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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

Civil Action No. 2023-CP-40-01759

Appellate Case Nos. 2025-002120 and 2025-002121

John A. Tibbs and Margaret B. Tibbs,

Plaintiffs / Respondents

v.

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

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

Defendants,

and

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

Third-Party Plaintiff / Respondent

v.

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

Third-Party Defendants,

of which

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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leur ont jamais été signifiés. AIA et M. Altrad risquent, pour leur part, de subir aux Etats-Unis une condamnation à des dommages et intérêts tout à fait considérables, en raison des agissements du *receiver* et des conséquences des actions entreprises par ce dernier au nom et pour le compte de Cape Jersey et/ou CIHL.

2. OBJET DE LA REQUÊTE

8. Les requérantes demandent :

(i) La non-reconnaissance d'un jugement de la *Court of common pleas*[1] du comté de Richmond, en Caroline du Sud, aux Etats-Unis, rendu le 16 mars 2024 dans l'affaire portant le numéro 2021-CP-40-02727 (le « **Jugement Américain** »)[2] ;

(ii) La confirmation de la reconnaissance d'un jugement de la *High Court of Justice* d'Angleterre et du Pays de Galles, rendu le 22 novembre 2024 dans l'affaire portant le numéro BL-2024-001337 (le « **Jugement Anglais** »)[3].

2.1. Non-reconnaissance du Jugement Américain

9. Le Jugement Américain est la décision étrangère par laquelle un *receiver* disposant de pouvoirs de gestion et de disposition extrêmement étendus sur les actifs de « Cape PLC », fut désigné.

10. Il n'a longtemps pas été clair laquelle des requérantes, CIHL ou Cape Jersey, est réellement visée par cette désignation. En effet, Jugement Américain mentionne « Cape PLC », ce qui semble désigner Cape Jersey – seule société dénommée « Cape PLC » depuis 2011. Pourtant, le *receiver* soutient désormais qu'il interviendrait en

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1 L'équivalent local d'un tribunal civil de première instance.

2 Pièce 1

3 Pièce 2

réalité pour CIHL.[4]

11. Quoi qu'il en soit, les requérantes estiment que le Jugement Américain n'est pas susceptible de reconnaissance dans l'ordre juridique belge en raison de :

(i) Ses effets contraires à l'ordre public international belge (article 25, §1er, 1° CDIP), dès lors que la reconnaissance du Jugement Américain entraînerait :

(a) Une violation du principe de droit international privé belge selon lequel les pouvoirs de représentation d'une société sont établis (uniquement) selon la loi du siège de la personne morale ; et

(b) Une violation du principe de droit international privé belge selon lequel la désignation d'administrateurs/curateurs, etc. ne peuvent être nommés que par les tribunaux du for du siège ou d'un établissement d'une personne morale ;

(c) L'acceptation dans l'ordre juridique belge d'un dessaisissement de fait d'entités qui ne sont pas en difficultés financières et qui n'ont, à ce stade, aucune dette exigible, portant ainsi atteinte de manière inacceptable au droit de propriété notamment.

(ii) La violation des droits de la défense de Cape Jersey et de CIHL (article 25, §1er, 2° CDIP), dès lors que :

(a) Les citations introductives d'instance, la demande visant à entendre désigner le *receiver*, et/ou le Jugement Américain n'ont jamais été signifiés ;

(b) Le Jugement Américain revient en substance à la désignation « d'office » d'un « représentant légal » affecté d'un conflit d'intérêts manifeste. En effet, le *receiver* a un intérêt financier direct et personnel à ce que la société qu'il « représente » soit condamnée à payer les montants les plus élevés possible, dès lors qu'un tiers des actifs qu'il parvient à « liquider » au profit des plaignants lui revient. Une telle situation porte bien entendu une atteinte irrémédiable aux droits de la défense de Cape Jersey et de CIHL.

(iii) Le Jugement Américain est inconciliable avec une décision étrangère rendue préalablement, à savoir un jugement de la High Court d'Angleterre et du Pays de Galles rendu le 27 juillet 1989 dans l'affaire *Adams v Cape Industries plc* ([1990] Ch 433) (article 25, §1er, 5° CDIP).[5]

(iv) La compétence de la juridiction étrangère semble avoir a été établie alors

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[4] Pièce 13

[5] Pièce 14

que ni Cape, ni CIHL n'avaient le moindre lien avec la Caroline du Sud (article 25, §1er, 8° CDIP).

2.2. Reconnaissance du Jugement Anglais

12. Cape Jersey et CIHL ont agi devant les tribunaux anglais en vue d'obtenir une déclaration de non-reconnaissance du Jugement Américain, assortie d'une injonction contre le *receiver* de cesser d'agir en tant que représentant de CIHL et de Cape.

13. Les tribunaux anglais ont octroyé cette déclaration et cette injonction notamment en raison des considérations suivantes :

> « *115.At this point it will be useful to draw together the strands of the factual narrative and legal analysis.*
>
> *(a) A receiver has been appointed in South Carolina whose appointment would not, as a matter of English law, be recognised in this jurisdiction and ought not to be recognised by any jurisdiction which accepts that the management and affairs of CIHL ought to be exclusively in the hands of the English board.*
>
> *(b) He is a receiver who has the benefit of extensive powers which are capable of causing serious and unjustified disruption to the affairs of CIHL (and the group of which it is part).*
>
> *(c) He is a receiver one of whose functions is apparently to protect the interests of CIHL over which he has been appointed. Yet he has demonstrated that he is not fulfilling that obligation, and is indeed apparently doing the opposite. He has made admissions in relation to asbestos claims, and advanced a positive case, which are positively damaging to the interests of CIHL. He has filed a defence in the Tibbs claim which is in reality no defence at all because it incorporates all the elements of the Third Party proceedings.*
>
> *(d) There is plainly a risk, if not an inevitability, that the receiver will continue to act in that manner.* »[6]

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[6] Pièce 2, traduction libre : « *115. À ce stade, il est utile de rassembler les différents éléments du récit factuel et de l'analyse juridique.*

(a) Un administrateur judiciaire a été nommé en Caroline du Sud, dont la nomination ne serait pas reconnue en vertu du droit anglais dans cette juridiction et ne devrait être reconnue par aucune juridiction qui accepte que la gestion et les affaires de CIHL relève exclusivement de la compétence du conseil d'administration anglais.

(b) Il s'agit d'un administrateur judiciaire qui bénéficie de pouvoirs étendus susceptibles de perturber gravement et injustement les affaires de CIHL (et du groupe dont elle fait partie).

(c) Il s'agit d'un administrateur judiciaire dont l'une des fonctions est apparemment de protéger les intérêts de CIHL pour laquelle il a été nommé. Or, il a démontré qu'il ne remplissait pas cette obligation et qu'il faisait même

14. Les requérantes demandent que soit confirmée la reconnaissance du Jugement Anglais, parallèlement à la non-reconnaissance du Jugement Américain.

2.3. Objectif concret des requérants

15. En définitive, les requérants cherchent à faire établir que le prétendu pouvoir de représentation du *receiver* désigné par les tribunaux américains, en violation de plusieurs dispositions de l'article 25 CDIP, n'est pas reconnu dans l'ordre juridique belge. Dès lors, toute action entreprise ou à entreprendre par le *receiver* au nom et pour le compte de CIHL ou Cape Jersey, devra être considérée comme inopérante en ce qui concerne l'ordre juridique belge, faute de reconnaissance du prétendu « mandat ».

16. Le caractère non-extravagant et raisonnable de la demande des requérants découle de décisions similaires rendues à l'étranger, dont notamment le Jugement Anglais qui, a, au demeurant, également fait l'objet d'une procédure d'exequatur en France.[7]

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apparemment le contraire. Il a fait des aveux concernant des réclamations liées à l'amiante et a présenté des arguments affirmatifs qui nuisent clairement aux intérêts de CIHL. Il a déposé une défense dans le cadre de l'affaire Tibbs qui n'en est en réalité pas une, car elle reprend tous les éléments de la procédure engagée par un tiers.

(d) Il existe un risque évident, voire inévitable, que l'administrateur judiciaire continue d'agir de la sorte. »

[7] Pièce 3

II. LES FAITS

1. LE GROUPE CAPE

17. Le groupe Cape fut fondé en 1893 par la création de la Cape Asbestos Company Ltd. Cette société est actuellement dénommée Cape Intermediate Holdings Ltd. ou « CIHL ». CIHL est la deuxième requérante. Elle est une société *anglaise* dont le siège est établi en Angleterre.[8]

18. La première requérante, Cape Jersey, est une société de droit jersiais, établie à *Jersey* et fondée en 2011.[9] Depuis sa constitution, elle est la société-mère de CIHL.

19. Il est utile de préciser que, comme le révèle l'information accessible publiquement sur le site officiel du gouvernement du Royaume-Uni,[10] CIHL a fait commerce sous plusieurs dénominations distinctes par le passé :

(i) Cape Asbestos Company Ltd (1893-1974)

(ii) Cape Industries Ltd (1974-1981)

(iii) Cape Industries Plc (1981-1989)

(iv) Cape Plc (1989-2011)

(v) Cape Intermediate Holding Plc (2011-2013)

(vi) Cape Intermediate Holding Ltd. (depuis 2013).

20. En d'autres termes, « Cape PLC » peut, selon le contexte et l'époque, viser soit la société anglaise CIHL (entre 1989 et 2011), soit la société établie à Jersey et première requérante, Cape Jersey. Il est toutefois clair que « Cape PLC » ne peut viser, depuis 2011, *que* Cape Jersey.

21. A l'origine, le groupe Cape était actif dans l'extraction et le commerce de l'amiante. L'amiante extraite en Afrique du Sud était distribuée par des sociétés sudafricaines (Egnep et Casap) aux Etats-Unis, où une filiale locale du groupe nommée North American Asbestos Corporation (« **NAAC** ») était chargée de recueillir et de transmettre les commandes de clients américains intéressés par l'achat d'amiante brut.

22. Les activités du groupe Cape en rapport avec l'amiante cessèrent complètement

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[8] Pièce 4

[9] Pièce 5

[10] https://find-and-update.company-information.service.gov.uk/company/00040203

dans le courant des années 1970. NAAC fut dissoute en 1978.

23. Le groupe Cape n'est donc plus actif (du tout) dans l'extraction et le commerce de l'amiante depuis les années 1970. Il se concentre actuellement sur la livraison de services et de matériaux pour certains secteurs industriels, spécifiquement dans le secteur pétrolier.

24. CIHL et Cape Jersey n'ont pas et n'ont jamais eu la moindre présence ni activités aux Etats-Unis.

2. LE GROUPE ALTRAD

25. Le groupe Altrad est un leader mondial dans la fourniture de services et de matériaux pour le secteur de la construction notamment. En Belgique, le groupe Altrad est connu notamment pour être l'un des plus grands fournisseurs de services dits d'accès (échafaudages, grimpeurs, etc.) et de matériel d'isolation.

26. Le groupe Altrad fut fondé par M. Altrad en 1985.

27. La société holding du groupe est la troisième requérante, AIA. AIA dispose d'intérêts considérables en Belgique, détenant des participations de contrôle dans plusieurs filiales ayant leur siège en Belgique.

3. ACQUISITION DU GROUPE CAPE PAR LE GROUPE ALTRAD

28. En septembre 2017, le groupe Cape a été acquis par le groupe Altrad, par le biais d'une prise de contrôle de 100% des parts de Cape Jersey.

29. Le groupe Altrad est donc entré au capital de Cape 40 ans après la fin de ses activités liées à l'amiante.

30. Ni AIA, ni M. Altrad, ni aucune autre société du groupe Altrad n'a donc jamais « profité » d'une quelconque manière du commerce de tels produits.

4. LES PROCÉDURES INTENTÉES AUX ETATS-UNIS (AFFAIRES « PARK » ET « TIBBS »)

31. La Caroline du Sud est un for particulièrement avantageux pour les victimes de l'amiante. En effet, comme indiqué plus haut, un usage local s'est développé par lequel des sociétés locales, jadis actives dans le commerce de produits amiantés et ayant cessé leurs activités depuis longtemps, sont « ressuscitées » par le biais de la désignation d'un *receiver* (un administrateur judiciaire).

32. Ce *receiver*, « représentant » ainsi ces sociétés dites « zombies », accepte ou ne conteste pas les demandes formulées par les plaignants et recherche ensuite à

réaliser les actifs de la société qu'il « représente ». Ces actifs prennent généralement la forme de (prétendues) couvertures d'assurance dont les sociétés concernées auraient disposé.

33. Toutes ces affaires sont entendues par la même juge, Mme Jean H. Toal (la « **juge Toal** »). La juge Toal nomme dans la majorité des affaires le même *receiver* : un avocat local nommé Peter D. Protopapas (« **M. Protopapas** »).

34. M. Protopapas a été autorisé à percevoir, au titre d'honoraires de résultat, un tiers des montants qu'il parvient à récupérer dans le cadre de ses mandats.

35. Ces méthodes ont été critiquées dans la presse spécialisée.[11]

36. Il est en effet évident que, dans un contexte où il n'existe (i) aucune condamnation locale prononcée contre la société ainsi administrée et (ii) aucune insolvabilité, un conflit d'intérêts manifeste existe entre le *receiver* – personnellement intéressé à faire condamner le plus lourdement possible la société – d'une part, et la société qu'il administre – dont l'intérêt est bien entendu de se défendre le plus vigoureusement possible contre les demandes des plaignants – d'autre part. C'est, en réalité, ce vice fondamental qui affecte le Jugement Américain, parmi de nombreux autres points devant mener à sa non-reconnaissance

37. Concernant le groupe Cape en particulier, deux affaires ont été introduites devant les juridictions de Caroline du Sud par des personnes affirmant avoir subi des atteintes à leur santé suite à leur exposition à l'amiante :

(i) Une première procédure fut introduite le 4 juin 2021 par Mme Isabella Park.[12] Cette affaire porte le numéro 2021-CP-40-02727 (« **l'Affaire Park** »)[13] ;

(ii) Une seconde procédure fut introduite le 5 avril 2023 par Monsieur et Madame Tibbs, sous le numéro 2023-CP-40-01759 (« **l'Affaire Tibbs** »).[14]

4.1. L'Affaire Park et la désignation de M. Protopapas comme administrateur judiciaire de « Cape PLC »

38. En Caroline du Sud, un procès est intenté par le biais d'un document nommé *complaint* (« plainte »). Cette plainte identifie les défendeurs et contient les demandes et moyens du demandeur. La plainte est, en principe, signifiée aux défendeurs accompagnée d'un document appelé *summons* (« assignation à

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11 Pièce 6

12 Mme Park est décédée le 9 juin 2021. Son fils aurait ensuite repris l'instance.

13 Pièce 7

14 Pièce 8

comparaître »), qui précise dans quel délai le défendeur est invité à répondre à la plainte. Le droit de Caroline du Sud exige la signification (« service ») des deux documents en même temps (*summons* et *complaint*).

39. L'Affaire Park a été introduite par plusieurs plaintes amendées et réamendées :

(i) Une première plainte du 4 juin 2021, désignant « Cape PLC » comme défenderesse ;[15]

(ii) Un premier amendement à cette plainte a été déposé le 5 novembre 2021, nommant comme défendeurs « Cape PLC » et CIHL ;[16]

(iii) Une seconde plainte amendée fut déposée le 17 décembre 2021, reprenant également « Cape PLC » et CIHL comme défendeurs.[17]

40. Le seul document prétendument signifié à « Cape PLC » et à CIHL est le premier amendement à la plainte initiale du 5 novembre 2021. Les deux autres documents *sub* (i) et (iii) ci-dessus n'ont jamais fait l'objet de la moindre (tentative de) signification, que ce soit à « Cape PLC » ou à CIHL.

41. Quant au document qui aurait été signifié, sa prétendue signification aux requérantes est viciée pour les raisons suivantes :

(i) La seule preuve de signification à « Cape PLC », dénomination qui ne peut renvoyer qu'à Cape Jersey (CIHL ayant été ajoutée à la liste des défenderesses), est une photo d'un pli postal adressé à une adresse en Angleterre, alors que le siège de Cape Jersey se situe à Jersey.[18] Aucun document n'a, par conséquent, jamais été signifié à Cape Jersey ;

(ii) La seule preuve de signification à CIHL est une photo d'un pli postal dont l'expéditeur certifie qu'il contient (uniquement) les « *summons* » et pas la plainte en tant que telle.[19]

42. En résumé, les documents introductifs d'instance n'ont soit pas été signifiés du tout, soit été signifiés de manière incorrecte ou incomplète. En toute hypothèse, la dernière itération de la plainte (la seconde plainte amendée) n'a *jamais* été signifiée aux sociétés requérantes, qui n'ont donc jamais eu connaissance des demandes portées contre elles.

43. Cape Jersey et CIHL n'ont pas accepté le pouvoir de juridiction des tribunaux de Caroline du Sud. Compte tenu du fait qu'aucune signification (valable) ne leur était

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15 Pièce 7a

16 Pièce 7b

17 Pièce 7c

18 Pièce 13, page 12

19 Pièce 12, page 11.

parvenue, elles n'ont pas comparu et n'ont pas pu faire valoir leurs moyens de défense.

44. Le 3 juin 2022, le conseil du demandeur Park informa le tribunal de Caroline du Sud que l'affaire avait été « *définitivement résolue* ».[20] Les conditions de cette « résolution » sont inconnues des requérantes, mais il est clair que cette transaction apparente n'impliquait en rien Cape Jersey ou CIHL.

45. Aucun jugement n'a jamais été rendu contre Cape Jersey ou CIHL dans cette affaire et, à la connaissance des requérants, le demandeur Park n'a pas maintenu ses demandes. Ni Cape Jersey, ni CIHL, ne sont débiteurs d'un quelconque montant envers les demandeurs Park. A fortiori, aucune procédure d'insolvabilité quelconque n'existe contre ces parties – il ne pourrait d'ailleurs pas y en avoir, non seulement en raison de l'absence de quelconques créanciers locaux, mais aussi et surtout en raison de l'absence de tout établissement ou présence de Cape Jersey et CIHL aux Etats-Unis.

46. Nonobstant le fait que cette affaire semblait avoir été « définitivement résolue », une demande de désignation d'un *receiver* fut déposée par le conseil de M. Park le 6 mars 2023. Cette demande visait à entendre désigner un *receiver* en qualité d'administrateur judiciaire des biens et actifs de « Cape PLC » :

> « *Plaintiffs, pursuant to S.C. Code §§ 15-65-10(4) and (5), move this Court to appoint a receiver over Cape PLC and its subsidiaries, affiliates, successors, and assigns. Cape PLC is a defendant in the above-captioned action.* »[21]

47. Cette demande ne faisait aucune référence à CIHL – qui était pourtant connue des demandeurs, puisque leur demande avait été étendue à cette entité quelques mois plus tôt. L'entité visée par cette demande ne pouvait donc être que Cape Jersey.

48. De manière intéressante, cette demande était justifiée notamment par le fait que Cape Jersey n'aurait pas répondu à la seconde plainte amendée, laquelle aurait été « signifiée de manière correcte » selon les conseils de Park :

> « *Cape began to engage in a campaign of litigation avoidance by refusing to accept process or appear in any proceedings in the United States, including failing to respond to the Second Amended Summons in this action.* »[22]

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[20] Pièce 9

[21] Pièce 10, page 1 ; traduction libre : « *Les demandeurs, conformément aux articles 15-65-10(4) et (5) du Code de Caroline du Sud, demandent à la Cour de nommer un séquestre pour Cape PLC et ses filiales, sociétés affiliées, successeurs et ayants droit. Cape PLC est défenderesse dans l'action susmentionnée.* »

[22] Pièce 10, page 5 ; traduction libre : « *Cape a commencé à mener une campagne visant à éviter tout litige en refusant d'accepter la procédure ou de comparaître dans le cadre de toute procédure aux États-Unis, notamment en ne répondant pas à la deuxième assignation modifiée dans le cadre de cette action.* »

49. Pourtant, cette seconde plainte amendée n'a *jamais* été signifiée *du tout*, ni à Cape Jersey (l'entité visée par la demande), ni à CIHL (pourtant connue de Park pour avoir été nommée expressément défenderesse).

50. La demande de désignation d'un *receiver* en tant que telle ne fut pas plus signifiée à CIHL ou à Cape Jersey. Ses rédacteurs prétendent, en note de bas de page n° 13, avoir adressé par DHL une copie de cette demande à l'adresse à laquelle les précédentes significations eurent lieu, mais :

(i) Il n'existe aucune preuve de cet envoi par DHL ;

(ii) Comme indiqué ci-dessus, aucune signification n'a jamais été réalisée à Cape Jersey à Jersey, de sorte qu'en toute hypothèse, même si ce pli DHL a existé, il n'a pas été adressé à l'adresse du siège de Cape Jersey.

51. Le tribunal de Caroline du Sud fit néanmoins droit à cette demande par la voie du Jugement Américain, daté du 16 mars 2024, dont la non-reconnaissance est postulée par cette requête.

52. Il est important de noter que le Jugement Américain précise bien que la désignation de M. Protopapas intervient (uniquement) *dans le cadre de l'Affaire Park* :

> « *Therefore, this Court hereby appoints Peter Protopapas be and hereby is appointed Receiver* ***in this case*** *pursuant to the South Carolina Law* »[23]

53. Les requérants précisent aussi qu'aucune audience n'a eu lieu. M. Protopapas fut ainsi désigné comme « représentant légal » de « Cape PLC » sans aucun débat contradictoire.

54. En d'autres termes, un tribunal de Caroline du Sud a estimé pouvoir désigner un administrateur judiciaire sur les biens d'une société :

(i) étrangère ;

(ii) qui ne dispose d'aucun actif et d'aucune activité en Caroline du Sud ;

(iii) qui n'est pas en état de faillite ;

(iv) contre laquelle aucun jugement n'a jamais été rendu ; et

(v) à laquelle aucun acte introductif d'instance n'a été valablement signifié.

55. Il n'y a pas eu de développements ultérieurs dans l'Affaire Park.

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[23] Pièce 1; traduction libre : « *Par conséquent, le tribunal nomme Peter Protopapas et le désigne par la présente comme administrateur judiciaire* ***dans cette affaire****, conformément à la loi de Caroline du Sud.* »

4.2. L'Affaire Tibbs

56. Le 5 avril 2023, M. et Mme Tibbs ont introduit des demandes d'indemnisation à charge de « Cape PLC ».[24] Les demandeurs Tibbs sont représentés par les mêmes avocats que les demandeurs Park. Ces avocats ont indéniablement connaissance de l'existence de CIHL, puisque ces mêmes conseils avaient nommé CIHL comme défenderesse dans le dossier Park. On doit donc en conclure que seule Cape Jersey est visée par cette plainte. CIHL n'est, en tout cas, pas désignée comme défenderesse dans cette affaire.

57. L'acte introductif de cette instance n'a jamais été signifié à Cape Jersey. Il ne l'a pas plus été à CIHL.

58. Il est probable que cette signification ait été faite à M. Protopapas en sa qualité de « représentant » de « Cape PLC », dès lors que le Jugement Américain lui octroie le pouvoir d'accepter des significations. Cependant, cette signification éventuelle ne saurait en aucun cas être valable, puisque la désignation de M. Protopapas dans l'Affaire Park était bien limitée à son intervention « *in this case* » (« dans cette affaire »), c.à.d. dans l'Affaire Park. Il est donc exclu de signifier valablement une quelconque plainte à M. Protopapas au sujet d'une autre affaire que l'affaire Park.

59. Nonobstant cette évidence, M. Protopapas a cru pouvoir faire usage des pouvoirs de représentation qui lui avaient été concédés par le Jugement Américain dans le cadre de l'Affaire Park pour agir dans l'Affaire Tibbs au nom de « Cape PLC ».

60. Ainsi, toujours au nom de « Cape PLC » :

(i) M. Protopapas a négligé de contester les demandes formées par M. et Mme Tibbs ; et

(ii) M. Protopapas a introduit le 30 juin 2023 une « *third party complaint* », l'équivalent local d'une assignation en intervention et garantie, à charge de toute une série de personnes liées au groupe Cape, en ce compris notamment AIA et M. Altrad.[25]

61. La lecture de cette assignation est édifiante quant à la position du prétendu « représentant » de « Cape PLC ». Il adopte en effet tout simplement les thèses des demandeurs Tibbs et demande à cet égard, en substance, que toutes les sociétés liées à « Cape PLC » soient déclarées codébitrices à l'égard des demandeurs. On peut donc pas dire que les intérêts de « Cape PLC » soient particulièrement bien défendus par son « représentant ». C'est exactement ce que les tribunaux anglais ont relevé comme mentionné au § 13 ci-dessus.

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[24] Pièce 8

[25] Pièce 11

62. AIA et M. Altrad furent donc appelés à la cause dans l'Affaire Tibbs et ils ont tenté d'obtenir, par une procédure plus ou moins équivalente à la tierce-opposition, le retrait du Jugement Américain, notamment sur la base du fait qu'il n'était pas clair en quoi un pouvoir de représentation octroyé sur les biens et actifs de Cape Jersey (société fondée en 2011) pouvait être justifié par des activités prétendument déployées par NAAC, filiale de CIHL, dans les années 1970.[26]

63. A cette question, M. Protopapas soutint que son pouvoir aurait, en réalité, concerné CIHL et non pas Cape Jersey, et que cette « erreur matérielle » n'aurait pas été préjudiciable. De manière incompréhensible, il fut suivi dans ce raisonnement par la juge Toal, qui refusa de retirer le Jugement Américain.[27]

4.3. Résumé de la situation

64. En substance, la situation judiciaire actuelle aux Etats-Unis est la suivante :

(i) Dans l'Affaire Park, Cape Jersey et CIHL furent désignés comme défendeurs, mais l'acte (final) introductif d'instance ne leur a jamais été signifiée ;

(ii) Dans cette Affaire Park – et spécifiquement et uniquement pour celle-ci –, M. Protopapas a été désigné comme *receiver* de « Cape PLC » (qui ne peut viser que Cape Jersey), sur la base d'une demande qui dont la prétendue signification à Cape ou à CIHL n'a jamais été démontrée ;

(iii) Dans l'affaire Tibbs, seule Cape Jersey est citée comme défenderesse. Elle n'a jamais été appelée à comparaître.

(iv) Sur la base du pouvoir donné dans une autre affaire (et limité à celle-ci), M. Protopapas estime pouvoir « représenter » Cape Jersey et appeler en garantie toute une série de personnes, dont AIA et M. Altrad ;

(v) Lorsqu'il apparaît que les demandeurs Tibbs ont, en réalité, désigné comme défenderesse Cape Jersey, qui n'a été fondée qu'en 2011 et qui n'a donc rien à voir avec de quelconques activités déployées dans les années 1970, il est soudainement soutenu que le défendeur « réel » serait, en fait, CIHL et que le pouvoir de représentation de Cape Jersey est, en réalité, un pouvoir de représentation de CIHL, et ce alors même que CIHL n'a jamais été désignée comme défenderesse dans l'Affaire Tibbs.

5. LA PROCÉDURE MENÉE DEVANT LES JURIDICTIONS ANGLAISES PAR CIHL ET CAPE

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[26] Pièce 12.

[27] Pièce 13, page 19

65. Dès lors qu'elles se trouvaient gravement préjudiciées par le Jugement Américain, Cape Jersey et CIHL ont décidé d'agir devant les juridictions anglaises en vue d'obtenir une déclaration de non-reconnaissance dudit Jugement Américain, assorti d'une injonction à M. Protopapas de cesser d'agir au nom et pour le compte de Cape et/ou de CIHL.

66. Par le biais du Jugement Anglais, il a été confirmé que le Jugement Américain ne serait pas reconnu dans l'ordre juridique d'Angleterre et du Pays de Galles. L'injonction à charge de M. Protopapas a également été prononcée.[28]

67. Le « mandat » de M. Protopapas n'est donc pas reconnu dans l'ordre juridique anglais, c.à.d., dans l'ordre juridique dont le droit est applicable aux questions de représentation de la société CIHL.

68. Le Jugement Anglais a fait l'objet d'une reconnaissance dans l'ordre juridique français.[29]

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[28] Pièce 2

[29] Pièce 3

III. DISCUSSION

1. NON-RECONNAISSANCE DU JUGEMENT AMÉRICAIN

1.1. Introduction – recevabilité – procédure

69. S'agissant de la (non-)reconnaissance d'un jugement rendu aux Etats-Unis, il n'existe pas de convention internationale réglant la question de la reconnaissance et de l'exécution de telles décisions. Les Etats-Unis ont certes signé, mais n'ont jamais ratifié, la Convention de La Haye du 2 juillet 2019 sur la reconnaissance et l'exécution des jugements étrangers en matière civile ou commerciale.[30]

70. En toute hypothèse, la Convention de La Haye ne s'applique pas aux matières concernant l'administration judiciaire de sociétés ni aux matières couvrant les questions de la représentation de personnes morales (cfr. article 1, (e) et (i) de la Convention).

71. Seules les dispositions du CDIP sont donc pertinentes pour apprécier la question de la reconnaissance du Jugement Américain dans l'ordre juridique belge.

72. Les requérantes estiment que le Jugement Américain doit faire l'objet d'une déclaration de non-reconnaissance, conformément au prescrit de l'article 22, § 2 CDIP :

> « *§ 2. Toute personne qui y a intérêt [...] peut faire constater, conformément à la procédure visée à l'article 23, que la décision doit être reconnue ou déclarée exécutoire, en tout ou en partie, ou ne peut l'être.* »

73. L'article 25 CDIP énumère les motifs de refus de reconnaissance d'une décision étrangère :

> « *§ 1er. Une décision judiciaire étrangère n'est ni reconnue ni déclarée exécutoire si :*
>
> *1° l'effet de la reconnaissance ou de la déclaration de la force exécutoire serait manifestement incompatible avec l'ordre public; cette incompatibilité s'apprécie en tenant compte, notamment, de l'intensité du rattachement de la situation avec l'ordre juridique belge et de la gravité de l'effet ainsi produit;*
>
> *2° les droits de la défense ont été violés;*
>
> *3° la décision a été obtenue, en une matière où les personnes ne*

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30 https://www.hcch.net/fr/instruments/conventions/status-table/?cid=137

disposent pas librement de leurs droits, dans le seul but d'échapper à l'application du droit désigné par la présente loi;

4° sans préjudice de l'article 23, § 4, elle peut encore faire l'objet d'un recours ordinaire selon le droit de l'Etat dans lequel elle a été rendue;

5° elle est inconciliable avec une décision rendue en Belgique ou avec une décision rendue antérieurement à l'étranger et susceptible d'être reconnue en Belgique;

6° la demande a été introduite à l'étranger après l'introduction en Belgique d'une demande, encore pendante, entre les mêmes parties et sur le même objet;

7° les juridictions belges étaient seules compétentes pour connaître de la demande;

8° la compétence de la juridiction étrangère était fondée uniquement sur la présence du défendeur ou de biens sans relation directe avec le litige dans l'Etat dont relève cette juridiction; ou

9° la reconnaissance ou la déclaration de la force exécutoire se heurte à l'un des motifs de refus visés aux articles 39, 57, 72, 95, 115 et 121.

§ 2. En aucun cas, la décision judiciaire étrangère ne peut faire l'objet d'une révision au fond. »

74. L'action en non-reconnaissance prévue à l'article 22, § 2 CDIP est expressément ouverte à « *toute personne qui y a intérêt* ». En l'espèce, l'intérêt des requérants est manifeste :

(i) Cape Jersey et CIHL ont intérêt à ce que les (conséquences des) agissements de M. Protopapas, posés en leur nom en vertu d'une décision américaine contraire à tous les principes procéduraux les plus élémentaires, ne soient pas reconnus en Belgique ;

(ii) AIA et M. Altrad ont été appelés en garantie par M. Protopapas sur la base des pouvoirs octroyés à ce dernier dans le Jugement Américain. Ils risquent que les agissements de M. Protopapas, affecté d'un conflit d'intérêts manifeste, résulte en des condamnations considérables contre eux, mettant en péril les actifs qu'ils détiennent en Belgique.

75. Quant aux exigences procédurales posées par l'article 23 CDIP, celles-ci sont toutes rencontrées. Ainsi :

(i) Le tribunal de première instance de Bruxelles est compétent en vertu de l'article 23, § 2, al. 2 CDIP. Les critères retenus pour la compétence d'un

autre tribunal en vertu de l'al. 1er de la même disposition ne sont en effet pas d'application, M. Protopapas n'ayant pas de domicile en Belgique. Il n'y a, actuellement, pas plus de « lieu d'exécution » en Belgique au sens de cette disposition.

(ii) Les formes imposées par le CDIP sont respectées, à savoir l'introduction de cette demande par requête unilatérale.

1.2. Premier moyen – à titre principal : l'effet du Jugement Américain serait contraire à l'ordre public international belge

1.2.1. *Introduction*

76. L'article 25, §1, 1° CDIP permet aux tribunaux belges de refuser la reconnaissance d'un jugement étranger lorsque l'effet de ce jugement serait contraire à l'ordre public international belge.

77. L'ordre public international belge recouvre les éléments de l'organisation sociale, politique ou économique qui sont considérées comme suffisamment importants dans l'ordre juridique belge pour faire échec aux conséquences concrètes d'une décision de justice étrangère contraire à ces principes.[31] La doctrine précise encore que l'ordre public international belge englobe ces principes fondamentaux, mais aussi les lois de police et les obligations internationales de l'Etat belge.[32]

1.2.2. *La reconnaissance du Jugement Américain contrevient au principe d'ordre public international du siège statutaire*

78. Les requérants soutiennent que le principe selon lequel l'organisation interne et les pouvoirs de représentation d'une personne morale sont soumis au droit du lieu du siège statutaire de cette personne morale, fait partie de l'ordre public international belge.

79. Ce principe est reconnu par le CDIP lui-même, dès lors que son article 110 précise bien que :

> « *La personne morale est régie par le droit de l'Etat où se situe son siège statutaire.* »

80. Selon l'article 111 du CDIP, le domaine du droit applicable à la personne morale comprend notamment « *la composition, les pouvoirs et le fonctionnement de ses*

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31 Cass., 18 juin 2007, C.04.0430.F, *RGDC*, 2008, p. 521

32 O . van der Haegen et J. Degrooff, « Le contrôle de la contrariété d'une sentence arbitrale à l'ordre public », *b-Arbitra*, 2024/2, p. 476.

organes ».

81. Ces dispositions légales forment l'expression de la théorie dite du « siège statutaire ». Elles forment le principe fondamental du droit international privé belge des sociétés, confirmé par l'article 2:146 CSA :

> « *Le présent code est applicable aux personnes morales qui ont leur siège statutaire en Belgique.* »

82. Il n'existe aucune exception ni liberté de choix des fondateurs d'une société à cet égard, ce qui confirme bien que la théorie du siège statutaire revêt un caractère impératif. Cela n'a rien d'étonnant car cette règle (absolue) vise précisément à garantir la sécurité juridique du droit applicable à la (représentation d'une) personne morale.

83. Le caractère d'ordre public international du principe du siège statutaire découle, en outre, d'une lecture combinée des articles 115 et 121 du CDIP.

(i) L'article 115 CDIP précise que si CIHL et Cape avaient été des sociétés belges, le Jugement Américain n'aurait pas été reconnu :

> « *Une décision judiciaire étrangère concernant la validité, le fonctionnement, la dissolution ou la liquidation d'une personne morale* ***n'est pas reconnue en Belgique*** *si, outre l'existence d'un motif de refus visé à l'article 25, le siège statutaire de la personne morale était situé en Belgique lors de l'introduction de la demande à l'étranger.* »

(ii) L'article 121, § 1er CDIP précise quant à lui que la désignation d'un « administrateur » (au sens de curateur à la faillite) par une juridiction étrangère n'est susceptible d'être reconnue par les juridictions belges que dans deux cas, à savoir :

(a) D'une part, « *en tant que décision dans une procédure principale, lorsque la décision a été rendue* ***par une juridiction de l'Etat où était situé l'établissement principal*** *du débiteur au moment de l'introduction de cette procédure* » ;

(b) D'autre part, « *en tant que décision dans une procédure territoriale, lorsque la décision a été rendue* ***par une juridiction de l'Etat où était situé un établissement*** *autre que l'établissement principal du débiteur au moment de l'introduction de cette procédure; dans cette hypothèse, la reconnaissance et l'exécution de la décision ne concernent que les biens situés sur le territoire de l'Etat où cette procédure a été ouverte* ».

84. En d'autres termes :

(i) la Belgique n'admet pas dans son ordre juridique, en aucun cas, de décision étrangère qui s'immiscerait dans le fonctionnement d'une société dont le siège est situé en Belgique.

(ii) La Belgique ne reconnaît dans son ordre juridique que les décisions étrangères désignant des administrateurs que lorsqu'il s'agit de jugements provenant de pays dans lesquels la société en question avait un établissement principal ou secondaire.

85. Or, aucune de ces situations n'est d'application en l'espèce puisque CIHL et Cape ne sont pas en état de faillite, que leur sièges sont établis à Jersey et en Angleterre et qu'ils n'avaient, en toute hypothèse, aucun « établissement » aux Etats-Unis au moment de la demande de désignation de M. Protopapas.

86. Dès lors, les principes fondamentaux de droit international privé belge relatifs à la représentation et à l'administration de sociétés, qui ne souffrent d'aucune exception ni liberté de choix, sont les suivants :

(i) Le droit applicable aux personnes morales et les modalités de son administration doivent être déterminés en application du droit du lieu de leur siège statutaire ;

(ii) La désignation de mandataires de justice n'est reconnue que si la personne morale en question dispose effectivement d'une présence dans l'Etat dans lequel ce mandataire est désigné.

87. Admettre la reconnaissance d'une décision qui, en substance, applique le droit de la Caroline du Sud en matière de désignation d'un administrateur judiciaire à des sociétés situées à Jersey d'une part et en Angleterre d'autre part, et qui ne disposent d'aucune présence aux Etats-Unis, créant ainsi un organe de représentation concurrent au sein des mêmes personnes morales, revient à heurter l'ordre public international belge.

88. C'est d'ailleurs, en substance, les mêmes principes qui ont mené les tribunaux anglais à la non-reconnaissance du Jugement Américain par le Jugement Anglais, comme résumé au § 13 ci-dessus.

89. En conséquence, il est nécessaire de dire pour droit que le Jugement Américain n'est pas reconnu.

1.2.3. ***La reconnaissance du Jugement Américain revient à admettre une expropriation contraire à l'article 1 du premier protocole additionnel à la Convention Européenne des Droits de l'Homme***

90. L'article 1er du premier protocole additionnel à la Convention Européenne des droits de l'Homme est libellé en ces termes :

> *« Toute personne physique ou morale a droit au respect de ses biens. Nul ne peut être privé de sa propriété que pour cause d'utilité publique et dans les conditions prévues par la loi et les principes généraux du droit international.*
>
> *Les dispositions précédentes ne portent pas atteinte au droit que possèdent les États de mettre en vigueur les lois qu'ils jugent nécessaires pour réglementer l'usage des biens conformément à l'intérêt général ou pour assurer le paiement des impôts ou d'autres contributions ou des amendes. »*

91. La Convention Européenne des Droits de l'Homme oblige les Etats Membres à (faire) respecter les droits fondamentaux qu'elle énonce. Les obligations internationales de l'Etat belge relèvent de l'ordre public international belge, comme indiqué ci-dessus.

92. Or, la reconnaissance du Jugement Américain dans l'ordre juridique belge reviendrait à admettre que M. Protopapas puisse administrer et disposer, en concurrence avec les organes statutaires et légaux de CIHL et/ou de Cape Jersey, des actifs de ces personnes morales. Cela revient à admettre un cas d'expropriation qui n'a aucune cause d'utilité publique, ni aucun lien avec la réglementation de l'usage des biens prévue par la Convention.

93. Il n'y a pas plus de raison liée à l'insolvabilité (inexistante) de Cape Jersey ou de CIHL pour admettre la désignation d'un administrateur qui, en tout état de cause, ne peut être reconnu par les juridictions belges en application de l'article 121 CDIP.

94. La reconnaissance du Jugement Américain est donc contraire à l'ordre public international belge.

1.2.4. ***La reconnaissance du Jugement Américain aboutirait à une acceptation de la violation des droits de la défense des requérants***

95. Au vu du conflit d'intérêts manifeste qui l'affecte, M. Protopapas n'a aucun intérêt à ce que la défense de Cape Jersey ou de CIHL dans les Affaires Park ou Tibbs soit efficace. M. Protopapas n'a aucune intention réelle de défendre les intérêts de « Cape PLC », puisqu'il ne conteste en rien les demandes de Tibbs et appelle même en

garantie des sociétés liées au groupe Cape dans le but avoué de les « faire payer ».[33]

96. Cape Jersey et CIHL ne sont pas en mesure de donner la moindre instruction à M. Protopapas, qui ne répond qu'au tribunal local.

97. Ainsi, la reconnaissance du Jugement Américain reviendrait à admettre ou reconnaître, dans l'ordre juridique belge, les conséquences des démarches procédurales manifestement contraires aux droits de la défense des requérants entreprises par M. Protopapas.

98. La non-reconnaissance de cette décision s'impose pour cette seule raison.

1.3. Deuxième moyen – à titre principal : les droits de la défense de CIHL et de Cape ont été violés

99. Comme indiqué ci-dessus :

(i) Seul un des trois documents introductifs d'instance de l'Affaire Park ont été prétendument signifiés (uniquement) à CIHL, et il n'existe aucune preuve que cette signification ait été réalisée de manière conforme aux règles applicables en Caroline du Sud ;

(ii) Il n'existe aucune preuve de la signification (prétendument intervenue par DHL) de la demande de désignation d'un *receiver* telle que formulée par les demandeurs dans l'Affaire Park ;

(iii) Aucun document introductif d'instance n'a jamais été signifié à CIHL ou à Cape Jersey dans l'Affaire Tibbs. Il ressort du texte-même du Jugement Américain que les pouvoirs de M. Protopapas ne valaient que dans le cadre de l'Affaire Park, de sorte qu'il n'avait pas le pouvoir d'accepter une quelconque signification dans l'Affaire Tibbs ;

(iv) Les conseils des demandeurs Park et Tibbs connaissaient la distinction entre CIHL et Cape Jersey. Ils ont pourtant dirigé leur demande de désignation d'un *receiver* uniquement contre « Cape PLC », à savoir Cape Jersey, seule entité ayant cette dénomination depuis 2011. Aucun document, dans aucune des affaires, n'a jamais été signifié à Jersey.

(v) En cours de route, il a été considéré, sans que CIHL en soit jamais avertie, que la désignation de M. Protopapas ne concernait finalement pas Cape Jersey, mais bien CIHL. CIHL n'a donc jamais pu faire valoir la moindre défense contre la décision prise dans le Jugement Américain.

100. Dans ces conditions, il est indiscutable que Cape Jersey et CIHL n'ont pas été averties

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[33] Pièce 11

de manière correcte des demandes portées à leur égard, de sorte qu'elles n'ont jamais été touchées, ni, en tout cas, n'ont pu anticiper, la demande de désignation d'un *receiver* ayant abouti Jugement Américain. Elles n'ont pas plus pu prévoir que ce *receiver* accepterait une signification dans le cadre de l'Affaire Tibbs (en violation de sa désignation limitée à l'Affaire Park). Elles n'ont donc pas pu se défendre, de telle manière que leurs droits de la défense ont été violés de manière manifeste.

101. Encore plus fondamentalement, il est évident que les droits de la défense de CIHL et de Cape sont violés dans le cadre des procédures en cours aux Etats-Unis. En effet, la désignation d'un *receiver* qui intervient pour « Cape PLC » dans l'Affaire Tibbs en ne contestant pas les demandes de Tibbs et en appelant en garantie AIA et M. Altrad, revient, en réalité, à la désignation, par le tribunal, d'un représentant « commis d'office » auquel Cape et CIHL ne sont pas en mesure de donner la moindre instruction. L'adoption par M. Protopapas d'une attitude de non-contestation vis-à-vis des demandeurs Tibbs, dans un but évident d'enrichissement personnel et en conflit avec les intérêts de sa « mandante », forme une violation manifeste des droits de la défense de CIHL et de Cape Jersey.

102. Les principes les plus élémentaires de défense judiciaires sont ainsi niés, par le fait du tribunal étranger. Le Jugement Américain ne saurait être reconnu dans ces conditions.

1.4. Quatrième moyen – à titre principal : le Jugement Américain est fondé sur des éléments inconciliables avec une autre décision étrangère rendue préalablement

103. Dans sa demande de désignation d'un *receiver*, les conseils de Park ont dû soutenir que « Cape PLC » disposait d'une « présence » aux Etats-Unis, c.à.d. que Cape Jersey et/ou CIHL auraient disposé d'actifs à « administrer » par le *receiver* aux Etats-Unis.

104. L'argument fondamental des demandeurs Park était que la « présence » de « Cape PLC » était établie par le fait qu'une filiale américaine du groupe dénommée NAAC – dissoute en 1978 – avait existé :

> « *Cape Establishes American Presence and Operations Through NAAC* »[34]

105. Bien que le Jugement Américain ne se prononce pas expressément sur cette question, on peut supposer que le tribunal de Caroline du Sud a au moins implicitement admis qu'il y aurait eu lieu d'identifier NAAC à « Cape PLC », et que l'existence de NAAC – bien qu'il s'agisse d'une entité séparée de « Cape PLC » - établissait ainsi une « présence » aux Etats-Unis justifiant la désignation d'un *receiver*.

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[34] Pièce 10 ; traduction libre : « *Cape établit sa présence et ses activités aux États-Unis par l'intermédiaire de NAAC* ».

106. Cependant, cette décision est contraire aux motifs d'un jugement rendu par la Cour d'Appel d'Angleterre et du Pays de Galles dans une affaire Adams v Cape Industries en 1989.[35] Dans cette affaire, précisément, il avait été jugé que la présence de NAAC aux Etats-Unis jusqu'en 1978 n'établissait pas une « présence » aux Etats-Unis de CIHL, notamment en raison du fait que NAAC et CIHL n'étaient pas des « alter egos » :

> « *On the facts of this case neither Cape nor Capasco had an office in Illinois. The 150, North Wacker Drive offices were N.A.A.C.'s offices. N.A.A.C.'s business was its own business, not the business of Cape or of Capasco. N.A.A.C. had no authority to contract on behalf of Cape or Capasco or any other company in the Cape group. Accordingly, in my judgment, the presence of N.A.A.C. at 150, North Wacker Drive, Chicago, Illinois, did not constitute the presence in Illinois of Cape or of Capasco so as to subject them, on a territorial basis, to the jurisdiction of United States courts.* »[36]

107. Le Jugement Américain est ainsi, au moins implicitement, contraire au jugement anglais rendu dans l'affaire *Adams*. Le CDIP impose, dans ces conditions, la non-reconnaissance du Jugement Américain.

1.5. Cinquième moyen – à titre principal : CIHL et Cape n'ont jamais eu la moindre présence aux Etats-Unis

108. L'article 25, § 1er, 8° CDIP précise qu'un jugement rendu contre une partie sur la base d'une compétence fondée « *uniquement sur la présence du défendeur ou de biens sans relation directe avec le litige dans l'Etat dont relève cette juridiction* », n'est pas susceptible d'être reconnu en Belgique.

109. Cette disposition vise à exclure de la reconnaissance les décisions rendues sur la base du phénomène (principalement américain) dit du « *tag jurisdiction* », c.à.d. une situation dans laquelle un tribunal se déclare compétent pour connaître d'une demande à l'encontre d'un défendeur sur la base de sa présence personnelle ou de la présence de certains biens sans rapport aucun avec le litige. Le « cas d'école » est celui du vacancier attrait à comparaître dans le pays qu'il visite.

110. L'article 25, § 1er, 8° CDIP permet donc, en substance, d'écarter les jugements prononcés par des tribunaux dont la compétence est fondée sur un lien fortuit et/ou trop ténu avec le for choisi par le demandeur.

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35 *Adams v Cape Industries plc* [1990] 2 WLR 659.

36 Pièce 14

111. A plus forte raison, lorsque des sociétés n'ont *aucune* présence ni biens dans l'Etat en question, cette disposition doit trouver à s'appliquer.

112. Il n'est pas entièrement clair sur quelle base le tribunal américain a estimé être compétent pour rendre le Jugement Américain, dès lors que cette décision ne contient aucun motif précis sur sa propre compétence.

113. Cependant, un passage (à vrai dire, le seul passage de motivation) du Jugement Américain semble considérer que c'est précisément en raison de la dissolution et donc de l'*absence* de toute présence sur le territoire américain de Cape et de CIHL que la désignation de M. Protopapas a été justifiée :

> « *This Court finds that the application is meritorious under the applicable statute because Cape PLC as the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) (« Cape Asbestos ») and its subsidiaries and global affiliates (collectively, « Cape » or the « Company ») have dissolved and Cape, a foreign corporation, has forfeited its charter and has further failed to answer this case and therefore, Plaintiffs request for an expedited ruling on this motion is appropriate and also granted.* »[37]

114. Dès lors que la compétence du tribunal étranger semble avoir été fondée sur l'absence de tout lien avec le for local, a plus forte raison faut-il appliquer l'article 25, § 1er, 8° CDIP et refuser la reconnaissance du Jugement Américain.

2. RECONNAISSANCE DU JUGEMENT ANGLAIS

115. Le Jugement Anglais jouit de la reconnaissance *de plano* de principe établie par l'article 22, §1er, al. 2 CDIP.

116. Les requérants sont conscients du prescrit de l'article 25, §1er, 5° CDIP qui précise qu'une décision étrangère (le Jugement Anglais) « *inconciliable avec une décision [...] rendue antérieurement à l'étranger* » (le Jugement Américain) pourrait ne pas être reconnu.

117. Cependant, cette disposition précise bien que le jugement étranger antérieur doit être « *susceptible d'être reconnu en Belgique* ». Or, précisément, l'objet de cette requête est d'établir la non-reconnaissance du Jugement Américain, de sorte que le Jugement Anglais doit être reconnu.

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[37] Pièce 1 ; « *Le tribunal estime que la demande est recevable en vertu de la loi applicable, car Cape PLC, en tant que successeur en droit de Cape Industries Ltd. (anciennement Cape Asbestos Company Ltd.) (« Cape Asbestos ») et ses filiales et sociétés affiliées mondiales (collectivement, « Cape » ou la « Société ») ont été dissoutes et Cape, une société étrangère, a perdu sa charte et n'a pas répondu à la présente affaire. Par conséquent, la demande des demandeurs visant à obtenir une décision rapide sur cette requête est appropriée et est également accueillie* ».

118. Pour autant que de besoin, les requérants en demandent la confirmation.

A CES CAUSES,

Sous toutes réserves et sans reconnaissance préjudiciable,

PLAISE AU TRIBUNAL,

(i) Recevoir cette requête ;

(ii) La dire fondée et, en conséquence :

(a) Dire pour droit que le jugement de la *Court of common pleas* du comté de Richmond, en Caroline du Sud, aux Etats-Unis, rendu le 16 mars 2024 dans l'affaire portant le numéro 2021-CP-40-02727, par lequel M. Protopapas a été désigné comme *receiver* de Cape et/ou de CIHL, n'est pas reconnu en Belgique ;

(b) Confirmer, pour autant que de besoin, que le jugement de la *High Court of Justice* d'Angleterre et du Pays de Galles, rendu le 22 novembre 2024 dans l'affaire portant le numéro BL-2024-001337, est reconnu en Belgique.

(iii) Frais comme de droit.

Fait à Bruxelles, le 8 juillet 2025.

Pour les requérants, leur conseil,

Coco Joanna Kolber

INVENTAIRE DES PIECES

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Pièce 2.	Jugement Anglais
Pièce 3.	Ordonnance d'exequatur du Jugement Anglais rendue par les juridictions françaises
Pièce 4.	Extrait des informations disponibles publiquement au sujet de CIHL
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Pièce 6.	Coupures de presse spécialisée
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Pièce 8.	Acte introductif d'instance dans l'Affaire Tibbs
Pièce 9.	E-mail du 3 juin 2022 confirmation que l'Affaire Park a été « entièrement résolue »
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Pièce 11.	Demande en garantie introduite au nom de « Cape PLC » contre AIA et M. Altrad par l'intermédiaire de M. Protopapas
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Pièce 14.	Adams v Cape Industries

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No.

French-speaking Court of First Instance of Brussels,
Civil Section

Order (exequatur)

1. 9th Civil Chamber

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Justice in Peril
The judiciary is one of the three pillars of the State.
Today, it is collapsing as a result of chronic, structural, and recurrent underfunding.
These deficiencies hinder the proper functioning of justice and jeopardize the attractiveness of judicial office.
Magistrates and judicial staff can no longer remain silent...

a25c -- appeal: third-party opposition req. unilateral. Exequatur
Final order. Appendix: one petition

IN THE MATTER OF:

1. **Cape PLC,** whose registered office is located at 5-6 Old Street, Osprey House, 1st Floor, Saint Helier, JE2 3RG (Jersey);

2. **Altrad Investment Authority SAS**, whose registered office is located at 16 Avenue de la Gardie, 34510 Florensac (France);

3. **Mr Mohamed ALTRAD**, residing at 150 Rue Le Pérugin, 34000 Montpellier (France), having elected domicile at the office of their counsel, Ms Joanna Kolbert, solicitor, whose office is at 52 Rue de la Régence, 1000 Brussels (joanna.kolber@strelia.com),

Having regard to the petition attached hereto, received by the court's clerk on 8 July 2025;

Whereas the petitioners request the court to declare that an American judgment is not recognised in Belgium and that an English judgment must, however, be recognised;

Whereas, under Article 22, §2, in fine, of the Code of Private International Law, it is possible to apply preventively to the judiciary to prevent a judgment rendered abroad from being recognised in Belgium; that in this case, according to the petition, it concerns the judgment pronounced by the *Court of Common Pleas* of Richmond County on 16 March 2024, but it must be specified that the case exhibits reveals that this decision was actually pronounced on 16 March 2023 (see the English copy or its translation);

Whereas, moreover, the required documents have been provided and there is no reason to oppose the petition; however, the request of the payment of the court fees must be addressed;

Whereas, indeed, under Article 269/2, §1, paragraph 2, 1, of the Code of Registration, Mortgage and Court Fees, this fee must be charged to the unsuccessful defendant; whereas, in this case, the purpose of the procedure is not, as is generally the case in exequatur matters, to enforce in Belgium a judgment obtained abroad, which would allow the identification of a potential defendant, but, more generally, to prevent the recognition of a judgment and to allow another to be invoked;

Whereas, therefore, the present order may be opposed *erga omnes*, so that there is no specifically designated defendant; therefore, the court fee will be left to the petitioners;

FOR THESE REASONS

And having regard to the Law of 15 June 1935 on the use of languages in judicial matters,

the Court,

Receives the petition and finds it well-founded;

Rules that:

2. the judgment rendered on 16 March 2023 by the *Court of Common Pleas* of Richmond County (South Carolina, United States of America), in case number 2021-CP-40-02727, is not recognised in Belgium;
3. the judgment of the *High Court of Justice* of England and Wales, rendered on 22 November 2024 in case number BL-2024-001337, is recognised in Belgium;

Orders the petitioners to pay the costs, assessed at €165 (court fee) for the Belgian State, and not assessed for the remainder in the absence of a statement.

Done in the council chamber of the 9th Civil Division on 11 September 2025, in the presence of:

- Mr P. COLLIGNON, Vice-President;
- Mr D. DI GIOVANNI, Deputy Registrar.

D. DI GIOVANNI

P. COLLIGNON

Register of Petitions

8 July 2025

N° 25/1724/03

PETTION FOR NON-RECOGNITION OF A FOREIGN JUDGMENT

Art. 22, §2 PIL Code - Art. 1025 to 1034 Judicial code

FOR :

CAPE PLC, a company incorporated in Jersey, whose registered office is at Osprey House, 1st Floor, 5-6 Old Street, St. Helier, JE2 3RG, Jersey

Hereinafter referred to as "**Cape Jersey**

CAPE INTERMEDIATE HOLDINGS LTD, a company incorporated in England with its registered office at 6-7 Lyncastle Way Barleycastle Lane, Appleton, Warrington, W - A4 4 ST, United Kingdom.

Hereinafter referred to as "**CIHL**".

ALTRAD INVESTMENT AUTHORITY SAS, a French company with its registered office at 16 avenue de la Gardie, 34510 Florensac, France

Hereinafter "**AIA**

Mr Mohed ALTRAD, company director, born on 9 March 1948 and domiciled at 150 rue Le Pérugin, 34000 Montpellier, France

Each electing domicile at the office of their counsel in accordance with Article 23, § 3 CDIP

Applicants

Sollicitor:

Joanna Kolber
Rue de la Régence 52
1000 Brussels
E: joanna.kolber@strelia.com

French-speaking Court of First Instance of Brussels

Table of contents

I. INTRODUCTION

1. GENERAL BACKGROUND

1. This petition arises in the context of litigation in the United States concerning compensation for victims of diseases caused by asbestos.

2. For several years now, this type of litigation has been gaining momentum, particularly in the state of South Carolina. A local practice has developed in which companies that have been in liquidation, sometimes for several decades, are "resuscitated" by the appointment of receivers, who are mandated by the local courts to seek assets, generally in the form of insurance cover, to compensate the plaintiffs.

3. Thus, in the case underlying the present petition, a *receiver* was appointed in South Carolina, with the power to "administer" the petitioners CIHL and/or Cape, in their capacity as purported "successors" of the North American Asbestos Company ("**NAAC**"), a former American subsidiary of the Cape group, which was liquidated in the 1970s.

4. Unlike, however, the practice described in §2 above, the *receiver* appointed in this case obtained from the South Carolina courts the power to act in the name and on behalf of Cape Jersey and/or CIHL, i.e. foreign companies which had not been dissolved and which had never had the slightest presence or activity in South Carolina or even in the United States.

5. The *receiver* then decided, in a manner manifestly contrary to the interests of the companies it "represents", not to oppose the claims for compensation brought against Cape Jersey and/or CIHL before the South Carolina courts. On the contrary, the *receiver* decided to take up the plaintiffs' cause and to call the petitioners AIA and Mr Mohed Altrad as guarantors, arguing that these third parties would be required to indemnify the plaintiffs on the basis of various (flimsy) theories to justify their liability towards individuals who had come into contact with asbestos-based products manufactured and marketed decades earlier by NAAC's American clients. These theories include allegations of unjust enrichment, piercing of CIHL's (own) social veil, etc.

6. However, the Altrad group only acquired the Cape group in 2017, when the latter had ceased all forms of asbestos trade for 40 years and none of the companies involved in the American proceedings had ever had the slightest presence in the United States.

7. The *receiver* was appointed in breach of CIHL's and Cape Jersey's most basic rights, in particular because they were never served with the originating documents in the US proceedings or with the request to appoint the *receiver*. AIA and Mr Altrad, for their part, risk being ordered to pay considerable damages in the United States as a result of the *receiver*'s actions and the consequences of the actions undertaken by the receiver in the name and on behalf of Cape Jersey and/or CIHL.

2. PURPOSE OF THE PETITION

8. The petitioners seek :

   (i) Non-recognition of a judgment of the *Court of common pleas*[1] of Richmond County, South Carolina, United States, rendered on 16 March 2024 in case number 2021-CP-40-02727 (the "**American Judgment**")[2] ;

   (ii) Confirmation of the recognition of a judgment of the *High Court of Justice of*

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1 The local equivalent of a civil court of first instance.

2 Pièce 1

England and Wales delivered on 22 November 2024 in case number BL-2024-001337 (the "**English Judgment**") .[3]

2.1. Non-recognition of the American Judgment

9. The American Judgment is the foreign decision by which a *receiver* with extremely wide powers of management and disposal over the assets of Cape PLC was appointed.

10. For a long time, it was not clear which of the claimants, CIHL or Cape Jersey, was really the target of this designation. Indeed, the American Judgment refers to "Cape PLC", which appears to refer to Cape Jersey - the only company to be named "Cape PLC" since 2011. However, the *receiver* now claims that it is actually acting for CIHL. [4]

11. In any event, the claimants consider that the American Judgment is not capable of recognition in the Belgian legal order because of :

(i) Its effects are contrary to Belgian international public policy (Article 25, §1er, 1° PIL code), since recognition of the American Judgment would entail :

(a) A violation of the principle of Belgian private international law according to which the powers of representation of a company are established (solely) according to the law of the registered office of the legal person; and

(b) A violation of the principle of Belgian private international law according to which the appointment of administrators/guardians, etc. may only be made by the courts of the forum of the registered office or place of business of a legal person;

(c) The acceptance in the Belgian legal system of a de facto divestiture of entities which are not in financial difficulty and which do not, at this stage, have any outstanding debts, thereby unacceptably infringing the right of ownership in particular.

(ii) Violation of the rights of defence of Cape Jersey and CIHL (Article 25, §1er, 2° PIL cod)), since :

(a) The summons to institute proceedings, the request for the *receiver* to be appointed, and/or the American Judgment were never served;

(b) The American Judgment essentially amounts to the "ex officio" appointment of a "legal representative" with a clear conflict of interest. Indeed, the *receiver* has a direct and personal financial interest in ensuring that the company it "represents" is ordered to pay the highest possible amounts, since a third of the assets it manages to "liquidate" for the benefit of the plaintiffs accrue to it. Such a situation would, of course, irreparably damage Cape Jersey's and CIHL's rights of defence.

(iii) The American Judgment is irreconcilable with an earlier foreign decision, namely a judgment of the High Court of England and Wales of 27 July 1989 in *Adams v Cape Industries plc* ([1990] Ch 433) (Article 25, §1er, 5° PIL code).[5]

(iv) The jurisdiction of the foreign court appears to have been established even though neither Cape nor CIHL had any connection whatsoever with South Carolina (Article

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[3] Pièce 2

[4] Pièce 13

[5] Pièce 14

25, §1er, 8° PIL code).

2.2. Recognition of the English Judgment

12. Cape Jersey and CIHL applied to the English courts for a declaration of non-recognition of the American Judgment, together with an injunction against the *receiver* to cease acting as representative of CIHL and Cape.

13. The English courts granted this declaration and injunction in particular because of the following considerations:

> *"115 At this point it will be useful to draw together the strands of the factual narrative and legal analysis.*
>
> *(a) A receiver has been appointed in South Carolina whose appointment would not, as a matter of English law, be recognised in this jurisdiction and ought not to be recognised by any jurisdiction which accepts that the management and affairs of CIHL ought to be exclusively in the hands of the English board.*
>
> *(b) He is a receiver who has the benefit of extensive powers which are capable of causing serious and unjustified disruption to the affairs of CIHL (and the group of which it is part).*
>
> *(c) He is a receiver one of whose functions is apparently to protect the interests of CIHL over which he has been appointed. Yet he has demonstrated that he is not fulfilling that obligation, and is indeed apparently doing the opposite. He has made admissions in relation to asbestos claims, and advanced a positive case, which are positively damaging to the interests of CIHL. He has filed a defence in the Tibbs claim which is in reality no defence at all because it incorporates all the elements of the Third Party proceedings.*
>
> *(d) There is plainly a risk, if not an inevitability, that the receiver will continue to act in that manner."*[6]

14. The petitioners seek to have the recognition of the English Judgment upheld, in parallel with the non-recognition of the American Judgment.

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[6] Pièce 2 *115. At this point, it is useful to bring together the various elements of the factual account and the legal analysis.*

(a) A receiver has been appointed in South Carolina, whose appointment would not be recognised under English law in that jurisdiction and should not be recognised by any jurisdiction that accepts that the management and affairs of CIHL are the exclusive responsibility of the English board.

(b) He is a receiver with wide-ranging powers capable of seriously and unfairly disrupting the affairs of CIHL (and the group of which it is a part).

(c) He is a receiver one of whose functions is ostensibly to protect the interests of CIHL for which he has been appointed. However, he has shown that he was not fulfilling this obligation and was even apparently doing the opposite. He has made admissions in relation to asbestos claims and has put forward affirmative arguments which are clearly detrimental to CIHL's interests. He has filed a defence in the Tibbs case which is not really a defence at all as it repeats all the elements of the third party proceedings.

(d) There is an obvious, indeed inevitable, risk that the receiver will continue to act in this way."

2.3. Petitioners' concrete objective

15. Ultimately, the petitioners are seeking to establish that the alleged power of representation of the *receiver* appointed by the American courts, in violation of several provisions of Article 25 PIL code, is not recognised in the Belgian legal system. Consequently, any action taken or to be taken by the *receiver* in the name and on behalf of CIHL or Cape Jersey must be considered inoperative as far as the Belgian legal system is concerned, for lack of recognition of the alleged "mandate".

16. The non-extravagant and reasonable nature of the claimants' request stems from similar decisions handed down abroad, in particular the English Judgment which, incidentally, was also the subject of an exequatur procedure in France.[7]

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[7] Pièce 3

II. THE FACTS

1. THE CAPE GROUP

17. The Cape group was founded in 1893 with the creation of the Cape Asbestos Company Ltd. This company is currently known as Cape Intermediate Holdings Ltd. or "CIHL". CIHL is the second applicant. It is an *English* company with its registered office in England.[8]

18. The first petitioner, Cape Jersey, is a Jersey company, established in *Jersey* and founded in 2011.[9] Since its incorporation, it has been the parent company of CIHL.

19. It is worth pointing out that, as publicly available information on the UK Government's official website reveals,[10] CIHL has traded under several separate names in the past:

    (i) Cape Asbestos Company Ltd (1893-1974)

    (ii) Cape Industries Ltd (1974-1981)

    (iii) Cape Industries Plc (1981-1989)

    (iv) Cape Plc (1989-2011)

    (v) Cape Intermediate Holding Plc (2011-2013)

    (vi) Cape Intermediate Holding Ltd (since 2013).

20. In other words, "Cape PLC" may, depending on the context and the time, refer either to the English company CIHL (between 1989 and 2011) or to the Jersey-based company and first petitioner, Cape Jersey. However, it is clear that since 2011, "Cape PLC" can *only* refer to Cape Jersey.

21. The Cape group was originally active in the extraction and trading of asbestos. Asbestos mined in South Africa was distributed by South African companies (Egnep and Casap) in the United States, where a local subsidiary of the group called North American Asbestos Corporation ("**NAAC**") was responsible for collecting and transmitting orders from American customers interested in purchasing raw asbestos.

22. The Cape Group's asbestos-related activities ceased completely in the 1970s. NAAC was dissolved in 1978.

23. The Cape Group has not been active (at all) in asbestos extraction and trading since the 1970s. It is currently concentrating on the supply of services and materials for certain industrial sectors, specifically the oil industry.

24. CIHL and Cape Jersey do not have and have never had any presence or activities in the United States.

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8 Pièce 4

9 Pièce 5

10 https://find-and-update.company-information.service.gov.uk/company/00040203

2. THE ALTRAD GROUP

25. The Altrad group is a world leader in the supply of services and materials for the construction sector in particular. In Belgium, the Altrad group is known as one of the largest suppliers of access services (scaffolding, climbers, etc.) and insulation materials.

26. The Altrad Group was founded by Mr Altrad in 1985.

27. The group's holding company is the third applicant, AIA. AIA has considerable interests in Belgium, holding controlling stakes in a number of subsidiaries based in Belgium.

3. ACQUISITION OF THE CAPE GROUP BY THE ALTRAD GROUP

28. In September 2017, the Cape Group was acquired by the Altrad Group, through a takeover of 100% of the shares in Cape Jersey.

29. The Altrad Group thus entered the capital of Cape 40 years after the end of its asbestos-related activities.

30. Neither AIA, nor Mr Altrad, nor any other Altrad Group company has ever "profited" in any way from the trade in such products.

4. PROCEEDINGS IN THE UNITED STATES ("PARK" AND "TIBBS" CASES)

31. South Carolina is a particularly advantageous jurisdiction for asbestos victims. As mentioned above, a local practice has developed whereby local companies that were once active in the trade of asbestos products and have long since ceased trading are "resuscitated" through the appointment of a *receiver* (a court-appointed administrator).

32. The *receiver*, who "represents" these so-called "zombie" companies, accepts or does not contest the claims made by the plaintiffs and then seeks to realise the assets of the company he "represents". These assets generally take the form of (alleged) insurance cover held by the companies concerned.

33. All of these cases are heard by the same judge, Jean H. Toal ("**Judge Toal**"). In the majority of the cases, Judge Toal appointed the same *receiver*: a local lawyer named Peter D. Protopapas ("**Mr. Protopapas**").

34. Mr Protopapas has been authorised to collect, by way of success fees, one third of the amounts he manages to recover in the course of his mandates.

35. These methods have been criticised in the specialist press.[11]

36. It is obvious that, in a context where there is (i) no local conviction against the company administered in this way and (ii) no insolvency, there is a clear conflict of interest between the *receiver* - personally interested in having the company convicted as heavily as possible - on the one hand, and the company he administers - whose interest is of course to defend itself as vigorously as possible against the plaintiffs' claims - on the other. It is, in fact, this fundamental flaw that affects the American Judgment, among many other points that should lead to its non-recognition.

37. As regards the Cape group in particular, two cases have been brought before the South Carolina courts by people claiming to have suffered damage to their health as a result of

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[11] Pièce 6

exposure to asbestos:

(i) The first case was brought on 4 June 2021 by Ms Isabella Park.[12] This case bears the number 2021-CP-40-02727 (**"the Park case"**)[13] ;

(ii) A second set of proceedings was commenced on 5 April 2023 by Mr and Mrs Tibbs, under number 2023-CP-40-01759 **(the "Tibbs Case")**. [14]

4.1. The Park case and the appointment of Mr Protopapas as administrator of Cape PLC

38. In South Carolina, a lawsuit was filed in the form of a *complaint*. The complaint identifies the defendants and contains the plaintiff's claims and pleas. The complaint is normally served on the defendants together with a document called a *summons*, which specifies the time limit within which the defendant must respond to the complaint. South Carolina law requires service of both documents (*summons* and *complaint*) at the same time.

39. The Park case was initiated by several amended and reamended complaints:

(i) A first complaint of June 4, 2021, naming "Cape PLC" as defendant;[15]

(ii) A first amendment to this complaint was filed on November 5, 2021, naming "Cape PLC" and CIHL as defendants;[16]

(iii) A second amended complaint was filed on 17 December 2021, also naming "Cape PLC" and CIHL as defendants.[17]

40. The only document purportedly served on Cape PLC and CIHL is the First Amendment to the Original Complaint of 5 November 2021. The other two documents *under* (i) and (iii) above were never (attempted to be) served on either Cape PLC or CIHL.

41. As for the document that was allegedly served, its purported service on the Applicants is flawed for the following reasons:

(i) The only evidence of service on "Cape PLC", a name which can only refer to Cape Jersey (CIHL having been added to the list of defendants), is a photograph of a postal envelope addressed to an address in England, whereas Cape Jersey's registered office is in Jersey.[18] No document was therefore ever served on Cape Jersey;

(ii) The only proof of service on CIHL is a photograph of a postal envelope which the sender certifies contains (only) the *summonses* and not the complaint as such.[19]

42. In short, the originating documents were either not served at all, or were served incorrectly or incompletely. In any event, the latest iteration of the complaint (the Second Amended Complaint) was *never* served on the claimant companies, who were therefore never made

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12 Mrs Park died on 9 June 2021. Her son is said to have subsequently taken over the proceedings.

13 Pièce 7

14 Pièce 8

15 Pièce 7

16 Pièce 7

17 Pièce 7

18 Pièce 13 , page 12

19 Pièce 12 , page 11.

aware of the claims against them.

43. Cape Jersey and CIHL have not accepted the jurisdiction of the South Carolina courts. Since no (valid) service of process had been received, they did not appear and were unable to present their defences.

44. On June 3, 2022, counsel for plaintiff Park informed the South Carolina court that the case had been "*finally resolved*".[20] The terms of this "resolution" are unknown to the plaintiffs, but it is clear that this apparent settlement did not involve Cape Jersey or CIHL in any way.

45. No judgment has ever been entered against Cape Jersey or CIHL in this matter and, to the knowledge of the Claimants, Plaintiff Park has not maintained its claims. Neither Cape Jersey nor CIHL is indebted to the Park Plaintiffs for any amount. A fortiori, there are no insolvency proceedings of any kind against these parties - nor could there be, not only because of the absence of any local creditors, but also and above all because of the absence of any establishment or presence of Cape Jersey and CIHL in the United States.

46. Notwithstanding the fact that this matter appeared to have been "finally resolved", an application for the appointment of a *receiver* was filed by counsel for Mr Park on 6 March 2023. This application sought the appointment of a *receiver* to administer the property and assets of Cape PLC:

> *"Plaintiffs, pursuant to S.C. Code §§ 15-65-10(4) and (5), move this Court to appoint a receiver over Cape PLC and its subsidiaries, affiliates, successors, and assigns. Cape PLC is a defendant in the above-captioned action."*[21]

47. This application made no reference to CIHL - which was, however, known to the plaintiffs, since their application had been extended to this entity a few months earlier. The entity covered by this application could therefore only be Cape Jersey.

48. Interestingly, one of the reasons given for the application was that Cape Jersey had failed to respond to the second amended complaint, which had been "properly served" according to Park's counsel:

> *"Cape began to engage in a campaign of litigation avoidance by refusing to accept process or appear in any proceedings in the United States, including failing to respond to the Second Amended Summons in this action."* [22]

49. However, this Second Amended Complaint was *never* served *at all*, either on Cape Jersey (the entity against which the claim was brought) or on CIHL (despite Park's knowledge that it was expressly named as a defendant).

50. Nor was CIHL or Cape Jersey served with the application for the appointment of a *receiver* as such. Its drafters claim, in footnote 13, to have sent a copy of this request by DHL to the address at which the previous services were effected, but :

(i) There is no evidence of this DHL mailing;

(ii) As noted above, no service was ever effected on Cape Jersey in Jersey, so in any event, even if this DHL mailing did exist, it was not addressed to Cape Jersey's

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20 Pièce 9

21 Pièce 10 , page 1: "*Plaintiffs, pursuant to South Carolina Code §§ 15-65-10(4) and (5), request that the Court appoint a receiver for Cape PLC and its subsidiaries, affiliates, successors and assigns. Cape PLC is a defendant in the foregoing action.*"

22 Pièce 10 , page 5: "*Cape has begun a campaign to avoid litigation by refusing to consent to or appear in any proceedings in the United States, including by failing to respond to the Second Amended Summons in this action.*"

registered office address.

51. The South Carolina court nevertheless granted this application by way of the American Judgment, dated 16 March 2024, the non-recognition of which is postulated by this application.

52. It is important to note that the U.S. Judgment makes clear that the appointment of Mr. Protopapas is (solely) in *the context of the Park Case*:

> "*Therefore, this Court hereby appoints Peter Protopapas be and hereby is appointed Receiver* ***in this case*** *pursuant to the South Carolina Law*"[23]

53. The applicants also state that no hearing took place. Mr Protopapas was thus appointed as the "legal representative" of Cape PLC without any adversarial debate.

54. In other words, a South Carolina court considered that it could appoint a receiver over the assets of a :

(i) foreign ;

(ii) which has no assets or activities in South Carolina; and

(iii) which was not bankrupt ;

(iv) against which no judgment has ever been rendered; and

(v) has not been validly served with an originating process.

55. There have been no further developments in the Park case.

4.2. The Tibbs Case

56. On 5 April 2023, Mr and Mrs Tibbs brought claims for compensation against Cape PLC.[24] The Tibbs claimants are represented by the same solicitors as the Park claimants. These lawyers are undeniably aware of the existence of CIHL, since these same lawyers had named CIHL as defendant in the Park case. It must therefore be concluded that only Cape Jersey is the target of this complaint. In any event, CIHL has not been named as a defendant in this case.

57. The document instituting these proceedings was never served on Cape Jersey. Nor was it served on CIHL.

58. It is likely that service was made on Mr Protopapas in his capacity as "representative" of Cape PLC, since the American Judgment grants him the power to accept service. However, any such service could not be valid in any event, since Mr Protopapas' designation in the Park Case was indeed limited to his intervention "*in this case*", i.e. in the Park Case. It is therefore impossible to validly serve any complaint on Mr Protopapas concerning a case other than the Park case.

59. Notwithstanding this obvious fact, Mr Protopapas believed that he could use the powers of representation granted to him by the American Judgment in the Park Case to act in the Tibbs Case on behalf of Cape PLC.

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[23] Pièce 1 "*Accordingly, the Court appoints Peter Protopapas and hereby designates him as receiver* ***in this matter*** *pursuant to South Carolina law.*"

[24] Pièce 8

60. Again on behalf of Cape PLC:

(i) Mr Protopapas failed to contest the claims made by Mr and Mrs Tibbs; and

(ii) On 30 June 2023, Mr Protopapas lodged a *third party complaint*, the local equivalent of a writ of intervention and guarantee, against a whole series of persons linked to the Cape group, including in particular AIA and Mr Altrad.[25]

61. A reading of this summons is edifying as to the position of the so-called "representative" of Cape PLC. He simply adopts the arguments of the Tibbs plaintiffs and in this respect asks, in substance, that all the companies linked to "Cape PLC" be declared co-debtors towards the plaintiffs. Cape PLC's interests cannot therefore be said to be particularly well defended by its "representative". This is exactly what the English courts noted, as mentioned in §13 above.

62. AIA and Mr Altrad were therefore called upon in the Tibbs Case and they sought, by a procedure more or less equivalent to third party proceedings, to have the US Judgment set aside, in particular on the basis that it was not clear how a power of representation granted over the property and assets of Cape Jersey (a company founded in 2011) could be justified by activities allegedly carried out by NAAC, a subsidiary of CIHL, in the 1970s.[26]

63. To this question, Mr Protopapas argued that his power would, in fact, have related to CIHL and not Cape Jersey, and that this "clerical error" would not have been prejudicial. Incomprehensibly, he was followed in this reasoning by Toal J, who refused to withdraw the American Judgment.[27]

4.3. Summary of the situation

64. In essence, the current judicial situation in the United States is as follows:

(i) In the Park Case, Cape Jersey and CIHL were named as defendants, but were never served with the (final) originating process;

(ii) In this Park case - and specifically and only in this Park case - Mr Protopapas was named as *receiver* for "Cape PLC" (which can only be Cape Jersey), on the basis of a claim that was never shown to have been served on Cape or CIHL;

(iii) In the Tibbs case, only Cape Jersey was named as defendant. It was never called to appear.

(iv) On the basis of the authority given in another case (and limited to this one), Mr Protopapas believes that he can "represent" Cape Jersey and call as guarantor a whole series of persons, including AIA and Mr Altrad;

(v) When it emerges that the Tibbs claimants have, in fact, named Cape Jersey as a defendant, which was only founded in 2011 and therefore has nothing to do with any activities in the 1970s, it is suddenly argued that the "real" defendant is, in fact, CIHL and that Cape Jersey's power of representation is, in fact, a power of representation of CIHL, even though CIHL was never named as a defendant in the Tibbs case.

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25 Pièce 11

26 Pièce 12

27 Pièce 13 , page 19

5. CIHL AND CAPE JERSEY'S ENGLISH COURT PROCEEDINGS

65. Since they were seriously prejudiced by the American Judgment, Cape Jersey and CIHL decided to bring proceedings before the English courts seeking a declaration of non-recognition of the American Judgment, together with an injunction against Mr Protopapas to cease acting in the name and on behalf of Cape and/or CIHL.

66. By way of the English Judgment, it was confirmed that the American Judgment would not be recognised in the legal order of England and Wales. The injunction against Mr Protopapas was also granted. [28]

67. Mr Protopapas' "mandate" is therefore not recognised in the English legal system, i.e. in the legal system whose law is applicable to matters of representation of CIHL.

68. The English Judgment has been recognised in the French legal system.[29]

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[28] Pièce 2

[29] Pièce 3

III. DISCUSSION

1. NON-RECOGNITION OF THE AMERICAN JUDGMENT

1.1. Introduction - admissibility - procedure

69. With regard to the (non-)recognition of a judgment rendered in the United States, there is no international convention governing the recognition and enforcement of such judgments. The United States has signed, but never ratified, the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.[30]

70. In any event, the Hague Convention does not apply to matters concerning the judicial administration of companies or to matters covering the representation of legal persons (see Article 1(e) and (l) of the Convention).

71. Only the provisions of the PIL code are therefore relevant in assessing the question of the recognition of the American Judgment in the Belgian legal order.

72. The petitioners consider that the American Judgment should be the subject of a declaration of non-recognition, in accordance with the provisions of Article 22 § 2 of the PIL code:

> *"Any person having an interest therein[...] may apply for a declaration, in accordance with the procedure referred to in Article 23, that the judgment is to be recognised or declared enforceable, in whole or in part, or that it cannot be recognised or declared enforceable.*

73. Article 25 PIL code lists the grounds for refusal of recognition of a foreign decision:

> *"§ 1. A foreign judgment shall not be recognized or declared enforceable if:*
>
> *1° the result of the recognition or enforceability would be manifestly incompatible with public policy; upon determining the incompatibility with the public policy special consideration is given to the extent in which the situation is connected to the Belgian legal order and the seriousness of the consequences, which will be caused thereby.*
>
> *2° the rights of the defense were violated;*
>
> *3° in a matter in which parties cannot freely dispose of their rights, the judgment is only obtained to evade the application of the law designated by the present statute;*
>
> *4° according to the law of the State where the judgment was rendered and without prejudice to article 23, §4, the judgment would still be subject to an ordinary recourse in the said State;*
>
> *5° the judgment is irreconcilable with a Belgian judgment or an earlier foreign judgment that is amenable to recognition in Belgium;*
>
> *6° the claim was brought abroad after a claim which is still pending between the same parties and with the same cause of action was brought in Belgium;*

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30 https://www.hcch.net/fr/instruments/conventions/status-table/?cid=137

7° the Belgian courts had exclusive jurisdiction to hear the claim;

8° the jurisdiction of the foreign court was based exclusively on the presence of the defendant or the assets located in the state of such court, but without any direct relation with the dispute; or;

9° the recognition or enforceability would be contrary to the grounds for refusal provided for in articles 39, 57, 72, 95, 115 and 121.

§ 2. Under no circumstances will the foreign judgment be reviewed on the merits."

74. The action for non-recognition provided for in Article 22, § 2 PIL code is expressly open to "*any person who has an interest therein*". In the present case, the petitioners' interest is clear:

(i) Cape Jersey and CIHL have an interest in ensuring that the (consequences of) the actions of Mr Protopapas, taken on their behalf by virtue of an American decision contrary to all the most elementary procedural principles, are not recognised in Belgium ;

(ii) AIA and Mr Altrad have been called as guarantors by Mr Protopapas on the basis of the powers granted to the latter in the American Judgment. They risk that the actions of Mr Protopapas, who is affected by a manifest conflict of interest, will result in considerable judgments against them, jeopardising the assets they hold in Belgium.

75. As for the procedural requirements set out in article 23 PIL code, these have all been met. Thus :

(i) The Brussels Court of First Instance has jurisdiction by virtue of Article 23, § 2, para. 2 PIL code. The criteria for the jurisdiction of another court under para. 1st of the same provision do not apply, as Mr Protopapas is not domiciled in Belgium. There is currently no 'place of enforcement' in Belgium within the meaning of this provision.

(ii) The formalities imposed by the PIL code have been complied with, namely the lodging of this application by unilateral petition.

1.2. First ground - principal claim: the effect of the American Judgment is contrary to Belgian international public policy

1.2.1. *Introduction*

76. Article 25, §1, 1° PIL code allows Belgian courts to refuse to recognise a foreign judgment if the effect of that judgment is contrary to Belgian international public policy.

77. Belgian international public policy covers the elements of social, political or economic organisation that are considered sufficiently important in the Belgian legal order to counteract the concrete consequences of a foreign court decision that is contrary to these principles.[31] Academic writers go on to explain that Belgian international public policy encompasses not only these fundamental principles, but also public policy laws and the international obligations of the Belgian State. [32]

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31 Cass. 18 June 2007, C.04.0430.F, *RGDC*, 2008, p. 521

32 O. van der Haegen and J. Degrooff, "Le contrôle de la contrariété d'une sentence arbitrale à l'ordre

1.2.2. *Recognition of the American Judgment contravenes the principle of international public policy of the registered office*

78. The petitioners maintain that the principle according to which the internal organisation and powers of representation of a legal person are subject to the law of the place where that legal person has its registered office is part of Belgian international public policy.

79. This principle is recognised by the PIL code itself, since article 110 clearly states that:

> *"A legal person is governed by the law of the State in which its registered office is located.*

80. According to article 111 of the PIL code, the area of law applicable to a legal person includes in particular "*the composition, powers and operation of its organs*".

81. These legal provisions are the expression of the theory known as the "statutory seat". They form the fundamental principle of Belgian private international company law, confirmed by article 2:146 of the Companies and association code:

> "*This Code is applicable to legal persons having their registered office in Belgium.*"

82. There are no exceptions or freedom of choice for the founders of a company in this respect, which clearly confirms that the theory of the registered office is imperative. This should come as no surprise, as this (absolute) rule is intended precisely to guarantee the legal certainty of the law applicable to the (representation of a) legal person.

83. The international public policy nature of the principle of the registered office also follows from a combined reading of articles 115 and 121 of the PIL code.

(i) Article 115 PIL code states that if CIHL and Cape had been Belgian companies, the American Judgment would not have been recognised:

> "*A foreign judicial decision concerning the validity, operation, dissolution or liquidation of a legal person* ***shall not be recognised in Belgium*** *if, apart from the existence of a ground for refusal referred to in Article 25, the registered office of the legal person was located in Belgium when the application was filed abroad.*"

(ii) Article 121(1) of the PIL code states that the appointment of an "director" (in the sense of bankruptcy trustee) by a foreign court may only be recognised by the Belgian courts in two cases:

(a) Firstly, "*as a decision in main proceedings, where the decision was given* ***by a court in the State in which*** *the debtor's* ***principal place of business was located*** *at the time the proceedings were instituted*";

(b) Secondly, "*as a judgment in territorial proceedings, where the judgment was given* ***by a court of the State in which an establishment*** *other than the debtor's principal establishment* ***was located*** *at the time the proceedings were instituted; in this case, recognition and enforcement of the judgment relate only to assets located on the territory of the State in which the proceedings were instituted*".

84. In other words :

(i) Belgium does not recognise in its legal system, under any circumstances, any

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public", *b-Arbitra*, 2024/2, p. 476.

foreign decision that interferes with the operation of a company whose registered office is located in Belgium.

(ii) Belgium only recognises foreign rulings appointing directors in its legal system when they come from countries in which the company in question had a principal or secondary establishment.

85. However, neither of these situations applies in the present case since CIHL and Cape are not bankrupt, their registered offices are in Jersey and England and, in any event, they had no 'establishment' in the United States at the time of Mr Protopapas' application for appointment.

86. Consequently, the fundamental principles of Belgian private international law relating to the representation and administration of companies, which are not subject to any exceptions or freedom of choice, are as follows:

(i) The law applicable to legal persons and the arrangements for their administration must be determined in accordance with the law of the place where they have their registered office;

(ii) The appointment of legal representatives is only recognised if the legal person in question is actually present in the State in which the representative is appointed.

87. Allowing the recognition of a decision which, in substance, applies South Carolina law to the appointment of a receiver to companies located in Jersey on the one hand and in England on the other, and which have no presence in the United States, thus creating a competing representative body within the same legal entities, amounts to infringing Belgian international public policy.

88. It is, moreover, essentially the same principles that led the English courts to the non-recognition of the American Judgment by the English Judgment, as summarised in §13 above.

89. Accordingly, it is necessary to hold as a matter of law that the American Judgment is not recognised.

1.2.3. *Recognition of the American Judgment is tantamount to admitting an expropriation contrary to Article 1 of the First Additional Protocol to the European Convention on Human Rights.*

90. Article 1st of the First Additional Protocol to the European Convention on Human Rights reads as follows:

> *"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*
>
> *The preceding provisions shall not, however, in any way impair the right of the State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure payment of taxes or other contributions or penalties."*

91. The European Convention on Human Rights obliges Member States to (ensure) respect for the fundamental rights it sets out. The international obligations of the Belgian State fall under Belgian international public policy, as indicated above.

92. Recognition of the American Judgment in the Belgian legal system would mean admitting that Mr Protopapas could administer and dispose of the assets of these legal entities, in competition with the statutory and legal bodies of CIHL and/or Cape Jersey. This is

tantamount to admitting a case of expropriation which has no public utility cause, nor any connection with the regulation of the use of the assets provided for by the Convention.

93. Nor is there any reason linked to the (non-existent) insolvency of Cape Jersey or CIHL to admit the appointment of an administrator who, in any event, cannot be recognised by the Belgian courts pursuant to Article 121 CISG.

94. Recognition of the American Judgment is therefore contrary to Belgian international public policy.

1.2.4. *Recognition of the American Judgment would result in acceptance of the violation of the petitioners' rights of defence*

95. In view of the clear conflict of interest affecting him, Mr Protopapas has no interest in the effectiveness of the defence of Cape Jersey or CIHL in the Park or Tibbs Cases. Mr Protopapas has no real intention of defending the interests of "Cape PLC", since he is not contesting Tibbs' claims in any way and is even calling in guarantee companies linked to the Cape group with the avowed aim of "making them pay". [33]

96. Cape Jersey and CIHL are not in a position to give the slightest instruction to Mr Protopapas, who answers only to the local court.

97. Thus, recognition of the American Judgment would be tantamount to admitting or recognising, in the Belgian legal system, the consequences of the procedural steps taken by Mr Protopapas that are manifestly contrary to the petitioners' rights of defence.

98. That decision must not be recognised for that reason alone.

1.3. Second ground - principal claim: CIHL's and Cape's rights of defence were infringed

99. As stated above :

(i) Only one of the three originating documents in the Park Case was purportedly served (only) on CIHL, and there is no evidence that such service was effected in a manner consistent with the applicable South Carolina rules;

(ii) There is no evidence of service (allegedly by DHL) on the claimants in the Park Case of the claim for the appointment of a *receiver;*

(iii) No originating documents were ever served on CIHL or Cape Jersey in the Tibbs Case. It is clear from the text of the U.S. Judgment itself that Mr. Protopapas' authority was limited to the Park Case and he had no authority to accept service in the Tibbs Case;

(iv) Counsel for the claimants Park and Tibbs were aware of the distinction between CIHL and Cape Jersey. Yet they directed their request for the appointment of a *receiver* solely against "Cape PLC", namely Cape Jersey, the only entity with that name since 2011. No documents in any of the cases were ever served on Jersey.

(v) Along the way, it was considered, without CIHL ever being notified, that Mr Protopapas' designation did not ultimately relate to Cape Jersey, but to CIHL. CIHL was therefore never able to raise any defence against the decision taken in the

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[33] Pièce 11

American Judgment.

100. In these circumstances, it is indisputable that Cape Jersey and CIHL were not given proper notice of the claims against them, with the result that they were never affected by, nor in any event able to anticipate, the request for the appointment of a *receiver* which resulted in the American Judgment. Nor could they have foreseen that the *receiver* would accept service in the Tibbs Case (in breach of his designation limited to the Park Case). They were therefore unable to defend themselves, in such a way that their rights of defence were manifestly violated.

101. Even more fundamentally, it is clear that CIHL's and Cape's rights of defence have been violated in the context of the proceedings underway in the United States. Indeed, the appointment of a *receiver* to act for "Cape PLC" in the Tibbs case by not contesting Tibbs' claims and by calling AIA and Mr Altrad as guarantors amounts, in reality, to the appointment by the court of a "court-appointed" representative to whom Cape and CIHL are not in a position to give the slightest instruction. The adoption by Mr Protopapas of an attitude of non-contestation towards the Tibbs plaintiffs, with the obvious aim of personal enrichment and in conflict with the interests of his "principal", constitutes a clear violation of the rights of defence of CIHL and Cape Jersey.

102. The most elementary principles of judicial defence are thus denied by the foreign court. The American Judgment cannot be recognised in these circumstances.

1.4. Fourth ground - principal claim: the U.S. Judgment is based on elements that are irreconcilable with a prior foreign decision

103. In its application for the appointment of a *receiver*, Park's counsel had to argue that "Cape PLC" had a "presence" in the United States, i.e. that Cape Jersey and/or CIHL had assets to be "administered" by the *receiver* in the United States.

104. The fundamental argument of the Park plaintiffs was that the "presence" of Cape PLC was established by the fact that a US subsidiary of the group called NAAC - dissolved in 1978 - had existed:

> *"Cape Establishes American Presence and Operations Through NAAC".*[34]

105. Although the U.S. Judgment does not expressly address this issue, it can be assumed that the South Carolina court at least implicitly accepted that NAAC should have been identified with "Cape PLC", and that the existence of NAAC - albeit as a separate entity from "Cape PLC" - thus established a "presence" in the United States justifying the appointment of a *receiver*.

106. However, this decision is contrary to the reasons given in a judgment handed down by the Court of Appeal of England and Wales in Adams v Cape Industries in 1989.[35] In that case, it was held that NAAC's presence in the United States until 1978 did not establish CIHL's "presence" in the United States, in particular because NAAC and CIHL were not "alter egos":

> *"On the facts of this case neither Cape nor Capasco had an office in Illinois. The 150, North Wacker Drive offices were N.A.A.C.'s offices. N.A.A.C.'s business was its own business, not the business of Cape or of Capasco. N.A.A.C. had no authority to contract on behalf of Cape or Capasco or any other company in the Cape group. Accordingly, in my judgment, the presence of N.A.A.C. at 150, North Wacker Drive, Chicago, Illinois, did not constitute the presence in Illinois of Cape or of*

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[34] Pièce 10 ; free translation: "*Cape establishes its presence and activities in the United States through NAAC*".

[35] *Adams v Cape Industries plc* [1990] 2 WLR 659.

Capasco so as to subject them, on a territorial basis, to the jurisdiction of United States courts."[36]

107. The American judgment is thus, at least implicitly, contrary to the English judgment in *Adams*. In those circumstances, the CDIP submits that the American Judgment should not be recognised.

1.5. Fifth ground - principal claim : CIHL and Cape never had any presence in the United States

108. Article 25, § 1er, 8° PIL code specifies that a judgment rendered against a party on the basis of a jurisdiction founded "*solely on the presence of the defendant or of property not directly related to the dispute in the State to which that court belongs*" is not capable of being recognised in Belgium.

109. The purpose of this provision is to exclude from recognition judgments given on the basis of the (mainly American) phenomenon known as "*tag jurisdiction*", i.e. a situation in which a court declares itself competent to hear a claim against a defendant on the basis of his personal presence or the presence of certain assets that have no connection whatsoever with the dispute. The "textbook case" is that of the holidaymaker summoned to appear in court in the country he is visiting.

110. Article 25, § 1er, 8° PIL code therefore allows, in substance, the setting aside of judgments handed down by courts whose jurisdiction is based on a fortuitous and/or too tenuous link with the forum chosen by the plaintiff.

111. A fortiori, where companies have *no* presence or assets in the State in question, this provision should apply.

112. It is not entirely clear on what basis the U.S. Court found itself competent to render the U.S. Judgment, since that decision contains no specific reasoning as to its own jurisdiction.

113. However, one extract (indeed, the only extract of reasoning) in the U.S. Judgment appears to consider that it was precisely because of the dissolution and therefore *the absence of* any presence on U.S. territory of Cape and CIHL that the appointment of Mr. Protopapas was justified:

> "*This Court finds that the application is meritorious under the applicable statute because Cape PLC as the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) ("Cape Asbestos") and its subsidiaries and global affiliates (collectively, "Cape" or the "Company") have dissolved and Cape, a foreign corporation, has forfeited its charter and has further failed to answer this case and therefore, Plaintiffs request for an expedited ruling on this motion is appropriate and also granted.*"[37]

114. Since the jurisdiction of the foreign court appears to have been based on the absence of any connection with the local forum, there is all the more reason to apply Article 25, § 1er, 8° PIL code and refuse recognition of the American Judgment.

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36 Pièce 14

37 Pièce 1 ; "*The Court finds that the Petition is cognizable under applicable law because Cape PLC, as successor in interest to Cape Industries Ltd. (formerly Cape Asbestos Company Ltd.) ("Cape Asbestos") and its worldwide subsidiaries and affiliates (collectively, "Cape" or the "Company") have been dissolved and Cape, a foreign corporation, has lost its charter and has not responded to this matter. Accordingly, Plaintiffs' request for an expedited ruling on this motion is appropriate and is also granted.*"

2. RECOGNITION OF THE ENGLISH JUDGMENT

115. The English Judgment enjoys the *de plano* recognition in principle established by Article 22, §1er, para. 2 PIL code.

116. The petitioners are aware of the requirement of Article 25, §1er, 5° PIL code, which states that a foreign decision (the English Judgment) "*irreconcilable with a decision [...] given previously abroad*" (the American Judgment) may not be recognised.

117. However, this provision clearly states that the earlier foreign judgment must be "*capable of being recognised in Belgium*". Now, the very purpose of this petition is to establish that the American Judgment is not recognised, so that the English Judgment must be recognised.

118. Insofar as necessary, the petitioners seek confirmation of this.

FOR THESE REASONS,

Without prejudice or prejudicial recognition,

PLEASE THE COURT,

(i) Receive this petition;

(ii) Declare it well-founded and, consequently :

(a) declares that the judgment of the *Court of Common Pleas* of Richmond County, South Carolina, United States, delivered on 16 March 2024 in case number 2021-CP-40-02727, by which Mr Protopapas was designated as *receiver* of Cape and/or CIHL, is not recognised in Belgium;

(b) confirm, in so far as necessary, that the judgment of the *High Court of Justice* of England and Wales of 22 November 2024 in case number BL-2024-001337 is recognised in Belgium.

(iii) Court expenses as of right.

Done at Brussels on 17 June 2025.
For the petitioners, their counsel,

Joanna Kolber

INVENTORY OF DOCUMENTS

Pièce 1.	American Judgment
Pièce 2.	English Judgment
Pièce 3.	Exequatur order of the English Judgment issued by the French courts
Pièce 4.	Extract of publicly available information about CIHL
Pièce 5.	Extract of publicly available information about Cape Jersey
Pièce 6.	Specialised press extracts
Pièce 7.	Originating documents in the Park case
Pièce 8.	Originating documents in the Tibbs Case
Pièce 9.	Email dated 3 June 2022 confirming that the Park Case has been "fully resolved".
Pièce 10.	Request for appointment of *receiver*
Pièce 11.	Guarantee claim brought on behalf of Cape PLC against AIA and Mr Altrad through Mr Protopapas
Pièce 12.	AIA's submissions in the third-party proceedings against the US Judgment
Pièce 13.	*Receiver*'s Reply to the Third-Party Challenge to the US Judgment
Pièce 14.	Adams v Cape Industries

STATE OF SOUTH CAROLINA — IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND — FOR THE FIFTH JUDICIAL CIRCUIT

\- - -

JOHN A. TIBBS AND MARGARET B. TIBBS,

Plaintiffs,

vs.

3M COMPANY, ET AL.,

Defendants.

Case No. 2023-CP-40-01759

CAPE PLC, INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO CAPE ASBESTOS COMPANY LIMITED, BY AND THROUGH ITS DULY APPOINTED RECEIVER PETER D. PROTOPAPAS,

Third-Party Plaintiff,

vs.

ANGLO AMERICAN PLC, et al.,

Third-Party Defendants

TRIAL BEFORE: THE HONORABLE JEAN H. TOAL
VOLUME I, PAGES 1 - 208
DATED MONDAY, OCTOBER 20, 2025

RICHLAND COUNTY JUDICIAL CENTER
1701 MAIN STREET
COURTROOM 3B
COLUMBIA, SOUTH CAROLINA

REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708, CA CSR #13529

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unless you want me to.

THE COURT: No, sir.

MR. CARROLL: I'm glad to stand on my filings, but we don't view this Court as having jurisdiction to proceed as a matter of subject matter jurisdiction, personal jurisdiction, fundamental jurisdiction, and now Rule 205, which is independent of what we filed in the State Supreme Court, as you know.

THE COURT: All right.

MR. CARROLL: Thank you.

THE COURT: Mr. Lay.

MR. LAY: I think Mr. Robinson is going to handle this argument.

MR. ROBINSON: Good morning, Your Honor. John Robinson here on behalf of Mr. Protopapas as the receiver for Cape.

THE COURT: Yes.

MR. ROBINSON: Your Honor, I think your recitation of the different appellate machinations over the last now six years certainly encompasses most of the types of tactics that have been employed to delay trials before you. I just want to point out before I get to the pending appeal at the moment, a couple of things.

There was an order that you mentioned issued

THE COURT: That's exactly what I assumed because those reports -- and I guess I'm all out. The next one I file will be my fourth report.

MR. ROBINSON: Yes, ma'am. That was your third.

THE COURT: The Courts are required by the Supreme Court in its order in connection with the remand of the Tibbs case.

MR. ROBINSON: That's correct and in your third order.

THE COURT: So in this very case, I am continuing to make reports, and I made that report to the Court to indicate what the progress had been, and the Supreme Court, I assume, looked at it, and the very next day sent the order that they sent. So there's nothing nefarious about it at all. It's a direct result of the mechanism they set up for overseeing the conclusion of this matter that has plagued them with so many invalid fields.

MR. ROBINSON: Correct, Your Honor. In fact, your third report, which was dated the day before this Supreme Court order came out, you specifically state that the Cape matter is scheduled for trial on October 20th, 2025, pursuant to a previous order. So all of those things are laid out in your report and

your attempt to have a hearing on October 6th, which you did, a trial on October 20th, which we are here for today, and the idea that you were considering exploring requiring mediation. So all of those things were addressed in your report. It appears on September the 24th.

As it relates to the appeal, Your Honor, there are two -- as this Court pointed out -- Mr. Carroll and I believe Mr. Rawl filed two appeals of your orders denying motion to dismiss and dissolve the receivership. It -- the -- the order and the appeal is titled as an order on Altrad defendants -- I'm sorry. The order you issued is an order on Altrad defendants notice of recent Supreme Court authority voiding third-party litigation renewed motion to dismiss and motion to strike all filings in order to end the third-party case and the receivers and Tibbs plaintiffs' motion to confirm the appointment of the receiver. That is what the order was titled.

They have -- in the notices of appeal, Altrad Charter referred to this order as an order granting the appointment of a receiver, of course, which it is not. They filed on October 15th, the day after the appeal was filed. The receiver filed a motion to dismiss those appeals. We had the motion ready because it is

very similar to the last motion that we filed to dismiss. And as this Court knows, the court of appeals did, in fact, dismiss the appeals of those orders and found that those were interrogatory orders.

The Supreme Court later remanded seven appeals to you. They denied five of those as interlocutory -- well, they determined they were all interlocutory. They denied the petitions for cert on five; they accepted original jurisdiction on two and remanded those back to you. But they remanded them back for all purposes. The Supreme Court did reserve to itself consideration of a pending sanctions motion against Altrad.

And that is, as far as we know, still before the Court. And the remand order, the Supreme Court indicated that it was going to rule on the sanctions issued at a later date relating to Altrad. That same order, of course, indicated that the parties, the appellants, any further frivolous appeals or interlocutory appeals would be summarily dismissed and would result in sanctions, that same remand order.

We also know that these orders are not appealable, Your Honor, because, in the Childers case, which I believe you referenced, and Mr. Carroll was certainly involved in that, that was an appeal of an

order denying the motion to dismiss and resolve the receivership. The court of appeals on September the 8th of, I believe, 2023, issued an order that not only -- that the receivership, No. 1, was not stayed, during the course of this type of appeal, and they cited in their ruling Rule 62, and it says, "Unless ordered by the Court, an interlocutory or final judgment in an action for an injunction or in receivership action shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal."

And we may recall Judge Verdin's order that clarified that the receivership was not stayed. On November 21st, 2023, the court of appeals issued a second order rejecting the Rule 205 arguments, and they denied an emergency motion to clarify and enforce rule 205. On March 27th, 2024, the Supreme Court issued what is been called the Childers order that this Court is certainly familiar with. It confirmed that order was not immediately appealable. And as this Court may recall, the Supreme Court took that case up at the behest of Mr. Carroll's client and others and asked them to take jurisdiction from the court of appeals because the decision on that case would have wide-reaching implications across the receivership

world on whether these types of orders are appealable.

The Supreme Court agreed to take it up but ruled against them and then we are still talking about that issue here today, some time three years later.

The court of appeals has also issued orders in receivership appeals rejecting the Rule 205 motions in Welch. On April 12th, 2024, they determined -- the court of appeals said the appellant Continental Insurance Company filed a motion to enforce this Court's exclusive jurisdiction. That motion was denied. In Mitchell, on April 12th, 2024, appellant Continental Insurance filed a motion to enforce the Court's exclusive jurisdiction; however, that motion is denied.

This is not new. Our Courts have determined on numerous occasions in the past that, No. 1, an improper interlocutory appeal does not transfer jurisdiction to the appellate courts. In the South Carolina Public Service Authority versus Arnold, which was issued by the Supreme Court in 1986, that's 287SC584, the Court stated since this Court granted respondent's motion to dismiss on the grounds that the consolidation order was interlocutory and not appealable, the circuit court never lost jurisdiction and properly proceeded to trial.

Underwriters at Lloyd's of London
The Lloyd's building
One Lime Street
London
EC3M 7HA

By Post and email

7 May 2025

Dear Sirs

Re: Isabella Park vs. Armstrong International, et al., in the Court of Common Pleas for the Fifth Judicial Circuit, South Carolina ("the South Carolina Court"): Civil Action No. 2021-CP-40-02727 ("Park Claim")

We refer to the subpoena issued to you in the above proceedings by John Chandler, of the firm Rikard & Protopapas, as Attorney for the purported "Receiver for Cape PLC / Cape Industries Ltd" (**Purported Receiver**) on 28 April 2025 (**Subpoena**).

Attached to this letter is an order from Mr Justice Mann, sitting in the High Court of Justice, Business and Property Courts Of England And Wales (**Court**) dated 22 November 2024 (**High Court Order**).

I write as the sole director of CIHL, being the only person legally entitled to represent CIHL, as confirmed by the High Court Order.

The Purported Receiver has recently been holding himself out as a duly appointed receiver over, alternatively, Cape PLC, Cape Industries Ltd and/or Cape Intermediate Holdings Limited (**CIHL**), all apparently as entities formerly known as Cape Asbestos Company Limited. He has done so relying on an order granted by order of the South Carolina Court dated 16 March 2023 appointing the Purported Receiver as a receiver over CIHL (**Receivership Order**), which the South Carolina Court issued without notice or a hearing several months after the Park Claim was reported to be fully resolved and concluded. The Receivership Order purports to be in respect of the entity "Cape Plc", but has been subsequently clarified by the South Carolina Court to be actually in respect of CIHL.

To the extent you are not already aware, the Receivership Order is currently the subject of appeals with the Supreme Court of South Carolina from several entities. It is also the subject of a request by the Troutman Pepper Locke law firm to dissolve the purported receivership. That request has been pending before the South Carolina Court since 15 September 2023, and has not been opposed by the Purported Receiver. The Purported Receiver and the South Carolina courts have been made aware of the High Court Order.

The High Court of Justice has ordered, amongst other things, that:

1. The Receivership Order is not recognised and has no legal effect in England and Wales and worldwide.

2. The Purported Receiver has and had no power or authority to act on behalf of CIHL in England and Wales or worldwide and has no power to or authority in respect of CIHL in England and Wales or worldwide.

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Appleton, Warrington, England, WA4 4ST
United Kingdom
Registered number: 00040203
Tel: +44 (0) 1895 431 705 Fax: +44 (0) 1895 459 999
www.capeplc.com

3. The Purported Receiver has and had no power or authority on behalf of CIHL to act for or to bind CIHL in the South Carolina Court in respect of Park Claim and has and had no power or authority on behalf of CIHL to issue or pursue third party claims.

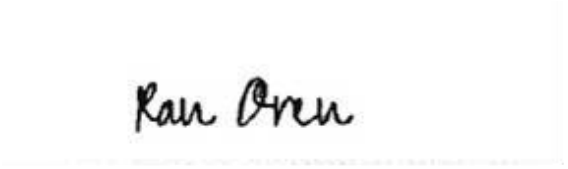
4. The Purported Receiver be restrained in England and Wales and worldwide from acting or purporting to act as agent or otherwise on behalf of CIHL pursuant to the Receivership Order, including by taking any actions in the Park Claim.

By reason of the High Court Order, by issuing the Subpoena, the Purported Receiver was acting unlawfully and in clear breach of that order.

Taking steps to comply with the Subpoena would represent conduct that CIHL considers to be unlawful for the purposes of the law of England and Wales.

We ask that you confirm, by response to this letter by **14 May 2025**, that you will take all necessary steps to comply with the law, including by notifying the Purported Receiver that you do not intend to respond to the Subpoena due to the Purported Receiver's lack of power or authority, as determined by the High Court Order.

Yours faithfully



Ran Oren
Director, Cape Intermediate Holdings Limited

Claim No. BL-2024 - 001337

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (CHD)

Before Mr Justice Mann, sitting in retirement

B E T W E E N:

(1) CAPE INTERMEDIATE HOLDINGS LIMITED
(2) CAPE PLC (a company incorporated under the laws of Jersey)

Claimants

- and -

PETER D. PROTOPAPAS

Defendant

ORDER

UPON THE CLAIM of Cape Intermediate Holdings Limited ("**CIHL**") and Cape plc ("**the Claimants**") issued by Part 8 Claim Form on 6 September 2024

AND UPON HEARING Counsel for the Claimants, Mark Phillips KC, Derrick Dale KC, William Willson, Angus Groom and Louise Merrett

AND UPON READING the evidence, being the first witness statement of Ran Oren dated 6 September 2024 ("**Oren 1**"), the second witness statement of Ran Oren dated 8 November 2024 ("**Oren 2**"), the expert report of the Hon William W Wilkins dated 30 October 202H4 ("**the Wilkins Report**"), the further expert report of the Hon William W Wilkins dated 11 November 2024 ("**the Supplemental Wilkins Report**"), the fifth witness statement of Paul Brehony dated 11 November 2024 ("**Brehony 5**"), the sixth witness statement of Paul Brehony dated 13 November 2024 ("**Brehony 6**"), and the seventh witness statement of Paul Brehony dated 21 November 2024 ("**Brehony 7**")

AND UPON finding that the appointment of the Defendant as purported receiver of CIHL is not recognised by the laws of England and Wales (where CIHL is incorporated), because CIHL was not present in the state South Carolina at the date upon which the application for the appointment or the appointment was made and because CIHL has not submitted to the jurisdiction of that state

IT IS DECLARED THAT

1. The receivership order of the Court of Common Pleas for the Fifth Judicial Circuit of the State of South Carolina, County of Richland ("**the South Carolina Court**") dated 16 March 2023 appointing Mr Peter Protopapas ("**Mr Protopapas**") as a receiver over CIHL ("**the Receivership Order**") is not recognised and has no legal effect in England and Wales and worldwide.

2. Mr Protopapas has and had no power or authority to act on behalf of CIHL in England and Wales or worldwide and has no power to or authority in respect of CIHL in England and Wales or worldwide to carry out the acts referred to in paragraph 6-10 below.

3. The rights and duties of the directors of CIHL remain unaffected by the appointment of Mr Protopapas as receiver of CIHL pursuant to the Receivership Order.

4. Mr Protopapas has and had no power or authority on behalf of CIHL to act for or to bind CIHL in the South Carolina Court in respect of Park Claim and the Tibbs Claim (as defined in Oren 1) and has and had no power or authority on behalf of CIHL to issue or pursue third party claims including in the Tibbs Claim against any of the third party defendants in those proceedings ("**the 3P Complaint**"), including (i) Mohed Altrad (ii) Altrad Investment Authority SAS (iii) Altrad UK Ltd (iv) Cape UK Holdings Newco Ltd (v) Cape Industrial Services Group Ltd (vi) Cape Holdco Ltd (vii) Altrad Services Ltd.

5. Mr Protopapas has and had no power or authority to accept service on behalf of CIHL in the claim brought in the South Carolina Court by a summons dated 11 November 2024 with claim number C/A NO. 2024-CP-40-06639 or any other legal proceedings issued against CIHL in the South Carolina Court or worldwide.

AND IT IS ORDERED THAT:

6. Mr Protopapas be restrained in England and Wales and worldwide from acting or purporting to act as agent or otherwise on behalf of CIHL pursuant to the Receivership Order.

7. Mr Protopapas be restrained in England and Wales and worldwide from appropriating, interfering with or usurping (in any way whatsoever) the lawful exercise of the rights and duties of the directors of CIHL.

8. Mr Protopapas be restrained from acting or purporting to act on behalf of CIHL in the Park Claim and the Tibbs Claim (as defined in Oren 1).

9. Mr Protopapas be restrained from continuing to prosecute the 3P Complaint (as defined in Oren 1).

10. Mr Protopapas be restrained from purporting to act for CIHL in the claim brought in the South Carolina Court by a summons dated 11 November 2024 and with claim number C/A NO. 2024-CP-40-06639 or in any other legal proceedings issued against CIHL in the South Carolina Court or worldwide.

Liberty to Apply

11. The Claimants shall have liberty to apply for further or related relief.

Costs

12. The Claimants' costs be paid by the Defendant on the standard basis, to be a matter of detailed assessment if not agreed.

13. The Claimants shall have liberty to apply for an interim payment on account of costs.

Service of this Order

This order shall be served by the Claimants on the Defendant.

The court has provided a sealed copy of this order to the serving party, Signature Litigation LL, 138 Fetter Lane, London, EC4A 1BT.

22 November 2024

Underwriters at Continental Casualty Company
151 N. Franklin Street
Chicago, Illinois
IL 60606
United States of America

By Post and email

7 May 2025

Dear Sirs

Re: Isabella Park vs. Armstrong International, et al., in the Court of Common Pleas for the Fifth Judicial Circuit, South Carolina ("the South Carolina Court"): Civil Action No. 2021-CP-40-02727 ("Park Claim")

We refer to the subpoena issued to you in the above proceedings by John Chandler, of the firm Rikard & Protopapas, as Attorney for the purported "Receiver for Cape PLC / Cape Industries Ltd" (**Purported Receiver**) on 28 April 2025 (**Subpoena**).

Attached to this letter is an order from Mr Justice Mann, sitting in the High Court of Justice, Business and Property Courts Of England And Wales (**Court**) dated 22 November 2024 (**High Court Order**).

I write as the sole director of CIHL, being the only person legally entitled to represent CIHL, as confirmed by the High Court Order.

The Purported Receiver has recently been holding himself out as a duly appointed receiver over, alternatively, Cape PLC, Cape Industries Ltd and/or Cape Intermediate Holdings Limited (**CIHL**), all apparently as entities formerly known as Cape Asbestos Company Limited. He has done so relying on an order granted by order of the South Carolina Court dated 16 March 2023 appointing the Purported Receiver as a receiver over CIHL (**Receivership Order**), which the South Carolina Court issued without notice or a hearing several months after the Park Claim was reported to be fully resolved and concluded. The Receivership Order purports to be in respect of the entity "Cape Plc", but has been subsequently clarified by the South Carolina Court to be actually in respect of CIHL.

To the extent you are not already aware, the Receivership Order is currently the subject of appeals with the Supreme Court of South Carolina from several entities. It is also the subject of a request by the Troutman Pepper Locke law firm to dissolve the purported receivership. That request has been pending before the South Carolina Court since 15 September 2023, and has not been opposed by the Purported Receiver. The Purported Receiver and the South Carolina courts have been made aware of the High Court Order.

The High Court of Justice has ordered, amongst other things, that:

1. The Receivership Order is not recognised and has no legal effect in England and Wales and worldwide.

2. The Purported Receiver has and had no power or authority to act on behalf of CIHL in England and Wales or worldwide and has no power to or authority in respect of CIHL in England and Wales or worldwide.

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3. The Purported Receiver has and had no power or authority on behalf of CIHL to act for or to bind CIHL in the South Carolina Court in respect of Park Claim and has and had no power or authority on behalf of CIHL to issue or pursue third party claims.

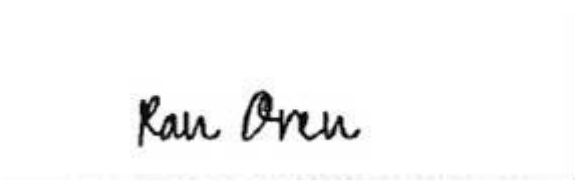
4. The Purported Receiver be restrained in England and Wales and worldwide from acting or purporting to act as agent or otherwise on behalf of CIHL pursuant to the Receivership Order, including by taking any actions in the Park Claim.

By reason of the High Court Order, by issuing the Subpoena, the Purported Receiver was acting unlawfully and in clear breach of that order.

Taking steps to comply with the Subpoena would represent conduct that CIHL considers to be unlawful for the purposes of the law of England and Wales.

We ask that you confirm, by response to this letter by **14 May 2025**, that you will take all necessary steps to comply with the law, including by notifying the Purported Receiver that you do not intend to respond to the Subpoena due to the Purported Receiver's lack of power or authority, as determined by the High Court Order.

Yours faithfully



Ran Oren
Director, Cape Intermediate Holdings Limited

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
JOHN A. TIBBS AND MARGARET B. TIBBS, Plaintiff, Vs. 3M COMPANY, et al., Defendants.	In Re: Asbestos Personal Injury Litigation Coordinated Docket Civil Action No. 2023-CP-40-01759 ORDER GRANTING MOTION TO APPROVE CONFIDENTIAL SETTLEMENT AGREEMENT BETWEEN AND AMONG THE RECEIVER FOR CAPE PLC, **SOUTH CAROLINA ASBESTOS VICTIMS COMPENSATION QSF LLC**, AND ANGLO AMERICAN US HOLDINGS INC. FOR ITSELF AND ITS AFFILIATES

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
KEITH W. PARK, Individually and as the Personal Representative of the Estate of ISABELLA PARK, Plaintiff, Vs. ARMSTRONG INTERNATIONAL, INC., Defendants.	In Re: Asbestos Personal Injury Litigation Coordinated Docket Civil Action No. 2021-CP-40-02727 ORDER GRANTING MOTION TO APPROVE CONFIDENTIAL SETTLEMENT AGREEMENT BETWEEN AND AMONG THE RECEIVER FOR CAPE PLC, **SOUTH CAROLINA ASBESTOS VICTIMS COMPENSATION QSF LLC**, AND ANGLO AMERICAN US HOLDINGS INC. FOR ITSELF AND ITS AFFILIATES

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

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

ASBESTOS DOCKET MANAGEMENT

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

PROCEDURAL HISTORY

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

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

ANALYSIS AND TREATMENT OF CONFIDENTIAL SETTLEMENT AGREEMENTS

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

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

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

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

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

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

LIQUIDATION OF RECEIVERSHIP ASSETS AND APPROVAL OF SETTLEMENT

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

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

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

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

THE PRESENT SETTLEMENT AND REQUESTED RELIEF

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

B. Approval of Qualified Settlement Fund

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

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

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

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

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

CONTRACTS WITH ATTORNEYS

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

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

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

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

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

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

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

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

IT IS THEREFORE ORDERED THAT:

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

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

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

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

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

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

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

(7) The Court retains continuing jurisdiction in accordance with Income Tax Regulation § 1.468B-1(c)(1) of all matters related to this Order.

IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]

Richland Common Pleas

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

Case Number: 2023CP4001759

Type: Order/Approval Of Settlement

So Ordered

Jean H. Toal