
10 different and here's what I think needs to be
11 done with Cape.

12 But I simply reiterate that the concept of
13 every time something is done here on an interim
14 basis within the context of a piece of
15 legislation, that there's an immediate appeal of
16 that up to the Court of Appeals or a request
17 that the Supreme Court somehow or another have
18 filed with it reports and other things that I'm
19 doing to respond to the orders that they gave me
20 in Tibbs. That's frustrating to me. And I
21 don't intend to deal with the case that way.

22 I think the court -- both appellate courts
23 are very well aware of what our appellate rules
24 are and how matters proceed with the court. And
25 this additional information in the remand order

1 to me, in Tibbs, is not some kind of open-ended
2 license to start plowing yet again more stuff at
3 the Supreme Court level that I'm supposed to
4 somehow take notice of in connection with the
5 decisions I'm making in the cases that are
6 before me.

7 And that is why I am trying to fit this
8 thing into some kind of procedural posture where
9 I decide the things before me. I fit them into
10 the bigger context of where these cases stand
11 now. And then when I made final decisions on
12 everything, they go to the court. And the
13 courts -- the appellate courts can make
14 decisions on the merits of these matters.

15 That's what I'm still going to try to do.
16 But the defense has raised some issues that need
17 more thoughtful attention than I am capable of
18 providing off the bench at this moment about
19 procedurally how these receiverships work. And
20 I'm going to give that my attention and let you
21 all know something. And it may take one or two
22 forms.

23 I may either be completely resolved as to
24 how I want to handle these things and give
25 instructions to whoever the prevailing party is

1 and then the other parties will -- or party will
2 have a chance to respond. Or I may ask for
3 competing orders. I just can't quite decide
4 that. These are some very interesting and
5 technical matters about how things work
6 procedurally.

7 So beyond just the fussing about all the
8 kind of out-of-the-box things that are taking
9 place about going constantly to the appellate
10 courts I'm thinking about as opposed to a
11 hearing.

12 When you get past that and look at what's
13 now before me at this moment, your presentations
14 have been your usual, amazing, fine job. This
15 is a very sophisticated bar that practices in
16 these asbestos cases, and there's some very
17 serious issues raised on each side. And I'm
18 going to give it my very best shot at being
19 attentive and giving you some directions that I
20 think may move this thing on forward and
21 hopefully past me.

22 Thank you very much. Court is adjourned.

23 MR. SAWYER: Just one point that I noted
24 earlier I wanted to at the end adopt arguments.
25 That's all I want to do real quickly. If I may

1 adopt Mr. Carroll's arguments and adopt the
2 argument that we need to -- there should be a
3 bond. That's all I wanted to do, Your Honor.

4 THE COURT: Madam Court Reporter, do you
5 have that?

6 THE COURT REPORTER: I do.

7 THE COURT: On the record, Mr. Sawyer.
8 Thank you so much.

9 MR. SAWYER: Thank you so much.

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11 (The hearing concluded at 4:58 p.m.)

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

JOHN A. TIBBS AND
MARGARITE B. TIBBS,

Plaintiffs,

vs.

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

3M COMPANY, ET AL.,

Defendants.

(Caption continued on the following page.)

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

DATE TAKEN: Tuesday, July 22, 2025

TIME START: 9:24 a.m.

TIME END: 1:38 p.m.

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

REPORTED BY: SHERI L. BYERS, RPR
EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202

CAPTION CONTINUED:

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.

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I N D E X

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E X H I B I T S

(None were proffered.)

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P R O C E E D I N G S

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THE COURT: All right. Ladies and gentlemen, this is a status conference, to begin with, to discuss the order of the South Carolina Supreme Court remanding seven different matters back to this court dated June 26, 2025.

The cases are described as petitions filed by some combination of petitioners Mohed Altrad, Altrad Investment Authority, SAS, Charter Consolidated Limited, ESAB Corporation, and Central Mining and Investment Corporation Limited, arising from orders of the Court of Appeals dismissing those cases on the grounds that the appellate grounds is not immediately appealable.

The order then goes on to describe some of the things that were placed before consideration before the court, all of which they decided to decline to rule on and dispense with any further briefing and remanded those cases back to this court with certain instructions.

And I want to develop today a satisfactory means without putting this court through the

1 same thing that appellate courts were put
2 through, which is thousands and thousands of
3 pages of materials, with all kind of
4 cross-discussions about each other and this
5 court and the courts of South Carolina, et
6 cetera. I don't want to get into all of that.
7 I want to take a very targeted look at what the
8 court has asked me to look at about these seven
9 cases.

10 Then I have listed in the agenda for today
11 everything that my law clerk, Tasha Bridenback,
12 and myself think is pending in connection with
13 the third-party cause of action which was filed
14 in the Tibbs matter.

15 And I want to take a look at those matters
16 and see how best we can proceed on them. Some
17 of which are impacted by the order involving the
18 Altrad corporations that have implications for
19 other receiverships.

20 What the receiver did in response to that
21 remand was to prepare a detailed report of all
22 the activities of the receivership because, of
23 course, all the matters that were remanded to me
24 targeted an individual group of related
25 defendants in the third-party action brought by

1 the receiver.

2 They impact all kinds of other
3 receiverships that have been set up, and they
4 refer very freely in the complaints to these
5 other receiverships. Sometimes in an effort to
6 disparage the activities of this court and of
7 the receiver.

8 But nevertheless, I want to take some kind
9 of organized, sensible approach to how we talk
10 about these matters and then move forward.

11 I've got pending still trials on the merits
12 that involve many of these things, and I intend
13 to get those things accomplished. All of those
14 were put on hold by this enormous flurry of
15 activity, much of which circulated around the
16 seven remands that I received today, but also
17 involve many other things that came before the
18 Court of Appeals. Some resulting in dispositive
19 decisions, some which have been reviewed by the
20 Supreme Court in such cases as Welch, which
21 bears very heavily on what we're talking about
22 today.

23 But today the first thing I want to do is
24 talk about the status of the matters that have
25 been remanded to me and how we can best move

1 forward to satisfy the directives the court gave
2 me that are really based on activity that
3 surrounded the opinion it filed in the Welch
4 case.

5 So with that kind of introductory
6 explanation of why this agenda looks like it
7 does, what I'd like kind of to begin with is
8 again to get away from all the heat and light
9 generated very unproductively by the appellate
10 activity in these matters.

11 And now that they are back in front of me,
12 I want to have each side talk about how we move
13 forward with a discussion of the propriety of
14 these receiverships. That's what's at play
15 centrally in this.

16 The contention is made that the
17 receiverships -- in many of the receiverships
18 that have been set up, and all of them have been
19 set up in a similar way, as third-party requests
20 made in connection with a particular piece of
21 asbestos litigation. But one big question that
22 looms right to begin with, that the receiver and
23 the opposing parties spent a good deal of time
24 talking about in the materials filed before me
25 is whether or not it is proper for a

1 receivership of a particular entity to continue
2 beyond the claims made in the case in which the
3 receivership, by means of third-party complaint,
4 was appointed.

5 The contention that is made by some
6 defendants is that you can only -- that if you
7 appoint a receiver in a particular case, that
8 receiver can only deal with that asbestos case
9 and no other.

10 I will tell you that that is at odds with
11 the very first receivership I established about
12 which no one has fussed or complained one bit,
13 and that's the Covil case. It was the ground
14 under which this whole asbestos docket changed.
15 And it came about as the result of a practice by
16 the insurance companies for years of appointing
17 lawyers to represent Covil in various asbestos
18 cases.

19 Covil was a defunct thermal engineering
20 company that operated broadly in North and
21 South Carolina and many other places. And by
22 the time many of these asbestos claims were
23 made, primarily mesothelioma claims, which has a
24 long latency period, longer than almost any
25 other asbestos-related disease that has found

1 its way to my court, by the time those claims
2 started to reach South Carolina courts involving
3 Covil, Covil had long since gone defunct.

4 And so these insurance companies for Covil
5 would appoint lawyers to represent Covil. They
6 devised a system of having the defunct
7 corporation, one of the Covils, one of the
8 younger Covils, accept service on various
9 complaints that were filed and then tender them
10 to the insurance company to follow through.

11 And the insurance companies did that,
12 appointed lawyers, and the lawyers would
13 basically take the position in mediations and
14 other appearances before the court that Covil
15 was defunct. It had no assets. It had no
16 insurance. And in the end would settle claims
17 against Covil, and there were hundreds of them
18 by the time the matter got to me, for small
19 amounts of money. Negligent, kind of nuisance
20 value, and they would get Covil dismissed.

21 It paid out insurance companies on Covil's
22 behalf, primarily one, but there were several
23 involved, paid out over \$500,000 over the period
24 I'm talking about in nuisance value payments.
25 Most of it which made under the representation

1 that Covil had no assets, including any
2 insurance assets that would provide coverage.

3 Then came before my court issues involving
4 the enforcement of a \$32 million judgment that
5 Ms. Ann Finch had obtained on behalf of her
6 deceased husband's estate in North Carolina in a
7 suit against Covil. And in addition, Covil had
8 defaulted on two other cases pending in front of
9 me in South Carolina.

10 So Ms. Finch sought to track down the
11 insurance assets of Covil. As we know, regular
12 South Carolina law says that insurance assets
13 are present in the state where the coverage is
14 provided. It does happen, though, that in the
15 case of Covil, Covil was a South Carolina
16 corporation.

17 But it would not have had to be a
18 South Carolina corporation if you had caused
19 damage to someone in this state and had
20 insurance that covered that event, you would be
21 present in the state as a corporation because of
22 the tort you had committed and your insurance
23 assets would be present in the state because
24 they provided coverage for those matters.

25 So it was against that understanding by

1 yours truly of the landscape that I appointed a
2 receiver for Covil. I did not concede from the
3 very beginning that the receiver's duties would
4 only involve marshaling assets by way of
5 insurance policies for Ms. Finch.

6 And from the very beginning, it turned out
7 that the receiver I appointed, Mr. Peter
8 Protopapas, a very well-known lawyer in
9 Columbia, who had handled other similar matters,
10 and in addition certain ethics matters that made
11 him uniquely qualified to take on what was the
12 role of a receiver as an arm of the court.

13 Quickly, investigation -- very aggressive
14 investigation turned up a good deal of coverage
15 for Covil. Lots of different companies. And
16 ultimately, those -- many of those insurance
17 companies, including some who today contest what
18 we're doing in these other receiverships, these
19 companies decided to buy peace, and they asked
20 the court to set up a qualified settlement fund,
21 a device known under tax law to allow for the
22 settlement proceeds or the proceeds of future
23 coverage on insurance policies to be placed if
24 the sums are agreed and approved by the court
25 into a qualified settlement fund, which is

1 administered generally by the receiver, and used
2 to satisfy future obligations against the
3 receivership corporation.

4 And that's what was done in Covil, and it's
5 worked great. And there are letters that are
6 even in the file of these proceedings today by
7 people who dealt with Covil. I was particularly
8 heartened to see one by New Indy Catawba, which
9 took over the Bowater operation, and I tried a
10 good many cases involving Bowater and involving
11 Covil.

12 And what they pointed out is something that
13 is very central to the reason that to me
14 completely justifies receiverships being used
15 for more than just a case in which the
16 third-party receivership request was made.

17 New Indy points out we bought Bowater's
18 property having no idea of what the dimension of
19 these asbestos claims would be, and but for the
20 receivership that was created in Covil, we,
21 because of the joint and several liability rules
22 in South Carolina, would be forced to shoulder
23 all the responsibility for activity that took
24 place years and years and years before we ever
25 bought Bowater's property and turned it into New

1 Indy Catawba.

2 That observation is also borne out by some
3 other letters that have come in to me and
4 including one by Peter McCoy, who is the current
5 receiver for the assets of convicted Alex
6 Murdaugh, whose case is very well-known, very
7 infamous, and who had assets that were in grave
8 danger of being concealed or disposed of.

9 McCoy and a co-receiver were appointed to
10 attempt to marshal those assets, and they did so
11 in a lot of matters other than the matter which
12 brought first to the attentions of Judge Hall
13 the need to appoint a receiver.

14 But again, there are two other states that
15 are a very well-known as desired states for
16 incorporation by leading corporations in America
17 who use these receiverships just as I have done,
18 and that is the state of Delaware and the state
19 of New York.

20 And the reason illustrates another aspect
21 of the beneficial use of receiverships. If you
22 used the blunt instrument of a bankruptcy, you
23 interfere with the tort litigation tremendously.
24 You end up deferring the final coming to
25 conclusion of a lot of litigation that involves

1 the bankrupt corporation. And you end up not
2 having anything like the ability to create
3 things like qualified settlement funds or other
4 things or negotiate settlements of pending
5 litigation.

6 A receivership is a different animal. You
7 don't have to use the blunt force of bankruptcy
8 with all the peculiarities and interference it
9 brings to other litigation involving the
10 company. And that is why for years in
11 South Carolina business lawyers have used
12 receiverships to marshal assets of defunct or
13 in-trouble corporations without the use of
14 bankruptcy so that the asset could emerge, if
15 it's still a going concern, with some ability to
16 produce income on a going-forward basis and
17 produce assets on a going-forward basis.

18 So that is another reason that has been
19 known to me from my earliest years of practice,
20 both with the Haynsworth firm and the Belser
21 firm, as something that was often used in
22 connection with their work. And both those
23 firms were primarily defense firms, and I did a
24 lot of defense work for them. And we employed
25 the use of receiverships in that regard as I

1 have described for you all.

2 So that will give you at least a little bit
3 of history of my background in dealing with
4 this. That is not intended to negate the
5 ability to argue that the receivership's
6 improper. I think we need to get into much more
7 of the specifics about the law that governs this
8 thing, and I have no preconceived notions about
9 that.

10 I think the court wants me to do that,
11 indicated the June 26 order that I should do
12 that. And I don't think the court had any
13 notion that I would do that today immediately in
14 the first 30 days that I had this matter. And I
15 certainly won't.

16 I will submit regular reports to the court
17 explaining the intricacies of what they've asked
18 me to do. But I think the Welch case does deal
19 with some kind of broad outlines of what the
20 court thinks of receiverships.

21 I also think that it and the Tibbs case and
22 its third-party receivership is the subject of
23 all this illustrates that the court is not
24 completely aware of how receiverships are used
25 in South Carolina. And that is, I think, one

1 reason why the receiver went to great lengths in
2 the report that was sent to all of us to explain
3 the breadth of the receivership.

4 And I consider that a legitimate part of
5 the discussion we're going to have because it
6 affects a lot of receiverships that are ongoing
7 at this time. And we need to have a
8 comprehensive ruling by myself on these matters
9 that will be a good platform for the court to
10 then take this up in a normal way.

11 I hope and pray as we move through this
12 that the tactic of appealing everything back
13 through the appellate chain comes to a halt for
14 now. Because I don't know what to do when those
15 things are filed, whether they preclude me.
16 They say everything I'm doing on a particular
17 case or a particular aspect that deals with why
18 the appeal was lodged, and I don't think the
19 Supreme Court of South Carolina is at all
20 enamored with that kind of piecemeal approach to
21 talking about issues that purvey this
22 receivership matter on a more global basis.

23 So I want to set up a methodology that
24 allows us to take an orderly approach to looking
25 at this issue and setting up the arguments in

1 such a way since the final stop will not be
2 yours truly, by any means, but set them up in
3 such a way that the appellate court will have
4 full advantage of the reasoning behind what the
5 circuit court has done with this issue of
6 receiverships used to marshal assets in asbestos
7 cases. So that's kind of my mindset.

8 What I would like to do, there are some
9 kind of principal filers here, and they mainly
10 are the receiver and its attorneys on the one
11 hand, and Altrad and its allied conspiracies on
12 the other, as the matter was teed up for my
13 consideration today.

14 And I would like to turn first to the
15 receiver and then to the attorneys for the
16 Altrad group. And what I'd like for you to do,
17 I've got your papers that say one side is right
18 and the other side is wrong. But what I want
19 from you is some suggestions as to how we
20 proceed in an orderly matter on the seven
21 matters that have been remanded to me. So I
22 start first with the receiver.

23 Mr. Carroll, I see you walking down here.
24 Let's get everybody who's going to be here on
25 the other side down here.

1 MR. CARROLL: Might want to take the rope
2 down for the first row.

3 THE COURT: Well, I think we're going to
4 get the first row up here if that's who's going
5 to participate. Come on up. There are plenty
6 of seats here.

7 All the lawyers who are going to
8 participate in this part of the discussion about
9 Altrad come on forward.

10 MR SAWYER: Your Honor, this is as to the
11 Tibbs specific case, correct? There's also a
12 the motion in Park which -- I just want to know
13 whether you want me up.

14 THE COURT: You know, the Tibbs case is the
15 Tibbs case. I think I tried, Wes, to indicate
16 in the preliminary remarks I've made that I
17 consider this something that involves the
18 propriety of third-party receiverships being
19 created and dealing with more than just the
20 complaints or claims in the particular case.

21 MR SAWYER: Thank you. I just want to make
22 sure I knew whether I needed to be up or not.
23 I'll step up, Your Honor. Thanks so much.

24 THE COURT: That has been raised first and
25 most vociferously by the so-called Altrad folks.

1 So they're the one who will be heard first.

2 MR. BALBER: Your Honor, we don't consider
3 ourselves among the Altrad folks.

4 THE COURT: What's that?

5 MR. BALBER: We are not among the Altrad
6 folks; however, we do represent the Anglo
7 American-De Beers entities.

8 THE COURT: Well, that, you know, is all
9 kind of in one big family right now. You all
10 don't say that they're related, but they say
11 they're related. So anybody that's got anything
12 to do with anybody from any point here has been
13 claiming to be part of this group, you need to
14 come up on.

15 MR. BALBER: It's a dysfunctional family.

16 THE COURT: I couldn't agree with that
17 more.

18 MR. ROBINSON: May I proceed?

19 THE COURT: Let me guide you a little bit
20 to begin with, Mr. Robinson, because we're here
21 in a framework. We're not here just kind of
22 generally to talk about everything that's been
23 filed back and forth.

24 This piece of what we're going to do today,
25 we're in here on a framework that is dictated by

1 the order of the court for June 26. And that
2 order describes the seven petitions for cert
3 that they have granted way briefing and return
4 the issues to me. And they all deal with Altrad
5 and the allied Altrad-Cape situation.

6 But they reference Welch, and they direct
7 the circuit court to do three things: One,
8 ensure the receiver has been authorized to
9 conduct the work by an order filed in the
10 specific case to which the work is to take
11 place. The receiver is not authorized to
12 conduct work as to a case in which no receiver
13 appointment has been -- order has been filed.
14 That's the first thing.

15 Second: Ensure that such an order is based
16 on findings of fact sufficient under Welch to
17 justify the order.

18 Three: To the extent the circuit court
19 intends to authorize the work of receiver based
20 on facts not found -- on facts not found
21 sufficient in Welch or to authorize the scope of
22 work not approved in Welch, the circuit court
23 should make specific findings of fact and
24 conclusion of law the circuit court finds to
25 justify its actions.

1 So what they simply say is a very narrow
2 understanding they have of receiverships but
3 emphasize if there's not an order in place
4 appointing a receiver in every specific case,
5 look at signing such an order on findings
6 sufficient under Welch to justify that
7 receivership; and two, to the extent the --
8 three, to the extent the circuit court intends
9 to authorize the work of the receiver based on
10 facts not found sufficient in Welch or to
11 authorize scope of work not approved in Welch,
12 the circuit court should make specific findings
13 of fact.

14 In other words, I understand that to leave
15 it to me to explore more broadly this
16 receivership issue and what the law is in regard
17 to the appointment of a receiver and whether a
18 receiver must -- can act on matters other than
19 the claim in the case in which the receiver was
20 first appointed.

21 MR. ROBINSON: And so, Your Honor, in
22 response to that --

23 THE COURT: Now, there's a little wrinkle
24 on that here, and the wrinkle is this: With
25 Altrad defendants, the Altrad defendants claim

1 that they're not in any of these cases, but
2 they -- not only is it not legitimate to sue
3 them in South Carolina, they haven't been sued
4 in South Carolina. Nor has any entity that
5 they've got anything to do with.

6 And so you all take a completely different
7 position. You claim that the suits have been
8 brought against Cape include them because of the
9 corporate succession and amalgamation of
10 interest, I think is also an argument used. But
11 basically the argument used is a normal argument
12 of corporate succession, is how I understand it.

13 So with that as your background, kind of
14 what I'm looking for to start to answer some of
15 the questions of the Supreme Court, you tell me
16 how we should proceed.

17 MR. ROBINSON: So, Your Honor, I plan to
18 address, with the Court's permission, and if I'm
19 going in a direction that the Court is not
20 prepared at this stage to go, I'll be happy to
21 redirect. But I plan to address first the
22 issues in Tibbs and the framework that we would
23 propose moving forward to address the questions
24 that you just read into the record from the
25 Tibbs order.

1 I think that we can all agree, I hope, that
2 the Supreme Court has determined and found that
3 this trial court really is the fact finder. The
4 fact finder. And so I don't think anything has
5 happened that changes that. The fact they have
6 sent this case back to you to be the fact
7 finder. So part of our framework will be trying
8 to accomplish findings of fact that the court
9 has asked you to look into and report back to.

10 So we start with, you know, the premise
11 that the Supreme Court is not nor have they
12 volunteered to be in this case the fact finder,
13 so they sent it back to you. And so I think
14 that kind of starts the framework.

15 So the next question is what facts need to
16 be found and what orders would be appropriate to
17 address the Supreme Court's request of you to
18 ensure that what is going on in this courtroom
19 complies with what they understand the law to
20 be -- or what they have stated the law to be,
21 rather in Welch and in other cases.

22 And so I think that's the threshold issue
23 of getting findings of facts and making sure
24 that the orders in this court comply with what
25 the Supreme Court expects in a receivership

1 case. And to do that, I think there are certain
2 motions.

3 I believe we'll talk about them today.
4 Mr. Lay is going to talk about some of the
5 motions that are on your list that may go to the
6 heart of those issues. And it's a couple. I
7 think there are three motions specifically. The
8 motion to dissolve. There's a motion to
9 dissolve that has been pending the receivership.
10 There's a motion to confirm the appointment, and
11 then there's a motion --

12 THE COURT: Hang on for a minute. There
13 are a lot of motions to dissolve. Which one are
14 you talking about?

15 MR. ROBINSON: Well, on the -- on the --
16 it's your tab 13, 14, and 15. Well, tab 13 --
17 I'm sorry. Tab 15 -- tab 14, they're
18 consolidated motions to dismiss and dissolve.
19 So that's your tab 14.

20 And in your agenda, it is --

21 THE COURT: Of course, that's a very recent
22 one. That was filed right after Welch and
23 within two days of the time the Supreme Court
24 filed its order in Tibbs. That's De Beers and
25 all the De Beers entities' motion to dissolve

1 and dismiss. And I guess it's filed in Tibbs,
2 right?

3 MR. ROBINSON: Yes, Your Honor. I believe
4 it was filed in Tibbs. And so when you ask --
5 and, of course, I think Your Honor has already
6 stated that the idea is to create a framework
7 and not necessarily one that's going to be
8 accomplished in the next six days or seven days
9 before your first report is due.

10 But the motions that appear to jump out and
11 really go to the heart of what the court has
12 asked would be the receiver's motion to confirm
13 the appointment in the Tibbs case. And that is
14 your tab --

15 THE COURT: 15.

16 MR. ROBINSON: -- 15. And that was filed
17 July 11th. And then the long -- there's a
18 motion to amend the complaint that has been
19 pending for some time, and I think being able to
20 determine the operative complaint that we're
21 dealing with in this case also goes to the heart
22 of the issues.

23 That's the motion and that is --

24 THE COURT: 13?

25 MR. ROBINSON: Yes, Your Honor.

1 THE COURT: That's an amended motion we'll
2 need to amend.

3 MR. ROBINSON: That's right, Your Honor.

4 THE COURT: The first one was filed
5 sometime ago, right?

6 MR. ROBINSON: I believe in late 2024.
7 October of 2024.

8 THE COURT: Yeah.

9 MR. ROBINSON: So, you know, in asking our
10 proposed framework, we believe that knowing what
11 the operative complaint is in this case is
12 certainly a reasonable issue to have resolved so
13 that when you report back to the Supreme Court
14 at some point, whether it be this month or next
15 month, the court knows what the operative
16 complaint is.

17 I mean, we have a complaint that was in
18 place, but if the court is inclined to have that
19 complaint amended, then we would all be working
20 off an operative complaint.

21 THE COURT: So as I understand your
22 argument here is if I look at the order of the
23 Supreme Court of June 26, which is kind of my
24 guideline at this stage of our proceeding,
25 answering the three numbered directives to me as

1 a circuit court, in your view is most
2 beneficially done by taking up these motions to
3 dissolve.

4 MR. ROBINSON: So -- and the order that you
5 choose, I think, one, because quite frankly the
6 questions that were presented is the motion to
7 confirm the appointment deals really with the
8 primary issue that you talk about.

9 Is there, number one, a need to issue an
10 order to confirm the appointment? And if so,
11 what does that order look like? I think that
12 probably based on your comments and really --

13 THE COURT: Okay. So the big framework to
14 answer questions 1, 2, and 3, in your view, is
15 to set a hearing on your motion to confirm the
16 receiver's appointment and your motions to amend
17 the third-party complaint?

18 MR. ROBINSON: Yes, Your Honor.

19 THE COURT: And the De Beers, for one, and
20 maybe others, motions to dissolve the Cape
21 receivership.

22 MR. ROBINSON: Yes, Your Honor.

23 THE COURT: All right.

24 MR. ROBINSON: And so with the Court's
25 permission, I'd kind of like to talk about what

1 we would -- and I understand the Court will be
2 certainly setting hearings as it sees fit and
3 scheduling these motions as it sees fit.

4 But what I'd like to do, because the other
5 thing that you've asked and kind of on the
6 agenda is just a -- I'm not going through my
7 report. I'm not going through all the
8 receiverships. I'm talking about Tibbs and the
9 Supreme Court order still.

10 THE COURT: Well, it kind of got beyond
11 Tibbs because what it said was --

12 MR. ROBINSON: I'm prepared to address
13 that.

14 THE COURT: I mean, it says, "Ensure that
15 the receiver has been authorized to conduct its
16 work by an order filed in a specific case in
17 which the work is to take place."

18 MR. ROBINSON: Yes, Your Honor. So I will
19 address that.

20 So, Your Honor, I'd like to --

21 THE COURT: Do you think that means in the
22 Tibbs case only, or do you think that means in
23 all the cases -- all the receivership cases?

24 MR. ROBINSON: Well, Your Honor, I think
25 that if we --

1 THE COURT: They think it means in all the
2 receivership cases. They've taken that as a
3 platform to attack everything. That's why all
4 these other people have chimed in, as I
5 understand it.

6 MR. ROBINSON: Your Honor, I think we're
7 often told to read the words the court put. The
8 court says that the receiver should not be
9 acting in a case in which a receivership order
10 has not been filed.

11 THE COURT: Right.

12 MR. ROBINSON: It does not say a new order
13 has not been entered, a new petition has not
14 been made to appoint a receiver, it says "has
15 not been filed."

16 So the short answer to your question is I
17 don't think there are any receivership cases in
18 which there has not been an order filed.

19 THE COURT: I understand that. But
20 particularly number 3 directs that if I think
21 Welch does not indicate a complete understanding
22 of what it is I'm trying to do to make specific
23 findings of facts and conclusions of law to
24 justify what I'm doing and --

25 MR. ROBINSON: So, Your Honor, if I may

1 just address. You're asking some very specific
2 questions, and I think I can address them all at
3 one time.

4 THE COURT: Okay.

5 MR. ROBINSON: Okay. First, Your Honor, I
6 would like to point out that since the
7 appointment in 2018 of Mr. Protopapas, that you
8 talked about in your capacity as chief judge for
9 the asbestos docket, that not one U.S. court,
10 state or federal, has issued any decision,
11 dispositive decision finding that the facts,
12 circumstances, and law did not merit the
13 appointment of a receivership order. So that's
14 where we start.

15 Since 2018, not one of your appointment
16 orders has been reversed. And we do not have
17 any dispositive decisions on any of your
18 appointments that has instructed this court to
19 dissolve or dismiss a receivership. And I think
20 we all know the number of appeals that have been
21 involved over -- since 2018.

22 In fact, in the last 18 months, two
23 published opinions from our appellate courts
24 have been issued that have confirmed your
25 decisions regarding Covil and permitted that

1 receiver to continue his work in multiple cases
2 outside of the original case that he was
3 appointed in. Last 18 months. One was the
4 Supreme Court opinion of Covil v. Penn.

5 THE COURT: Covil v. Penn National and
6 Covil v. Travelers, right?

7 MR. ROBINSON: With SF&G, which the Court
8 of Appeals issued an opinion very much that
9 dealt with the Covil's -- the entity of the
10 receivership and the Supreme Court denied cert
11 on that. So we have two published opinions in
12 the last 18 months.

13 And following the latest, of course, you
14 have our reports. But I want to talk about --
15 what I'd like to talk about is Tibbs and the
16 context of those orders.

17 As you've pointed out, Your Honor, the
18 Tibbs cases involve seven petitions for cert. A
19 motion to compel discovery, an order granting
20 the first one was an order granting Motion to
21 Compel discovery, the order relating to your
22 ruling on adverse inferences, the order granting
23 the motion to preadmit exhibits, and two
24 scheduling orders.

25 That's what the Supreme Court had in front

1 of it the first time. They dismissed those as
2 interlocutory, and they have remanded them to
3 you.

4 The other two orders -- well, the other two
5 appeals involve one order, which was an order
6 denying the motion to dismiss or dissolve. Now,
7 of course, this court remembers in Childers, the
8 Supreme Court said motions denying orders to
9 dismiss and dissolve are not immediately
10 appealable.

11 And the Supreme Court hasn't changed that
12 in Tibbs. What they did do is they took the
13 original jurisdiction, not appellate, but the
14 original jurisdiction of those -- of your order
15 and they have remanded that order back to you,
16 along with all the cases, and the words they
17 used were "for all purposes," and then they gave
18 a list of questions and asked you to report
19 back.

20 What they did not do is dismiss or dissolve
21 the receivership. They did not do that. And
22 the court certainly had the issues in front of
23 them and could have done it. They had the
24 orders in front of them and could have done it.
25 But again, they're not the fact finder.

1 So they had before them, what immediately
2 preceded that order remanding was something that
3 was styled as a Notice of Supplemental Authority
4 that made a number of factual allegations. And
5 the Supreme Court said, stop, we're sending this
6 back to the fact finder to determine what the
7 facts are.

8 So, Your Honor, as you pointed out, one of
9 the things, and I won't go back through the list
10 because you've already put them on the record of
11 what the Supreme Court asks, but one of the
12 things is that they want you to make sure that
13 there's an order filed in any case.

14 And I want to talk about that specifically
15 because that's a question that is -- you've
16 indicated is on your mind and certainly on the
17 Supreme Court's mind.

18 They also asked you -- just to put it on
19 the record, I think this has been communicated
20 to you, there were two pending motions in Park.
21 They listed those motions specifically. Those
22 motions have been resolved, and they are no
23 longer pending. So when we go back to framework
24 of report back, those motions have been resolved
25 and are no longer pending. There were two

1 specific motions that the court referenced in
2 its remand order.

3 And, Your Honor, of course, the court
4 remanded the case back to you, but they did keep
5 jurisdiction over one matter, and that was the
6 matter for sanctions and frivolous appeals. And
7 that matter is still under advisement. They did
8 not grant the motion. They didn't deny. They
9 said they are going to rule on it at a later
10 date.

11 And so, Your Honor, that is the landscape
12 that we walk into. So what I'd like to talk
13 about is this issue about a receivership
14 appointed in each case.

15 While a receiver certainly is only
16 authorized to act pursuant to the statute of the
17 rules and the orders of appointment, we know --
18 we know that the Supreme Court does not now nor
19 has it ever required a separate and new
20 appointment order in every single case in which
21 a receiver is fulfilling and effectuating his
22 duties.

23 And we know that because the Supreme Court
24 has told us that. They told us that in the last
25 18 months.

1 The first case, Your Honor, Covil v. Penn,
2 as you well know, was pending for many years,
3 and ended in a published opinion in July 24th of
4 2024. I believe the opinion was written by Few
5 and joined by the Court. That was an order that
6 this Court issued. That was an appeal and order
7 this Court issued regarding summary judgment in
8 a coverage case brought by Covil against Penn
9 National.

10 Now, Covil was a prejudgment appointment.
11 As the Court might remember, there was a
12 default, not a judgment, not a complete trial.
13 There was a default in the Taylor case, and this
14 Court appointed Mr. Protopapas as the receiver
15 in Taylor.

16 The Taylor case was not in Covil v. Penn.
17 There was no new order filed in Covil v. Penn.
18 Of course, the order of appointment was part of
19 the record and was filed in Covil v. Penn
20 because what Mr. Protopapas does, and I believe
21 what the statute does and what the Supreme Court
22 has allowed in the other case that they have
23 adjudicated, is that when he files a new action,
24 when he files an answer to a new action, he
25 begins with his order of appointment. And if

1 not in every single case, and I believe it is in
2 every single case, certainly the ones that we're
3 talking about today, he files a copy of the
4 order of appointment. And that makes sense.

5 He would need to file the copy so that
6 everybody is put on notice that he is the
7 receiver for that company and is acting as the
8 receiver. So he does file a copy of the
9 appointment order in every case.

10 And this idea that he needs a new order in
11 every single case -- the idea, unless the
12 Supreme Court changes or reverses its prior
13 orders, the idea has to be that a new order
14 is needed in every single case.

15 THE COURT: Back up for a minute. The way
16 the receiver often gets involved in other cases
17 is that as the receiver, he is sued by other
18 claimants in asbestos cases.

19 MR. ROBINSON: Correct, Your Honor.

20 THE COURT: Claimants that didn't exist and
21 lawsuits that did not exist against Covil at the
22 time he was first appointed.

23 MR. ROBINSON: Correct.

24 THE COURT: And he then tenders -- he then
25 searches for insurance assets and tenders to

1 insurance companies and works with the lawyers
2 the insurance companies provide for his defense
3 in the case in which he was sued on behalf of
4 claimants against Covil, right?

5 MR. ROBINSON: That's correct, Your Honor.
6 This is not new. This has been a practice that
7 is --

8 THE COURT: In Covil v. Penn National, he
9 had been appointed as a receiver before the
10 existence of the Taylor case, as I understand
11 it.

12 MR. ROBINSON: So Your Honor, the -- I said
13 Taylor, the receiver was acting --

14 THE COURT: He was then appointed in the
15 Taylor -- he was then appointed in the Taylor
16 case.

17 MR. ROBINSON: That's correct. The initial
18 appointment was in Taylor, and from that, there
19 was a clarifying order that came out sometime
20 later.

21 THE COURT: Right.

22 MR. ROBINSON: From that, all of the
23 litigation, including the two published opinions
24 that I have discussed, in the last 18 months,
25 Mr. Protopapas was acting in an action other

1 than Taylor --

2 THE COURT: That's correct.

3 MR. ROBINSON: -- in his capacity --

4 THE COURT: Penn National is a prime
5 example of that. In Penn National -- Covil was
6 suing Penn National, not for coverage specific
7 to the Taylor case, but for coverage generally
8 in asbestos claims against it. And it started
9 by trying to find out what kind of policies
10 Covil had with Penn National. That was a bloody
11 battle for several years.

12 MR. ROBINSON: It was.

13 THE COURT: And that was coverage for
14 things well beyond any involvement just in
15 Taylor, right?

16 MR. ROBINSON: Your Honor, Taylor was not a
17 party to the case. This was Covil versus Penn
18 National and Covil acting pursuant to your
19 order, pursuant to the statute that allows you
20 and any court to appoint a receiver over a
21 dissolved or defunct company.

22 And I think that's a key -- it is a key
23 point that as a dissolved or defunct company has
24 no one to answer anything because they are
25 dissolved or defunct. In fact, in the case that

1 we're talking about, and in -- I want to say
2 that so the Tibbs case, nor Welch, for that
3 matter, mentioned that it was overturning Covil
4 v. Penn in any way or modifying Covil v. Penn.
5 It has not said that.

6 So we have to assume that Covil v. Penn is
7 still precedent in this state and is still
8 binding.

9 So also, the Tibbs case nor the Welch in
10 any way said that they were repealing Rule 66 of
11 the South Carolina Rules of Civil Procedure.
12 And Rule 66 is the receivership rule that
13 specifically states in addition to the powers
14 conferred by law, every receiver of the property
15 in effects of a debtor shall, unless restricted
16 by order of the court, have general power and
17 authority to sue and collect debts, demands and
18 rents belonging to the debtor and compromise and
19 settle such as or doubtful value. He may also
20 sue and defend in the name of the debtor where
21 it's necessary and proper for him to do so.

22 That rule has not been repealed. It has
23 not been abrogated. It is in -- it is in place
24 and it is being used today in receiverships
25 across this state.

1 So what the Supreme Court noted in Covil v.
2 Penn, the appointment order empowered Protopapas
3 with the right and obligation to administer any
4 insurance assets of Covil Corporation as well as
5 any claims related to the actions or failure to
6 act of Covil's insurance carriers.

7 Since Mr. Protopapas was appointed as a
8 receiver, numerous plaintiffs have filed
9 lawsuits against Covil alleging the company's
10 operations cause their asbestos-related
11 diseases.

12 And that hasn't changed. It was true at
13 the time this opinion was written in July of
14 '24 -- 2024. And, again, that case involved
15 Penn National's refusal to contribute to a
16 settlement. In an underlying case, this
17 particular case was Rawlings, again, not the
18 case that had the appointment.

19 THE COURT: Not Taylor. Not Taylor.

20 MR. ROBINSON: Not Taylor. That's right.

21 THE COURT: And not Finch.

22 MR. ROBINSON: That's right. And whether
23 the receiver's tender in the Rawlings case,
24 which did not have a new or separate appointment
25 in it, but did have the original appointment in

1 it, was timely or material to the breach.

2 And so, you know, that opinion, of course,
3 reiterates that the receiver may tender suits.
4 He may access responsive policies and act in the
5 place of the defunct or dissolved entity for the
6 claims being brought by the entity. And he may
7 initiate new actions, which this was.

8 The other case, Your Honor, is the USF&G
9 versus Covil. And that was issued by the Court
10 of Appeals. And cert was denied in February of
11 last year. And there, the Court of Appeals
12 upheld your grant of summary judgment again in a
13 stand-alone case. Because the order of
14 appointment, as we recall, was in the Taylor
15 case.

16 This was USF&G versus Covil. There was no
17 order in that case -- new order. Of course, the
18 order of appointment, as I said before, has been
19 filed in the cases. It's part of the record.
20 The Supreme Court had it as part of the record.
21 They saw the order of appointment in that case.
22 There was no question it was not a new order
23 that allowed Mr. Protopapas to defend and
24 prosecute the USF&G case.

25 It was a stand-alone case by Covil. The

1 receiver against USF&G and others, while
2 Templeton was in that case, for bad faith,
3 malpractice, and breach of judiciary duty. All
4 initiated pursuant to the original appointment
5 order, which charged Mr. Protopapas with
6 identifying and marshaling the assets of a
7 defunct company, a dissolved company.

8 There the Court of Appeals noted that the
9 receiver clearly has an interest in determining
10 whether Covil is subject to future claims as it
11 seeks to fulfill the requirements of the
12 appointment order.

13 As a result of your initial appointment,
14 and I think the Court is well aware this has
15 been said publicly many times, the receiver has
16 been able to marshal more than \$50 million in
17 previously fit or undisclosed insurance assets
18 for this company. You mention one of those
19 cases involving Ms. Finch, which is not part of
20 that. Some of it might be part of it. But one
21 of the cases involving Finch was a 30-something-
22 million-dollar verdict in North Carolina that
23 but for the appointment of the receivership, and
24 but for the receiver's pursuit of identity and
25 identification of those assets, that verdict

1 would have gone unpaid and unjustly unpaid
2 because the assets existed and it took a
3 receiver to go find them.

4 So, Your Honor, then we go to Welch. Which
5 the Supreme Court issued, as you know, a
6 published opinion in Welch regarding the
7 Atlas Turner receivership. I think despite
8 perhaps some of the arguments to the contrary,
9 the Supreme Court affirmed your appointment of
10 Mr. Protopapas as a receiver for Atlas Turner in
11 the Welch case.

12 You appointed Mr. Protopapas as a receiver
13 for insurance assets. Your order talks at
14 length about the insurance assets. In fact,
15 Justice Few, in his comments in the oral
16 argument which we'll go ahead in talking about
17 the last -- or a line in your order which dealt
18 with assets outside of insurance in that
19 particular case, and we conceded this was an
20 insurance asset receivership, Justice Few stated
21 that if I get penalized for all the unclear
22 stuff I've written over the years, I'd never pay
23 it off.

24 And so they determined that there was a
25 line in your order that related to things

1 outside of the insurance assets.

2 We have never contended that we were trying
3 to take over the board of Atlas Turner. And so
4 the court revised the order and upheld your
5 appointment and at the same time gave some
6 guidelines. Well, I say guidelines. They
7 affirmed guidelines that had been previously
8 stated in the Virginia Chemical Company, which
9 was about a hundred years old, that case. They
10 stated guidelines of what courts should look to
11 when dealing with a Subsection 5 appointment.

12 This is not a dissolved entity. This is
13 not a defunct entity. It was an entity that was
14 ongoing but that this Court had made factual
15 findings had committed fraud.

16 And what the Supreme Court said in that
17 case, is that as I said it was specifically
18 limited to insurance. They said we conclude
19 Atlas Turner's conduct justified the appointment
20 of a receiver before judgment. They said that
21 the evidence supports the finding that Atlas
22 Turner engaged in moral fraud against the trial
23 court, the state of South Carolina, and the
24 respondent.

25 And they cited Virginia Chemical and Wright

1 and Miller as factors that courts have
2 considered relevant to establishing the
3 requisite need for a receivership include
4 fraudulent conduct on the part of the defendant.

5 Of course, they also talked at great
6 lengths about Atlas Turner's refusal to abide by
7 its responsibilities under our process of law
8 and abide by court orders that were being
9 issued.

10 So, Your Honor, where that leaves us, and
11 really I think that background is so critical to
12 this idea that a new appointment order has to be
13 in every receivership. The Supreme Court has
14 not said that. An order needs to be filed in
15 every receivership. People need to be put on
16 notice of the receiver and that has happened.

17 When dealing with the Section 5, the
18 Supreme Court has said that you have to make
19 factual findings related to an entity, an
20 ongoing entity. And so while we have filed the
21 order, the original order, and your clarifying
22 order, which begins in the Park case. As you
23 may recall, there was initial order in Park.

24 And then when Altrad and other groups began
25 proceeding with litigation in Europe, you issued

1 a subsequent order in Park and specifically
2 cross-referenced in your order that the actions
3 of Mr. Protopapas was taken pursuant to your
4 order in the Tibbs case were authorized by you.
5 And that order has been filed in the Tibbs case.

6 So, Your Honor, I think that when we look
7 at what the court did, we also have to look at
8 what the court did not do. They did not dismiss
9 or dissolve the case. They received a
10 supplemental authority that makes wild
11 accusations and factual accusations, which, of
12 course, we have contended were not appropriate
13 as a supplemental authority filing. That issue
14 has not been resolved yet, whether that was an
15 appropriate filing. But the court sent it back
16 to you to make some factual findings.

17 And, Judge, we have -- I'm not going to go
18 at length with -- over the report itself
19 regarding all of the receiverships or the
20 difference between the Subsection 4 or
21 Subsection 5 receiverships, but I'll just simply
22 say that the idea -- well, there's one other
23 allegation that has been made -- or claim. I
24 will say claim that has been made in multiple
25 filings, including one yesterday in the Supreme

1 Court. I believe Mr. Carroll filed a petition
2 for cert on the Starr Davis case.

3 There have been claims made that somehow
4 Welch and Tibbs voids every receivership in this
5 case, in your docket, the asbestos docket,
6 including the Starr Davis one that the Supreme
7 Court recently affirmed.

8 THE COURT: Starr Davis, Payne Keller,
9 Heath, Frost, et cetera.

10 MR. ROBINSON: And including the
11 Starr Davis, which is now -- if the Supreme
12 Court takes the petition for cert. It was just
13 filed yesterday.

14 One of the first rounds that Welch and
15 Tibbs required the dismissal of Starr Davis and
16 the voiding of any actions of the receiver
17 across the board in every case.

18 Number one, we look at the cases that have
19 already been decided that contradict that and in
20 fact say that that is not the case because
21 they've already been upheld by the Supreme
22 Court.

23 The second thing, and it's an interesting
24 claim, in addition to a reading of Welch and
25 Tibbs, that there has to be an appointment order

1 in each case, that there is this new argument or
2 claim being made that there actually has to be a
3 finding of fraud in every single receivership
4 before an appointment could be made regardless
5 of the statutory provision.

6 And that receivership -- a receiver, based
7 on their understanding of Tibbs and Welch, can
8 only be appointed in the rarest and most
9 extraordinary circumstances.

10 Now, Justice Kittredge asked me in the oral
11 argument did I agree that this should not be
12 commonplace, the appointment of a receiver of an
13 ongoing entity. And my response was it should
14 not be commonplace but neither should fraud and
15 neither should this type of activity with the
16 courts.

17 But where it is found and where the facts
18 support it, the legislature has given a remedy
19 for that, and it's the appointment of a
20 receiver. And that's as to Section 5.

21 But this idea that the court cannot appoint
22 a receiver over any entity, whether it be
23 defunct, whether it be dissolved, whether it be
24 one engaged in fraud as in Welch, really, if you
25 walk back through, its natural, its end, and

1 we've seen this because it got touched on in the
2 Covil v. Penn case.

3 If a defunct entity is sued by Covil, and
4 you cannot appoint a receiver prejudgment, you
5 cannot appoint a receiver unless there's
6 evidence that Covil itself had committed fraud,
7 and you cannot appoint a receiver unless it is a
8 rare and extraordinary circumstance, which that
9 is now the new laundry list of requirements
10 based on the interpretations that have been made
11 of Welch, this is what happens: A judgment is
12 entered against Covil.

13 Now, of course, the defense case had alter
14 ego and other issues involved.

15 A judgment is entered against we'll call it
16 the dissolved entity. And then a receiver is
17 appointed. And the receiver says, hey, there
18 are insurance policies out there. I have been
19 appointed the receiver over a defunct entity who
20 has a judgment entered against it.

21 Guess what the carriers get to say? Our
22 insured breached its duty because it didn't
23 tender the lawsuit to us; therefore, there's no
24 coverage.

25 And I say it was touched on in Covil v.

Penn because in that case Mr. Protopapas tendered the lawsuit to Penn, and they claimed it was too late because it was too close to mediation or too close to trial. To think that the carriers would not take the next step and say if it's not tendered to them at all before trial, therefore there is no coverage, defies both the activity that has occurred in this litigation, the history of what had actually been litigated, and it's completely contrary to the statute in the Supreme Court.

So with that, Your Honor, that was a -- hopefully a background that gives the Court some framework as to how we view the questions that the court -- Supreme Court has submitted to you. I am happy to answer any questions.

Mr. Lay is here to discuss any specifics regarding the motions in Cape that are listed on your list. And I believe we also have other counsel from Morgan Lewis, I believe, here to address issues that are specific to the actual items you have listed on your agenda.

THE COURT: Well, all right.

MR. ROBINSON: If we get to those.

THE COURT: We are certainly going to get

1 to these various items after we talk generally
2 about how to proceed.

3 But your answer to how to proceed is let
4 this play out in all the matters that we have
5 amongst which, first of all, is the thing that
6 the seven matters that were remanded to me, it
7 involved Altrad, conduct a hearing on those, and
8 let the issues play out in the context of fact
9 finding specific to the things that are pending
10 before me. Amongst which are those seven Altrad
11 matters.

12 MR. ROBINSON: Yes, Your Honor. And I
13 think it is important, as you've noted, to let
14 the Supreme Court know the breadth of the
15 receiverships and what they have done under --
16 under your administration as the chief judge of
17 the asbestos docket.

18 And also, you know, with that -- that was
19 in mind when we submitted the reports to the
20 Court. So that you would have a full -- because
21 that order in Tibbs sometimes says all asbestos
22 cases, sometimes talks about just the Tibbs
23 case.

24 The Welch opinion, as they have pointed
25 out, cross-references the Tibbs matter and talks

1 about the shocking activities that were going on
2 in Europe.

3 So I think the Supreme Court is certainly
4 aware there are multiple receiverships in this
5 court. I think that every appointment order is
6 created for the circumstances of that situation.
7 This is not a one-size-fits-all situation.
8 There are different statutes that relate to
9 receiverships. There are rules and there are
10 certainly orders.

11 And there are, as Virginia Chemical pointed
12 out, and now Welch, factors that have to be
13 firmly established in order for a case to move
14 forward or receivership to be established over
15 an ongoing entity. And one of those factors, of
16 course, is the engagement of fraud. And this
17 Court made that finding.

18 Well, I point this out, and I think Mr. Lay
19 is going to mention this. The petition to
20 appoint the receiver in Park alleged the fraud.
21 The order that you issued in response to that
22 petition, I'm not sure made factual findings
23 regarding the fraud that had been alleged.

24 And I think that's important, Your Honor.
25 That you certainly had the information before

1 you relating to the fraud that Cape was involved
2 in. I don't know that the factual findings
3 actually got into the appointment order. So
4 that might be something that this Court may want
5 to address as it reports back to the Supreme
6 Court that certainly there is evidence of fraud
7 with Cape that there have been mounds of --

8 THE COURT: Well, you say that Park's off
9 the books now. It's been resolved. Am I right?

10 MR. ROBINSON: Say that again.

11 THE COURT: You say that Park is off the
12 book -- off the books and it's been resolved.
13 It is --

14 MR. ROBINSON: Well, the motion.

15 THE COURT: Just the motion. And he is
16 talking about Park is still viable and active
17 case?

18 MR. ROBINSON: That's correct, Your Honor.
19 There was against Locke Lord. I'm sorry, there
20 was an order, a complaint against Locke Lord --

21 THE COURT: Yes.

22 MR. ROBINSON: -- for documents and
23 information. A new complaint. There were
24 motions pending relating to that new action that
25 I think it might have even been a third-party

1 action, but it was Locke Lord was brought in as
2 a defendant either in the original Park case or
3 a new case. I think it was a third-party --
4 third-party case in the original action
5 against --

6 THE COURT: The motion they are talking
7 about related to that third-party action?

8 MR. ROBINSON: That's correct.

9 THE COURT: So essentially the Locke Lord
10 things has been resolved.

11 MR. ROBINSON: It has. That case has been
12 dismissed.

13 THE COURT: All that needs to be said about
14 answering that question is that third-party
15 matter has been resolved.

16 MR. ROBINSON: It's been dismissed.

17 THE COURT: Dismissed.

18 MR. ROBINSON: But the underlying Park case
19 has not.

20 THE COURT: The underlying Park case
21 continues?

22 MR. ROBINSON: Correct, Your Honor.

23 THE COURT: And that's not what they were
24 asking about here.

25 MR. ROBINSON: Not in that provision,

1 that's correct.

2 THE COURT: Right.

3 MR. ROBINSON: They were asking about the
4 mention pending in the third-party complaint
5 against Park.

6 THE COURT: Now, I don't have it right here
7 at hand, but one of the arguments that is made
8 is that there are receiverships and then there
9 are receiverships. And there's a difference
10 between the application of Rule 66, for example,
11 and the authorities it talks about, and the
12 statutory framework under which receiverships
13 are created.

14 What do you say to that?

15 MR. ROBINSON: Well, Your Honor, I don't --
16 I think that there are several statutes. The
17 main one that this Court has dealt with is
18 15-65-10. There are other statutory provisions
19 that allow situations for a receivership. But
20 in the context of this docket, we -- this Court
21 has dealt with dissolved entities, defunct
22 entities, and ongoing entities.

23 THE COURT: Under Title 15.

24 MR. ROBINSON: Under Title 15. There are
25 18, I believe, defunct or dissolved entities.

1 THE COURT: Well, all three that are active
2 are Cape entities, are they not?

3 MR. ROBINSON: So the three active entities
4 would be ACL, which is now in bankruptcy. So
5 that case, as you may recall, was argued to the
6 Supreme Court and before the court issued an
7 opinion, ACL filed bankruptcy. So ACL.

8 THE COURT: Right.

9 MR. ROBINSON: And then we have Atlas
10 Turner is the ongoing entity that the Court
11 affirmed. Mr. Protopapas remains the receiver
12 for Atlas Turner. And then we have Cape, which
13 is an ongoing entity and -- that is the subject
14 of the Tibbs seven remands.

15 There is another case, it's the Whittaker
16 Clark & Daniel. But that case is in bankruptcy.

17 THE COURT: That's in Plant and it stayed.

18 MR. ROBINSON: It stayed. That's correct,
19 Your Honor.

20 In fact, I think this Court, when it was
21 appointing the receiver in Cape, perhaps even
22 mentioned that I'm appointing it because this
23 company is in danger of going bankrupt, and
24 within ten days, they filed bankruptcy. So that
25 case is stayed.

1 And so those -- I believe that covers all
2 the receiverships.

3 But I do think as far as getting back to
4 the framework, the factual findings, and this is
5 just -- we will submit this just as an
6 observation, the factual findings that were in
7 the Welch case, and the fraud in the appointment
8 order, could be relevant to the Court's question
9 regarding you making the factual findings. They
10 clearly asked you to make factual findings on
11 something.

12 THE COURT: Yeah.

13 MR. ROBINSON: That's the words they use
14 and the conclusion of law. To confirm that the
15 appointment order complies with Welch.

16 So if we look at the appointment order in
17 Park, as I said, certainly the petition to
18 appoint included allegations of fraud so it's in
19 the record. And so when we get back to the
20 motion to confirm the appointment, which was in
21 that original list that we talked about, that
22 may be one of the things that could be relevant
23 to response to the Court that are actually
24 factual findings on what this Court determined
25 in ordering a receiver in the face of the

1 allegations and the evidence that was presented
2 for fraud.

3 THE COURT: I note with interest two other
4 filings that were submitted by or on you all's
5 behalf. One is a letter from Amy Hill, a
6 prominent business and tort litigator in
7 Columbia. She apparently represents a good many
8 municipal water companies in the big batch of
9 PFAS cases that are pending. Many of them
10 before Judge Knie in Spartanburg, who's destined
11 to do for PFAS what I've had to try to do for
12 asbestos.

13 But what Ms. Hill points out in discussing
14 the beneficial aspect of having a receiver is
15 that it would be a very difficult thing to
16 impose the requirement that once a receiver is
17 appointed for a defendant, that you have to
18 reappoint the receiver every time you bring a
19 new claim by a new water company. And that that
20 would lead to some endless squabbles that eat up
21 the money they've got available to try to find
22 some coverage that will take some of the
23 financial burden off of the municipalities in
24 trying to fix the mess that is the PFAS bunch of
25 litigation.

1 She's got most of the state and Richard
2 Burrow has got most of the federal litigation on
3 that subject.

4 But, again, we paint with a real broad
5 brush here when we get to settling requirements
6 that might interfere with those two batches of
7 litigation. The argument she makes.

8 You agree with that?

9 MR. ROBINSON: Well, yes, Your Honor,
10 except for the fact we did not file. The
11 plaintiff filed it. And we have seen the letter
12 that she filed. But the receiver did not file
13 that.

14 We think certainly the letter is
15 appropriate. There were some unfortunate and
16 disparaging remarks about her yesterday filed in
17 the Supreme Court regarding that letter and how
18 it was transmitted to the court. The substance
19 of the letter certainly I think encapsulates the
20 working -- of the actual working of the
21 receiverships in all avenues. Not just the
22 asbestos docket.

23 You know, we discussed the Murdaugh
24 situation.

25 THE COURT: Murdaugh is another example

1 that was rendered if you had had to reappoint
2 the receiver any time another claim was made in
3 connection with trying to marshal the Murdaugh
4 assets, that would have been quite something.

5 MR. ROBINSON: Well, and now just trying to
6 go back and undo all of those things, which is
7 what some of our colleagues on -- to my left,
8 not on the left, but some of the colleagues to
9 my left would propose we do, go undo all of the
10 receiverships or declare all of the
11 receiverships void based on what we certainly
12 believe is a misreading of the law in this state
13 and certainly contrary to two recent published
14 opinions would make no sense at all.

15 And again, it would create a situation
16 because you would -- this idea that fraud has to
17 be present in every receivership of where
18 entities such as New Indy would never have the
19 opportunity to allow others who may have
20 contributed to some of the damages there or some
21 of the injuries that occurred to have others --
22 insurance carriers respond to those because it
23 would be a -- it would be a circular argument
24 that never got out of the circle because the
25 carrier, you know, you can't appoint a receiver

1 because prejudice. But if you appoint one
2 after the judgment, we don't have to pay.

3 So there's never a scenario in which the
4 carrier actually has to fulfill its
5 obligation -- their obligations to the insured
6 in that scenario. And I don't think any court
7 has ruled that in the state, nor I would dare to
8 say certainly the Supreme Court will do what
9 they will do. I would find it difficult to
10 believe that that's the law.

11 THE COURT: Thank you, Mr. Robinson.
12 Ms. McVey.

13 MS. MCVEY: Your Honor, I just wanted to
14 make mention of the framework of two quick
15 issues.

16 THE COURT: Come a little closer.

17 MS. MCVEY: I'm going to take two minutes.
18 As you're navigating the day and what it should
19 look like, I wanted to remind the Court that a
20 lot of the Section 4 receiverships that Starr
21 Davis, the Davis Mechanical, the Covils are
22 coming up in your August and September blocks.

23 THE COURT: That's correct.

24 MS. MCVEY: And so this idea that those
25 cases cannot go forward because an order wasn't

1 entered is silly.

2 And so our position is that these cases
3 move forward that they -- the orders have been
4 filed in each and every case. And those cases
5 should go forward, they must go forward. And
6 the carriers, to the extent the receiver -- need
7 to cooperate with the receiver in his duties
8 going forward.

9 THE COURT: Well, many carriers of these
10 cases are already cooperating, as I understand
11 it, because I've already receiving information
12 about some settlements in these very cases.

13 MS. MCVEY: That's right.

14 THE COURT: And that's what -- now what am
15 I supposed to do? Void those approvals of those
16 settlements, or how is that supposed to be
17 handled?

18 MS. MCVEY: That's right.

19 THE COURT: That is certainly not the way
20 receiverships have operated in this state for a
21 good long time.

22 MS. MCVEY: That's right. So I want to
23 remind the Court of that. It's a silly thing
24 for them to be arguing, but I anticipate it's
25 coming up. And I know in particular with

1 Stafford Insulation, which is in Mr. Ledlie's
2 cases, which he has in August, that's going to
3 be an issue coming up. Just as that's being
4 addressed today, I want to raise it.

5 THE COURT: Right.

6 MS. MCVEY: The last thing I want to say is
7 you mentioned Ms. Hill, very well respected
8 lawyer here in South Carolina, sent you a
9 letter, which I then filed. She -- Mr. Carroll
10 filed something in the Supreme Court yesterday
11 which accused her ex parte communication.

12 THE COURT: Accused who?

13 MS. MCVEY: Ms. Hill of ex parte
14 communication. And I want to make it -- and
15 using it to benefit her in a case in front of
16 Judge Brown in federal court. And I just want
17 to say for the record -- a couple of things:
18 One, that letter was filed by me. She is not in
19 this case. She has nothing to benefit from any
20 of these cases. And I just confirmed with her
21 today that she is not in the PFAS case that has
22 a hearing in front of federal court,
23 Judge Brown.

24 So to the extent that needs to be corrected
25 in the Supreme Court, it certainly should be

1 corrected because it's obviously a disparaging
2 remark about an ethical and appropriate lawyer
3 here in South Carolina. I want to make sure
4 that's clear on the record.

5 THE COURT: There wasn't any accusation
6 she's had any ex parte communication with me or
7 what?

8 MS. MCVEY: Yeah, they're saying that since
9 she emailed you or maybe the law clerk the
10 letter.

11 THE COURT: Oh, that that was an ex parte
12 communication. I got you.

13 MS. MCVEY: And so that's been obviously
14 publicly filed. And if I didn't file it soon
15 enough, that's on me. That's certainly not on
16 her.

17 THE COURT: Right.

18 MS. MCVEY: But she has nothing to do with
19 this case. She doesn't represent any party in
20 this case. And so certainly if it was done
21 inappropriately, it was not anything scary or
22 benign or any of that stuff.

23 So I just want to make sure that's clear on
24 the record. And I also want to make sure these
25 guys are going to clean up. That she somehow

1 represents somebody in this PFAS litigation.
2 And I'll show you the footnote at some point
3 today so you can see that.

4 THE COURT: Thank you.

5 MR. CARROLL: Your Honor, I'm glad to
6 address everybody now, if you would like.

7 THE COURT: How about we do that.

8 MR. CARROLL: On that issue, my clients
9 think that all these letters from random law
10 firms in the state regarding the receivership
11 situation are just inappropriate. If any of
12 them want to speak to the Court, they should
13 file a motion for leave to speak as an amicus
14 party. No such motions have been filed.

15 But with regard to Ms. Hill's letter, we
16 didn't know about it until Ms. McVey filed it on
17 Friday. It was addressed to Your Honor.

18 THE COURT: I didn't see it until today.

19 MR. CARROLL: I understand, but I didn't
20 see it until Friday, and it was dated July 10th.
21 That letter asks Your Honor to disregard in
22 these cases what the Supreme Court said in Welch
23 and Tibbs because it would be unhelpful for her.
24 I think she said like an administrative
25 nightmare or something like that in the PFAS

1 cases.

2 THE COURT: Right.

3 MR. CARROLL: So tomorrow, Judge Brown, in
4 Greenville, is going to be hearing a motion to
5 remand filed by the receiver for Burlington
6 Industries. That is an alleged coverage action
7 that arises out of PFAS litigation.

8 In the receiver's complaint that has been
9 removed to federal court, he identifies two
10 lawsuits that he says are at issue that he wants
11 coverage declarations for. One of them is on
12 behalf of the City of Columbia. Ms. Hill is the
13 lawyer of record in that case.

14 So when I see --

15 THE COURT: Well, that's not something --

16 MR. CARROLL: Your Honor, when I see --

17 THE COURT: I don't -- and I don't know the
18 particulars of what you're going to be arguing
19 about in front of Judge Brown, but let me just
20 say I don't consider any of these letters,
21 whether it's from Ms. Finch or from Amy Hill or
22 from Peter McCoy to be anything other than
23 informational material for me in connection with
24 this matter.

25 I don't think they're ex parte

1 communications because they are communications
2 sent to me and to you all at the same time.

3 MR. CARROLL: They were not sent to me and
4 you at the same time. And that is what we
5 find --

6 THE COURT: I got them today. When did you
7 get them? Last Friday?

8 MR. CARROLL: The letter from Ms. Hill?

9 THE COURT: Yeah.

10 MR. CARROLL: It's dated July 10th. And
11 Ms. McVey represented was --

12 THE COURT: I saw it the first time today.

13 MR. CARROLL: I saw it Friday, July 18th.

14 THE COURT: Well, it's no ex parte
15 communication as far as I'm concerned because I
16 saw it at a time when it was indicated to me
17 that it was an attachment to something filed by
18 Mr. Robinson's group and that was it.

19 MR. CARROLL: Yes, ma'am.

20 THE COURT: And I assume, and I think
21 rightly so, that everything that he sent me, he
22 sent you. So I don't regard it as some kind of
23 ex parte material submitted simply for my
24 benefit.

25 MR. CARROLL: Yes, ma'am.

1 THE COURT: The arguments you have in front
2 of somebody else, I think are sad. This thing
3 of attacking lawyers rather than arguing the
4 merits is something the Court has spoken to
5 directly in this case.

6 MR. CARROLL: I'm well aware of.

7 THE COURT: I don't want to hear anything
8 more about that.

9 MR. CARROLL: Your Honor, I didn't intend
10 to address it today, but I was given no --

11 THE COURT: Your reply to Ms. McVey, and
12 that's fine.

13 MR. CARROLL: Yes, ma'am. Thank you.

14 THE COURT: Mr. Protopapas.

15 MR. PROTOPAPAS: Your Honor, I have good
16 news, and it stems off of Ms. McVey's mentioning
17 the August --

18 THE COURT: Speak up a little bit.

19 MR. PROTOPAPAS: Yes, Your Honor. We have
20 good news. Ms. McVey was mentioning the
21 Stafford cases and the August block which are
22 the last items on your agenda today.

23 THE COURT: Yes.

24 MR. PROTOPAPAS: Since Friday, my friends
25 at Travelers, and it gets lost in some of the

1 acrimony, but we do work together a lot. And so
2 my friends at Travelers and I have been working
3 hard since Friday, and a couple of good things
4 happened.

5 We also talked with the plaintiffs,
6 Mr. Ledlie and his colleagues, and what we would
7 propose to the Court, Mr. Ledlie has agreed to a
8 dismissal without prejudice, a tolling agreement
9 for those three cases on your docket.

10 Travelers and I have agreed to a global
11 mediation, not for just Stafford, but also for
12 some of these other issues, be it Starr Davis,
13 be it whatever, all the things because outside
14 of this courtroom and the filings, the
15 professional adjusters at Travelers, their
16 senior claims folks, and even when the lawyers
17 participate, we speak collectively, collegially
18 to resolve claims, and it becomes acrimonious
19 when we come to this courtroom, and I hate that.

20 And I think there's a recommitment in part
21 from the Tibbs order and its last paragraph
22 saying we're sick and tired of seeing the
23 sniping. There's a recommitment between the
24 folks at Travelers and I to bring the
25 temperature down and find solutions.

1 And so one solution we would propose to the
2 court is the Stafford dissolution motion does
3 not need to be heard today, and it does not need
4 to be heard for the August block because we have
5 a solution to the August block if the Court
6 feels it's appropriate.

7 Let us go at the end of July. It's been
8 scheduled for the 29th, if I'm not mistaken.

9 THE COURT: Right.

10 MR. PROTOPAPAS: Let us enter into this
11 more global dialogue with my friends at
12 Travelers and bring, just like we did to Covil
13 or to Southern or to Keaton Frost or to so many
14 of these other receiverships where there are 18
15 of them, six of them have maybe some chaos or
16 some findings that are hot, but the other 12
17 just march along and in order. And we're going
18 to get those other six in order as well.

19 I think we are committed to it, and I'm
20 going to reach out today to my friends at
21 Resolute and try to create that same dialogue we
22 have with Travelers.

23 But for purposes of today, I did want to
24 alert the Court, with my friends Motley Rice in
25 here, my friends from Traveler's, Mr. Lee,

1 Mr. Carroll here, that we have a solution for
2 the Court, which is those three cases, the last
3 defendant in Stafford. We have reached an
4 agreement to dismissal without prejudice.

5 If a moment comes where a qualified
6 settlement fund is operated, we do not need to
7 go through a new claims file, I will take up
8 those three cases, my reports from defense
9 counsel, and engage in an honest settlement
10 discussion with them.

11 And we would ask that those last motions
12 where my friends at Traveler's want to argue
13 that the Stafford company shouldn't be in
14 receivership, we ask the Court not hear those
15 today. Schedule them in August or when the
16 Court deems appropriate.

17 Let us go to this mediation in July. Let's
18 make progress that we have -- we take those two
19 steps forward and then, my gosh, the filing
20 get --

21 THE COURT: That, as I say, is the irony of
22 much of this really disagreeable back and forth
23 that's taking place primarily, unfortunately, in
24 this Atlas, Cape, ACL dimension that is infected
25 some of the rest of the docket. But the

1 solutions they call for to satisfy their clients
2 would destroy the good cooperation that you just
3 described in so many of these other asbestos
4 cases.

5 And there are so many that my docket would
6 be completely overwhelmed if every one of them
7 had to have judicial attention at the very
8 beginning and throughout. To be able to resolve
9 so many of them through very hard-fought and
10 heart-felt dialogue between the receiver, again,
11 given the defendant, and the insurance companies
12 and others that have the kind of assets
13 necessary to resolve it. That's just exactly
14 what we want to have happen.

15 MR. PROTOPAPAS: In the Stafford --

16 THE COURT: And it's, to me, mind-boggling
17 that the same people who get up here and argue,
18 accuse the other side of everything in the world
19 that's terrible. Their insurance companies at
20 the same time are moving -- are very happily
21 working with the receiver to settle so many of
22 these cases.

23 But the solution that they ask for from
24 this court and the Supreme Court is to abolish
25 all the receivers, including the ones in which

1 they have cooperated to set up qualified
2 settlement funds. Doesn't make any sense to me.

3 MR. PROTOPAPAS: It doesn't, Your Honor.
4 We are going to bring a very confident and
5 optimistic -- we're going to bring better order,
6 especially with my friends at Travelers. And
7 I'll work just as hard for my friends at
8 Resolute.

9 And I think it should be mentioned, Your
10 Honor, that the civil defense firms defending
11 these receiverships before you are amongst the
12 best in the state.

13 THE COURT: They are.

14 MR. PROTOPAPAS: Be it Maynard Nexsen, be
15 it Nelson Mullins, be it Pierce Sloan. And
16 Mr. Melling, who is the attorney, who is the one
17 tasked with defending plaintiffs' claims has had
18 amazing amount of research and investigation at
19 Stafford, has fought the August block cases, has
20 made his recommendations that we will not share
21 in open court.

22 And I have the material I need to engage
23 with the plaintiffs' counsel. We would ask a
24 little bit of runway to allow us to accomplish
25 that, rather than to deepen perhaps the divide

1 between Travelers and I by hearing the Stafford
2 dissolution motion.

3 THE COURT: We'll put that off until the
4 end of July when that hearing is already
5 scheduled, for sure.

6 MR. PROTOPAPAS: Thank you, Your Honor.

7 THE COURT: All right. Now, Mr. Carroll.

8 MR. CARROLL: Yes, ma'am. Is this my turn
9 to respond to the overall framework?

10 THE COURT: Yes. Yes.

11 MR. CARROLL: We got sidetracked, Judge. I
12 kind of lost my place in where we are.

13 Your Honor, Todd Carroll on behalf of Mohed
14 Altrad and the Altrad Investment Authority.

15 I know when counsel was getting arranged,
16 there were some comments that I understand that
17 there were --

18 THE COURT: Speak up now, Mr. Carroll.

19 MR. CARROLL: When we were sitting down, I
20 understand that there were some informal
21 comments about all of us being one big family.
22 I want to be clear, I don't represent Mr. Rawl's
23 clients. I don't have Mr. Elliott and his
24 colleagues' clients. I have two clients, Mohed
25 Altrad, Altrad Investment Authority. Those are

1 my clients in the Tibbs case.

2 Your Honor, I think that what the Supreme
3 Court -- I heard Mr. Robinson talk for half an
4 hour. He didn't talk about Welch. He talked
5 about a Covil case against Penn National and a
6 Covil case against USF&G. And said, Well, those
7 cases happened. Those cases didn't involve
8 cases where the receiver -- in which the
9 receiver was actually appointed, so we should
10 just continue business as usual.

11 Your Honor, the world changed with Welch.
12 Welch may have been a reaffirmation of
13 long-standing principles, but the Supreme Court
14 put a very fine point on what a receiver is
15 supposed to do. And that is the --

16 THE COURT: In what document?

17 MR. CARROLL: The Welch decision.

18 THE COURT: Right.

19 MR. CARROLL: Particularly pages 29 and 30
20 of the clerk's advance sheet.

21 THE COURT: All right.

22 MR. CARROLL: There's a heading called
23 Scope of Receivership. In that, the Supreme
24 Court, while it affirmed Your Honor's general
25 appointment of a receiver over Atlas Turner, it

1 reversed this Court in one very critical aspect.
2 And it said that the receiver can only marshal
3 assets to pay Mr. Welch's claim.

4 And then it said to the extent that the
5 appointment goes beyond this claim, that order
6 is hereby reversed.

7 And, Your Honor, that is entirely
8 consistent with the receivership statute. A
9 receiver only comes into existence at the
10 request of a creditor who has a known debt, and
11 there is concern that property that could be
12 used to satisfy that debt is in peril.

13 Under our receivership statute, 15-65, I'm
14 going to point to Section 90.

15 THE COURT: Give me a statutory cite you
16 make.

17 MR. CARROLL: 15-65-90. It says that a
18 party has to ask for a receiver. Now, Section
19 10 tells you the circumstances under which the
20 court could grant that motion. But Section 90
21 says a party must be the one requesting a
22 receiver and that that request comes with very
23 significant consequences, namely, if you are
24 wrong, if you have put the property of somebody
25 else in peril by trying to put it in the hands

1 of a receiver, and your request is wrong, you
2 are on the hook for all the costs, all the
3 expenses, and all the actual damages that come
4 from your improper request.

5 Just like the Tiffany versus Smith and in
6 the Machin case, or however you say it, case say
7 that only a defendant can appear on the verdict
8 form because the General Assembly used the word
9 defendant in the joint and several liability
10 statute.

11 So to here, 15-65-90 uses the word party.
12 Only a party can ask for receiver and that's
13 because a receiver, unlike a custodian, which
14 the shipmaster's case talks about from the Court
15 of Appeals. And a custodian can actually be
16 appointed to run a business and to take over a
17 business and make business decisions like
18 whether to file a lawsuit, whether to assert
19 certain defenses. A custodian can only happen
20 to a domestic company and that process is under
21 Title 33 of the state code.

22 A receiver, by contrast, has a very
23 specific and very limited function. And that's
24 what Welch says.

25 THE COURT: Let me ask you this,

1 Mr. Carroll.

2 MR. CARROLL: Yes, ma'am.

3 THE COURT: Number one, does the receiver
4 have the ability, once appointed, to be served
5 by another claimant with a claim against the
6 corporation of which the receiver is appointed
7 as a receiver?

8 MR. CARROLL: No, ma'am.

9 THE COURT: So --

10 MR. CARROLL: Because that is not
11 marshaling an asset. That would be the order.

12 THE COURT: Well, there's some other things
13 that the statute says about what a receiver does
14 and what a receiver's authority is, and you say
15 those do not allow a receiver to be served with
16 any kind of claim.

17 MR. CARROLL: Your Honor, let me answer
18 this in the context of the Tibbs case because
19 that's what I'm here --

20 THE COURT: I'm asking generally. You say
21 that the Welch case has made a broad statement
22 that applies to all receiverships in the
23 asbestos world that we're dealing with. And the
24 one of the things you say is that a receiver has
25 to be appointed in every case in which a claim

1 is made against the company. But you also have
2 just made the claim that the receiver cannot
3 be -- cannot be served with a claim, a lawsuit.

4 MR. CARROLL: I suppose if the claim is
5 about the specific piece of property. Like if I
6 have a car and somebody --

7 THE COURT: No, this is a tort claim. What
8 language is it that limits it to being served
9 with a claim about an asset?

10 MR. CARROLL: Because the receiver's
11 function is limited to the asset in which he was
12 appointed.

13 THE COURT: Is that by statute that you're
14 saying that?

15 MR. CARROLL: Your Honor, that's what Welch
16 says. That's what it reversed this court on.
17 It said we hold the trial -- this is page 30 of
18 the advance sheet. "We hold the trial court
19 properly gave the receiver power to pursue
20 claims in South Carolina's jurisdiction to bring
21 insurance assets to be bear.

22 "In covering Mr. Welch's injuries, however"
23 -- because he's the one who got the appointment.
24 "-- however, we hold that power does not
25 properly extend to reach every claim relating to

1 Atlas Turner's asset in business activities."

2 Welch says the receivership is limited to a
3 property for which a party has asked for the
4 appointment. Which is why we take the position
5 that I think the Supreme Court said in Welch and
6 then confirmed in the Tibbs order that brought
7 us back here today. The Supreme Court --

8 THE COURT: So you say that the receiver --
9 the receiver's authority by Welch is limited to
10 dealing with insurance assets, that's it?

11 MR. CARROLL: No, ma'am. In Welch --

12 THE COURT: That's the question I asked
13 you. Just slow down for a second.

14 MR. CARROLL: Yes, ma'am.

15 THE COURT: Listen to the question. My
16 question is this: I understand that what you're
17 saying is that a receiver, per the Welch
18 opinion, is limited in authority to marshaling
19 insurance assets and not any other activity on
20 behalf of the corporation of which it is a
21 receiver.

22 MR. CARROLL: No, ma'am.

23 THE COURT: What are the other activities
24 and where does the authority come from?

25 MR. CARROLL: I was reading to you what the

1 court said in that case.

2 THE COURT: That's what I'm asking you.

3 Let's not do --

4 MR. CARROLL: I'm not trying to --

5 THE COURT: You're saying the Supreme Court
6 in Welch, despite what the statute may say or
7 anything else, has limited the authority of a
8 receiver to only marshaling insurance assets,
9 correct?

10 MR. CARROLL: No, ma'am. I'm saying that
11 the Supreme Court in Welch has limited the
12 receiver's authority to only marshaling assets.
13 They happen to be insurance asset in Atlas
14 Turner and in Welch, but the Supreme Court in
15 Welch limited a receiver's authority to
16 marshaling assets needed to pay the claim of the
17 person responsible for the receivership
18 appointment. In Welch it was limited to
19 insurance assets. But --

20 THE COURT: I understand what you're
21 saying.

22 MR. CARROLL: Yes, ma'am.

23 THE COURT: Why in the world would not the
24 Supreme Court have taken a different view of the
25 Covil/Penn National litigation if you are right

1 in what you say about the authority of a
2 receiver?

3 MR. CARROLL: Well, let me answer that two
4 ways: Number one, they were never asked that
5 question; number two, why didn't the receiver
6 ask for a rehearing in Welch in its 15 days to
7 say, hey, wait a minute, your order says I can't
8 marshal assets to pay any other claims, and I
9 can only marshal assets to pay --

10 THE COURT: I think because --

11 MR. CARROLL: I'm going to have a broken
12 receivership.

13 THE COURT: I think, Mr. Carroll, is
14 because the receiver doesn't interpret that
15 decision as you do.

16 MR. ROBINSON: I can confirm that, Your
17 Honor.

18 THE COURT: Wait a minute. No, sir,
19 Mr. Robinson. You can't interrupt his argument.
20 I forbid that.

21 MR. CARROLL: Your Honor.

22 THE COURT: But that's what I'm saying to
23 you, you castigate the receiver for not asking
24 for a rehearing on this point. My guess is it's
25 because the receivership doesn't agree with your

1 analysis of the words of Welch that we're
2 talking about.

3 MR. CARROLL: Okay.

4 THE COURT: You say it's a limitation of
5 receiver's authority in the Welch case to only
6 dealing with insurance assets or other assets
7 that might relate to satisfying the Welch claim.

8 MR. CARROLL: That's what I'm saying.

9 THE COURT: That's what you say the court
10 said. And my response to that was to ask you
11 why in the world the Supreme Court would have
12 made the decision it made in the Penn
13 National/Covil case?

14 MR. CARROLL: Your Honor, I don't know.
15 But I do know that that question was never asked
16 to them. Now, we have raised it in the Starr
17 Davis cert petition that we filed just
18 yesterday. Because the Starr Davis appointment
19 comes from the Hopper case, and the Hopper case
20 was dismissed with prejudice as it relates to
21 Starr Davis before the complaint that spawn that
22 appeal was even filed.

23 THE COURT: That's a little different
24 question. I'm trying to concentrate on one
25 thing at a time here.

1 MR. CARROLL: I understand.

2 THE COURT: Let's assume that the receiver
3 is properly appointed, and that's where we are
4 right now. Appointed in the case that the claim
5 against your defendant arises in. You're saying
6 that the receiver's authority has got
7 limitations on it. And that's per Welch.

8 MR. CARROLL: Absolutely.

9 THE COURT: I understand that's your --

10 MR. CARROLL: Yes, ma'am.

11 THE COURT: That's your reading of Welch.

12 MR. CARROLL: Yes, ma'am. There's a page
13 29 of the advance sheet has a heading called
14 Scope of Receiver's Authority. And that section
15 is two pages long. And three times in that
16 one --

17 THE COURT: I'm very familiar with the
18 Welch case.

19 MR. CARROLL: Three times in that one
20 section, the Supreme Court makes the point that
21 I am making.

22 THE COURT: I understand your argument.

23 MR. CARROLL: Now, the Tibbs case -- the
24 Tibbs order says, among other things, that the
25 court has to ensure that the receiver has been

1 authorized to conduct its work in the case that
2 is before the court. There's no such order
3 here. That's Section A1.

4 But then section A2 says that this court is
5 required to ensure that such an order, an order
6 authorizing the receiver in the specific case at
7 hand, ensure that such an order is based on
8 findings of fact sufficient under Welch to
9 justify the order and that the receiver's scope
10 of authority is limited as set forth in Welch.

11 That phrase "scope of authority" in Tibbs
12 matches the heading that -- on page 29 of the
13 advance sheet from which my argument flows.

14 THE COURT: All right.

15 MR. CARROLL: These orders link up
16 entirely.

17 THE COURT: What do you do with section 3?

18 MR. CARROLL: My understanding is that the
19 court is to --

20 THE COURT: Well, what does it say?

21 MR. CARROLL: We ask that the circuit court
22 provide this court with a report on the progress
23 as to matters A and B, including the status of
24 Park, which I'll get to, and all asbestos cases
25 in which a receiver has been appointed every 30

1 days.

2 THE COURT: It says or to -- it says to the
3 extent the circuit court intends to authorize
4 the work of the receiver --

5 MR. CARROLL: I'm sorry, I was reading --

6 THE COURT: -- not found sufficient in
7 Welch, or to authorize a scope of work not
8 approved in Welch, the circuit court should make
9 specific findings of facts and conclusions of
10 law the circuit court finds justify its actions.

11 MR. CARROLL: Yes, ma'am. I'm sorry. I
12 was reading Section C, not A3.

13 The last sentence of number 1, though, A1,
14 limits any such order. The Supreme Court
15 specifically says the receiver is not to be
16 authorized to conduct work as to a case in which
17 no receiver appointment has been filed.

18 So that part of Welch is the law.

19 Now, if I can talk about --

20 THE COURT: But what does 3 mean then? Is
21 it referring to one and all? I believe it is.
22 It says to the extent circuit court intends to
23 authorize work based on facts not found
24 sufficient in Welch involved or scope of work
25 not approved in Welch.

1 MR. CARROLL: Yes, ma'am.

2 THE COURT: Then the circuit could make
3 specific findings of fact and conclusions of,
4 law the circuit court finds justify its actions.

5 MR. CARROLL: That's right. But the
6 receiver is not -- when you're doing that, the
7 receiver is not to be authorized to conduct work
8 as to a case in which --

9 THE COURT: Well, we just read the order
10 differently.

11 MR. CARROLL: But, Your Honor, my reading
12 jives with the statute because under the statute
13 a party has to ask for a receiver to go after a
14 specific asset to pay a debt owed to that party.

15 THE COURT: But if that were so, the two
16 decisions -- two appellate decisions that are
17 final in this area would not have been made.
18 And you say it's because nobody asked them about
19 that. Let me tell you something, they had
20 people on your side of the fence that were
21 very -- including you, that very aggressively
22 argued those points.

23 MR. CARROLL: We didn't argue -- Your
24 Honor, this point has never been --

25 THE COURT: Why not? If this turns out to

1 be the heart and sole of what you're now
2 arguing.

3 MR. CARROLL: Your Honor, that's why you
4 have this litany of people in the room who are
5 making this argument and have said Welch says
6 that what the --

7 THE COURT: Well, you've been making this
8 argument a long time before the Welch decision
9 came out, Mr. Carroll.

10 MR. CARROLL: Oh, no, ma'am.

11 THE COURT: A long time before this
12 decision came out. This is nothing new in terms
13 of the contention that you made on behalf of
14 your client.

15 MR. CARROLL: Well, I disagree with that,
16 but let's apply this ruling to the actual Tibbs
17 case.

18 THE COURT: Well, I'm going to do that.
19 I've been directed to do that and I'm going to
20 do that.

21 MR. CARROLL: Yes, ma'am.

22 THE COURT: Whether I end up applying it as
23 you think it reads or as Mr. Robinson thinks it
24 reads or somewhere in between remains to be
25 seen.

1 MR. CARROLL: Yes, ma'am.

2 THE COURT: But I'm certainly going to do
3 that.

4 MR. CARROLL: Well, there's no dispute that
5 there is no order appointing the receiver in the
6 Tibbs case. Which is why our notice that we
7 filed -- my clients filed on Friday says that
8 everything that the receiver has said should be
9 stricken from the record.

10 The whole third-party proceeding is a
11 nullity because there is no order authorizing
12 the receiver to do anything in the Tibbs case.
13 And that's for several reasons, not the least of
14 which is that the Tibbs have never asked for
15 such an order, and they never asked for such an
16 order because they have not actually sued the
17 entity that they want to have in receivership.
18 My client is not the defendant to the Tibbs
19 case.

20 THE COURT: Is that a request, then, for
21 the Supreme Court to revisit this remand back to
22 me? Because they wouldn't be asking me to do
23 what they're asking me to do if you were right
24 in what you just said.

25 MR. CARROLL: Your Honor --

1 THE COURT: Just the whole thing is a
2 nullity to begin with. That would be an easy
3 call for them to make. But they didn't make
4 that call. In fact, quite to the contrary, they
5 retained the ability to sanction your client
6 with them, but they sent the rest of it back to
7 me.

8 MR. CARROLL: Your Honor, I think they have
9 given the court a very easy and gracious way of
10 resolving this whole situation. The receiver
11 has no standing to make any argument in this
12 case. He definitely has no standing to make an
13 argument to be heard, ever to be -- to now be
14 appointed as a receiver in the Tibbs case. And
15 that goes back to 15-65-90.

16 He's not a party. He's not a creditor of
17 any of these third-party defendants. He has
18 retreated back in his motion to -- I want the
19 record to reflect, I'm putting quotes on it, in
20 his motion to confirm his appointment, he points
21 back to the Park case and says, well, gee-whiz,
22 was appointed there so that should be good
23 enough.

24 Your Honor, the Park appointment order is a
25 nullity on its own. I hope that you have read

1 our papers on this point.

2 THE COURT: I have.

3 MR. CARROLL: There was no order appointing
4 Mr. Park as the personal representative, and
5 there had not been for more than six months.
6 And Ms. Parks' estate had been closed. At the
7 time that the motion was filed, which, of
8 course, as Your Honor also knows, was nine
9 months after the Park family's counsel reported
10 to the court that the case was, quote, fully
11 resolved.

12 Nine months after the case was fully
13 resolved, six months after the estate is closed
14 and its personal representative appointment was
15 terminated, a motion got filed supposedly on
16 behalf of the estate asking for the receiver to
17 be appointed.

18 That is -- that filing is a nullity. The
19 Park appointment order is a nullity. It cannot
20 possibly be imported into this case, not the
21 least of which because Welch and Tibbs say it
22 can't, but also bring -- dragging a nullity from
23 one case into another is, of course, a futile
24 effort.

25 Cape --

1 THE COURT: Let me understand something.

2 MR. CARROLL: Yes, ma'am.

3 THE COURT: All right. The seven matters
4 that have been sent back to me are matters -- in
5 terms of your client are matters involving the
6 Tibbs case, right?

7 MR. CARROLL: Yes, ma'am.

8 THE COURT: So tell me, the court has given
9 me some directives about pending motions in
10 Park. And what I've been advised is that those
11 pending motions have now been resolved and
12 withdrawn.

13 MR. CARROLL: Yes, ma'am.

14 THE COURT: So tell me what the pertinence
15 is of this argument that you're making right now
16 about the Park case.

17 MR. CARROLL: Of course. The receiver
18 says, hey, I was appointed in Park so you should
19 recognize it in Tibbs. And I'm telling you that
20 the order in Park is annulled. That's why I'm
21 talking about Park.

22 He brings it up, and I, in response, am
23 telling you that what he's relying on, the
24 foundation for which his whole argument to be
25 confirmed, quote, confirmed in this case, his

1 whole argument is based on a foundation of sand
2 that has been washed out to sea. The order is a
3 nullity. It was a nullity the moment it was
4 entered.

5 The Tibbs case was fully resolved, as
6 counsel -- pardon me -- the Park case was fully
7 resolved as counsel reported to the court. If
8 Your Honor saw the timeline that we included
9 with our exhibit, counsel reports that Park is
10 fully resolved on June 3rd.

11 Three days later Mr. Park goes to the
12 probate court in Spartanburg County and says
13 please terminate my appointment as personal
14 representative and close this estate.

15 In August, the probate court grants that
16 motion, closes the estate, terminates his PR
17 appointment. And there's silence and peace for
18 more than six months in a case that's fully
19 resolved. And then out of nowhere a motion to
20 appoint a receiver over a company that was never
21 even served with process in the Park case comes
22 to Your Honor and that order is entered.

23 I heard Mr. Robinson say, hey, there was
24 some fraud told to you in that case about Cape,
25 but I don't think it made in your appointment

1 order so you ought to revisit that appointment
2 order.

3 On that point, Your Honor, the Welch court
4 did not -- it talked about moral fraud and said
5 Atlas Turner is subject to a receivership
6 because of, quote, moral fraud. But it didn't
7 say selling asbestos is moral fraud. What it
8 talked about is on page 25 of the advance sheet,
9 and all of the moral -- the quote, moral fraud
10 that was at play in Welch by Atlas Turner was
11 Atlas Turner's litigation conduct.

12 Your Honor ordered them to respond to
13 discovery. They said we don't have anybody who
14 can answer discovery. Your Honor said bring
15 your insurance asset to bear. They said, What
16 are you talking about? We don't have any
17 insurance. And Your Honor got to the bottom of
18 that and realized that wasn't true.

19 And so the Supreme Court, they identified
20 page 25 of the advance sheet, they identified
21 three things that justified the moral fraud
22 finding that resulted in the appointment of the
23 receiver. Number one, ignoring Your Honor's
24 discovery orders.

25 Number two, false statements regarding

1 insurance coverage.

2 And number three, refusing to tender the
3 claims to its insurance carriers. All of which
4 was in litigation conduct from the Welch case
5 itself. There's no such thing regarding Cape
6 LPLC, or Cape Intermediate Holdings Limited in
7 the Park case.

8 And Your Honor knows that because they were
9 never served with process in the very first
10 place. There's no default. There's no default
11 judgment. I know the receiver likes to say,
12 well, gee-whiz, he never answered the complaint.
13 Well, of course, they didn't answer the
14 complaint. They were never served with the
15 complaint. But that's not my client. This is
16 just what I concede from reading the public
17 index.

18 So, Your Honor, the application of Welch
19 and Tibbs as it relates to the purported Cape
20 receivership, the answer is easy. The Supreme
21 Court has given this court an easy way to unwind
22 this whole rotten situation. The Park
23 appointment order is nullity. The Cape -- the
24 purported Cape receivership is a nullity.

25 There's never been any service of Cape

1 Intermediate Holdings Limited or Cape PLC,
2 itself, in the Tibbs case without them actually
3 having been served or even named as real
4 defendants instead of defendants owed through
5 the receiver. Without that ever happening, this
6 court can never even attempt to appoint a
7 receiver, if the Tibbs family even asked for
8 one, which they have not. All they've done is
9 tried to adjoin a filing that itself is void.

10 Your Honor, I appreciate you giving me some
11 latitude to air my talking points. I'm glad to
12 answer any other questions you might have.

13 THE COURT: All right, sir.

14 MR. CARROLL: Thank you.

15 MR. RAWL: Your Honor, it's always nice to
16 see you. I'm Vic Rawl. I'm with the law firm
17 of Gordon Rees. I represent ESAB, Charter, and
18 Central Mining, that are named third-party
19 defendants in this Tibbs matter.

20 I'm not going to repeat everything that
21 Mr. Carroll just said, but we do incorporate
22 that. We also incorporate the brief that was
23 filed on behalf of London, you know, in the Park
24 matter, which is in opposition to a motion to
25 compel filed by the receiver in Park. I just

1 want to make sure I put that on the record.

2 Your Honor, I have it in my brief just to
3 make sure you know these arguments are not
4 waiving our personal jurisdiction arguments.

5 Your Honor, basically, Your Honor, on
6 behalf of the Charter defendants, I want to make
7 sure that, you know, we make our objections
8 clear. But what I would like to point out is a
9 lot of the issues that we are dealing with in
10 these receiverships.

11 And as Your Honor knows, Tibbs doesn't have
12 anything to do with insurance or insurance
13 carriers. It's separate. All the other
14 receiverships do, so Tibbs is a little bit of in
15 a different position.

16 But what strikes me whenever I hear these
17 arguments is that right now what we're dealing
18 with is the Supreme Court has asked Your Honor
19 to review the underlying appointment and
20 appointment orders, one for the Cape receiver
21 and others. But it's the underlying plaintiff
22 in those cases, as Mr. Carroll pointed out, that
23 has to make that motion to appoint the receiver.

24 And so it is that the plaintiff in the
25 underlying case that makes the motion to appoint

1 the receiver that gives the evidence of why the
2 receiver should be appointed that -- and they're
3 all ex parte. But that evidence is put before
4 you to make the determination as to whether or
5 not receivership should be appointed.

6 Those decisions and what happens there are
7 the purview of the underlying plaintiff and what
8 those plaintiffs argued and whether or not it
9 was sufficient to support an order.

10 THE COURT: Let me stop you right there.

11 MR. RAWL: Of course.

12 THE COURT: You say that it's the
13 underlying plaintiff and only the underlying
14 plaintiff who can ask for the appointment of a
15 receiver for a party defendant. And only for a
16 party defendant in their case.

17 MR. RAWL: Correct.

18 THE COURT: So there can never be a third
19 party complaint in a normal asbestos case even
20 when coverage questions are raised. Because
21 that's how these receivers end up being
22 appointed is through a third-party complaint in
23 an underlying plaintiff's action. And you're
24 saying that underlying plaintiff has to be the
25 initiating party.

1 MR. RAWL: Yes.

2 THE COURT: Let me ask you this as a
3 practical matter. You're here -- let's start
4 with the one that started it all, the granddaddy
5 of them all, Covil. For years, Covil was a
6 defunct corporation, but its insurers developed
7 a process of using one of the Covils to accept
8 service as if Covil was still an active
9 corporation and then tender those suits to the
10 insurance company for defense.

11 The plaintiff never knew any of that, and
12 when the underlying insurer lawyer would go on
13 behalf of the defendant to the mediation, it
14 would say the defendant's defunct, doesn't have
15 any assets, we might be able to scrape up
16 something, implication the Covils might be
17 willing to stick something in the pot as a
18 nuisance thing.

19 That's how those cases were settled all
20 those years until both Judge Eagles in the
21 federal case that involved the Finches resulted
22 in the \$32 million verdict, she had been told
23 consistently by the lawyers no insurance. Then
24 at the last, they finally said, oh, there may be
25 some insurance, but what you have to settle

1 within the limits of it, 300,000 or 200,000,
2 whatever it was.

3 They couldn't -- Covil would not allow
4 settlement within that limit. Again, the
5 plaintiff knows nothing about the specific
6 insurance policies or anything else.

7 How did the Covil insurance get discovered?

8 MR. RAWL: Your Honor, I apologize. I'm
9 not in the Covil case.

10 THE COURT: Well, let me explain to you.
11 You sat here and listened so I think you
12 probably know. It got discovered after I
13 appointed a receiver for Covil, and Covil
14 discovered an enormous amount, that the receiver
15 uncovered an enormous amount of coverage for
16 Covil in not just the case in which it was
17 originally appointed, but insurance that could
18 apply in the cases Covil was being sued in. Not
19 the case that it was initially appointed on.

20 And that situation was then -- the coverage
21 situation was then litigated extensively in the
22 Court of Appeals and in the South Carolina
23 Supreme Court. And the activities were affirmed
24 in every respect.

25 MR. RAWL: Your Honor, I've heard --

1 THE COURT: You know, how would that result
2 have ever come about if you're right and
3 Mr. Carroll is right and the only way a
4 defendant in an asbestos case can ever be
5 required to respond when it refuses to accept
6 service, refuse to admit the authority of the
7 court or anything else is for a specific
8 receiver and the specific case to be appointed,
9 and then that appointment is made only if the
10 plaintiff asks that it be made, when they don't
11 even know there's insurance out there.

12 That's the argument you're making to me. I
13 don't understand that.

14 MR. RAWL: And without going back to Covil,
15 I don't know all the facts. What I do know is
16 that having read the Supreme Court's opinions on
17 Covil, the receivership appointments were not
18 challenged. So nobody said these appointment --
19 these receiver appointments are improper for
20 these specific reasons. The carriers -- the
21 parties, they all accepted the appointment.
22 They didn't challenge them for whatever reason.
23 Maybe they did not have a problem with them.
24 But they were not challenged. So we don't have
25 a Supreme Court order that is upholding the

1 appointment of the receiver in Covil.

2 But to answer your question, yes, if
3 there's a party that wants to put a defendant or
4 plaintiff put a defendant into receivership, the
5 receivership statutes require that plaintiff to
6 make a motion to say, you know, why this entity
7 should be in receivership, what assets are at
8 issue, or, you know, in some of your other cases
9 they say we think there's insurance and you
10 should have marshaled those insurance assets.

11 But, yes, a plaintiff has to make a
12 showing. Now we know more about what the
13 showing has to be pursuant to both the Tibbs
14 order and the Covil opinion -- I mean, the Welch
15 opinion as to what the plaintiff has to show to
16 the judge in that case in order to have a
17 receiver appointed.

18 But the receivership statute, it's a
19 remedy. As Mr. Robinson said earlier, this is a
20 remedy. A remedy in a specific case. And why
21 would the Supreme Court just assume that there
22 will be several more cases that --

23 THE COURT: They discussed them. They
24 referred specifically to the many cases that the
25 receiver was involved in. The Supreme Court,

1 Court of Appeals are not unaware of this. They
2 were very much aware.

3 MR. RAWL: But I think that the Supreme
4 Court is looking back at the actual receivership
5 statute that says in numerous areas that it's
6 limited to that case. I mean --

7 THE COURT: That language limited to that
8 case does not appear in any of those statutes.
9 You make the interpretation based on the
10 statutory language. And I understand your
11 arguments in that regard. But the words you
12 just used do not appear anywhere in the statute.

13 MR. RAWL: In numerous sections of the
14 statute says in this cause, in this cause, and
15 it's in the singular cause. It also -- that
16 statute also says that the -- for a receiver
17 appointed under any portion of that statute,
18 that a bond has to be -- an amount of a bond has
19 to be --

20 THE COURT: There's a lot of argument about
21 that too, of course.

22 MR. RAWL: And that if the party in that
23 case pays the bond, then the receiver in that
24 case has to be terminated. So, I mean, how
25 would a party in a different case pay a bond in

1 an unrelated case in order to terminate a
2 receiver?

3 If a receiver can act in more than one
4 case, if they are appointed in only one case, by
5 one plaintiff, and starts acting in another
6 case, how can the parties that are being
7 affected in that other case be able to pay a
8 bond --

9 THE COURT: Once the receiver is appointed,
10 can the receiver be served with claims against
11 the corporation for which the receiver has been
12 appointed that are not involved in the original
13 appointment of the receiver?

14 MR. RAWL: Not if the receiver is appointed
15 pursuant to the receivership statute issued in
16 this case, which is a remedy statute. If the
17 receiver is appointed under the South Carolina
18 corporate section, which is different than an
19 asset -- a receiver or prejudgment asset
20 receiver, what we're dealing with in the Tibbs
21 case, then you run into the Rule 66 that gives
22 certain authority.

23 But the Rule 66, you can't contradict the
24 statutory language that's in 15-65-10 et. seq.,
25 which limits the request. It has to be the

1 plaintiff in the case, the receiver's actions
2 have to be in that case for the benefit of, you
3 know, collecting assets for that receiver.

4 And I think that it's very clear what the
5 Supreme Court said in the Tibbs order, which is,
6 you know, the receiver can't be allowed to act
7 in any case where he was not appointed as
8 receiver. Where all of a sudden he's been doing
9 what he was told that he can't do in Welch,
10 which is act on behalf of somebody else other
11 than the person on whom he was appointed.

12 THE COURT: How about you refer to the
13 Model Business Corporation Act. I'm real
14 familiar with that.

15 MR. RAWL: Thank you, Your Honor.

16 THE COURT: What does it about the
17 appointment of receiver? What is the authority
18 of the receiver once appointed?

19 MR. RAWL: You know, it basically says that
20 it's more in the line of a general receiver.
21 But the -- I believe it has to already be -- I
22 apologize, I don't know off the top my head. I
23 don't want to guess.

24 THE COURT: Okay. All right.

25 MR. RAWL: Again, I don't want to rehash

1 all the arguments, but I do want to go back to
2 my original point, which is if -- in any case
3 where the issue is was the appointment
4 sufficient? Well, that appointment order in the
5 motion, you know, for the appointment was made
6 by the underlying plaintiff.

7 You know, the receiver was not there --
8 let's take the Park case, for example. You
9 know, Mr. Protopapas was not acting in the Park
10 case prior to the time Your Honor issued the
11 order appointing him as the receiver. He wasn't
12 there saying, Your Honor, you should appoint me
13 as a receiver in this Park case for all these
14 reasons. You know, it was the Park plaintiff.

15 We now have a different understanding now
16 because that we know there was actually no
17 plaintiff at the time of the case. There was no
18 case in controversy. You have to have at least
19 two parties to have a case in controversy. So
20 it is my client's position as well that that
21 case was over and that there would be no proper
22 appointment.

23 Even if the plaintiff at the time, you
24 know, was still appointed PR and still had
25 authority to act on behalf of the Park estate,

1 and that case was not -- have already been fully
2 resolved, by making the motion, he is making the
3 argument as to why our receiver should be
4 appointed. If that becomes in question again,
5 it's not up to the receiver who is the arm of
6 the court, who is supposed to be a neutral and
7 not have, you know, an advocate of any party, it
8 is not up to the receiver to go then stand in
9 the shoes of Mr. Park and say, well, Mr. Park
10 should have argued this, or he meant to argue
11 this but he didn't.

12 THE COURT: I don't understand that to be
13 what the receiver is doing at all. The receiver
14 is acting as the representative of the defendant
15 not as the -- he's acting as a receiver for a
16 specific defendant party. He's not acting as a
17 representative for the plaintiff at all.

18 MR. RAWL: Your Honor, respectfully, the
19 receiver made a motion to confirm the
20 receivership. He made a motion to confirm his
21 own authority and suggesting that this Court --

22 THE COURT: Right. That's not a motion
23 made by the plaintiff in any case.

24 MR. RAWL: No. And that's my point,
25 Your Honor.

1 THE COURT: So none of these appointments
2 or even appointments where you -- you want to
3 invalidate them all, including those that where
4 a receiver is appointed pursuant to an order
5 initially issued in Taylor, for example, for
6 Covil. Unless the plaintiff did the requesting,
7 no third-party request would be valid, in your
8 opinion?

9 MR. RAWL: I don't think that any action of
10 a receiver appointed in one case pursuant to
11 15-65-10, et. seq., you know, any action would
12 be appropriate in another case.

13 THE COURT: Okay. Well, now you're talking
14 another case. You're not asking for the
15 invalidation of every receiver appointment?

16 MR. RAWL: I'm only here in regard to the
17 Tibbs case. I represent ESAB, Charter --

18 THE COURT: I understand who you represent.

19 MR. RAWL: Yes. And so it is -- I do think
20 that --

21 THE COURT: But you're making a pretty
22 broad argument about the authority of the
23 receiver appointed in any of these cases. And
24 pursuant to the argument you make, all these
25 receiverships, except those that pertain to the

1 specific case in which a receiver was initially
2 appointed, would be invalid.

3 MR. RAWL: I believe that, yes.

4 THE COURT: And a case in which he's
5 appointed unless the plaintiff asks for the
6 appointment, they would be invalid.

7 MR. RAWL: If a plaintiff gets an
8 appointment of a receiver in a certain case, if
9 the receiver acts beyond that case, if it's
10 under this statute, then he would not have the
11 authority to act in that other case, is my
12 client's reading of this case.

13 THE COURT: I understand.

14 MR. RAWL: But again --

15 THE COURT: That would have gotten rid of a
16 lot of litigation that's already gone over the
17 dam and been resolved and gone even as high as
18 the Supreme Court.

19 MR. RAWL: And I don't know why different
20 parties did not challenge the appointment of the
21 receiver at those times. I notice there were
22 some challenges, but the appeals were not
23 accepted as immediately appealable. This is the
24 first, you know --

25 THE COURT: That's clearly something wrong

1 that was done in this case. That the court has
2 recognized. These were not immediately
3 appealable orders, and the court has made that
4 very clear.

5 MR. RAWL: I did read the Tibbs opinion or
6 Tibbs order, yes, ma'am, Your Honor.

7 THE COURT: What's that?

8 MR. RAWL: I said, yes, Your Honor, I did
9 read the Tibbs order. So I do understand what
10 they said?

11 THE COURT: Some parts you like other parts
12 you don't like?

13 MR. RAWL: Isn't that every case?

14 THE COURT: Yeah, well, it is. That's what
15 I'm all about.

16 MR. RAWL: Your Honor, but in this, the
17 Tibbs case that I'm standing here for today, my
18 client objects that the receiver does not have
19 standing to act in this case. But further --

20 THE COURT: That's an underlying argument.

21 MR. RAWL: Doesn't have standing to try and
22 argue for his own appointment. You know,
23 whether or not the appointment was appropriate
24 or not or enough evidence or not,
25 Mr. Protopapas, he didn't have anything to do

1 with getting himself appointed. The order was
2 made, he was appointed. So whatever happened
3 before his appointment, whether that appointment
4 order was appropriate or whether the evidence
5 that was provided to the court was sufficient,
6 you know, under Welch, that is not the receiver
7 standing to make this argument.

8 For example, we made this argument when we
9 made a motion to resolve the receivership in
10 this case. And there was an issue, if Your
11 Honor remembers, with -- we pointed out that the
12 Cape entity, the motion to appoint the receiver
13 had all this information, but what it did not
14 provide to the court was any evidence that there
15 was personal jurisdiction over the Cape entity.

16 Later in the briefing, there was a receiver
17 provided a copy of reported service. There was
18 an affidavit that said the summons had been
19 filed or had been served but no summons and
20 complaint.

21 And we make the argument that that --
22 you -- whatever happened in the underlying
23 appointment would be the argument of Mr. Park
24 that said, yes, I did it the right way, and not
25 for Mr. Protopapas or his lawyers to say, oh,

1 no, Park did it the right way, and we're going
2 to try and supplement and make some arguments
3 that Park did not make in the underlying case.

4 I'm saying the same thing here, Your Honor.
5 I don't think it's appropriate for the receiver
6 to argue, hey, you should go back and maybe
7 include some of these facts because Mr. Park
8 didn't make them. If Mr. Park thinks that the
9 appointment order was correct, then he should be
10 here arguing that -- what was argued and then
11 the underlying appointment order is correct.

12 Not Your Honor's arm of the court,
13 Mr. Protopapas, which should be -- I don't think
14 it should be argued in furtherance of his own
15 authority. His authority comes through you. It
16 would be up to the person seeking the
17 appointment to say whether or not if there's a
18 challenge to the appointment and that under --

19 THE COURT: That's the same argument you
20 made before, right?

21 MR. RAWL: It is similar. It is not the
22 same because we have different evidence now.
23 Because right now, Park can't come back. Park
24 is no longer a plaintiff. There is no plaintiff
25 in the Park case. That probably explains why he

1 may not have come back earlier because it's
2 definitely not back now.

3 I have just a couple of objections unless,
4 of course, Your Honor wants to ask me some more
5 questions. I want to make sure that on the
6 record that, you know, my client does object to,
7 you know, Mr. Protopapas' assertion that he has
8 standing to make any of these arguments because
9 the -- I think that the receivership, his
10 ability to act in Tibbs is a nullity. There is
11 no order appointing the receiver in the Tibbs
12 case. And that the order in Park was a nullity
13 to begin with because there was no case in
14 controversy.

15 The -- we also object to --

16 THE COURT: Okay. Well, let me just ask
17 you this: The main thrust of all of you all's
18 arguments has been the appointment of Protopapas
19 was not proper because it wasn't in the Tibbs
20 case. I got that. I don't think you need to
21 plow that ground anymore.

22 But all the other issues about why a
23 receiver can't be appointed for your clients.
24 So let's say for reasons beyond what I'm
25 prepared to decide today it's decided that his

1 appointment was proper. Now what is your
2 argument?

3 MR. RAWL: If Your Honor was to decide that
4 the only appointment order regarding any Cape
5 entity was the appointment order in the Park
6 case.

7 THE COURT: I understand that. I
8 understand that, Mr. Rawl. I'm trying to -- I
9 understand that completely, and I understand you
10 would like to resolve the whole thing on that
11 basis alone.

12 MR. RAWL: Yes.

13 THE COURT: I am asking you a little bit
14 different question right now.

15 MR. RAWL: Okay.

16 THE COURT: Which is assume for a moment
17 the appointment is not the problem, but there
18 are other issues about whether any receiver
19 should have been appointed over your client
20 because your client is not a defendant or
21 related to a defendant, et cetera, et cetera. I
22 would like to at least hear a little bit about
23 that.

24 MR. RAWL: I apologize, Your Honor. I want
25 to make sure we're on the same page. There is

1 no receiver appointed over my client.

2 THE COURT: Right.

3 MR. RAWL: A receiver was -- a receiver
4 order was appointed. Well, in the Park case to
5 put an --

6 THE COURT: Let's not go to the Park case.
7 How did your client get in here at all?

8 MR. RAWL: The receiver -- Mr. Protopapas
9 purports to be a receiver for an entity called
10 Cape PLC.

11 THE COURT: Exactly. That's where I want
12 to go now. He says he's a receiver for Cape
13 PLC. And you say, well, he hasn't been
14 appointed as a receiver for Cape PLC in the
15 Tibbs case, therefore, his authority is null to
16 begin with. I got that argument.

17 MR. RAWL: Okay.

18 THE COURT: But I'm looking for a little
19 bit different argument, which is let's assume
20 for a moment that he was properly appointed to
21 be the receiver and act for Cape as the
22 receiver. Your clients get hooked into this
23 thing because of their alleged relationship to
24 Cape, correct?

25 MR. RAWL: Well, I'll say --

1 THE COURT: That's the area I would like to
2 at least have addressed to some extent instead
3 of keep going on a doom scroll about this one
4 issue, there is the validity of his appointment
5 at all. I got what your argument is there. I
6 got the argument that Mr. Carroll has made about
7 that. It's an argument based on Welch. It's an
8 argument based on statute. Argument based on
9 the order of June the 26th. I got all that.

10 But in addition, there was an underlying
11 dispute as the case left me with a determination
12 about the relationship between Cape and Altrad
13 and the other defendants that are now in this
14 thing. I want you to talk about that for a
15 minute.

16 You represent ESAB, Central Mining, other
17 insurers of London, insureds, Charter, et
18 cetera, right?

19 MR. RAWL: I represent ESAB, Charter, and
20 Central Mining.

21 THE COURT: Okay.

22 MR. RAWL: Your Honor, my clients --

23 THE COURT: They are in this case why?

24 MR. RAWL: They are in this case because
25 what we claim is, of course, an improperly

1 appointed receiver brought a third-party action
2 in a case where he was not appointed receiver.

3 THE COURT: He brought a third-party case.
4 We've talked at length about the fact he can't
5 do that. But let's go to the merits of the case
6 he did bring.

7 MR. RAWL: Sure.

8 THE COURT: How it originally got to me.
9 And that is your claim that he can't make a
10 claim against you.

11 MR. RAWL: Well --

12 THE COURT: What is his claim based on?

13 MR. RAWL: If you go to the actual claim he
14 makes. I'll take one of my clients, for
15 example, ESAB. ESAB is a company who's only
16 been in business for a couple of years. There's
17 only I think one paragraph in the entire
18 90-something-page complaint. And in what we
19 said is there is no personal jurisdiction --
20 even if you have the authority to act, there's
21 no personal jurisdiction.

22 You show no connection whatsoever between
23 this historic, what they claim to be a terrible
24 actor from South Africa and my client, which is
25 a U.S. corporation that has nothing to do with

1 asbestos.

2 And so we made a motion to dismiss for lack
3 of personal jurisdiction, and then have been
4 challenging the authority of the receiver and
5 the standing on personal jurisdiction issue
6 since. So what I would say is the underlying
7 case, what it is about is the receiver did not
8 seek -- did not go and try to marshal some kind
9 of insurance asset. They did not identify any
10 asset of any entity that are presented in
11 South Carolina.

12 They said, oh, we think that there are some
13 relationship between these clients, and they
14 brought one cause of action, which is the unjust
15 enrichment cause of action, which they think
16 that somehow my client was unjustly enriched by
17 the actions of this entity from fifty-something
18 years ago.

19 That's basically what the underlying case
20 is. But until very recently, we've had all
21 these issuance on appeal. And from my client's
22 standpoint and what happened the Supreme Court
23 pointed out and the Tibbs order is all of my
24 client's appellate activity challenged the
25 authority of the receiver to act in the

1 underlying appointment of Mr. Protopapas as a
2 receiver.

3 THE COURT: I got that. I got that,
4 Mr. Rawl.

5 MR. RAWL: That's where we are.

6 THE COURT: Mr. Rawl, settle just for a
7 minute, please, sir. I'm not dismissing those
8 arguments by saying that they may not be good
9 arguments. I get the basic Park appointment
10 can't help in the Tibbs case. I got that.

11 I'm just trying to probe for a little bit
12 the specifics of how they claim you -- your
13 client is related to Cape and therefore becomes
14 a legitimate defendant if all -- the appointment
15 thing is not a problem.

16 MR. RAWL: Even if every bit of the
17 appointment was proper --

18 THE COURT: Right.

19 MR. RAWL: -- there's no merit whatsoever
20 to the underlying case against my client.

21 THE COURT: Okay. And what is that
22 underlying case? What is their claim?

23 MR. RAWL: Again, they're claiming that
24 somehow my client, who is a relatively
25 newly-formed corporation, somehow has something

1 to do with Cape from fifty years ago. There's
2 no connection. I'm sorry.

3 THE COURT: I think you know more than what
4 you're answering here. I'm frustrated that you
5 keep kind of going in vague circles.

6 But what I understand your client's
7 position in this case to be is that there's a
8 claim that it ended up with the assets or part
9 of the assets of the corporations that
10 distributed South African asbestos to
11 South Carolina and injured South Carolina
12 plaintiffs.

13 MR. RAWL: No, Your Honor.

14 THE COURT: Then what is the claim? What
15 is the relationship claim claimed between your
16 client and Cape?

17 MR. RAWL: That somehow my client was
18 unjustly enriched by Cape's bad acts.

19 THE COURT: Bad acts in what? Selling off
20 its assets or distributing these assets or
21 closing down one company and putting the assets
22 in the name of another shell corporation?

23 MR. RAWL: I mean, the complaint says that
24 this underlying Cape entity, you know, was a
25 large miner of asbestos. That its products were

1 distributed, and it would be in a lot of other
2 products maybe in South Carolina. That they
3 allege that there is a company called NAAC that
4 was a subsidiary.

5 THE COURT: Right. That's a big part of
6 their claim is that when Cape decided, hey, we
7 don't like this litigation environment in the
8 United States even though we've distributed
9 asbestos here for years, so we are going to get
10 out of the United States and put our affairs in
11 the hands of NAAC. The receiver's contention is
12 that NAAC is just a shell corporation that Cape
13 continues to control. But it was the named
14 distributor. In fact, it even had an office in
15 South Carolina.

16 And so what is the claim about the
17 relationship between that entity or any other
18 Cape entity and your claims?

19 MR. RAWL: There is no claim that my
20 clients, at least not in the complaint, that my
21 clients have any relation whatsoever to NAAC.

22 THE COURT: What is the -- what corporation
23 in the Cape chain do they say your client was
24 either related to or received the assets of?

25 MR. RAWL: I think they did allege at one

1 point that my client was a small shareholder of
2 one related Cape entity. But there's no
3 allegation that any assets of Cape were put into
4 the hands of my client. That is -- those are
5 not the allegations.

6 THE COURT: Okay. If that's the case,
7 doesn't that solve your problem completely?
8 Shouldn't you be out just on that without
9 getting into all this other complexity?

10 MR. RAWL: Well, Your Honor, when we argue
11 personal jurisdiction, I thought you were
12 actually going to -- were with me.

13 THE COURT: Yeah.

14 MR. RAWL: I thought that you were going to
15 find that there was no link and there was
16 nothing. But we did make that argument, but you
17 did deny my motion and at this point we are
18 still in the case.

19 But also I believe that NAAC never had any
20 connection. There's no allegation there's a
21 connection with South Carolina, is my
22 understanding. I think they said there was one
23 employee of NAAC that was in Chicago.

24 THE COURT: Well, the allegation is that
25 NAAC actually had an office in South Carolina.

1 MR. RAWL: Not in this complaint,
2 Your Honor.

3 THE COURT: Huh?

4 MR. RAWL: Not in this complaint, I don't
5 believe. I've read it so many times because
6 it's somewhat of a struggle for me to discern
7 what's being alleged against my client. It
8 is -- I am pretty confident that the allegation
9 is that NAAC had an office only in Chicago. But
10 if I'm wrong about that, it doesn't make any
11 difference from any client's standpoint.

12 THE COURT: Your personal jurisdiction
13 argument the thing beyond anything else, you say
14 get your client out, right?

15 MR. RAWL: I think that at the time we made
16 the argument, we did not know that Park was not
17 actually still a plaintiff. So we did not have
18 the ability to make the argument at the time.

19 THE COURT: But you don't need that if the
20 court revisits the personal jurisdiction issue.

21 MR. RAWL: I think we should win on
22 personal jurisdiction also, Your Honor, yes.

23 THE COURT: All right.

24 MR. RAWL: If I can put the rest of my
25 objections on the record real quick. Your

1 patience --

2 THE COURT: The rest of your objections?

3 MR. RAWL: I have a couple of objections to
4 make sure I have some of the stuff that the
5 receiver has done here.

6 THE COURT: Is that going to get into kind
7 of the personal back and forth that the court
8 asked me to put an end to?

9 MR. RAWL: No, I'm not looking to be
10 personal back and forth. What I do want to do
11 on behalf of my client, I do want to object to
12 the consideration of nonparties filing --

13 THE COURT: Are you in this the same thing
14 that Mr. Carroll has already covered about the
15 Amy Hill letter and other things?

16 MR. RAWL: I'm not arguing anything about
17 ex parte communication. My only point is that,
18 you know, as the judge in the Tibbs case, I
19 think it is -- you know, I'm asking that
20 Your Honor only consider the filings by the
21 parties in the Tibbs case. And to the extent
22 that there are filings being filed in the Tibbs
23 case trying to sway this court on how it should
24 rule on these receivership issues by parties
25 that -- or by lawyers that don't represent a

1 party in a Tibbs case, or I mean, I think
2 Mr. McCoy is a very nice person, but his view of
3 receiverships from the Murdaugh case are not
4 relevant to the Tibbs' decision.

5 THE COURT: Okay. So your argument is on
6 the merits of these materials that have been
7 submitted as exhibits not on the basis that they
8 are ex parte? On the merits you think it
9 shouldn't be considered.

10 MR. RAWL: I'm saying they are not
11 considered -- I think they're improper and we
12 would ask that the court not consider them in
13 regard to the Tibbs case because they are not
14 properly filed in this -- they should not have
15 been filed in this case.

16 THE COURT: All right.

17 MR. RAWL: Also to the extent we would ask
18 that they not be provided in any report that
19 goes to the Supreme Court.

20 Also, similarly there are some letters that
21 were filed that are general letters by law firms
22 that say on behalf of our past, future, and
23 present clients, here's our position. I don't
24 think that a lawyer can represent, still work in
25 the past or future client if they're going to

1 make any positions in any case on behalf of a
2 current client.

3 THE COURT: Wait a minute. Now that does
4 go a little beyond what I've even heard from
5 your colleague.

6 MR. RAWL: Mr. Carroll, yes.

7 THE COURT: Are you now saying that that
8 disqualifies them from any other participation
9 in any other case, what's been filed in this
10 case?

11 MR. RAWL: No, Your Honor. I'm not
12 suggesting anything nefarious. What I'm
13 suggesting is if this court -- if I think that
14 counsel is going to say I'm making these
15 arguments in this case on behalf of -- I'm
16 standing here today on behalf of ESAB, Charter,
17 and Consolidated Mining. But I've disclosed to
18 the Court who I'm making arguments on behalf of.
19 There are certain filings that were just made
20 generally by law firms that say on behalf of my
21 past, present, and future clients.

22 THE COURT: That's so nitpicky. I
23 understand you don't like that. It's not going
24 to have anything to do one way or another with
25 what I do about the legal issues in this case.

1 But what it does suggest to me is that the
2 receiverships are working.

3 The lawyers in various asbestos cases to
4 file letters that start off by saying "On behalf
5 of their past, present, and future clients,"
6 I'll ignore that. The rest of their comments
7 about what is happening in the receivership
8 world in general, they file, and they are there
9 for whatever good they do.

10 My judgments are going to be made on what I
11 think the law is in this area.

12 MR. RAWL: Your Honor, I do appreciate
13 that.

14 THE COURT: So I don't think you need to
15 make any more arguments along those lines.

16 MR. RAWL: That's my only point is I do not
17 believe those people had standing to make any
18 arguments for how --

19 THE COURT: All right. I've heard that. I
20 got it.

21 MR. RAWL: Your Honor, unless you have any
22 other questions for me, I am happy to sit down.

23 THE COURT: Thank you, sir.

24 MR. RAWL: Thank you, Your Honor.

25 THE COURT: 12 o'clock is way past when I

1 normally break. Let's take a 15-minute break.
2 Be back at 12:15.

3 - - -

4 (A recess transpired.)

5 - - -

6 THE COURT: All right. Welcome. If you
7 don't have anything new to say, make it very
8 brief. Thank you.

9 MR. BALBER: Thank you, Your Honor. I will
10 be brief.

11 I am Scott Balber from Herbert Smith
12 Freehills on behalf of the
13 Anglo American-De Beers defendants.

14 The first thing I want to do is address a
15 question you asked Mr. Rawl about why my clients
16 are here and who we are. I think it's
17 important.

18 So the Anglo American-De Beers entities are
19 ultimately a publicly-traded company in the
20 business of mining platinum, diamonds, and
21 copper. Not asbestos. Never mined asbestos.
22 Never sold asbestos. Not in South Carolina or
23 anywhere else in the world.

24 We're also not insurance company. Never
25 have been.

1 We are here in this case because one of my
2 client entities owned an equity interest, a
3 minority equity stake in one of Mr. Rawl's
4 client-related entities, which itself ultimately
5 owned a minority equity stake in Cape PLC. So
6 we are the historically minority owner of a
7 minority ownership interest in an entity that
8 was a minority owner in Cape. That's it, Judge.

9 So to answer your question, yes, you can
10 revisit the personal jurisdiction motions, which
11 we continue to reserve, and the other motions to
12 dismiss we made, and not negatively impact, I
13 think, the good work that Your Honor has done in
14 the insurance context.

15 This is not an insurance case. I just want
16 to be clear about that because there are no
17 insurance defendants. And I think very
18 significantly, Your Honor, the receiver himself
19 acknowledges that Cape's insurance was exhausted
20 in 1978. That's in page 14 of the Interim
21 Statute Report.

22 So nothing in this case has to do with
23 insurance. And again, Your Honor can dispense
24 with all the issues in this case without
25 negatively impacting the insurance regime where

1 I know Your Honor has done substantial good work
2 and which continues to progress onward.

3 THE COURT: One of the things that I'm
4 curious about in terms of your assertion about
5 what insurance was around, I get your basic
6 assertion, which is we are at such a removed
7 from the South African company and its series of
8 more directly associated corporations that were
9 in the asbestos business that we are at best for
10 a minority or a minority interest, so we are two
11 steps removed from any association. Get that
12 argument.

13 The insurance thing, though, makes me a
14 little bit curious. There is an issue in this
15 part of this complex matter in which some of the
16 lawyers and certain London insurers take the
17 position that they should not have any
18 involvement in the case for all kind of
19 jurisdictional reasons, but this is the same
20 company that's been selling liability insurance
21 to South Carolina corporations for commercial
22 general liability policies that cover this kind
23 of thing for years and years and years.

24 But you're not a part of any insurance
25 regime or anything else and your argument about

1 insurance asset is just another argument about
2 who you are. You aren't in the insurance
3 business, you aren't in the asbestos mining
4 business, and you really -- that's the central
5 argument you make.

6 You, of course, agree with all the other
7 arguments they're making about the lack of
8 authority or the receiver because receiver
9 wasn't properly appointed in this matter. I get
10 that.

11 But your basic touchstone is we ought not
12 to be in this case at all.

13 MR. BALBER: That's right, Your Honor. One
14 more nuance, which I would like to explain,
15 which is I can appreciate the propriety of the
16 receivership regime in the context of insurance
17 cases for all the reasons Your Honor described
18 with regard to the -- that's makes sense.

19 We are a different regime so it is, yes, we
20 don't think we belong here at all. But
21 particularly, the appropriateness of the
22 receivership in this context is far less
23 compelling than what Your Honor has articulated
24 in the insurance.

25 THE COURT: Sure. I understand.

1 MR. BALBER: Okay. My only other point,
2 Your Honor, is again Your Honor asked one of my
3 colleagues the question about, well, if we
4 assume there's a receivership order in this
5 case, what does that mean? So I'm just going to
6 take Your Honor's assumption and address the
7 question, if I may.

8 The problem is not only the absence of the
9 receivership order in this case. I'm not going
10 to argue that again. You've heard plenty of
11 that and been very patient. But it's also the
12 scope of the receivership order that existed in
13 Park that is being deployed in this case.

14 Okay. And the Supreme Court in Welch, I
15 think made a couple of things clear, many of
16 which have been discussed. But one of the
17 things that haven't been given enough attention
18 yet, which is that the receiver cannot gain
19 entry into the boardroom or have some vague
20 right to take over the operations of the
21 company.

22 Now certain things we all would agree would
23 be improper under Welch and certainly cannot
24 fall under the purview of a receivership order.
25 But certain things have happened in this case

1 which I respectfully submit also fall within the
2 parameters of what has by prohibited by Welch.

3 For example, waiving jurisdictional and
4 merit defenses, which the receiver has done on
5 behalf of Cape. Confessing to misconduct on
6 behalf of Cape. That's happened in the
7 complaint and elsewhere.

8 Waiving the attorney-client privilege.
9 Privileging documents on behalf of Cape.
10 Entering into a tolling agreement with
11 plaintiff's counsel. That's also happened in
12 this case.

13 And last but by no means least, is
14 accepting service of the complaint on behalf of
15 Cape. And let me just explain why I think, Your
16 Honor, that is so significant.

17 Cape, be it a good company, a bad company,
18 or the worst company, is entitled to due
19 process. Due process is not just for the good
20 guys. And in this case, in the Tibbs case, Cape
21 was deprived of due process because it was not
22 served with the complaint by the Tibbs. Rather,
23 this was short-cutted.

24 This, again, goes into the argument of who
25 had the right to seek the receiver. We think it

1 was the Tibbs only, but I'm not going to
2 reiterate that. But regardless, Cape has to be
3 served with a complaint by the Tibbs in order
4 for due process to be honored. And then if Cape
5 did what it may have done in other cases, what I
6 know the receiver claims it would have done
7 here, defaults, engaged in bad conduct, in this
8 case, well, then, Your Honor, we're off to the
9 races and whatever happens happens.

10 But Cape was deprived of that due process
11 because it was never served with the complaint.

12 Again, I don't want to reiterate anything
13 else. I've certainly agreed with my colleagues'
14 arguments. And I appreciate your time,
15 Your Honor.

16 THE COURT: Thank you very much.

17 Mr. Sawyer.

18 MR SAWYER: Good afternoon, Your Honor.
19 May it please the Court. Wesley Sawyer. I am
20 actually here in the Park case, not in the Tibbs
21 case.

22 THE COURT: I'm not hearing the Park case
23 today.

24 MR SAWYER: That's why I asked about
25 stepping up earlier, Your Honor, for

1 clarification. There's a motion to compel
2 against my clients in the Park case agenda.

3 THE COURT: What I am told is that the one
4 order that was discussed in the Supreme Court's
5 order of June 26, 2025, which is the reason for
6 this hearing -- I'm not down into motions that
7 are also pending yet -- but that case that in
8 Section B refers to the Park case.

9 MR SAWYER: It does refer to the Park case,
10 Your Honor.

11 THE COURT: And what's been represented to
12 me is that that pending motion has been settled.
13 Is that not so?

14 MR SAWYER: My understanding, Your Honor,
15 is that after the Supreme Court issued the Tibbs
16 order directing that this Court rule on those
17 pending motions from Locke Lord to dissolve the
18 receivership, that the receiver voluntarily
19 dismissed that case with prejudice.

20 THE COURT: There's nothing for you to
21 worry about in terms of the Park case. Who did
22 you represent in Park?

23 MR. SAWYER: I currently -- I'm new to
24 Park -- represent Certain Underwriters of
25 Lloyd's of London, Continental --

1 THE COURT: What are the certain other
2 insurers -- that crowd gets my attention because
3 they've been saying all along they don't have
4 any insurance. They don't represent anybody.
5 Lloyd's is one of the biggest insurers and
6 directly and indirectly in South Carolina that
7 there is in a commercial general liability
8 field. So I'm -- but why in the world are they
9 paying you to appear in a case when the motion
10 they care about has been settled?

11 MR SAWYER: That's not the motion that I'm
12 here for, Your Honor.

13 THE COURT: What are you here for?

14 MR SAWYER: May I let the court reporter
15 know who else I represent so the record is
16 clear?

17 THE COURT: Yes.

18 MR. SAWYER: I represent also Continental
19 Casualty Company and Liberty Mutual Insurance
20 Company.

21 And, Your Honor, I'm here because the
22 receiver filed a motion to compel against my
23 clients in connection with the subpoena while
24 his claim -- his third-party claim against
25 Locke Lord was still pending. That motion is on

1 your agenda for today, which is why I'm here
2 today. So my involvement in Park is limited to
3 opposing that motion to compel and is filed and
4 added to the court's agenda. I'm happy to
5 address it now or later today.

6 THE COURT: The receiver filed that motion
7 in which case?

8 MR SAWYER: In Park. That's where the
9 subpoenas were captured in Park and the motion
10 to enforce the subpoenas is --

11 THE COURT: But Park has been resolved, as
12 I understand it.

13 MR SAWYER: During our break, Your Honor, I
14 approached the receiver's counsel to ask if this
15 motion is resolved or not. They said it is not
16 resolved. I did ask for clarification,
17 Your Honor.

18 MR. PROTOPAPAS: Your Honor --

19 THE COURT: What motion are you talking
20 about?

21 MR SAWYER: The receiver's motion to
22 enforce the subpoenas against Continental
23 Casualty Company.

24 THE COURT: Receiver's motion to enforce
25 subpoenas against who?

1 MR SAWYER: Continental Casualty Company,
2 Certain Underwrites at Lloyd's of London, and
3 Liberty Mutual Insurance Company.

4 THE COURT: And they are parties in what
5 case?

6 MR SAWYER: They are not parties. They
7 were subpoenaed in the Park case and objected to
8 the subpoena.

9 THE COURT: They were subpoenaed in the
10 Park case?

11 MR SAWYER: Yes.

12 THE COURT: And the Park case is no more,
13 as I understand it.

14 MR SAWYER: If it's no more, then the
15 subpoenas are moot and that's put on the record,
16 I'll sit down, Your Honor.

17 THE COURT: All right. Mr. Protopapas. I
18 don't want any long-winded argument now. I just
19 want to know specifically what's the scoop on
20 the Park case?

21 MR. PROTOPAPAS: The Park claim is pending
22 against Cape.

23 THE COURT: Speak up.

24 MR. PROTOPAPAS: Certainly, Your Honor.

25 The Park case is pending against Cape, and

1 it's part of a normal, if you have a normal
2 receivership --

3 THE COURT: Park is still pending against
4 Cape by means of the original Park versus
5 everybody --

6 MR. PROTOPAPAS: Yes.

7 THE COURT: -- or by means of the
8 appointment of a receiver?

9 MR. PROTOPAPAS: By the original Park
10 versus everybody.

11 THE COURT: The original Park case had Cape
12 as a defendant?

13 MR. PROTOPAPAS: Yes, Your Honor. The sole
14 remaining defendant.

15 THE COURT: And -- all right. The original
16 Park case is still in existence? It hadn't
17 settled?

18 MR. PROTOPAPAS: It's settled as to all
19 defendants but Cape, and I am searching to find
20 assets available to satisfy the Park claim.

21 THE COURT: Okay. And so the demand for a
22 subpoena is still pending?

23 MR. PROTOPAPAS: Your Honor, yes. Your
24 Honor sent in April of 2025. A motion to compel
25 was filed June 2nd of '25.

1 THE COURT: All right. What you want to do
2 is talk about that, Mr. Sawyer?

3 MR SAWYER: Yes, Your Honor.

4 THE COURT: There will be a time.

5 MR SAWYER: Okay.

6 THE COURT: It's not today.

7 MR SAWYER: It was on today's agenda, so I
8 apologize.

9 THE COURT: No problem. No problem. It's
10 listed as one of the many pending matters that's
11 still out there. And I just didn't understand
12 that -- I was prepared to tell it's certainly
13 not pending in connection with the motion that
14 is talked about in the June 26 order.

15 MR SAWYER: That's correct, Your Honor.

16 THE COURT: That has been resolved, and I
17 can tell the court it's been resolved and it's
18 over with. The Park case itself is still alive
19 and well as to Cape.

20 MR SAWYER: And a very important part of my
21 argument is as to the propriety and the
22 receivership in Cape, which is also why I wasn't
23 sure if you wanted to hear from me now on that
24 particular issue. Not the whole context in the
25 Motion to Compel, but as to the receivership of

1 Cape in Park.

2 THE COURT: So far I'm trying to get with
3 these Altrad defendants and the propriety in
4 Tibbs, which is what's been projected to me to
5 look at. So let's put that one on the shelf for
6 a minute.

7 MR SAWYER: Okay. Thank you, Your Honor.
8 I'll sit down.

9 THE COURT: We're going to get back to how
10 to take up all these motions and when to take
11 them up.

12 MR SAWYER: That would be great, Your
13 Honor. Thank you.

14 MR. CARROLL: Your Honor, I did not want to
15 interrupt the dialogue, but I did want to have a
16 record before you that the Park case --

17 THE COURT: You have to speak up.

18 MR. CARROLL: Todd Carroll on behalf of the
19 Altrad defendants.

20 According to the public index, the Park
21 case appears to be fully resolved.

22 THE COURT: Wait a minute.

23 MR. CARROLL: According to the public
24 index, the Park case appears to be fully
25 resolved. That's how the Park plaintiff's

1 attorney reported it to this court more than
2 three years ago. That is what the Spartanburg
3 County Probate Court file also indicates.

4 THE COURT: All right. I'll find out about
5 that, but you're not in that as far as
6 Mr. Sawyer's clients are concerned, and I'm not
7 going to get into a full-blown discussion. You
8 have enough on your hands to deal with what
9 you've got.

10 MR. CARROLL: Yes, ma'am. I just did not
11 want my silence to be misunderstood on the
12 record as to agreement with those cases.

13 THE COURT: I understand.

14 MR. CARROLL: Thank you.

15 THE COURT: We have a big dust-up as to
16 whether the Park case is still alive. There
17 must be some agreements or something out there
18 that's keeping it alive.

19 MR SAWYER: There's a big dust-up in
20 particular because there's no PR for the estate
21 and the estate is closed.

22 THE COURT: I understand all that. I
23 understand all that. I'm not going to argue
24 that today. I understand that. They are
25 representing things that may or may not be true.

1 I don't take them as God's-given fact written in
2 the stars anywhere. That's their contention.
3 And that's why we want to have a hearing on
4 whoever motions they have. But that's all they
5 are at this moment is contentions.

6 They do not, however, directly impact what
7 I'm asked to do in the piece of Park that is
8 mentioned in this remand order. The piece of
9 Park that's mentioned in this remand order was a
10 reconsideration of a motion to dissolve the
11 partner -- the receivership, right?

12 MR. CARROLL: Your Honor, the two motions
13 in Park that are --

14 THE COURT: Okay. Just a minute. We're
15 not going to have back and forth. Hold it for a
16 minute. Let me look at this thing one more
17 time.

18 Here's what the court says, "It has come to
19 our attention that there may be motions filed in
20 this case and other asbestos cases that have not
21 been ruled on by the circuit court.

22 Specifically, we understand there is a pending
23 motion to dissolve the receivership filed
24 September the 15th, 2023, and a pending motion
25 to reconsider a clarifying order filed November

1 the 15th, 2024, both in the Park case.

2 "To the extent that is true, we direct the
3 Circuit Court to either rule on all the pending
4 motions or set forth an explanation of the
5 reasons the court determines it should not rule
6 at this time."

7 Now, that both of those -- all of that has
8 to do with Park. And I'm not in Park today
9 except that it was represented to me that some
10 parts of Park that are mentioned in this
11 clarifying order have been resolved. But I will
12 take that up when I deal with the Park motions.
13 I am not getting into a duplicate argument about
14 that today.

15 So I understand, Mr. Carroll. You don't
16 need to say anything else. I have heard enough
17 about the Park case.

18 All right. We've got a whole other set of
19 documents about where did the receiver for Cape
20 get his appointment? And I understand that's a
21 big issue out there.

22 So, you know, was that in the Park case?
23 That in the Tibbs case? Or where was it? I
24 don't know. But I'm not here to resolve that
25 today. I'm here to figure out a mechanism

1 whereby I can deal with what I've been asked to
2 deal with by the court.

3 All right. Now, I finished with
4 Mr. Sawyer. Anybody else?

5 All right. Mr. Robinson, I'm coming back
6 to you for a brief response. And one of the
7 things I would like to ask you before we get
8 started is very simply this: In what case was
9 Protopapas appointed as a receiver for Cape?

10 MR. ROBINSON: Park originally.

11 THE COURT: All right. Was it because of a
12 third-party complaint? Or who made the motion
13 for the approval of Protopapas as the receiver
14 in the Park case? Did the plaintiff make that
15 motion?

16 MR. ROBINSON: Your Honor, the plaintiff,
17 Ms. McVey.

18 THE COURT: All right. Ms. McVey made that
19 motion, that a receiver be appointed for one of
20 the defendants that her client, Park, had sued,
21 correct?

22 MR. ROBINSON: Correct, Your Honor.

23 THE COURT: All right. You may sit for a
24 minute. It looks like I'm going to get into
25 this whether I like it or not.

1 MR. ROBINSON: Your Honor, may I --

2 THE COURT: No. Keep your seat for a
3 minute.

4 MR. ROBINSON: Okay.

5 THE COURT: Ms. McVey, how did the Park
6 appointment of Cape's receiver come about?
7 What's the scoop on that?

8 MS. MCVEY: So, Your Honor, we sued Cape in
9 the Park case.

10 THE COURT: Right. I see that, and I
11 noticed that. I know that Cape's name appears
12 there.

13 MS. MCVEY: That's right. And as part of
14 that, they never filed an answer.

15 THE COURT: Right. They were in default.

16 MS. MCVEY: We did not move for a default
17 in Cape because what we didn't want to do is get
18 some judgment and then not be able to do
19 anything with it. Right?

20 THE COURT: Right.

21 MS. MCVEY: So what we did is we moved to a
22 receiver. I have -- I can hand it up to you --
23 the motion to appoint a receiver in Park.

24 THE COURT: Let me see it.

25 MS. MCVEY: And in that motion we allege

1 the worldwide fraud that Cape had engaged in.
2 And it's pretty detailed. It's about nine
3 pages.

4 THE COURT: Yeah, I'm familiar with the
5 motion. This is where you allege that Cape's
6 responsibility was projected through NAAC and --

7 MS. MCVEY: We alleged --

8 THE COURT: And then they liquidated NAAC,
9 as further means of retiring from the fray of
10 the United States, and a receiver could marshal
11 Cape's asset to satisfy their claims. That's
12 what you contend.

13 MS. MCVEY: Right.

14 THE COURT: And therefore appoint a
15 receiver for Cape.

16 Now, at the point in which you did this --
17 was filed in March of 2023. All right. And I
18 generally, if it's a motion to appoint a
19 receiver, under circumstances like this, whether
20 they're in default, then I don't give them any
21 chance to reply, I just appoint the receiver.

22 MS. MCVEY: That's right.

23 THE COURT: That's what I probably did
24 here. Is that right?

25 MS. MCVEY: Yes, ma'am.

1 THE COURT: Okay. So the receiver got
2 appointed.

3 MS. MCVEY: The receiver got appointed.

4 THE COURT: And the Park case was still
5 alive and kicking at that point.

6 MS. MCVEY: So the case had -- they keep
7 making this huge deal about me saying to the
8 court the Park case is fully resolved. And what
9 I meant by that is we had total agreement with
10 the receiver and that the Cape was up for trial.

11 THE COURT: Hold for a minute. You asked
12 for the receiver in March of 2023.

13 MS. MCVEY: So they --

14 THE COURT: And the receiver was appointed.
15 When was the tolling agreement made?

16 MS. MCVEY: It was after that.

17 THE COURT: Sometime thereafter --

18 MS. MCVEY: Right.

19 THE COURT: -- with the receiver --

20 MS. MCVEY: Right.

21 THE COURT: -- you made a tolling
22 agreement.

23 MS. MCVEY: Here's why. Because the Park
24 case, the underlying Park case that had many
25 defendants in it had been up for trial.

1 THE COURT: Right.

2 MS. MCVEY: And we had resolved with
3 everybody but Cape.

4 THE COURT: But Cape.

5 MS. MCVEY: The receiver had not finished
6 doing his work so we didn't want to go get any
7 kind of judgment that couldn't be collected.

8 THE COURT: Right. You were trying to
9 figure out whether there was some insurance to
10 cover the Park or some other asset that would
11 cover the Park case, right?

12 MS. MCVEY: That's right. That is correct.

13 THE COURT: I understand. That's typical.

14 MS. MCVEY: So that's what happened. Let
15 me back up and address, if you will let me --

16 THE COURT: What I want to know is this.

17 MS. MCVEY: Yes.

18 THE COURT: Okay. That happened.

19 MS. MCVEY: Right.

20 THE COURT: Now, is the tolling agreement
21 still out there?

22 MS. MCVEY: Yes, ma'am.

23 THE COURT: So you're still not settled
24 with Cape.

25 MS. MCVEY: Right.

1 THE COURT: Cape has still not admitted any
2 responsibility. And in the Park case, the Park
3 case is still alive as far as Cape is concerned.

4 MS. MCVEY: Correct.

5 THE COURT: Now, tell me about the
6 allegation that the public record says the case
7 is over.

8 MS. MCVEY: Okay. So I don't know why in
9 the world the case under the Spartanburg -- or
10 I'm sorry, the Richland County Clerk of Court
11 would say that the tort case is over. I don't
12 know why that would say that. I mean, we enter
13 into individual stipulations of dismissal for
14 defendants as they settle, as you know, where
15 they're dismissed or whatever.

16 THE COURT: Right.

17 MS. MCVEY: We didn't do that with Cape.

18 THE COURT: I have looked in the record,
19 and I see nothing in the record that you pull up
20 on the --

21 MS. MCVEY: Right.

22 THE COURT: -- website.

23 MS. MCVEY: The case is open. The Park --
24 the underlying -- thank you. Ms. Valek just
25 showed me.

1 THE COURT: The case --

2 MS. MCVEY: The Park case is open.

3 THE COURT: Yeah. I'm looking right at it.

4 That case is still an open case.

5 MS. MCVEY: That's right.

6 THE COURT: Assigned to me. And this is
7 the case in which Protopapas was appointed as
8 the receiver.

9 MS. MCVEY: Yes, ma'am.

10 THE COURT: All right.

11 MS. MCVEY: One other issue.

12 THE COURT: Then why are they saying that?

13 MS. MCVEY: Okay. So I don't know why they
14 said that, but what they wanted -- here's what
15 happened. When the Park case was filed, it was
16 filed as Mr. Park individually and as personal
17 representative of the estate of. Right?

18 THE COURT: Yeah.

19 MS. MCVEY: So we filed the case and when
20 we sued Cape, there was a personal
21 representative appointed. There was an
22 individual case, but there was also a personal
23 representative appointed.

24 THE COURT: Right.

25 MS. MCVEY: So the case moved along as it

1 did. What I didn't know until Friday is that
2 apparently the probate court has closed the
3 personal representative. In other words, he has
4 absolved the personal representative of any
5 authority at the moment going forward.

6 And what they want to say is that means
7 everything is done. You cannot do anything
8 about that.

9 Now, number one, I had no idea that it
10 happened. No one had told me. We weren't
11 copied on it. Didn't do the probate. I didn't
12 know.

13 But when I went and looked at the law of
14 this, number one, we had authority to sue Cape
15 because he was appointed the representative at
16 the time. But number two, when you go and look
17 at the statute about the ability of a personal
18 representative, and the case law that's
19 interpreting it, all we could do is reopen,
20 which is already in process.

21 THE COURT: Okay. That's the status of the
22 case. The case is still alive. Probate Court
23 closed the estate, and be a lot of reasons why
24 that might be done, is going to be reopening to
25 make it clear that the PR is still able to

1 function as the PR in Park.

2 MS. MCVEY: Absolutely. And when that
3 happens again, then the statute in the case law
4 says that it is retroactive.

5 THE COURT: It's retroactive. I'm familiar
6 with developing and closing of the states and
7 the reopening all that kind of thing. It all
8 reaches back.

9 MS. MCVEY: I think that's just a red
10 herring, but I want to make sure it's clear on
11 the record.

12 THE COURT: I get that. Now let me ask one
13 other question that has nothing to do with Park.
14 It has to do with Tibbs.

15 MS. MCVEY: Yes, ma'am.

16 THE COURT: Protopapas used his authority
17 as -- he got it in Park to also function as the
18 receiver for Cape in the Tibbs case, as I
19 understand it.

20 MS. MCVEY: Yes, ma'am.

21 THE COURT: That was a big issue floating
22 around here that's going to be resolved about
23 whether you can do that, right?

24 But what was filed in the Tibbs case was
25 Protopapas' order of appointment in the Covil

1 case, in the Taylor or in the Covil case, at
2 least by what I'm looking at here. I don't
3 understand that.

4 MS. MCVEY: Well, Covil was a defendant in
5 the Tibbs case. Is that what you're talking
6 about?

7 THE COURT: Then Covil is a defendant and
8 that's why that order was filed. It wasn't
9 filed because of an attempt to say that that
10 order authorized Cape.

11 MS. MCVEY: No. No. The Cape order was
12 also filed.

13 THE COURT: The Cape order was filed as
14 well.

15 MS. MCVEY: Yes.

16 THE COURT: And that is -- the Cape order
17 in Parks was filed as an exhibit in the Tibbs
18 case when the -- when the receiver became
19 involved as the third-party plaintiff in the
20 Tibbs case, right?

21 MS. MCVEY: Correct.

22 THE COURT: Okay. I got you.

23 MS. MCVEY: And we served the receiver as
24 Cape in the Tibbs case.

25 THE COURT: Right.

1 MS. MCVEY: As we've done in every other
2 receivership-type case.

3 THE COURT: Right. Right. Right.

4 MS. MCVEY: And you know, we look at Rule
5 66.

6 THE COURT: The issue about whether the
7 court has either in Welch or the most recent
8 order or both said that's a no-no.

9 MS. MCVEY: Right.

10 THE COURT: We got it resolved. Okay.
11 Very good. That clears it up. Thank you very
12 much.

13 MR SAWYER: Your Honor, I think since we've
14 gone into Cape and Park, I feel like --

15 THE COURT: No. I'm not going to get into
16 the merits of your argument at all.

17 MR SAWYER: I want to correct statements.

18 THE COURT: I'm going to conduct a full
19 hearing, Mr. Sawyer, on whether your client is
20 te absolve in Park or not. All I was trying to
21 do is look at the record and see what the record
22 reveals and particularly what the record reveals
23 about Park.

24 I am not going to today to hear any
25 arguments about whether the personal

1 representative has any authority to reopen the
2 closure of the estate of Park. That can wait
3 until we hear the Park motions.

4 MR SAWYER: Well, Your Honor --

5 THE COURT: She is simply explaining what
6 she understands about that and that's fine. You
7 explained what you understood about Park.
8 That's also fine. I'm going to have a big
9 argument on that, and I'm not going to have it
10 today.

11 MR SAWYER: Your Honor, just --

12 THE COURT: I'm not going to have that
13 argument today.

14 MR SAWYER: I'll note my objections to
15 everything she said. We didn't have a chance
16 to --

17 THE COURT: You object to everything I
18 said, that's fine.

19 MR SAWYER: To what Attorney McVey said.

20 THE COURT: Sir? I'm not hearing you.

21 MR. SAWYER: I was just noting I object to
22 what Ms. McVey said because I did not get a
23 chance to respond to it, so I want to note my
24 objection.

25 THE COURT: I note your objection. And I

1 note that I'm going to give you a chance to file
2 briefs on this point and argue it to your
3 heart's content when I take up Park.

4 All I wanted to do is see whether in fact
5 the notations that I was told by you and by
6 Mr. Carroll that the Park case had been closed
7 on the record is right, and that's not right.

8 It hasn't been -- the Park case is still
9 alive and pending with me assigned as the judge.
10 Therefore, these contentions about Park will be
11 resolved in the due course of time by a hearing.

12 MR SAWYER: To be clear, the notations I
13 made from exhibits from court filings, from the
14 probate court submitted to Your Honor. We have
15 a full brief on the Park motion that's been
16 submitted to Your Honor as well.

17 THE COURT: That's fine. And I'm not
18 hearing that Park motion and I'm not ruling
19 against you on the Park motion today. I'm
20 simply saying I wanted some clarification as to
21 whether the Park case had been dismissed and
22 shown on the public record as no longer an open
23 case.

24 And the Park case is shown on the record of
25 the Richland County Fifth Judicial Circuit's

1 Public Index as an open case.

2 MR SAWYER: And what I was noting as the
3 probate --

4 THE COURT: I understand what you all say
5 about Spartanburg County Probate Court. I'm not
6 ruling on that or dealing with that today. You
7 say one thing, she says another thing. That's
8 why we're going to have a hearing.

9 MR SAWYER: Okay. Thank you, Your Honor.

10 THE COURT: All right.

11 MR. CARROLL: Your Honor, just for the
12 record, I join.

13 THE COURT: I understand you join
14 everything he says twice. Noted.

15 MR. RAWL: For ESAB --

16 THE COURT: Noted. Noted.

17 MR. RAWL: I also like just to object on
18 behalf of ESAB and Charter that we don't
19 believe --

20 THE COURT: You know, this is not
21 necessary, Vic. None of it is necessary. You
22 all are going to file voluminous briefs on the
23 subject. Please don't do that me. I'm not
24 hearing that case today. I told you that when
25 we got started. I let you do a few things by

1 way of noting why you're going to be in that
2 case. But I'm not hearing that right now.

3 MR. RAWL: Thank you, Your Honor.

4 THE COURT: Thank you.

5 MR. RAWL: Objection noted. Thank you.

6 THE COURT: Okay. Now, let's get back to
7 Mr. Robinson.

8 Mr. Robinson, I think I've got some clarity
9 about where things stand and where Protopapas
10 was appointed and what he did with that
11 appointment in terms of filing it in the Tibbs
12 case. I get that.

13 And that we are going to have to a big
14 hearing about. A whole issue of whether a
15 receiver's authority extends to other cases
16 beyond an original appointment. We're going
17 to -- that's going to be a big -- it's going
18 back up to the Supreme Court. They are going to
19 have a lot of looking at it, and who knows what
20 the answer is going to be. I at least
21 understand the landscape a little better now.

22 You got anything else you need to tell me?

23 MR. ROBINSON: Your Honor, I would like to
24 just express my sincere apologies for
25 interrupting Mr. Carroll when he was talking.

1 He, as the Court noted, sat quietly and listened
2 as I argued, and I apologize for interjecting.

3 The issue that I was going to raise with
4 the Court, I think Mr. Lay would address. I
5 apologize.

6 THE COURT: I appreciate that,
7 Mr. Robinson, and I assure Mr. Carroll
8 appreciates that as well. He nods. Thank you
9 so much.

10 Now, let's talk practical sense about how
11 we approach this. To me, there's one big issue
12 about how receiverships in South Carolina are
13 handled, how appointments are handled, and what
14 the ambit of a receiver's authority is. And I
15 really -- I'm asking -- this is open ended --
16 I'm searching for what the best vehicle is for
17 dealing with this.

18 All these things continue to be raised
19 repetitively in all these various matters,
20 including the remanded material. And the
21 remanded seven cases are themselves cases in
22 which the motions that are made sometimes had
23 only indirect validity in the case to which the
24 matters were made.

25 So it's kind of a -- I'm trying to figure

1 out which is the case I really ought to be
2 looking at. Is it these seven cases where it's
3 a big old bust-up between Altrad and whether
4 it's the Cape -- even if it were properly named
5 would grab into Altrad, all them? Because the
6 motions, the seven cases in which the motions
7 were made are all wrapped up with the Altrad
8 matter.

9 I don't want to get into the details of
10 whether Altrad is the -- is an appropriate party
11 to be grabbed up in the mal of Cape. There's to
12 be a -- there ought to be a time and place on
13 this docket about standing motions for us to
14 explore the big issue of whether Cape can be
15 sued at all and then whether it can drag in, by
16 all these allegations that Mr. Lay makes in his
17 various filings, all these other corporations
18 like NAAC, like Altrad, like all the rest of
19 these entities.

20 Because they all are in various pieces and
21 parts of what's before me because of the initial
22 contention of liability on the part of Cape and
23 its related companies.

24 So that's one thing. And is that an
25 exploration that would be best done through the

1 vehicle of the remanded motion? The remanded
2 seven cases or seven really petitions, or is
3 there another and better vehicle? And I suspect
4 there is, which is one of the substantive cases
5 being tried that's not got that as a part of its
6 activity.

7 So I'm going to turn to you for a minute,
8 Mr. Lay. What would your --

9 MR. PROTOPAPAS: Your Honor, may I?

10 THE COURT: Well, I'll let you, yeah,
11 Mr. Protopapas. What are you all -- you all are
12 kind of in this thing together. So what do you
13 think an appropriate vehicle would be? And I'm
14 not going to necessarily agree with you because
15 I'm going to ask the same question of these
16 other folks. But what is an appropriate vehicle
17 for exploring the Cape and its extended
18 relationship allegedly with other organizations?

19 Some of these folks say they don't even
20 have enough to get closely to what would
21 proximate personal jurisdiction. Others say
22 it's all a bunch of stuff made up by all these
23 mean books that have been written about us and
24 it doesn't have any factual predicate to it and
25 it ought to be thrown out for that reason. That

1 may be a pretty good reason to do it.

2 What's the case and controversy I've got
3 before me that would most effectively explore
4 the Cape situation? I've done it once with
5 these motions on personal jurisdiction, but that
6 apparently is -- doesn't satisfy anybody,
7 including the Supreme Court. So you tell me.

8 MR. PROTOPAPAS: Tibbs, the case remanded
9 to you by the Supreme Court, where it retained
10 original jurisdiction over to is the appropriate
11 vehicle for the Cape matter.

12 THE COURT: Okay. Now, let's talk about
13 Tibbs for a minute. Tibbs names Cape. And then
14 it's through that naming of Cape that Mohed
15 Altrad, Altrad Investments, ESAB, Central Mining
16 are alleged to come in, right?

17 MR. PROTOPAPAS: Yes, Your Honor.

18 THE COURT: So if the Tibbs' case is back
19 in my responsibility, then what pending motions
20 best deal with this overall issue? I had an
21 original ruling on personal jurisdiction, but it
22 may have to be revisited. But what's the best
23 vehicle for exploring an issue that I think the
24 Supreme Court wants the court to explore?

25 MR. PROTOPAPAS: We have a motion to amend

1 our complaint, Your Honor, which the Court has
2 heard and deferred ruling on. The personal
3 jurisdiction issue can come by a motion right
4 after the amended complaint, or we can take it
5 up as part of the motion to amend and encourage
6 our friends to go ahead and renew --

7 THE COURT: Well, the motion to amend is a
8 motion that puts all this averment we are
9 talking about at issue, right?

10 MR. PROTOPAPAS: Yes, Your Honor.

11 THE COURT: Your Lawyer Lay is trying to --
12 I can't hear both of you now, Mr. Lay.

13 MR. LAY: I'm raising my hand. It seems to
14 me that the best vehicle would be the motion to
15 dissolve and our response, the motion for
16 confirmation.

17 THE COURT: Wait a minute. You got to go
18 again.

19 MR. LAY: Let me back up. There are a
20 bunch of motions that are filed in the Tibbs'
21 case. One of them is a motion by the defendants
22 to dissolve the receivership. We have our
23 motion to confirm the receivership. Embedded in
24 those motions are issues that you addressed in a
25 73-page order in December 2023, again, on the

1 dissolution. They raised things like personal
2 jurisdiction --

3 THE COURT: I don't agree with you,
4 Mr. Lay. There is Cape and whether the naming
5 of Cape can now legitimately include these other
6 corporations. That's an issue all by itself
7 that has nothing to do with motions to dissolve
8 the receivership. That's a separate thing.
9 It's an attack on the legitimacy of the
10 receivership.

11 And there's also a contention that the
12 parties can never include some of these that
13 made all these motions the Supreme Court didn't
14 have and sent back to me, like Altrad and some
15 big -- Rawl's clients and his clients. I mean,
16 there are a bunch of them that say it doesn't
17 extend as far as me. Those have got to be dealt
18 with.

19 MR. LAY: So I think in the motion for
20 dissolution and in the motion to confirm the
21 appointment, that is going to be about the scope
22 of our responsibility as receiver and ability to
23 bring those suits. So we're going to be talking
24 about --

25 THE COURT: That's fine. But before we do

1 that is the basic question: Should these people
2 be in this lawsuit? And you say I've already
3 ruled on that when I denied the motions for
4 personal jurisdiction. But they use that to
5 race all the way up to the Supreme Court, who
6 sent it back to me and now says take a look at
7 everything.

8 MR. LAY: Well, I'll respond to that
9 because I was chomping at the bit to get up to
10 explain when I was listening to Mr. Rawl explain
11 his confusion about what the case is about. I
12 can explain that now. If you would rather defer
13 that, I can do that.

14 THE COURT: That's what I want to have a
15 hearing about.

16 MR. LAY: Okay. I think as part of the
17 scope, in our -- they have a motion for summary
18 judgment, which is really not ripe at this
19 point. If they're wanting to revisit with a
20 motion to dismiss, we're glad to address that.
21 You have ruled on that.

22 THE COURT: I have.

23 MR. LAY: If that needs to be revisited,
24 then I guess that's something they can revisit.
25 We'll gladly take that on. But I think the

1 motion for dissolution and our authority, which
2 extends to what we're actually doing in the
3 third-party complaint, and the viability of that
4 third-party complaint are all embedded in the
5 motion for dissolution and our motion for
6 confirmation. If they need to supplement their
7 motion for dissolution, do it.

8 THE COURT: Here's what I want to do. I
9 want to separate out the part of the case that
10 deals with their continued contention that they
11 don't have anything to do with the case, and
12 therefore, I'm not to be in the case. I want to
13 take another shot at that.

14 And then I want to talk directly about the
15 scope of the receivership and their contentions
16 to the whole thing ought to be dissolved. They
17 have got several contentions. Some of them are
18 about the method of appointment itself. They
19 say you can't use these old appointments. You
20 had to have an appointment in the Tibbs case.

21 Then because they already had an
22 appointment in Park, they go back and attack the
23 Park case. And, you know, it might not even be
24 in the Park case, some of them, but they go back
25 and attack the appointment in Park for all kind

1 of procedural things.

2 So we have got to deal with the validity of
3 the appointment in Park to begin with. And we
4 want to go back that far. And then we have to
5 deal whether the appointment in Park can stand
6 for activities in Tibbs.

7 MR. LAY: Okay. Let me repeat it back and
8 make sure that I understand. If I can get some
9 help on this. You have the Park case in which
10 the appointment occurred.

11 THE COURT: Right.

12 MR. LAY: That appointment goes to Tibbs,
13 and in the Tibbs case, once, you know, they
14 responded, Cape responded to the complaint and
15 brought a third-party action against these
16 defendants.

17 THE COURT: Right. Typical that's done in
18 a bunch of asbestos cases.

19 MR. LAY: Yes, ma'am. Instead of it being
20 insurance based, it may be insurance based, at
21 some point there may be insurance involved in
22 this and that's part of what we're trying to
23 discover.

24 THE COURT: They're making a big point of
25 the fact that even if you could justify the

1 receiver as going over into the Tibbs case,
2 under no circumstances could they go after
3 assets other than insurance assets.

4 MR. LAY: Which is a wrong reading of
5 Welch.

6 THE COURT: I understand all that. That's
7 got to be dealt with.

8 MR. LAY: That's their argument and our
9 argument is we are responsible for assimilating
10 assets. That may be insurance --

11 THE COURT: That's fine.

12 MR. LAY: And then it's this third party --

13 THE COURT: I don't need to hear that
14 argument today. I understand.

15 MR. LAY: Yes, ma'am.

16 THE COURT: That's one that we're going to
17 have to deal with.

18 MR. LAY: Yes, ma'am. So how do we get --
19 I mean, I think the dissolution motion and the
20 confirmation motion have those issues, our
21 ability to do it. Now you're talking about
22 taking it a step further and looking at the
23 viability, it sounds like, effective motion to
24 dismiss on the third-party defendants. That
25 motion is not pending in front of you right now.

1 I don't know of a vehicle where that could
2 occur.

3 THE COURT: Well, it's pending to me in a
4 sense that -- wait a minute. What is pending
5 before me is a motion to dissolve the
6 receivership and that motion does go to the
7 heart of what their contention is, to Welch, to
8 some new order. Their reading of what the
9 difference is between custodian and receiver and
10 their reading of what the Business Corporation
11 Act says, Rule 66 says, what the Title 15 says
12 and so forth. That's all in their thing. This
13 is an illegit receivership.

14 That's got to be dealt with, and it's got
15 some of these other elements in it. But
16 that's -- their motion to dissolve the
17 receivership is a motion pending in Tibbs and
18 it's got to be heard.

19 MR. LAY: The fundamental issue is the
20 motion for dissolution and for confirmation.
21 And that's step one and that's fundamental. And
22 it seems to me that's what you need to be
23 addressing. As part of that, the motion to
24 amend, which is the operative complaint, needs
25 to be dealt with.

1 So I think those are the three motions that
2 give you a vehicle to get this started to have
3 this hearing.

4 THE COURT: Okay.

5 MR. LAY: Those are the three primary
6 motions.

7 THE COURT: So basically all these things
8 would go together if you did a motion to
9 dissolve, motion to confirm, and a motion to
10 amend --

11 MR. LAY: Yes, ma'am.

12 THE COURT: -- in Tibbs.

13 MR. LAY: In Tibbs. Yes, ma'am.

14 THE COURT: Okay. Now, let's go back to
15 Park for a minute.

16 Sawyer says that he still has motions
17 pending in Park even though Carroll says Park
18 has been totally resolved. I show on the
19 Richland County website that the Park case is
20 still an open case and noted as such on there.
21 So then I got to figure out what matters are
22 still pending in Park for resolution.

23 And I asked this to Protopapas.
24 Protopapas, are there motions in Park that
25 attack the receivership?

1 MR. PROTOPAPAS: No, Your Honor. There is
2 only a motion to compel insurance carriers that
3 Mr. Sawyer represents. On that motion to
4 compel, I will note I have withdrawn it as to
5 Travelers. I have reached agreement. I have
6 withdrawn it against Interstate. I reached an
7 agreement on their response. I have not reached
8 agreement with Mr. Sawyer's clients. I
9 apologize, Your Honor. Mr. Sawyer's clients.

10 THE COURT: So other clients may have --
11 other insurers may have gotten some resolution,
12 but where his clients have not given him any
13 permission to resolve so we still have to hear
14 his motions.

15 MR. PROTOPAPAS: Yes, Your Honor. I will
16 say, as I said earlier, I have reached out to
17 Resolute, who is his client, like I advised the
18 court, to see --

19 THE COURT: But Park is kind of -- that is
20 not as necessitous because you've got a toll
21 agreement in effect with Park with really the
22 only defendants that are left, right?

23 MR. PROTOPAPAS: Yes, Your Honor. Not to
24 confuse matters more, I do believe there is
25 insurance assets. I do believe there is money

1 for me to chase.

2 THE COURT: But that's the subject of more
3 discovery and so forth and so on. Right now,
4 what I got on the books for them is Wes Sawyer's
5 motion and that's it, right?

6 MR. PROTOPAPAS: My motion to compel his
7 memo in opposition. I should note his memo in
8 opposition raises all the --

9 THE COURT: And in his motion in
10 opposition, he raises all these questions about
11 the legitimacy of your appointment.

12 MR. PROTOPAPAS: Yes, Your Honor.

13 THE COURT: Okay. And that's how he gets
14 into the bigger playground of that.

15 MR. PROTOPAPAS: Yes, Your Honor. Probably
16 better dealt with in Tibbs with the primary
17 counsel.

18 THE COURT: Of course, Wes would not agree
19 with you on that.

20 MR SAWYER: Actually, Your Honor, I think
21 they are all very well equipped to fight that
22 fight. But if I have a motion against my
23 client, I have to make the arguments.

24 THE COURT: No question. No question.

25 MR SAWYER: Thank you, Your Honor.

1 THE COURT: You believe more thoroughly in
2 brevity being the sole of wit than some of your
3 brothers do. That's why I was trying to get you
4 to be the lead guy on that.

5 Okay. I understand that.

6 So here's what I want done. I want --
7 Todd, can you speak for all these brethren here
8 at least in the procedural matter talking about
9 how we would handle this?

10 MR. CARROLL: Your Honor, we've not
11 consulted.

12 THE COURT: If they -- if you say something
13 they don't like, I'm sure they will tell me.

14 MR. CARROLL: I'm sure they'll tell me,
15 too.

16 THE COURT: Here's what I would like to do,
17 is I would like to go on and take Tibbs and set
18 the motion to dissolve by you all, the motion to
19 confirm appointment by them, and the motion to
20 amend by them.

21 I would like to set these three things.
22 That would probably bring to the fore for
23 adjudication all these contentions about the
24 legitimacy of the receiver and all the rest of
25 it. Do you agree?

1 MR. CARROLL: Your Honor, I think the
2 motion to amend is completely premature because
3 as it stands --

4 THE COURT: I will put it third to be
5 heard. The first two things I would hear would
6 be the motion to dissolve and the motion to
7 confirm and then we would get to the motion to
8 amend.

9 MR. CARROLL: Sure. My client's file will
10 be styled a notice of the Supreme Court's orders
11 and a motion to strike. Our position is that
12 everything they file is a nullity.

13 THE COURT: Well, I understand that. The
14 motion to dissolve and the motion to confirm
15 will go a long way towards dealing with that.

16 MR. CARROLL: Yes, ma'am.

17 THE COURT: I can assure you if you then
18 try to, on an interim basis, appeal those two
19 things, that the South Carolina Supreme Court is
20 going to look at you with a big fish eye. But
21 we'll cross that bridge when we come to it. You
22 all won't be able to take a breath wrong. I
23 have no -- what you all do in that. But that's
24 how we will attack what I think is the main
25 questions raised by the Welch case and by the

1 Supreme Court's June the 26 case.

2 The main questions they raise can all be
3 accommodated in the legitimacy of the
4 receivership appointment and whether it should
5 be dissolved. And that will set the stage for
6 the rest of these matters to trail along behind.

7 MR. CARROLL: Yes, ma'am. The only reason
8 I distinguish my filing is because mine is not
9 called a motion to dissolve.

10 THE COURT: What is it called?

11 MR. CARROLL: It's a notice of the Supreme
12 Court's authority and a motion to strike.

13 THE COURT: Well, is that filed in the
14 Supreme Court?

15 MR. CARROLL: No, ma'am. It was filed on
16 Friday in this --

17 THE COURT: The motion to strike is a
18 motion on the pleadings. And, you know, if I'm
19 going to get into the motion to strike, I'm
20 going to get into the motion to amend. I will
21 put the motion to strike down there with the
22 motion to amend.

23 That's, to me, not the best vehicle for
24 talking about what we've got to talk about. The
25 motion to dissolve the receivership is the more

1 direct --

2 MR. CARROLL: Yes, ma'am. I promise I'm
3 not trying to quibble. I'm only saying what I'm
4 saying so that the record is clear that I think
5 my client's papers need to be considered as part
6 of that whole -- that whole set of issues.

7 THE COURT: Well, your clients are the two
8 Altrads, right?

9 MR. CARROLL: Yes, ma'am.

10 THE COURT: And you want to stay in the
11 case and talk about your motion to strike, but
12 you want to get out of the case because you want
13 the whole --

14 MR. CARROLL: I don't want to stay in the
15 case.

16 THE COURT: Well, then dissolving the
17 receivership I believe is the first thing you
18 want to do before you talk about nitpicking the
19 complaint.

20 MR. CARROLL: Your Honor, the only reason
21 I'm not nitpicking the complaint, I am not
22 saying -- I'm making this distinction because a
23 motion to dissolve the receivership presumes the
24 receivership exists in this case and no such
25 receivership exists. No, ma'am. That is the

1 heart and soul of our filing. So I don't want
2 anybody to hand me --

3 THE COURT: That's fine. You may not like
4 the way I set it up, then you can argue what you
5 want to argue.

6 MR. CARROLL: It's not how you set it up.
7 That is what the De Beers' motion is called.
8 And so I'm just making sure the record is clear
9 that I want my client's papers considered as
10 part of that whole consideration of the
11 receivership in this case, does it even exist in
12 this case? And if it doesn't, should it? I
13 just want my --

14 THE COURT: I see nothing, but I like my
15 writing better than your writing here because
16 the motion to dissolve the receivership --

17 MR. CARROLL: No, ma'am.

18 THE COURT: -- is made on the same basis as
19 your motion to strike. Motion to strike is a
20 pleadings motion to strike certain things that
21 are in the pleading. If that's an indirect way
22 of saying, I want to strike everything except
23 the receiver, you're just trying to attack the
24 receivership.

25 I'm not going to get into the nit-picky

1 details of this, but I think I know the way I'm
2 going to set this thing up. You can file what
3 you want to.

4 MR. CARROLL: No, Your Honor. I take your
5 point. I'm not trying to quibble. On the Park
6 case, if I may, item B, please.

7 THE COURT: No, I'm just saying I don't
8 hear you as well from there as you come up here.

9 Now you want to talk about the Park case?

10 MR. CARROLL: Briefly.

11 THE COURT: I'm not on the Park right now.

12 MR. CARROLL: I know you're not on Park,
13 but Item B on the Supreme Court Tibbs order,
14 calls out two motions in Park.

15 THE COURT: Yeah, both of them are
16 resolved.

17 MR. CARROLL: Those were my motions, and I
18 was just coming to report that those motions
19 don't exist anymore.

20 THE COURT: Do what?

21 MR. CARROLL: They do not exist anymore.

22 THE COURT: Right. So I'm going to tell --
23 don't worry, I'm going to tell that to the
24 Supreme Court right away. Those motions don't
25 exist anymore because what the heck are you

1 doing in the Park case?

2 MR. CARROLL: We talked about this earlier.
3 The only reason I've even raised any issue about
4 Park is because the receiver, with no
5 appointment in Tibbs, has said, oh, that's okay,
6 just Park --

7 THE COURT: You're going to attack that in
8 the motion to dissolve the receivership. You
9 want to dissolve it because you say you can't
10 operate in Tibbs. I get that. But this other
11 motion to strike and everything I don't get in
12 the Park case, you are not involved in Park
13 anymore.

14 MR. CARROLL: That's it. I was just trying
15 to help you clarify the point B on the Supreme
16 Court's order.

17 THE COURT: I get that.

18 MR. CARROLL: Okay. Those are my motions.
19 I owned them, now they're gone. That's that.

20 THE COURT: Thank you.

21 MR. CARROLL: Thank you.

22 THE COURT: All right. So get the calendar
23 out here for a minute.

24 MR. RAWL: Your Honor, if I may just
25 briefly. I want to incorporate what Mr. Carroll

1 said on behalf of ESAB and then Charter clients,
2 but our only point would be is that we think
3 that you do have to determine whether or not the
4 receivership appointment is proper first, so we
5 would ask that --

6 THE COURT: That's the predicate for the
7 motion to dissolve it, is it wasn't proper to
8 begin with, Mr. Rawl. And that's the first
9 thing I'm going to set for this proceeding.

10 MR. RAWL: Your Honor, my only request was
11 that the -- of the Anglo Group filed a motion to
12 dissolve -- the friends of the receiver filed a
13 motion to confirm. I believe -- I agree with
14 you that those motions together heard will deal
15 with the receivership appointment issues.

16 I would just ask that just those issues be
17 set first so that we can get a ruling
18 determination from you so that we can determine
19 that the receiver does have authority to
20 continue to push any other motion that he may
21 have.

22 THE COURT: That's why I set them to begin
23 with. Either I'm not making myself clear or
24 something funny is happening or everybody just
25 wants to get a word in and be heard.

1 That's just what I said, Mr. Rawl. I'm
2 going to set the motion to dissolve first. Then
3 I'm going to set the motion to confirm the
4 appointment. And we're going to probably hear
5 arguments on each of those things. I'm going to
6 cogitate. I'm going to rule from the bench, as
7 I generally do, and ask the winner to draw an
8 order. Okay.

9 MR. RAWL: Thank you, Your Honor.

10 THE COURT: Yes, sir. And that, depending
11 on what I do with those, may or may not obviate
12 the necessity for a motion to amend or motion to
13 strike.

14 Okay?

15 MR. RAWL: Thank you, Your Honor.

16 THE COURT: Now, what about this August
17 term? Is that the Motley Rice term? Come give
18 me some good news.

19 MR. LEDLIE: Yes, Your Honor. I'll be
20 happy to. This is James Ledlie.

21 THE COURT: Yes, James, I'm glad to see
22 you.

23 MR. LEDLIE: Thank you, Your Honor. I am
24 happy to report and follow up on what
25 Mr. Protopapas followed up on earlier. As to

1 all of our cases pending in August, all have
2 been resolved. As to all parties, subject to
3 the discussion with Mr. Protopapas, there's a D
4 block coming, and so I'm happy to report that we
5 can release back to the court.

6 THE COURT: That's what I was hoping. I
7 have the August term back.

8 Oh boy, we got somebody else? Surely
9 you're not going to blow this up for me.

10 MR. MERIWETHER: I am going to do my level
11 best not to do that. Robert Meriwether. Just
12 wanted to let Your Honor know that in one of the
13 remaining cases in the August term, which is
14 a -- it's one of the smoking lung cancer
15 cases --

16 THE COURT: Right. Right. Right.

17 MR. MERIWETHER: -- from an out of town
18 group. And we still are working hard to resolve
19 for two clients, but I didn't want you to think
20 that because Mr. Ledlie's have gone, that we
21 still have got that Vincent case.

22 THE COURT: Okay.

23 MR. MERIWETHER: Just not pulling anything
24 out. Working hard to get rid of it.

25 THE COURT: Good. Excellent. Thank you so

1 much.

2 So we still have an outstanding case left
3 on the August term, but a child is always
4 hoping. I am going to hope that one of the most
5 experienced asbestos defense attorneys that ever
6 practiced at the bar will work his magic and we
7 will get that case resolved.

8 And based on that, we had a pretrial
9 hearing set for the August term on Wednesday,
10 the 30th. And then we had trial beginning --
11 what is the 3rd, a holiday?

12 That's Monday. Okay. So then August 4th
13 would begin the August term. So that's when I
14 would like to set a hearing in Tibbs on the
15 motion to dissolve the receivership that's made
16 by the defense. The motion to confirm the
17 receiver's appointment in Tibbs. That's made by
18 the receiver.

19 Those two are kind of the opposite sides of
20 the same coin. They all revolve around whether
21 the receiver has been properly appointed. Then
22 the motion to amend the Tibbs complaint. And
23 then the motion to strike certain things from
24 the Tibbs complaint, which is really a place
25 keeper from the continued objection by Altrad

1 defendants to the right of the receiver to do
2 anything. Probably will be resolved in those
3 other arguments.

4 Now, I would like to set those matters to
5 be heard. And I think it's going to take a
6 couple of days. So I'm going to say pretrial on
7 those things to see if there's anything --
8 procedure that needs to be done. But pretrial
9 can go by the boards, we don't need it, would be
10 July the 30th.

11 And then merits hearing in Tibbs on those
12 motions, let's set it for the 4th, 5th, and 6th
13 with the idea that there may be other things
14 that would come up and with the promise that at
15 the end of that, whether it be the 5th or the
16 6th, I can't imagine we would get through all
17 those things in less than a day, we would hear
18 the Motion to Compel in Park and the opposition
19 of Sawyer day two.

20 And the combination of those things would
21 lead to the Court being able to make an order
22 that is responsive to the order of the Supreme
23 Court of June the 26th. And that's what I
24 would -- that's what my report will tell the
25 court, if that's what we can agree upon.

1 And can you think of anything else? We've
2 got -- we've got all this De Beers stuff. Who's
3 here for De Beers?

4 You are. So your stuff will be -- we ought
5 to contingently set your stuff as well. If the
6 receiver survives the first big, which is to
7 dissolve the receivership, that will take care
8 of your stuff. Wouldn't you agree?

9 MR. BALBER: That's right, Your Honor.
10 Yes.

11 THE COURT: Okay. Then I would think we
12 could tack all your stuff on after the motion to
13 strike for -- before we get to any of the Park
14 stuff.

15 MR. BALBER: Let me step up so you can hear
16 me, Your Honor.

17 THE COURT: Sure. Sure.

18 MR. BALBER: That largely makes sense. I
19 think one item that is among our stuff is our
20 motion for summary judgment.

21 THE COURT: Yeah. That ought to be heard,
22 you know, if the receiver survives that part.

23 MR. BALBER: And even then, we filed it
24 because we had to make a due date.

25 THE COURT: That's right. In all events,

1 your motion for summary judgment should be heard
2 because the larger landscape of Tibbs, of
3 course, continues.

4 MR. BALBER: Well, except we're only a
5 third-party defendant in Tibbs. So it's only
6 contingent, as you noted, on the receivership
7 being filed.

8 THE COURT: Right. Right.

9 MR. BALBER: But I was making a slightly
10 different point, which is actually may be at
11 this juncture premature because there's still
12 some discovery going on in our third-party
13 action.

14 THE COURT: I'll leave it off.

15 MR. BALBER: I would suggest you leave it
16 off, Your Honor. If I could just get a little
17 clarification for what you expect from us all on
18 the 4th, 5th, and 6th. I know we all want to
19 make sure we're prepared and present to you what
20 you want to hear.

21 Because I think the motions themselves, in
22 my humble opinion, are not going to require more
23 than a couple of hours. If you're envisioning
24 an evidentiary hearing or something like that, I
25 think we all want to make sure we're

1 accommodating what Your Honor is expecting.

2 THE COURT: Well, I am envisioning a
3 hearing which can include the presentation of
4 evidence, if anybody thinks that needs to be
5 done. So I'm not going to restrict the hearing
6 at this moment. You all got all huffy with each
7 other about exchanging letters that were kind of
8 evidentiary exhibits, as I saw them. So I sat
9 up here and being put the stop on that.

10 If there are evidentiary matters, even by
11 way of sworn affidavit or something else that
12 you all consider need to be considered as a part
13 of this matter, then I think that should be
14 done.

15 We know that if the receivership survives,
16 there's still all kinds of claims and
17 contentions about Cape and a lot of corporations
18 that are only averments and pleadings at this
19 point but will have to at some point be heard.

20 MR. BALBER: Right. The last question,
21 Your Honor, what is the Court's expectation on
22 July 30th?

23 THE COURT: That would be a pretrial to see
24 if any of these things have been resolved. It
25 would just be a place keeper for any prehearing

1 motions that you wanted to make to either
2 exclude things that have been selected for
3 possible use as exhibits or whatever. I just
4 find it's good to have a place keeper. We don't
5 have to use it if it's nothing that needs to be
6 done.

7 MR. BALBER: Okay. Thank you, Your Honor.

8 THE COURT: Any other questions?

9 Okay. Then what I'm going to do is two
10 things: Number one, I'm going to prepare an
11 order that sets these matters in Tibbs to be
12 heard.

13 Number two, I'm going to prepare a status
14 report to the Supreme Court in accordance with
15 its desires in the June 25th material. And
16 I'll -- if I can get them done by my 30 days
17 deadlines, I think is when -- the end of this
18 week -- then I'll try to get them to you all and
19 see if you have a stroke or heart attack or
20 something like that, don't like what I said,
21 then doesn't mean I'm going to change what I
22 said, but I'll give you a shot at it. It should
23 not be substance but rather what it fairly
24 reflects what I said I'm going to do.

25 And Stafford, as I understand it, it's

1 been -- there's a potential, upcoming mediation
2 with a potential agreement to dismiss without
3 prejudice. But that hadn't been officially done
4 yet.

5 MR. PROTOPAPAS: Your Honor, in Stafford,
6 the asbestos plaintiffs have agreed to dismissal
7 without prejudice on a toll agreement, as
8 Mr. Ledlie said. My individual action to
9 provide coverage for Mr. Ledlie's clients is
10 going to be part of the mediation at the end of
11 the month. My friends at Travelers want to keep
12 the motion alive in case they may want to move
13 to dissolve Stafford.

14 THE COURT: So they want to keep their
15 protection motion alive and -- that makes
16 perfect sense to me. That's fine.

17 MR. PROTOPAPAS: We will report back,
18 Your Honor.

19 THE COURT: We will just continue with
20 Stafford out there and on the list kind of like
21 we do with Park and the pretrial may resolve it.

22 MR. PROTOPAPAS: Yes, Your Honor.

23 THE COURT: Anything else?

24 I thank you for your patience. And as
25 contentious as these matters might all seem to

1 my brothers and sisters at the Supreme Court, I
2 think you will get along well enough, as you
3 always do in front of me. Let's get this thing
4 moving along and make some decisions that you
5 can legitimately appeal to the South Carolina
6 Supreme Court.

7 All right. Thanks.

8 - - -

9 (The hearing concluded at 1:38 p.m.)

10 - - -