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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

IN THE SUPREME COURT'S ORIGINAL JURISDICTION

CONCERNING A PETITION FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case Nos. 2024-001423, 2024-001499, 2025-002120, and 2025-002121

John A. Tibbs and Margaret B. Tibbs, ... Plaintiffs,

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.; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services; 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,
--	-------------

of which

Asbestos Corporation Limited is the.....	Appellant,
--	------------

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,
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of which

Charter Consolidated Ltd.; ESAB Corporation; Central Mining & Investment Corporation Ltd; Mohed Altrad; and Altrad Investment Authority SAS, are, in their respective cases, the.....

Petitioners.

CHARTER PETITIONERS’ FIRST SUPPLEMENTAL APPENDIX

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

JOHN A. TIBBS AND

MARGARITE B. TIBBS,

Plaintiff,

vs.

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

3M COMPANY, ET AL.,

Defendants.

(Caption continued on the following page.)

H E A R I N G

BEFORE THE HONORABLE

CHIEF JUSTICE (RET.) JEAN TOAL

DATE TAKEN: Monday, October 6, 2025

TIME START: 11:33 a.m.

TIME END: 1:04 p.m.

LOCATION: Richland County Judicial Center

1701 Main Street

Columbia, South Carolina

REPORTED BY: Sheri L. Byers, RPR

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CAPTION CONTINUED:

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

Third-Party Plaintiff,

v.

ANGLO AMERICAN PLC, INDIVIDUALLY
AND AS SUCCESSOR IN INTEREST TO
ANGLO AMERICAN CORPORATION OF
SOUTH AFRICA LTD., ET AL.,

Third-Party Defendants.

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E X H I B I T S

(None were proffered.)

1 - - -

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

3 - - -

4 THE COURT: All right. I've got an agenda
5 here which is a slight redo of the one Ms. Valek
6 sent me at the end of last week. Does that
7 fairly reflect what we're going to do today?

8 Mr. Protopapas?

9 MR. PROTOPAPAS: Your Honor, Peter
10 Protopapas as receiver. There is a substantial
11 change to the agenda.

12 THE COURT: Well, I hope that's good news.

13 MR. PROTOPAPAS: I believe it's good news.

14 As the Court may recall, there are three
15 categories of defendants before you in this
16 matter. I categorize them into three groups.
17 One is titled the Anglo defendants consisting of
18 Anglo American, PLC; De Beers, PLC; De Beers
19 Consolidated Mining Properties Limited; De
20 Beers, UK Limited; De Beers Centenary AG.

21 That's category one. I'll call them the
22 Anglo Group, Your Honor.

23 Category two -- and they're represented by
24 our friends Mr. Elliott and Mr. Balber.

25 Category two is ESAB, Charter, and Central

1 Mining represented by Mr. Rawl.

2 Category 3 is Altrad and Altrad SAS
3 represented by Mr. Carroll.

4 Those are the three categories, Your Honor.

5 The Anglo defendants, of course as
6 Your Honor knows, has been participating in this
7 case in discovery and motions practice. ESAB
8 and Altrad have not.

9 We have reached a settlement with our
10 friends at Anglo. And, Your Honor, after a lot
11 of hard work over the weekend through this
12 morning, Mr. Balber and I and members of his
13 team and of my team have reached a settlement,
14 which we will be presenting to the Court.

15 It will be a confidential settlement. We
16 will be filing it as we have traditionally in
17 other receiverships. It will create a qualified
18 settlement fund in proceeding as this Court is
19 so familiar.

20 And as a result, Your Honor, numbers 2, 3,
21 and 4 of the pretrial hearing agenda need not be
22 heard.

23 I know the Court read everything over the
24 weekend. I apologize we didn't get it done
25 sooner. And I understand that falls on me, Your

1 Honor. And I apologize, Your Honor.

2 THE COURT: That's all right. Let's hear
3 it. I'd read ten times that if it resulted in
4 what you're bringing me today.

5 MR. PROTOPAPAS: Also, Your Honor, I
6 believe the Court had submitted a third report
7 to the South Carolina Supreme Court. There are
8 two proposed orders that were hotly contested.
9 We will need to modify one of those two orders
10 to take into account that our friends at Anglo
11 are no longer defendants in this case and have
12 been fighting vociferously and partly before
13 this Court.

14 So we will be putting together a modified
15 proposal, of course, circulating it to all
16 concerned and giving it to the Court.

17 And the second proposed order which was on
18 a Motion to Compel in Park, this weekend,
19 Your Honor, of course late in the game, and I'll
20 take the blame for that, I have submitted a
21 proposal in an attempt to resolve that motion.
22 Mr. Sawyer just got it and he is going to check
23 with his clients to see if that proposal would
24 it resolve. And I apologize that was not done
25 sooner.

1 But we will be submitting in light of the
2 settlement and Mr. Balber is here and he and his
3 team deserve all the accolades for working
4 through incredibly sticky issues. And I don't
5 believe his -- no further order of this court
6 should impact anything for the Anglos as they
7 are buying their peace.

8 THE COURT: Wow. Well, do you propose to
9 proceed by placing it on the record now, or how
10 do you want to proceed?

11 MR. PROTOPAPAS: I think Mr. Balber is in a
12 position to acknowledge the settlement and then
13 to allow us to give you this fulsome settlement
14 proposal for the Court to review in camera.

15 And so if what we could do, Your Honor, is
16 I think our preference is not to put details of
17 it currently before this Court and in the
18 record, but to acknowledge the settlement and
19 then to present to the Court to final product of
20 the settlement.

21 THE COURT: What's your timeline on that?
22 I know that there are very many complexities
23 involved in this, Mr. Balber. I will say more
24 about you in a few minutes, but I know how
25 sophisticated this discussion has been and how

1 complex these documents are going to be. And we
2 want them to be right and particularly in
3 lightly of the fact that there still remain
4 those who are not -- whose controversies are not
5 composed, it's all the more important to have
6 these materials correct and able to stand alone.

7 MR. PROTOPAPAS: Your Honor, we'll have
8 signature-worthy documents by Thursday of this
9 week was the hope. I think we were talking.
10 But we would actually be able to sign or be in a
11 position to sign a final-final then. But we can
12 submit in camera to the Court a -- sooner than
13 that if the Court wants, but we will be working
14 on nonmaterial terms to the resolution.

15 THE COURT: Whatever you think will help
16 educate me the quickest about being able to
17 execute this. I think it would be well to have
18 in my hands the nonfinal confidential materials
19 that I can look at and be prepared to look at
20 the more fulsome documents if you think that's
21 wise.

22 MR. BALBER: With Your Honor's permission,
23 if you can give us maybe one more day.

24 THE COURT: Sure.

25 MR. BALBER: We've been working very hard.

1 THE COURT: Sure.

2 MR. BALBER: Incredibly collaborative. We
3 are there. I just have a lot of stakeholders I
4 need to ...

5 THE COURT: Sure. Understood. Understood.

6 Well, the arrangement will be, at least as
7 we sit here today, that Mr. Protopapas has made
8 certain representations. I want you to -- you
9 have made for the record the representation of
10 the categories of things that are potentially
11 resolved by this agreement to be forthcoming.

12 I'm going to ask Mr. Balber in a minute to
13 put something general on the record
14 acknowledging where we are. And then the time
15 frame would be Thursday for finalized documents
16 to come to me. And before that, if possible,
17 some kind of in-camera submission, but that's
18 not necessary.

19 I'll read everything when I get it and try
20 to make some determinations about what may need
21 more revision, what to sign and so forth as soon
22 as I receive the materials.

23 MR. PROTOPAPAS: Yes, Your Honor. We will
24 work to get you by close of business tomorrow a
25 preview or a -- something that can help to begin

1 the process of really learning.

2 THE COURT: Sure.

3 MR. PROTOPAPAS: And then signature worthy
4 in short order thereafter.

5 THE COURT: Right.

6 MR. PROTOPAPAS: Your Honor, I do believe
7 it appropriate for me to say categorically it
8 would resolve all disputes between Anglo. It
9 does resolve all disputes between the Anglo
10 parties, the receivership, creates a qualified
11 settlement fund for South Carolina claims, and
12 it complies with the orders of this Court and
13 our appellate courts.

14 And it will require, of course, the
15 appropriate orders from this Court to enforce
16 and to bring forward, but we're there. So I
17 appreciate the Court's indulgence in this matter
18 overall.

19 I appreciate the Court recognizing that for
20 purposes of today, that, one, the motions that
21 are on the pretrial hearing agenda, numbers 2,
22 3, 4, which were either us versus Anglo or Anglo
23 versus us no longer need to occupy this Court's
24 time.

25 THE COURT: All right. Mr. Balber, I call

1 on you now.

2 MR. BALBER: Yes, Your Honor. So
3 Mr. Protopapas has accurately described the
4 state of play. We have an agreement. We've
5 spent quite a lot of time working through, as
6 Your Honor knows, complex issues and we are
7 there. So as Mr. Protopapas represented, we
8 expect to be able to get you a signed agreement
9 by Thursday.

10 THE COURT: Well, I understand quite well
11 that the devil is in the details and you have
12 quite a few parties of interest in this
13 constellation of documents that will compose the
14 qualified settlement fund and the resolution of
15 all matters involving Anglo. So I just can't
16 tell you how much I appreciate your leadership
17 in particular, Mr. Balber, with respect to this
18 matter and of course local counsel.

19 It's good to have James Elliott back in
20 play now. And I appreciate so much, James, your
21 ability to jump right into this matter
22 immediately and keep us going.

23 MR. ELLIOTT: They all decided it was
24 better that I was gone for two months and got it
25 worked out apparently while I was gone.

1 MR. PROTOPAPAS: Your Honor, I have a
2 document I could hand up to the Court. The one
3 I'm handing the Court, Your Honor, is
4 unredacted. I would ask the Court to hold it in
5 camera until the appropriate motions.

6 THE COURT: All right. This is a document
7 with the caption Tibbs versus 3M and the Park
8 versus Armstrong, 2023-CP-40-01759. That's the
9 Tibbs litigation. And 2021-CP-40-02727, that is
10 the Park versus Armstrong litigation.

11 These are stipulations between the receiver
12 for Cape, who was appointed in the Park case,
13 and whose authority then spread to the other
14 cases in which Cape was involved as receiver,
15 including his activities as receiver and his
16 activities in connection with the third-party
17 litigation.

18 MR. PROTOPAPAS: Your Honor, on page 2,
19 paragraph 1, an amount should be redacted in
20 anything in the public record. I just
21 caution -- I just want to caution the Court that
22 I do have --

23 THE COURT: Right. I realize that the
24 amount is confidential at this time, but it's a
25 settlement stipulation pursuant to Rule 43(k) of

1 the South Carolina Rules of Civil Procedure and
2 this is simply a placeholder for documents that
3 will be submitted later in the week which will
4 flesh out the announcement of this stipulation.

5 So I will hold it in camera --

6 MR. PROTOPAPAS: Thank you.

7 THE COURT: -- awaiting the rest of the
8 documents. I think there are other things that
9 should be done ancillary to this, and I'll
10 discuss the posture of those in a minute, but
11 they deal with the Supreme Court's order asking
12 that I make certain findings and take certain
13 actions with respect to the receiverships.

14 And I intend to do that, and I want to talk
15 about that today in a limited sort of way
16 because I'm sure that will be satisfactory to
17 some and unsatisfactory to others. But everyone
18 needs to understand what my thinking is about
19 how to move forward with these receiverships.

20 Now, all that said, Mr. Protopapas, what
21 happens with number 1?

22 MR. PROTOPAPAS: Number 1, Your Honor, as
23 we have two categories of defendants who are
24 nonparticipating and I don't believe can oppose
25 the motion.

1 THE COURT: Right. We'll put that on the
2 record in a minute. This is with respect to
3 agenda items 2, 3, and 4, correct?

4 MR. PROTOPAPAS: They are resolved,
5 Your Honor.

6 THE COURT: And we still have number 5.

7 MR. PROTOPAPAS: Which I don't believe is a
8 motion that bears any weight for our purposes
9 today.

10 THE COURT: All right.

11 MR. PROTOPAPAS: I leave that to Ms. Joyner
12 and my team to argue. Mr. Lay is prepared to
13 talk about the motion to amend.

14 THE COURT: Right. That needs to be done,
15 and I'll ask you and Mr. Lay to give some
16 further attention to discussing the pendency of
17 the trial and what you envision that to involve,
18 if it takes place.

19 MR. PROTOPAPAS: Yes, Your Honor.

20 THE COURT: All right, sir.

21 So Mr. Lay.

22 MR. LAY: Yes, ma'am.

23 THE COURT: On item number 1.

24 MR. LAY: Motion to amend.

25 THE COURT: Yes, sir.

1 MR. LAY: All right. So we filed a motion
2 to amend in November.

3 THE COURT: I've seen the filing. I've
4 read the very voluminous materials.

5 MR. LAY: That's right. It was a
6 modification to the motion to amend where there
7 was a supplement in June of this year to
8 accommodate the rulings from the June order we
9 got from the Supreme Court. So there were
10 further modifications, but it's still
11 essentially the same thing.

12 It's specifically pleading an amalgamation
13 cause of action. Even though amalgamation was
14 in the complaint 13 times, just wanted to very
15 specifically plead the amalgamation theory,
16 adding some facts that have been obtained as we
17 have gone through this litigation so as to
18 conform to the evidence.

19 There is no one to oppose this that is
20 involved with this litigation or active in the
21 litigation. There's no prejudice involved in
22 any of this.

23 In fact, with the motion to amend that was
24 filed in October of last year, even the summary
25 judgments accounted for the amalgamation theory

1 that was in our motion for relief to amend.

2 Obviously under 15(a), that amendment is
3 going to be freely granted. So we would ask
4 that the motion be amended, the motion as
5 presented in our complaint with the supplemental
6 pleading and the supplemental motion, we would
7 ask that that be granted so we can move forward.

8 THE COURT: All right. Now, I have
9 Third-party Defendants Charter and Central
10 Mining Supplemental Objection and Opposition to
11 Receiver's Motion to Confirm the Appointment and
12 Amended Motion for Leave filed in the
13 Third-party Complaint.

14 And before I turn to recognize whoever is
15 going to make any kind of presentation regarding
16 this motion, I ask you, Mr. Lay, what is the
17 posture of the third-party defendants that make
18 this motion in your -- what is the position of
19 the receiver with respect to these third-party
20 defendants and this filing?

21 MR. LAY: Yes, ma'am. So the Anglo
22 third-party defendants, we've got a settlement
23 so they don't have a position on the motion to
24 amend. Any sort of -- these people, the Altrad
25 defendants and the ESAB defendants, or the

1 Charter defendants, they either need to
2 participate or not participate.

3 They haven't participated in two years.
4 They cannot come in here now, the eleventh hour,
5 after they haven't and they've refused to
6 provide any sort of discovery responses.
7 They've refused to present anyone for a
8 deposition. That's 30(b)(6) notices. They've
9 been completely nonparticipatory.

10 If they're taking that position, they're
11 taking that position, but they cannot weave in
12 and out of this litigation and make objections
13 or argue against a motion to amend without it
14 being participation.

15 So, you know, consider beware, I would say
16 to them, if they're going to try to participate,
17 in my view, that is participation if they're
18 coming in here to oppose this motion for leave
19 to amend. I object to that at this eleventh
20 hour. But certainly any of their arguments that
21 they're making, they shouldn't do this pursuant
22 to Rule 205 or some sort of personal
23 jurisdiction issue. I mean, we're on top of
24 waiver, if they're going to participate, and try
25 to make an argument against it.

1 But at this point they shouldn't be
2 arguing. This is an unopposed motion by the
3 people who have been participating in this
4 litigation. We ask that it be granted.

5 THE COURT: All right. Mr. Lay, with
6 respect to the nonparticipating parties, we will
7 call them, I take it that they have not filed
8 any responsive pleadings in this matter; am I
9 correct?

10 MR. LAY: That's right.

11 THE COURT: I take it that they are in
12 default.

13 MR. LAY: They filed initially a responsive
14 pleading and then once they brought the
15 interlocutory appeals, they stopped
16 participating. So there was initial filing of
17 the response. They had a motion to dismiss, for
18 example.

19 THE COURT: Right. And that motion to
20 dismiss was filed in what, 2023, 2024?

21 MR. LAY: 2023, yes, ma'am.

22 THE COURT: Yeah. And what happened with
23 it?

24 MR. LAY: You denied the motion.

25 THE COURT: I denied the motion. I

1 received orders, and I haven't filed anything
2 further on it; isn't that correct?

3 MR. LAY: Say that again, Your Honor.

4 THE COURT: I granted -- I denied the
5 motion to dismiss.

6 MR. LAY: That's correct.

7 THE COURT: Then many proposed orders went
8 back and forth about this and other matters in
9 connection with the nonparticipating parties.

10 MR. LAY: Yes, ma'am.

11 THE COURT: And nothing has been filed
12 about that, correct?

13 MR. PROTOPAPAS: Your Honor, the original
14 motion to dismiss was denied in December of
15 2023.

16 THE COURT: '3, that's correct. And
17 then -- and that denial is on the record.

18 MR. PROTOPAPAS: Yes, Your Honor.

19 THE COURT: Then what I'm asking about is
20 what occurred subsequently?

21 MR. LAY: They appealed the denial of the
22 motion to dismiss.

23 THE COURT: Right. The nonappealable ...

24 MR. LAY: And they filed it. And they did
25 file a responsive pleading as well while that

1 was --

2 THE COURT: Okay. That's what I'm getting
3 at. That's what I thought was the case, but I
4 want to be sure that that's on the record. They
5 have responsive pleadings filed, which then
6 would have imposed upon them the requirement of
7 participation in these proceedings by discovery
8 and other pretrial matters. Correct?

9 MR. LAY: Yes, ma'am.

10 THE COURT: They appealed and that brought
11 things to a halt as far as they were concerned.
12 They didn't participate anymore.

13 MR. LAY: That's right.

14 THE COURT: But those appeals have now been
15 dealt with.

16 MR. LAY: That's right. And we have
17 reached out to them to ask them --

18 THE COURT: And they have declined to
19 participate further, correct?

20 MR. LAY: That's right.

21 THE COURT: I mean, they filed a lot of
22 things about objecting to and saying the
23 signature is no good and so on and so on. But
24 in terms of any participation in this
25 litigation, in the normal pretrial activities of

1 responding defendant, they have not participated
2 beyond the initial responsive pleadings and then
3 the appeal, right?

4 MR. LAY: That's right, Your Honor.

5 Including after the June remand of all thing --
6 all matters back to you from the Supreme Court,
7 we reached out to both the Charter defendants
8 and to the Altrad defendants and asked them if
9 they were going to participate now that we have
10 received this order from the Supreme Court and
11 both said no. I mean, unambiguously said, no,
12 we're not participating.

13 THE COURT: And the litigation that they
14 filed with the Court of Appeals and then with
15 the Supreme Court about trying to continue the
16 appellate posture of this matter, all that
17 complex of matters were remanded back to this
18 court.

19 MR. LAY: That's correct, Your Honor.

20 THE COURT: And since that time, that's
21 June, there have been no responsive pleadings or
22 other participation in discovery, other kinds of
23 pretrial matters, correct?

24 MR. LAY: That's right, Your Honor.

25 THE COURT: So that the posture of the

1 matter is set for trial is the matters they
2 have -- they have made an initial response to
3 but failed to participate thereafter.

4 MR. LAY: Yes, ma'am.

5 THE COURT: And the remand order of the
6 Court, though it contains some other directives
7 that I will comply with, as I have indicated to
8 the Supreme Court, remands these very things
9 back to this Court, the trial we have set.

10 MR. LAY: Yes, ma'am. Precisely.

11 THE COURT: Okay. All right. With that
12 understood, who will speak for the Altrad
13 parties?

14 MR. CARROLL: Your Honor, Todd Carroll for
15 the Altrad parties.

16 Your Honor, first of all, I want the record
17 to be clear that this notion of a settlement, I
18 have no idea how the receiver thinks he can
19 enter into a settlement with anybody given he
20 does not exist as a legal entity in the state.

21 And the reason that I say that is exactly
22 what you and Mr. Lay were just talking about,
23 that June remand order didn't send everything
24 back down to this Court with a blindfold on at
25 the corner of Sumter and Gervais that said we'll

1 wait and see whatever happens at the end of
2 trial.

3 What it did was it gave this Court very
4 specific instructions about what to do with
5 this -- about not only this receivership but
6 every receivership in the asbestos docket.

7 And the very first paragraph A1 said that
8 the receiver is not to be authorized to do work
9 outside of the case in which he is appointed.

10 In the recitation of the settlement that
11 Your Honor gave a moment ago, Your Honor said,
12 well, he was appointed in Park, which we
13 disagreed with, and he was allowed to spread his
14 work in two other cases, like this one.

15 Well, Your Honor, respectfully, that's
16 exactly what the Supreme Court said can't
17 happen. And that came from the June order that
18 Mr. Lay was just pointing out is his view -- in
19 his view is the nexus of why this case could be
20 tried. It actually cannot be tried because the
21 threshold issues of jurisdiction, of standing,
22 of everything is a nullity in Park, everything
23 is a nullity in Tibbs, all of these threshold
24 issues have remained unaddressed or unresolved
25 by the Court. There's not an order from

1 Your Honor that responds to the Supreme Court's
2 June remand instructions.

3 There are threshold questions that have got
4 to be addressed by this Court before anything
5 else can happen. And so on that basis, you
6 know, we want the record to reflect that we are
7 quite puzzled by this notion of settlement. We
8 don't see how that can even happen. But also
9 the motion to amend itself is a nullity. It
10 doesn't exist. It is not filed by somebody that
11 has standing to file anything.

12 And I'm glad to walk you through that. We
13 did that in the July hearing, and we did that in
14 the August hearing.

15 THE COURT: We had quite a fulsome hearing
16 on precisely these matters.

17 MR. CARROLL: Yes, ma'am. Two of them.

18 THE COURT: And I indicated by letter
19 ruling what I would rule in that regard. And
20 you can be assured that those orders will be
21 filed as well.

22 MR. CARROLL: But they haven't been filed,
23 and that's my point.

24 THE COURT: I understand that. But you and
25 I differ radically about whether or not other

1 parties in this litigation have the ability to
2 settle with the receiver, but we also disagree
3 very, very radically about what it means to
4 appoint a receiver, a state receiver, and what
5 the ambit of that state receiver's authority is.

6 And that, of course, has been indicated by
7 what I said in the previous hearings we've had
8 on this matter.

9 But you have responded to this matter. You
10 have filed an answer in this matter.

11 MR. CARROLL: Yes, ma'am. So that there
12 would be none of this notion of default.

13 THE COURT: Well, I'm sorry, but you filed
14 an answer in this matter. And that -- and you
15 appealed rulings made in connection with your
16 posture as a participating defendant. And those
17 matters went all the way to the Supreme Court
18 who then remanded to me all of these matters.

19 So I don't think you can avoid whatever
20 consequences will come to your failure to
21 participate in these matters by simply making
22 these broad statements that the actions of
23 others in connection with this matter are
24 somehow something that you can challenge.

25 MR. CARROLL: Your Honor, very early -- I'm

1 sorry, I thought you were done.

2 THE COURT: You've got a very different
3 notion of how this Court can operate in the
4 light of the directives that were given to the
5 court in the Tibbs case and in the subsequent
6 memorandum orders by the court. Those matters
7 are clearly back in the jurisdiction of this
8 trial court to deal with, and I will deal with
9 them.

10 But I can assure you that I will not simply
11 stop these proceedings on the basis of what you
12 just argued about, the lack of the receiver's
13 authority. And I made that very clear in what I
14 said in June about this matter. And I don't
15 intend to vary from that.

16 So just so you understand, you can put
17 those things on the record if you like, but I
18 don't believe that they are consistent with the
19 receivership law of South Carolina nor with the
20 directives I've been given by the Supreme Court.
21 We have two very different views about that
22 memorandum from the Supreme Court.

23 And what I've got to do is to translate the
24 activities I take as trial Court into orders
25 that are reviewable by the Court, and I intend

1 to do that in a complex order that presents
2 everything at one time so we don't continue to
3 have this yo-yo back and forth with every action
4 that's taken between the appellate courts and
5 this Court.

6 Because what has happened uniformly in the
7 past, that not one of those appeals has been
8 found to have merit. But we've had a huge delay
9 in trying to deal with this matter because every
10 action that's taken, whether you have the
11 authority to appeal or not, you have appealed
12 and tried to stop the Court from moving forward
13 with the ordinary course of handling this
14 matter.

15 So that's the view of this Court on the
16 matter. You don't agree with that, but
17 understand what I perceive to be the directive
18 of the Supreme Court to me on this matter and
19 the responsibility I have as the presiding trial
20 judge in this matter, and I intend to move
21 forward with these settlements and to move
22 forward with this trial. Just so you
23 understand.

24 MR. CARROLL: Yes, ma'am. And the June
25 order gave very clear instructions that have not

1 yet been followed.

2 THE COURT: See, we just disagree about
3 that.

4 MR. CARROLL: We can disagree about it.

5 THE COURT: I understand.

6 MR. CARROLL: So here's my argument on the
7 motion to amend. In the Park case, it was fully
8 resolved in August of '22. That is what
9 Mr. Park's attorney reported to -- pardon me,
10 June of '22. That's what Mr. Park's lawyer told
11 the Court. In August of '22, Mr. Park
12 represented -- sorry. Also in June of '22,
13 Mr. Park represented to the probate judge that
14 the estate should be closed and that his
15 appointment as PR should be terminated.

16 In August of '22, the Spartanburg County
17 probate judge granted that motion, terminated
18 the appointment, closed the estate.

19 The purported receivership motion did not
20 get filed in Park until March of '23. At that
21 point in time, there was no plaintiff to even
22 make that request. And the request was to
23 appoint a receiver over Cape LPC, a defendant
24 who has not been served with process in that
25 case; therefore, it was a motion without a

1 plaintiff against a defendant who did not exist
2 in that case.

3 The Court granted it without a hearing.
4 And then the receiver has sprung from the Park
5 case into the Tibbs case and has purported to
6 accept service in Tibbs on behalf of Cape PLC,
7 even though the plaintiffs in Tibbs made no
8 attempts to actually serve Cape PLC.

9 Now he tells the Court that he stands in
10 the shoes of Cape Intermediate Holdings Limited,
11 a company that is not even named as a defendant
12 in Tibbs. So we've got a receiver --

13 THE COURT: By the way, a party that you
14 don't represent, correct?

15 MR. CARROLL: Correct, I don't. But I can
16 read the public index.

17 THE COURT: Nobody you mentioned so far
18 that you represent in this matter, correct?

19 MR. CARROLL: You're absolutely right. I'm
20 just reading what's in the pleadings,
21 Your Honor.

22 THE COURT: And this Court has already
23 addressed the legitimacy of the appointment in
24 Park, the legitimacy of the Park proceedings,
25 the fact that there's a tolling agreement in

1 place with respect to the Parks. And you have
2 no status of standing on behalf of Altrad to
3 really be involved in that discussion, do you?

4 MR. CARROLL: Of course, I do. Because all
5 of that shows that there's nothing that exists
6 at this table. This table is a nullity. That
7 affects my client, the Altrads. Okay.

8 THE COURT: How does that affect you all?

9 MR. CARROLL: And the tolling agreement
10 that you referenced in Park didn't exist until
11 the following summer in '23. It didn't exist
12 when counsel for the Parks told the Court there
13 were --

14 THE COURT: I --

15 MR. CARROLL: -- cases still unresolved in
16 June of '22 and didn't exist on the Court's
17 appointed receiver in March of '23.

18 THE COURT: Mr. Carroll.

19 MR. CARROLL: Yes, ma'am.

20 THE COURT: Please don't talk over me.

21 MR. CARROLL: I apologize, Your Honor.

22 THE COURT: Thank you.

23 These are the same arguments that were
24 presented in June. I have indicated in a letter
25 ruling that I don't agree with those arguments

1 and that I find the Park estate to have been
2 reopened properly, and its authority
3 retroactively recognized as the statute
4 contemplates. So we just have a disagreement
5 about that. But what you've got is in your
6 situation a client who has not filed any
7 responsive pleadings, correct?

8 MR. CARROLL: No, ma'am.

9 THE COURT: Well, you filed the pleadings
10 that have been recited into the record, but you
11 have not engaged any further in the litigation.

12 MR. CARROLL: Of course not because the
13 litigation itself is a nullity, and the Supreme
14 Court --

15 THE COURT: I understand. I've ruled
16 otherwise.

17 MR. CARROLL: But you --

18 THE COURT: And if you participate any
19 further in this matter, you may choose not to
20 and simply be in default status in that regard,
21 but if you participate further in this matter,
22 it will be -- you will have to understand that I
23 don't agree with your arguments about that. And
24 I'm not going to --

25 MR. CARROLL: I understand.

1 THE COURT: -- use this hearing to one more
2 time --

3 MR. CARROLL: Yes, ma'am.

4 THE COURT: -- review that.

5 MR. CARROLL: I understand. And,
6 Your Honor, I am trying to be fulsome with my
7 arguments because when Mr. Lay was up here a
8 moment ago or there a moment ago, he said we're
9 on the brink of waiver, and Lord have mercy, I
10 don't want to do that.

11 THE COURT: Well, I agree with him very
12 much. You have not -- you assume the posture of
13 a defendant, to begin with, and then -- or
14 third-party defendant, but you have disobeyed
15 every discovery rule and pretrial responsibility
16 that you have as a responding defendant in this
17 matter.

18 MR. CARROLL: Your Honor, I thoroughly
19 disagree with that.

20 THE COURT: Well, I understand. But please
21 understand that as I preside over this case,
22 that is the view I have of the matter, is you
23 responded to this suit. You then made several
24 efforts to have your feeling of nullity resolved
25 in an appellate posture. The appeal court said

1 we're not going to do that. We're going to send
2 it back to trial court. And they propounded
3 certain questions to the trial court. They've
4 not made any ruling about the issue of the
5 validity of this receivership whatsoever.

6 MR. CARROLL: I know that. That's what
7 they told Your Honor to do and that hasn't
8 happened.

9 THE COURT: And I've done that.

10 MR. CARROLL: There's no order. There's no
11 order that addressed --

12 THE COURT: There is an announced order
13 from the bench, and there's a letter order. And
14 I assure you that in connection with the rest of
15 these matters, there will be an order in place
16 to reflect that.

17 MR. CARROLL: But there is no order as we
18 stand here today.

19 THE COURT: Yes, sir, there is an order.
20 It's my order from the bench. I can do it that
21 way.

22 MR. CARROLL: But, Your Honor, you didn't
23 make an order from the bench. You told us you
24 had to wrestle with these issues, and we had
25 given you a lot of to think about and --

1 THE COURT: We won't --

2 MR. CARROLL: Then we got the letter.

3 THE COURT: We won't quibble about the
4 details, but I think it's pretty clear what my
5 ruling is about it today, viability of the
6 receivership's appointment and the viability of
7 this lawsuit.

8 MR. CARROLL: Yes, ma'am. So --

9 THE COURT: And at least you shared it to
10 some extent when you made your responsive
11 pleadings. And now that you've heard the other
12 side is going to take the position that you're
13 very close to waiver, you're trying to have it
14 both ways.

15 MR. CARROLL: No, ma'am, I'm not. No. I'm
16 not trying to have it both ways. My argument
17 has been clear from the word jump. The moment
18 we showed up in this case, we said there is no
19 basis. There is no jurisdictional basis for
20 this.

21 And in June of '25, the South Carolina
22 Supreme Court instructed Your Honor to tell it
23 what the basis is, and that hasn't happened yet.
24 And I know Your Honor disagrees with my reading
25 of the record, but I think I'm on very firm

1 ground with that.

2 But setting aside the nullity notion,
3 right, that comes from the invalidity of Park --
4 and by the way, there's still no evidence in the
5 record that Mr. Park -- I don't think as a
6 matter of law he could so-called ratify what
7 happened three years ago, but even if he could
8 under the law, there's still no evidence of him
9 even trying to do that either.

10 But setting aside all of the nullity orders
11 that we've briefed and argued about ad nauseam,
12 there's another very fundamental problem -- two
13 fundamental problems with the receiver's
14 proposed amended pleading.

15 Number one, he's trying to give you a
16 pleading and a claim that was resolved in the
17 Adams case 35 years ago. Quite literally,
18 everything that he's asking the Court to find
19 with this notion of amalgamation was tried,
20 appealed, and his view was rejected summarily --
21 not summarily, twice through hundred-plus
22 order -- hundred-plus-page orders. He's simply
23 asking the Court to cosign on a fiction that was
24 rejected 35 years ago.

25 Point one.

1 Point two --

2 THE COURT: And the Adams -- the Adams
3 order was issued by what authority?

4 MR. CARROLL: It was issued by a trial
5 court in England. It was appealed. And it was
6 addressed by the Court of Appeals in England
7 after being heavily contested by American
8 plaintiffs.

9 THE COURT: All right, sir.

10 MR. CARROLL: And so point number two, the
11 claims that he seems to want to ask the Court to
12 enter have been released by the company that he
13 claims to speak on behalf of.

14 Cape Intermediate Holdings Limited is not a
15 party to the Tibbs case. I cannot say that more
16 clearly. It's not even named as a defendant in
17 the caption. Yet the receiver is pretending to
18 speak on its behalf and bring these claims
19 against my clients, Mr. Altrad, Altrad
20 Investment Authority.

21 What Cape Intermediate Holdings Limited --

22 THE COURT: The Adams case and those claims
23 that you're talking about were claims in the
24 creation of a fund that had to do only with a
25 certain category of English workers.

1 MR. CARROLL: No, ma'am.

2 THE COURT: Had nothing to do with these
3 much later arising claims arising out of
4 business done at a much later time --

5 MR. CARROLL: Your Honor, there was no
6 business done.

7 THE COURT: -- that didn't matter at all.

8 MR. CARROLL: There was no more business
9 done after Adams.

10 THE COURT: Well, that's your view of the
11 succession of corporations. It's not these
12 plaintiffs' view.

13 MR. CARROLL: I don't know how anybody can
14 suggest that Cape Intermediate Holdings was
15 doing any more asbestos business after 1990.
16 And their theory of liability is that everything
17 goes through NAAC, the National -- the company
18 in Illinois. And it was there to -- it was not
19 some shelf entity. It had insurance. It paid
20 claims. It defended itself in claims.

21 The whole -- this Adams case came after
22 NAAC's insurance was exhausted and American
23 plaintiffs were trying to find another route to
24 recover money. Which is exactly what this null
25 receiver is trying to do here.

1 And in the Adams case, a trial judge heard
2 weeks and weeks and weeks of trial and said I've
3 considered absolutely every piece of evidence
4 you could ever marshal on this. I've heard from
5 the witnesses who actually lived it. And you're
6 wrong. NAAC was its own independent company.

7 That got appealed. There was a proposed --
8 dozens of proposed errors that the Adams
9 plaintiffs gave to the Court of Appeals. They
10 said the trial judge got the facts wrong in
11 these dozens of ways.

12 And the Court of Appeals looked at every
13 one single one of those that's in an appendix
14 attached to the Court of Appeals' opinion that
15 we've given to this Court and to the
16 South Carolina Supreme Court where this court of
17 appeals in England said you were just wrong on
18 the facts.

19 And those are the same facts that the
20 receiver is handing Your Honor in the amended
21 pleading that you can't -- you can't do that.

22 But number two, the claims that he's trying
23 to present against my client on behalf of Cape
24 Intermediate Holding or Cape PLC, or both, have
25 been released. There is no claim that he can

1 bring against my client because the companies
2 that actually have those claims have released my
3 clients. And my clients have likewise released
4 those companies from any potential counterclaim
5 that could come out of the same nucleus of
6 facts.

7 So he's asking you to -- a receivership who
8 doesn't exist as a matter of law, he's asking
9 you --

10 THE COURT: Okay. I've got it. You don't
11 need to repeat it again, Mr. Carroll. I've got
12 what your issue is about that.

13 I think the Supreme Court has already had
14 something to say about the applicability and
15 viability of the English authorities that you
16 cited on what we're doing in this South Carolina
17 court about South Carolina claimants.

18 So I understand your position about that.
19 I don't agree with you. I don't think the
20 South Carolina Supreme Court agrees with you.

21 MR. CARROLL: Well, Your Honor --

22 THE COURT: So your position is noted on
23 the record.

24 MR. CARROLL: But the claims have been
25 released. There can't be --

1 THE COURT: I understand that that's your
2 position.

3 MR. CARROLL: And not only that, not only
4 is there an actual contract on that point, but
5 it was handed to a different English court, and
6 they had a trial last week -- or two weeks ago.
7 And his honor issued a ruling that was quite
8 thorough last week that says this contract is
9 enforcement.

10 We continue to not recognize the
11 receivership, which is, again, back to my
12 earlier point about I don't know how my
13 colleagues on -- at Anglo can settle, quote,
14 settle with the receivership. Perhaps they're
15 paying Mr. Protopapas' individual capacity. But
16 I don't think they can actually settle with a
17 receiver because they have a court in England,
18 too, now saying English law does not recognize
19 this receivership.

20 And the points that the English court --

21 THE COURT: Well, the English court does
22 not recognize the authority of the American
23 courts in this situation at all. Our own court
24 had its own view of that. And, you know, the
25 activities in 1776 had some effect on the

1 independence of American courts and --

2 MR. CARROLL: Sure.

3 THE COURT: -- the authority of American
4 courts. And as far as I'm concerned, that's not
5 something that I need to revisit. I'm operating
6 under the framework that my own appellate court
7 has given me and the responsibility they have
8 given me on this remand.

9 MR. CARROLL: Yes, ma'am.

10 THE COURT: You've argued those things
11 before. Our court has not agreed with you on
12 that and has remanded the thing to me with
13 certain instructions. And nothing I've done so
14 far has contradicted to what they've asked me to
15 do in any respect, in my view.

16 MR. CARROLL: Well, I take it --

17 THE COURT: But I certainly don't think
18 you've got the authority under any view of our
19 own law or what you think is applicability in
20 English law to try to interfere with the ability
21 of Anglo to settle its responsibilities as it
22 sees them.

23 And I look with great concern on
24 codefendants in this case. It's one thing for
25 you to take the position as what the Court's

1 authority may be with respect to your clients,
2 Altrad. It's quite another thing for you to try
3 to blow up the settlements that other defendants
4 are making. How you got the authority or the
5 standing to do that is something I don't quite
6 understand.

7 MR. CARROLL: Your Honor, I'm simply
8 pointing out that Anglo appears to have made a
9 contract with somebody that doesn't exist.

10 THE COURT: Mr. Carroll, this is not some
11 academic law school exercise in talking about
12 the law. You've either got the authority to try
13 to interfere with the legitimate business
14 judgments that other defendants have made in
15 this action or you don't. And I am not going to
16 allow defendants who have made -- considered
17 business judgments about their own posture in
18 this matter to be told that your disagreement
19 with what they are doing is some reason for this
20 Court not to act.

21 The Court is going to act. The Court is
22 going to rule, as I indicated I will rule, as
23 the authority of the receiver. You can do what
24 you want to do with your clients in that regard.
25 But the notion that you could interfere with the

1 legitimate desires of other participants in this
2 litigation to settle their matters is something
3 that I can't comprehend.

4 I also can't comprehend how you personally
5 can on the one hand take this position with
6 respect to Altrad and on the other hand
7 representing USF&G and others who have interests
8 in some phase of this thing on their behalf and
9 seek settlements.

10 So I -- you know, that's something you have
11 to work out on your own, but I'm not going to
12 let it influence the responsibility the Court
13 has directed me on with respect to bringing
14 these other matters to conclusion.

15 MR. CARROLL: Well, Your Honor, I'm
16 simply -- again, I don't want to venture into
17 the notion of waiver. And when I hear the
18 contract has been entered on behalf --
19 reportedly on behalf of the company that has
20 told Mr. Protopapas that he has no authority to
21 speak for them, I feel like that I have to at
22 least point that out on the record lest I be
23 told I have waived something later.

24 THE COURT: All right.

25 MR. CARROLL: I appreciate your point about

1 1776. I understand that the English court does
2 not sit here in Columbia. Our General Assembly
3 has passed a law, the Receiving Statute or the
4 Reception Statute, I can't remember what it's
5 called.

6 THE COURT: It's one of the oldest laws on
7 the book. I'm extremely familiar with it. It's
8 the Reception Act. But the Reception Act
9 receives into our panoply --

10 MR. CARROLL: Common laws.

11 THE COURT: -- of common law authorities of
12 this state. Certain English principles. It
13 doesn't give the English courts the authority by
14 the Reception Act to interfere with the
15 sovereign authorities of the United States court
16 system or the South Carolina court system. And
17 I think that's exactly what the Supreme Court of
18 South Carolina meant when they made the first
19 rulings about this matter.

20 MR. CARROLL: Yes, ma'am. If I may make
21 two points on that. English common law is what
22 controlled the Adams decision. And English
23 common law in Adams --

24 THE COURT: All they are is an interpreting
25 court at that point. We don't -- the Reception

1 Act doesn't continue to receive into the law of
2 this state as a binding authority rulings made a
3 hundred -- several hundred years after our
4 Reception Act was passed. It's not some
5 looking-forward thing. It received into our
6 complex certain common law --

7 MR. CARROLL: Yes, ma'am.

8 THE COURT: -- was a matter of law at that
9 time. But we've got many decisions that say
10 that the Reception Act is not the ability for a
11 litigant on down the road to reach into
12 decisions of any common law jurisdiction,
13 including England, and say, oh, that court
14 decided it this way, it binds you. That's not
15 how the Reception Statute works.

16 MR. CARROLL: I understand that. My point
17 was simply that English common law on the
18 question of amalgamation is the same as
19 South Carolina law.

20 THE COURT: It may or may not be, but it's
21 not the English court's business to tell us.

22 MR. CARROLL: It certainly is.

23 THE COURT: No. It's the business of the
24 South Carolina courts to decide issues of
25 amalgamation interest and the decisions on the

1 books at the present time are way forward of
2 what the original thoughts about that might have
3 been in common law at the time of the Reception
4 Act.

5 So this doesn't empower some
6 non-South Carolina court to bind South Carolina
7 on the front end as to how it views amalgamation
8 and interest. That's the product of the
9 authority of the South Carolina Supreme Court
10 and South Carolina General Assembly on an
11 ongoing basis.

12 And the South Carolina General Assembly has
13 passed many statutory laws, including my old
14 Business Corporation Act that I formulated many
15 years ago, that have all kinds of implications
16 about what common law may have been with respect
17 to corporate existence and authority.

18 I do not in any way regard this argument
19 about litigation over the Adams matter as having
20 some binding effect on common law in this
21 country.

22 MR. CARROLL: Well, Your Honor, I'm
23 disappointed to hear that, as you can imagine.
24 I can't imagine taking a case out of
25 South Carolina and saying, well, the court of

1 jurisdiction looked at these facts, applied the
2 law, that actually matches the second
3 jurisdictions of law, looked at the same bundle
4 of facts, looked at the same law, made this
5 ruling, it was appealed, it was affirmed, every
6 single argument was addressed, and then having
7 forum number two.

8 Which, again, the Tibbs family is from
9 North Carolina. They're not South Carolinians.
10 Cape Intermediate Holdings and Cape PLC are --
11 one's in Jersey, one's in England. My clients
12 are in France. Mr. Rawl's clients are elsewhere
13 too.

14 I can't fathom what interest the state of
15 South Carolina could possibly have in a case
16 like this that would allow a court of this state
17 to say, well, the witnesses who lived the facts
18 testified in front of a court of competent
19 jurisdiction for weeks at a time in a hotly
20 contested case with American plaintiffs, and we
21 just really just don't care what they say. That
22 really surprises me.

23 THE COURT: All right. Well, you've said
24 that once again for about the fifth time in this
25 particular presentation. I think you've made

1 your point.

2 MR. CARROLL: Yes, ma'am.

3 THE COURT: I do not embrace it in any way.

4 MR. CARROLL: But, Your Honor --

5 THE COURT: Mr. Carroll, I think we've
6 finished with this discussion. If you've got
7 something further to say about the finding of
8 English decisions of 20 years ago on the common
9 law of South Carolina, I think I've heard enough
10 to understand what the argument is. I don't
11 agree with you.

12 MR. CARROLL: Yes, ma'am. My only other
13 point that Your Honor didn't engage with and so
14 I want to make sure if you have any questions,
15 that I can answer them.

16 Cape Intermediate Holding and Cape PLC have
17 released the claims against my clients. I can't
18 understand how those claims could possibly be
19 brought back to life at the request of the
20 receiver who is operating without an
21 appointment. So I think the motion to amend has
22 to be denied because it's trying to bring up
23 claims that don't exist anymore. If you have
24 any questions, I'm glad to answer them.
25 Otherwise, I will yield the podium.

1 THE COURT: All right, sir.

2 MR. CARROLL: Thank you.

3 THE COURT: All right. What are we doing
4 over here, Mr. Robinson?

5 MR. RAWL: Your Honor, may I?

6 THE COURT: Mr. Rawl.

7 MR. RAWL: May I -- Charter and ESAB is
8 wanting to be heard.

9 THE COURT: If you're going to address the
10 Court, go to the podium and address me,
11 Mr. Rawl.

12 MR. RAWL: Thank you, Your Honor. Without
13 specific preserving and not waiving personal
14 jurisdiction, I represent Charter Consolidated
15 Limited, ESAB Corporation, and Central Mining
16 Investment Corp.

17 My client has specifically preserved its
18 personal jurisdiction position and its other
19 jurisdiction positions in every single hearing,
20 at every single filing that has ever done in
21 this case.

22 And just as a little bit of a background,
23 Your Honor is correct, my client did move to
24 dismiss the case and move to dissolve the
25 receivership all at the same time. Which was

1 several bases for 12(b)(6), lack of personal
2 jurisdiction, and lack of regular jurisdiction.

3 The court issued an order --

4 THE COURT: Denying.

5 MR. RAWL: -- denying two different orders.

6 The first order was an order denying our motion
7 for personal jurisdiction and denying our
8 arguments that the receiver has no authority to
9 act and there is no basis for the appointment of
10 the receiver. And in that first order that
11 Your Honor issued in this case was appealed.
12 And that order was appealed in -- on December
13 the 18th of 2023.

14 And my client and all of the other
15 defendants, you know, appealed both the --
16 whether or not a receiver was ever appointed,
17 whether --

18 THE COURT: Right. Your appeal -- you
19 appealed the denial of a motion to dismiss,
20 which is a nonappealable matter, correct?

21 MR. RAWL: We appeal the --

22 THE COURT: You appealed the denial of a
23 12(b)(6) motion, correct?

24 MR. RAWL: We did not, Your Honor.

25 THE COURT: Then what did you appeal?

1 MR. RAWL: We appealed the ability of the
2 receiver to act in this case as it was never
3 appointed.

4 THE COURT: There's no such thing as the
5 appeal of the ability of the receiver to act.
6 You have got to appeal something that I ruled
7 upon.

8 MR. RAWL: Yes.

9 THE COURT: I ruled upon your motion to
10 dismiss. That motion to dismiss either did or
11 did not raise issues about the legitimacy of the
12 receivership.

13 MR. RAWL: Your Honor, you issued two
14 orders.

15 THE COURT: Sir?

16 MR. RAWL: You issued two orders.

17 THE COURT: Right. And they encompass the
18 contention about the legitimacy of the
19 receivership as well as the lack of jurisdiction
20 over your clients.

21 MR. RAWL: Yes, Your Honor.

22 THE COURT: And the lack of jurisdiction
23 over your client is kind of a mirror of your
24 attack on the receivership. They're bound
25 together. But I denied your motions.

1 MR. RAWL: You did.

2 THE COURT: And those denial of motions is
3 not appealable. But you went on a long
4 expedition of trying to appeal, did you not?

5 MR. RAWL: Your Honor, yes.

6 THE COURT: So what happened about that?

7 MR. RAWL: We ended up winning that in the
8 Supreme Court when the Court granted our
9 petition for certiorari and agreed with the
10 position that we made originally in those
11 motions, which said that we argued that a
12 receiver appointed in one case may not act in
13 another case. It was the primary basis for all
14 of the appeals.

15 And so at the end of -- after we appealed
16 on I believe it was December 18th or 19th of
17 2023, all the way until June the 26th of 2025,
18 where the Supreme Court ended up ruling with us
19 on our contentions. And so -- and to be
20 specific, Your Honor, the original order
21 addressed personal -- your original order
22 addressed personal jurisdiction and why the
23 receivership could be continued and why a
24 receiver could act from Park to the Tibbs case.

25 And so we said that there's no basis for

1 the receiver to act.

2 So from -- and so we did. We appealed it
3 on I think December the 18th of 2023. It was --
4 we fully briefed it. The receiver made a motion
5 to strike. We briefed that.

6 The Court of Appeals struck the appeal.

7 We sought a rehearing on bond. The Court
8 denied our rehearing on bond. At this point,
9 the Court -- the remitter has still not been
10 returned. We sought cert to the Supreme Court,
11 and our cert motion was granted.

12 So, you know, the receiver -- I mean, this
13 Court didn't have jurisdiction over any of my
14 clients.

15 THE COURT: No. No. All you told me right
16 now is that cert has been granted on your
17 motion, right? There's been no hearing had on
18 it or anything else. Cert has been granted,
19 correct?

20 MR. RAWL: Cert was granted on our petition
21 for certiorari, yes.

22 THE COURT: With respect to the Court of
23 Appeals' granting of the motion to strike,
24 correct? Or the Court of Appeals ruled against
25 you. You've now asked for certiorari to review

1 their decision; am I right?

2 MR. RAWL: The Court of Appeals struck the
3 appeal.

4 THE COURT: That's right. They ruled
5 against you.

6 MR. RAWL: They granted a motion to strike.
7 They did not address the merits.

8 THE COURT: Well, that's the whole point.
9 Procedurally, you can't go in medias res like
10 you've been trying to do all along and appeal
11 something that's not appealable. They've ruled
12 it was not appealable; and therefore, that is
13 why they ruled against you.

14 MR. RAWL: And then we sought rehearing.

15 THE COURT: And they denied it. And now
16 the Supreme Court has indicated that they will
17 hear those arguments. They have made no
18 judgment on the legitimacy or validity of the
19 arguments. As we stand here today, those
20 arguments have been rejected by the only
21 appellate authority to evaluate them.

22 MR. RAWL: I strenuously disagree,
23 Your Honor. The Supreme Court, in its June 26th
24 order, very much --

25 THE COURT: Which June -- the order in

1 Tibbs?

2 MR. RAWL: Yes.

3 THE COURT: That is an order that remanded
4 everything to me in Tibbs, right?

5 MR. RAWL: It remanded something to you,
6 Your Honor, yes, I agree. With specific
7 instructions --

8 THE COURT: What did it do to your case?

9 MR. RAWL: What did it do to my case?

10 THE COURT: Yes.

11 MR. RAWL: Well, what it said was -- is,
12 you know, we argued that Tibbs could not go
13 forward because the receiver is not appointed in
14 Tibbs and there was never --

15 THE COURT: They remanded that to me and
16 they said they weren't going to hear that.

17 MR. RAWL: With instructions to not allow a
18 receiver to move forward in a case where he
19 wasn't appointed, which is Tibbs.

20 THE COURT: Right.

21 MR. RAWL: Now, I do understand,
22 Your Honor, that as you put -- as soon as that
23 word came out, you said I have to figure out how
24 to address the specific instructions that were
25 given me by the Supreme Court. And we've had

1 two hearings on what to do about that.

2 THE COURT: Right. I've indicated what I'm
3 going to do. You all disagree heartily with me.
4 So now you want to appeal that when the Court
5 sent it back to me to try to make some sense of
6 it and make some rulings. You are now once
7 again in medias res this matter trying to
8 indicate to the court that I don't have
9 authority to settle some of the parties, to hear
10 anything further, to do anything other than just
11 agree with you.

12 MR. RAWL: I think Your Honor does have the
13 authority to do the first -- the thing that the
14 Supreme Court said to do. It remanded the issue
15 to you to decide the first --

16 THE COURT: It remanded the entire case to
17 me, and then they filed an order making certain
18 directives as I take these cases back within my
19 jurisdiction and deal with them on the merits.

20 MR. RAWL: The first -- what the Supreme
21 Court said was that Your Honor was supposed to,
22 especially with Tibbs, where we filed the
23 appeal, to address whether or not an order was
24 appointed in that case to allow the receiver to
25 act in that case. That was the first thing that

1 was to be done.

2 And Your Honor considered that and
3 Your Honor said that you were going to issue an
4 order on that. You asked for proposed orders.
5 You just -- you issued a ruling or a report to
6 the Supreme Court saying that you did --

7 THE COURT: I'm well aware of that whole
8 history, Mr. Rawl.

9 MR. RAWL: My point, Your Honor --

10 THE COURT: Yes, sir.

11 MR. RAWL: -- is that from December of
12 2023, when we initially appealed, through at the
13 very earliest June of '26 -- of 2025, the
14 exclusive jurisdiction over anything to do with
15 the receiver or anything to do with my client
16 was with the Supreme Court. So any order or
17 motion that was made between December of '23 and
18 June of '26, where this Court didn't have
19 jurisdiction, is a nullity.

20 My client's position is then on June 26,
21 Your Honor, this Court was supposed to look at
22 what the points from the June 26 order to
23 determine whether or not there is a receiver
24 that can act and issue an order on that. That
25 is the threshold issue with regard to the

1 appeal. That has not yet happened.

2 THE COURT: I understand your position.

3 MR. RAWL: Yes. And so my client's
4 position is that nothing that has happened since
5 December -- so my client made a motion to
6 dismiss and a motion to dissolve. Your Honor
7 ruled on it, we appealed it. And from that
8 point on, the remitter has not been returned to
9 this Court.

10 And so our position is, you know, there was
11 nothing for us to -- and we preserved it in
12 every single thing we filed. 205 -- the, you
13 know -- and it's not like the Supreme Court
14 rejected our arguments. They granted them and
15 agreed with us.

16 THE COURT: Well, both the Supreme Court
17 and the Court of Appeals have rejected your
18 arguments several times on exactly this point.
19 And what they finally did was send all that
20 material back to me, your contentions in Tibbs,
21 Anglo's contentions in Tibbs, Cape's contentions
22 in Tibbs. Everybody's contentions. Sent them
23 back to me because those matters were completely
24 remanded to me. And they're all raised in the
25 Tibbs case. And now I have them back in my

1 jurisdiction to try to figure out how to do
2 something going forward.

3 I have had a two fulsome hearings about the
4 South Carolina's remand. I have indicated how
5 I'm going to rule. I am trying to get this
6 thing in a posture where I have one encompassing
7 order I can send to the Supreme Court for them
8 to look at.

9 You have done the same treadmill of trying
10 to appeal everything that happens so as to
11 prevent the Court from doing what the Supreme
12 Court has charged me with doing. They sent all
13 that back to me and said you look at this thing,
14 here's some particular things we want you to
15 deal with in that connection. And that is what
16 I'm trying to do.

17 I understand you have a different view of
18 the matter. I think I understand what your view
19 is. I don't agree with it. So there we are. I
20 don't think there's anything more you can say
21 that will assist me in this matter.

22 MR. RAWL: Your Honor, I would like to make
23 a couple of points.

24 THE COURT: Mr. Rawl, have you not heard
25 what I just said?

1 MR. RAWL: I have certain arguments that
2 I've not yet made, Your Honor.

3 THE COURT: I see. I will let you proceed
4 with great caution. I can tell you, Mr. Rawl, I
5 don't believe what you just told me. So if you
6 now proceed with any further arguments along the
7 line of what you've already sent to the Court of
8 Appeals and Supreme Court several times, and
9 then again trying to make another intermediate
10 appeal of something that's not appealable, they
11 just simply haven't dealt with yet, I will not
12 regard that with favor.

13 MR. RAWL: May I point out the specific
14 ruling on the June 26th?

15 THE COURT: No, sir, I won't hear anything
16 more about that. You all have talked about
17 June 26. I had a big hearing about it. I've
18 made rulings about it. I don't think I need to
19 hear anything further about that.

20 You made arguments when we had the hearing
21 about what you all think we have a fundamental
22 disagreement about what the Supreme Court
23 directed me to do. They did not make any merits
24 rulings about anything to do with the receiver's
25 authority. They sent it back to me and told me

1 to make rulings.

2 And the reason they do that, they want a
3 record of what the ruling is and why it was
4 made. And I'm going to provide that to the
5 Court.

6 And I've indicated what it's going to be.
7 And I will do it in the context of trying to
8 send a complete package on this case to them
9 with all the rulings. And with an indication of
10 any part of it that's been settled.

11 And I will not allow further the treadmill
12 that we've gotten on for about three years now
13 of you all trying to avoid the Court making a
14 final decision on these matters by appealing
15 nonappealable matters. And that's where I think
16 we are.

17 So I don't need to hear anything further
18 about the June 26 order. You have been heard
19 extensively on that already, and I don't need to
20 hear anything further.

21 MR. RAWL: Your Honor, I would like to
22 incorporate the arguments that Mr. Carroll just
23 made while he was standing up here.

24 THE COURT: All right, sir.

25 MR. RAWL: And I do want to clarify -- make

1 sure Your Honor has not issued a final order
2 yet.

3 THE COURT: I understand that.

4 MR. RAWL: I just want to make sure.

5 THE COURT: I understand that's your
6 position, and I understand that is Mr. Carroll's
7 position. You led with that and you've said it
8 about four or five times in the course of this
9 very argument, so I understand what your
10 position is.

11 MR. RAWL: I'm just asking -- if I'm wrong,
12 Your Honor --

13 THE COURT: I'm not here to be questioned,
14 Mr. Rawl.

15 MR. RAWL: It's --

16 THE COURT: Mr. Rawl. Mr. Rawl. I think
17 I've heard enough.

18 MR. RAWL: So, Your Honor, with regard to
19 issues that I've not yet addressed, until this
20 Court issues a final order, we don't know the
21 scope of what Your Honor is going to order. For
22 example, we don't know what entity you are going
23 to order would be in receivership. We don't
24 know what the scope of the authority of that
25 receivership would be. We don't know whether or

1 not, you know, whatever order you issue is going
2 to comply with the bond provisions of the
3 South Carolina Receivership Statute. We don't
4 know --

5 THE COURT: Mr. Carroll.

6 MR. RAWL: I'm Mr. Rawl. Yes.

7 THE COURT: I mean Mr. Rawl, those are
8 matters you can raise at a certain point in
9 time, but I'm not going to hear those arguments
10 right now.

11 MR. RAWL: And my only point is we don't --
12 you know, my client does not know the answer to
13 those questions because we don't have that
14 order. So without that information, we don't
15 have the ability to even respond to those
16 motions.

17 THE COURT: Mr. Rawl, that's fine. You've
18 made your position known on this now for about
19 the fourth time of these proceedings. I don't
20 need any further argument on that. If you don't
21 have anything further to say other than this,
22 please take your seat.

23 MR. RAWL: Your Honor, thank you very much.

24 THE COURT: Yes, sir.

25 All right. Mr. Lay? Mr. Protopapas?

1 MR. LAY: I'm just going to --

2 THE COURT: What I want to know is this.

3 MR. LAY: Yes, ma'am.

4 THE COURT: We've got a settlement that is
5 going to be projected. And my guess is that the
6 parties having reached that settlement,
7 projected as Mr. Protopapas indicated it would
8 be, by this Thursday, I will await getting those
9 materials.

10 But what I want to know is this: Assuming
11 that we reached the settlements that you all
12 have brought out now indicated that the parties
13 have reached before me today, outline for me
14 where you think we're going with respect to the
15 trial.

16 MR. LAY: For the trial, Your Honor, we
17 have -- with the two nonparticipating
18 defendants, we still have to put our case up
19 even though it's going to be an unopposed trial.

20 THE COURT: Right.

21 MR. LAY: So we're still going to need
22 probably three days to put our case on against
23 the remaining two groups of defendants.

24 THE COURT: The Altrad Group and --

25 MR. LAY: The Altrad Group and the Charter.

1 THE COURT: Charter.

2 MR. LAY: Yes, ma'am.

3 THE COURT: And the Altrad Group and the
4 Charter Group have taken the position before me
5 today, as articulated by Mr. Carroll and
6 Mr. Rawl, that they don't think the Court has
7 any authority and so forth and so on. I have no
8 doubt when the documents come to me Thursday and
9 I file those, together with my other orders in
10 this matter, I have no doubt but what they will
11 attempt to appeal that.

12 And, you know, all I can tell you is I'm
13 going to finalize all this material as soon as I
14 get your settlement materials.

15 MR. LAY: Yes, ma'am. And, you know, I
16 want to point out that we also got an order from
17 the Supreme Court on September 25th
18 specifically --

19 THE COURT: Yes.

20 MR. LAY: -- addressed whether or not there
21 can be approval of settlements. So that would
22 be the height of frivolity if they appealed some
23 sort of settlement agreement.

24 THE COURT: When the Supreme Court --

25 MR. LAY: On what basis that would be, I

1 have no idea.

2 THE COURT: Well, that's exactly right.

3 The Supreme Court has made it clear that they
4 want settlements to proceed, and then they want
5 recitations made in connection with those
6 settlements that indicate the authority of the
7 Court and the posture of the parties. And I
8 will do that.

9 That is why I want to put all this together
10 in one package when I get the materials from you
11 all so that it will all be in front of them.
12 That will embrace not only directives when all
13 these matters were remanded by the earlier
14 directive of the Court, but they will also
15 incorporate the directives of the Court in the
16 September 25th order.

17 And then we'll have a package that can go
18 to them. And I would be astounded if the
19 directive wasn't then given, go try these
20 matters and then let us receive a complete trial
21 package so that we have the entire matter and a
22 complete trial.

23 MR. LAY: Your Honor, I just want to say it
24 was not only proceed on settlement, it was to go
25 through your normal course, proceeding in your

1 normal course, which is absolutely the trial
2 process.

3 THE COURT: Exactly.

4 MR. LAY: And they made it very clear.

5 THE COURT: Of course, let's remember that
6 this matter that's set for trial now was set for
7 trial either twice or maybe more and always
8 delayed by these appellate maneuvers, none of
9 which have ultimately proved successful, as I
10 recall. Am I right about that?

11 MR. LAY: Yes, ma'am.

12 THE COURT: They claim a lot of success,
13 but the final June order -- I think the June
14 order directs me to do certain things in
15 connection with the further handling of this
16 matter at trial. And that's what I'm attempting
17 to do.

18 So what I'm simply saying is this: I
19 understand what the trial will look like and
20 there are certainly things that the rulings that
21 we need to be made if we go forward on certain
22 affidavits and certain other things, but they
23 can be made at trial.

24 MR. LAY: Yes, ma'am.

25 THE COURT: They are not things that need

1 to be pretried. What we need to concentrate, as
2 I see it, on pretrial is to finalize or
3 regarding the authority of the receiver to act
4 and orders regarding the settlement of those who
5 are settling. And that is what I would like to
6 see in a fulsome package to me on Thursday.

7 MR. LAY: Yes, ma'am.

8 THE COURT: And that I can then look at,
9 deal with, modify as I see fit. But I think the
10 outlines of what I have found about the status
11 of the receiver and the receiver's authority is
12 already well-known to everybody in this room
13 pursuant to the other hearings that have been
14 held.

15 MR. LAY: Agreed.

16 THE COURT: Okay. What do I then -- what
17 further do I need to do at this moment?

18 MR. LAY: I would ask you to grant the
19 motion to amend.

20 THE COURT: Yes, sir. It is granted.

21 MR. LAY: Yes, ma'am.

22 THE COURT: And that can be encompassed in
23 what you bring to me Thursday about, A, the
24 settlement; and, B, the finalization of the
25 order I previously announced that was previously

1 submitted to me and which can be signed in
2 the -- basically the posture that was received
3 by me. But I need to look at it one more time
4 when it's proposed as the final order to decide
5 whether that is the way I will sign it in light
6 of the direction of September 25th.

7 MR. LAY: Yes, ma'am.

8 THE COURT: Do you need anything else by
9 way of any rulings from me?

10 MR. LAY: I think that's it, Your Honor.

11 THE COURT: All right. So just to recap.
12 The motion to amend the complaint is granted
13 over the objection and supplemental objection
14 and opposition of the third-party defendants
15 Charter, Central, Altrad, to the receiver's
16 motion to confirm the appointment of receiver
17 and receiver's amended motion for leave to amend
18 the third-party complaint.

19 I indicated that I have taken into account
20 all those pleadings. And in the face of those
21 pleadings, I have granted the motion to amend
22 and denied the motions or refused to grant the
23 objections, is the way they phrase. They
24 phrased it as an objection. That's kind of an
25 odd way to phrase it. But I denied the

1 objections, and I grant the motion the amend.

2 And the orders need to reflect that.

3 MR. LAY: Yes, ma'am.

4 THE COURT: In a manner that the Court has
5 indicated in the observations I've already made
6 in the course of these proceedings.

7 MR. LAY: Yes, ma'am.

8 THE COURT: All right. Mr. Robinson.

9 MR. ROBINSON: Your Honor, on behalf of the
10 receiver, the Court was referencing -- and it is
11 in the order that came out from the Supreme
12 Court September 25th. I know we put the
13 settlement on the record for the purpose of
14 43(k) and given you the key terms of it.

15 THE COURT: Right.

16 MR. ROBINSON: The Supreme Court said that
17 "As we wait the trial court ruling on the
18 matters referenced in this court, order dated
19 June 6, 2025, we issue this order to clarify
20 that nothing in the June 6, 2025, order prevents
21 the trial court proceedings from continuing in
22 the normal course in the asbestos litigation,
23 including the filing of and decisions on motions
24 to approve settlement agreements."

25 THE COURT: Well, thank you for making that

1 clear. I'm sure that will also be a part of the
2 filings that you will make proposing the written
3 order that I just recited from the bench.

4 But it's very clear to me from that
5 directive from the Supreme Court that they fully
6 anticipate that I will continue the judgments I
7 already made upholding the legitimacy of the
8 receiverships, and that I will consider the
9 fairness on its merits of proposed settlements
10 with respect to defendants in the proceedings
11 before me.

12 Had the Court not intended for me to do
13 that, I think it would have said so. I think it
14 is a direct reputation of the arguments that
15 have been made by Mr. Carroll and Mr. Rawl on
16 behalf of their client previously and today's
17 proceedings where they contend that the June
18 order of the Supreme Court called into question
19 the viability or the legitimacy of the
20 receiverships.

21 I viewed it as anything but that, and I
22 think the further directive that you have just
23 referred to underscores that.

24 But I will make very clear what I think the
25 receiver's authority is from whence it is

1 derived as I think I've already indicated on the
2 record in other proceedings that have been held
3 and today. I'm not going to vary from that.

4 MR. ROBINSON: Thank you, Your Honor.

5 THE COURT: All right, sir. Anything
6 further?

7 MR. CARROLL: Yes, ma'am. Item 5 on the
8 agenda.

9 THE COURT: What's that?

10 MR. CARROLL: Item 5 on the agenda.

11 THE COURT: Yes. That's the objections and
12 motion to strike the affidavits of Dr. Steven
13 Press and James T.H. Buxton.

14 Let me say this before you begin,
15 Mr. Carroll.

16 MR. CARROLL: Yes, ma'am.

17 THE COURT: What I just said to Mr. Lay is
18 that objections like this, which have to do with
19 the trial of this case and materials submitted
20 in connection with the trial of this case are
21 things that I will rule upon when the matter is
22 tried. So I don't think there's any necessity
23 for you to argue your objections and motion to
24 strike the affidavits of Dr. Steven Press and
25 James T.H. Buxton.

1 As I understand it, those materials are
2 submitted in connection with the materials that
3 would be put forth at the trial of this matter.
4 Am I wrong about that?

5 MR. CARROLL: Respectfully, Your Honor, you
6 are wrong.

7 THE COURT: All right. Why?

8 MR. CARROLL: These affidavits were
9 submitted in support of the receiver's motion to
10 confirm appointment in Tibbs. He filed these
11 affidavits in support of that. And so we filed
12 a motion to strike that. And Your Honor still
13 hasn't granted that motion. So to the extent
14 these affidavits inform your judgment, they
15 should be stricken.

16 Dr. Press' -- Dr. Press' proposed
17 testimony, you know, number one, of course these
18 come from -- the filing came from the receiver
19 who doesn't exist. I don't want to replot that
20 ground.

21 But number two, Dr. Press' testimony is
22 essentially an attempt to do a work around the
23 Adams case. He says, Hey, I'm a fact witness
24 and I've read some books. Here's how I think
25 Adams should be resolved. He didn't say

1 Adams. But he says here's how I think -- here's
2 how I think this amalgamation issue should be
3 resolved.

4 And I do not want to belabor that point,
5 Your Honor. I don't think this is something
6 that a purported expert could possibly testify
7 about. The Whittaker Clark Daniels case from
8 the third circuit from last month that addressed
9 the receivership there in the third circuit
10 said, Hey, if this receiver thinks he can
11 operate outside of South Carolina, he's
12 absolutely wrong. The U.S. constitution forbids
13 that. And if there's any doubt about it, he has
14 got to go to where Whittaker Clark & Daniels is
15 and ask those courts what his authority is.

16 Well, Your Honor, here, those courts --
17 quote/unquote, those courts would be the courts
18 of England, and they've already spoken. And
19 they say the receiver is wrong and that
20 Dr. Press is wrong. So I think his affidavit
21 should be stricken for those reasons.

22 Mr. Buxton's affidavit, again, if
23 Your Honor is going to consider it, as you
24 address the motion to, quote/unquote, confirm
25 the receivership, Mr. Buxton is presented as a

1 expert on the law. And of course, Your Honor
2 knows that's never the proper source of expert
3 testimony.

4 So for those reasons, Your Honor, I don't
5 want to belabor the point. If you have any
6 questions, I'm glad to answer them. But if not,
7 I will sit down.

8 THE COURT: All right.

9 MR. CARROLL: I didn't want the moment to
10 pass, and, again, I don't want to be accused of
11 waiving anything.

12 THE COURT: Yes, sir. I understand.

13 MS. JOYNER: Good morning or afternoon at
14 this point. Lindsay Joyner on behalf of the
15 receiver.

16 In response to this motion, Your Honor, we
17 believe it's moot because you've already made a
18 decision on the receivership. Those affidavits
19 were submitted in reply on the motion to confirm
20 the receivership order. And so any attempt now
21 to try to go at them substantively would be
22 waiver in the pretrial context.

23 And you've already made your decision clear
24 in your August 13th letter. So we believe this
25 motion is moot. But if Your Honor has questions

1 for me, I'm happy to answer them.

2 THE COURT: Well, I agree with you that
3 the -- I have decided now the issue concerning
4 the confirmation of the appointment of a
5 receiver. And frankly, I've done so without any
6 reference to these two affidavits. My decision
7 and the discussion that we had at the two
8 hearings I had on this matter did not encompass
9 discussing either of these folks' affidavits but
10 rather had to do with analyzing the Park case,
11 the authority of the receiver's appointment
12 there, and the authority of the receiver going
13 forward to act as receiver in connection with
14 other South Carolina claims.

15 So I agree that these objections are not
16 proper pretrial material. I made the decision,
17 in light of the other filings of legal
18 arguments, and nor was the observation of these
19 two folks in their affidavits discussed at the
20 time of those hearings.

21 So they are not anything that I would
22 consider as necessities of ruling about
23 pretrial. And we will see what happens in the
24 trial of the matter when it takes place as to
25 what the posture of these two affidavits would

1 be in terms of being offered by your client.

2 But I don't consider the matter of
3 confirmation of the appointment of the receiver
4 as something that needs any further elucidation
5 by way of affidavits at this time.

6 MS. JOYNER: Yes, Your Honor.

7 THE COURT: All right. Anything further?

8 MR. PROTOPAPAS: Nothing further for the
9 receiver, Your Honor.

10 THE COURT: All right.

11 Now, I just will observe for
12 Mr. Protopapas, for you, and for Mr. Robinson,
13 there may be other receiverships that now need
14 some attention in terms of confirming orders,
15 particularly settlement orders.

16 Now that I have got the directive from the
17 Court that makes it clear that I am to proceed
18 with those, I want to revive or look at those
19 and get them dealt with in regular format. So I
20 know I've got a couple with Heat and Frost that
21 are sitting on my desk, and I now feel that the
22 Court has given me direction sufficient to deal
23 with those matters and I want to deal with them.

24 MR. PROTOPAPAS: Your Honor, we'll provide
25 the Court with a list copying the appropriate --

1 THE COURT: Exactly. Exactly. I've got
2 several of them in folders sitting here right
3 now, but I want them in one comprehensive series
4 of orders and get those matters out of the way
5 now that I've got the Court's indication that I
6 should proceed with those. And that nothing
7 within their purview, by way of any over appeals
8 or any other filings, prevents me or stays me
9 from acting as a trial judge on these
10 settlements. And that's what I want to do.

11 MR. PROTOPAPAS: Yes, Your Honor. We will
12 collect and provide the appropriate copy to
13 defense counsel. So you have it in one place
14 don't have to look at thousand of filings we
15 have suffered the Court --

16 THE COURT: Great. Thank you very much.
17 Anything further?

18 MR. PROTOPAPAS: Nothing, Your Honor.

19 MR. RAWL: Your Honor, just briefly. You
20 know, my reading of that Supreme Court order, I
21 don't think was intended to be receivers. I
22 think it was just underlying asbestos cases.

23 But the only question I have, you know,
24 Your Honor, is that --

25 THE COURT: I might say to you, Mr. Rawl,

1 that is I think belied by the words themselves
2 in the Supreme Court. But I'm also not aware of
3 any settlements of individual mesothelioma cases
4 that you would have any interest in. But for
5 your information, I am not aware of any
6 settlements of mesothelioma cases on the
7 asbestos docket as a general matter that have
8 not been dealt with.

9 I know of only one that is on my desk right
10 now that had to be supplemented with some
11 further information about the distribution of
12 proceeds. But other than that, I'm not aware of
13 anything that's been brought to the attention of
14 the Supreme Court dealing with settlements of
15 individual mesothelioma cases.

16 I think they were very well aware that the
17 settlements that were being discussed in
18 connection with anything before them had to do
19 with the status of the receiver and the
20 authority of the receiver in these very matters.

21 MR. RAWL: Your Honor, I have no idea what
22 the Supreme Court -- I presume that the Supreme
23 Court didn't know about the settlement today
24 because it was not told to even us until today.
25 So I assume this Supreme Court --

1 THE COURT: No, sir. No, sir.

2 MR. RAWL: -- doesn't know any of those
3 issues.

4 THE COURT: Mr. Rawl, the Supreme Court and
5 the world would know that there have been many
6 qualified settlement funds approved and
7 settlements made in connection with actions by
8 the receiver. I held all kind of hearings.

9 We now have a comprehensive place on the
10 filings with the Richland County clerk's office
11 where one can view in a comprehensive whole a
12 listing of the status of these various
13 settlements and the activities of the receiver
14 in connection therewith.

15 So, no, sir, I don't view the remarks of
16 the Supreme Court as not including receiver
17 activity when that's been the very thrust of
18 what they talked about as they remanded these
19 cases to me to begin with. I think that's
20 precisely what they're talking about. And I
21 think what we're about here today is, again,
22 precisely what the court was talking about when
23 they made it clear that settlements could go
24 forward.

25 MR. RAWL: Thank you, Your Honor.

1 THE COURT: So thank you for your remarks
2 in that regard. Again, I couldn't disagree more
3 with you. I think I understand completely what
4 they said.

5 MR. RAWL: Thank you, Your Honor.

6 And my only last question is, I can't
7 remember if it was Mr. Lay or Mr. Protopapas
8 said he was going to provide us a copy of the
9 revised proposed order that they were going to
10 provide to you. I just wanted to know, you
11 know, how many days we would have to respond.

12 THE COURT: I'm not going to give any
13 further days or anything else. We had proposed
14 orders out there. I simply expect them to look
15 at them as both sides submitted them and provide
16 them to me. But I'm not going to make any
17 further back and forth. I've already done that.
18 And you all have already made it quite clear
19 what your position is. I have that, and I'm
20 obviously not going to agree with you.

21 MR. RAWL: Thank you. But we will get a
22 copy of whatever is provided to Your Honor,
23 correct?

24 THE COURT: Mr. Rawl, I find it a little
25 bit insulting to me that you would think that

1 there is anything I would ever receive from a
2 lawyer that wouldn't be copied to all opposing
3 counsel. I am confident they will do that, and
4 I am confident anything that I do by way of
5 signing an order is going to be filed with the
6 Richland County clerk's office in the due course
7 and given to all parties.

8 MR. RAWL: Thank you so much, Your Honor.

9 THE COURT: Yes, sir.

10 MR. PROTOPAPAS: Nothing further,
11 Your Honor.

12 THE COURT: All right. Court will be
13 adjourned.

14 - - -

15 (The hearing concluded at 1:04 p.m.)

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CERTIFICATE OF REPORTER

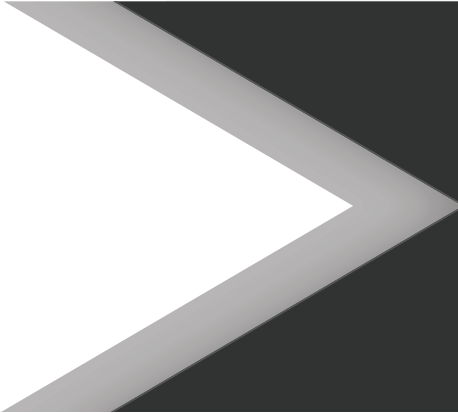
I, Sheri L. Byers, Registered Professional Reporter and Notary Public of the State of South Carolina at Large, do hereby certify:

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

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

Witness my hand, I have hereunto affixed my official seal this 6th day of October, 2025, at Lexington, Lexington County, South Carolina.

Sheri L. Byers
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STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	FOR THE FIFTH JUDICIAL CIRCUIT
JOHN A. TIBBS AND MARGARET B. TIBBS,	In Re: Asbestos Personal Injury Litigation Coordinated Docket
Plaintiff,	Civil Action No. 2023-CP-40-01759
Vs.	ORDER GRANTING MOTION TO APPROVE CONFIDENTIAL SETTLEMENT AGREEMENT BETWEEN AND AMONG THE RECEIVER FOR CAPE PLC, SOUTH CAROLINA ASBESTOS VICTIMS COMPENSATION QSF LLC , AND ANGLO AMERICAN US HOLDINGS INC. FOR ITSELF AND ITS AFFILIATES
3M COMPANY, et al.,	
Defendants.	
STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	FOR THE FIFTH JUDICIAL CIRCUIT
KEITH W. PARK, Individually and as the Personal Representative of the Estate of ISABELLA PARK,	In Re: Asbestos Personal Injury Litigation Coordinated Docket
Plaintiff,	Civil Action No. 2021-CP-40-02727
Vs.	ORDER GRANTING MOTION TO APPROVE CONFIDENTIAL SETTLEMENT AGREEMENT BETWEEN AND AMONG THE RECEIVER FOR CAPE PLC, SOUTH CAROLINA ASBESTOS VICTIMS COMPENSATION QSF LLC , AND ANGLO AMERICAN US HOLDINGS INC. FOR ITSELF AND ITS AFFILIATES
ARMSTRONG INTERNATIONAL, INC.,	
Defendants.	

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

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

ASBESTOS DOCKET MANAGEMENT

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

PROCEDURAL HISTORY

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

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

ANALYSIS AND TREATMENT OF CONFIDENTIAL SETTLEMENT AGREEMENTS

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

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

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

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

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

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

LIQUIDATION OF RECEIVERSHIP ASSETS AND APPROVAL OF SETTLEMENT

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

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

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

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

THE PRESENT SETTLEMENT AND REQUESTED RELIEF

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

B. Approval of Qualified Settlement Fund

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

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

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

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

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

CONTRACTS WITH ATTORNEYS

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

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

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

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

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

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

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

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

IT IS THEREFORE ORDERED THAT:

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

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

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

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

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

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

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

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

IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Richland Common Pleas

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

Case Number: 2023CP4001759

Type: Order/Approval Of Settlement

So Ordered

Jean H. Toal

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

SOUTH CAROLINA ASBESTOS VICTIMS COMPENSATION QSF LLC OPERATING AGREEMENT

This SOUTH CAROLINA ASBESTOS VICTIMS COMPENSATION QSF LLC OPERATING AGREEMENT (the “**Operating Agreement**”) for the establishment and operation of a settlement fund, including any and all sub-funds, is declared to be effective (the “**Effective Date**”) upon approval by a court of competent jurisdiction (the “**Court**”) which shall retain and have continuing jurisdiction over the Fund. This Operating Agreement is entered into by Peter D. Protopapas in his capacity as the court-appointed South Carolina 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**”) as the sole Member and the Manager (the “**Manager**”) of the limited liability company now established under the law of the State of South Carolina known as “South Carolina Asbestos Victims Compensation QSF, LLC” (the “**Fund**”).

WITNESSETH:

WHEREAS, in settlement of certain disputes, Anglo American US Holdings Inc., (“**Transferor**”) (as further identified on Schedule 1 herein) and the Receiver, acting pursuant to his authority and solely in such capacity, have entered into a Confidential Master Settlement Agreement (the “**Settlement Agreement**”) which has or shall be approved by a court of competent jurisdiction and which will resolve all disputes in South Carolina among the Receiver, the Transferor and its affiliates including Anglo American plc, De Beers plc, De Beers UK Ltd., De Beers Consolidated Mines (Pty) Ltd., De Beers Centenary AG, 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, “**Anglo American-De Beers Entities**”). **WHEREAS**, the Transferor, as set forth on Schedule 1 to this Operating Agreement, including all subsequent transferors, have agreed to be Transferors pursuant to Section 468B of the Internal Revenue Code;

WHEREAS, this Fund, together with all other additional proceeds or other assets that may become available to the Receiver (“**Other Assets**”), will be responsible for resolving Cape Asbestos Suits (as defined below), to the extent that such Other Assets have not paid or reimbursed such costs and expenses, but only to such extent, and to meet administrative costs and expenses of this Fund, including without limitation tax and investment fees and expenses;

WHEREAS, this Fund is excess of all such Other Assets;

WHEREAS, this Fund, including any and all Sub-Funds, are intended to qualify as a “Settlement Fund” within the meaning of Section 1.468B-1 of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended;

WHEREAS, the parties to this Operating Agreement acknowledge and agree that the funds and other assets and things of value transferred to the Fund and all earnings thereon or additions thereto are to be held, administered and distributed in accordance with the following provisions;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, it is agreed as follows:

Article I General Fund Provisions

1.1 Name of Fund. This Fund shall be known as and properly referred to as the **South Carolina Asbestos Victims Compensation QSF LLC (“the Fund”)**.

1.2 Fund Purposes. The purposes of this Fund shall be (i) to provide funds which may be used to resolve South Carolina 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, 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 (as defined in the Settlement Agreement), that are brought in South Carolina by any person or entity (whether it is an asbestos claimant, an asbestos trust, or others) (“**Cape Asbestos Suits**”); (ii) to provide funds to be used to pay the legal fees of the Receiver and lawyers engaged by the Receiver; (iii) to provide funds to be used to pay any settlement or to satisfy any final judgment or award entered against the Receiver in connection with any claims, causes of action, demands, proceedings, or investigations (whether threatened, pending, or future) asserted against the Receiver in his capacity as the Receiver; (iv) to provide advances to pay for legal fees and settlement costs 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.) (“**Cape**”) pending reimbursement or indemnification by other responsible third parties; (v) to secure certain future potential contingent obligations pursuant to the terms of the Settlement Agreement, which terms are expressly incorporated herein by reference; (vi) to pay for administrative and management costs as provided for herein; and (vii) to do all things necessary or appropriate in connection with the foregoing.

1.3 Distributions and Advances; Other Assets. Distributions from the Fund shall be made to meet Fund purposes, in the discretion of the Manager, or to meet any legal obligation of the Fund. Advances from the Fund may be made, in lieu of a distribution, when one or more parties are responsible for meeting fees, expenses, demands, costs or liabilities properly payable by the Fund. The determination to make a distribution or an advance may be made in the discretion of the Manager. Distributions or advances to pay for or fund Cape Asbestos Suits may be made at any time, pursuant to Article 1.2 (iv) of this Operating Agreement. Payments from the Fund for Cape Asbestos Suits may be made at any time to supplement other available assets that have been used to fund Cape Asbestos Suits or have been deposited in the Fund. Advances from the Fund shall be evidenced by a promissory note in the form attached as: Schedule 2. All advances shall be recorded as receivables. The Manager may in the future adopt certain standards for distributions or advances to meet the costs of Cape Asbestos Suits.

1.4 Fund is Irrevocable. This Fund is irrevocable and may not be revoked, amended and modified, in whole or in part; *provided, however*, notwithstanding the foregoing to the contrary (i) the Manager of this Fund shall have the exclusive power and authority to petition the court that retains jurisdiction over the Fund to reform this Fund, in whole or in part, to the extent said court determines it necessary or reasonable in order for this Fund or the Manager to function or be used to serve the Fund purposes set forth herein and to serve and meet the needs of the parties hereto, and (ii) upon written agreement of each of the parties hereto and without approval of the court, the Fund instrument may be amended to accomplish one or more of the purposes of the Fund as set

forth herein, to maintain the Fund's qualification as a Qualified Settlement Fund as set forth below or to transfer the Fund to a successor escrow fund, trust or other entity designated by the parties hereto which will carry out the purposes of this Fund. Notwithstanding the provisions of this Section 1.4, neither the Fund nor the Manager of the Fund may amend the terms of the Operating Agreement to the detriment of the Transferor or to otherwise make the Fund or the Operating Agreement inconsistent with the terms and conditions of the Settlement Agreement.

1.5 Separate and Independent Fund. This Fund shall at all times be held and remain as a separate and independent fund.

1.6 Duration of Fund. This Fund shall remain in existence from the date of its creation until December 31, 2055, or until such earlier date as the Fund is exhausted or the court which has kept jurisdiction over the Fund has approved a distribution of the Fund as set forth in Section 3.4 below (the "**Termination Date**").

1.7 Situs of Fund. This Fund shall have as its situs Columbia, South Carolina; *provided, however*, that in the event the Manager deems it in the best interest of the Fund and the potential distributees of funds hereunder, the Manager may establish some or all of the Fund assets and/or the situs of the Fund in any other state or judicial district within the continental United States.

1.8 Definitions. All terms shall have the meanings set forth in the Settlement Agreement or in this Operating Agreement, and any governing instrument applicable to its Managers.

1.9 The Settlement Agreement. All provisions of the Settlement Agreement are incorporated herein, and, to the maximum extent permitted by law, the Fund and the Fund Manager agree to be bound by the terms and conditions of the Settlement Agreement.

1.10 Sub-Funds. This Fund shall have the authority to create and maintain separate Sub-Funds which shall be separate and independent funds, in accordance with any documentary requirements establishing such Sub-Funds, but subject at all times to the general terms of this Operating Agreement and any and all orders establishing the Fund and retaining jurisdiction over this Fund or modifying the terms of such order or of this Operating Agreement. The Manager of the Fund may form one or more Sub-Funds at any time, in his discretion, or as required by any pertinent document, including (without limitation) Sub-Funds that are designated for a specific liability or settlement, Sub-Funds that may secure or provide for the satisfaction of a specific obligation, contingent or otherwise, and Sub-Funds securing any obligation to a Transferor.

Article II **Deposits**

2.1 Deposit. The Transferor shall fund the Fund with the "Settlement Sum," as defined by its Settlement Agreement.

2.2 Maintenance of Funds. The funds deposited by the Transferor shall be invested and maintained as provided for by Article V of this Operating Agreement.

Article III Funding, Distributions and Advances

3.1 Limitation on Distributions and Advances. No funding shall be made into this Fund and no distribution or advance may be made from the Fund until and unless (i) an order is received from a court of competent jurisdiction approving the Fund as part of the Settlement Agreement; and (ii) the foregoing court has retained continuing jurisdiction over this Fund. The foregoing conditions are referred to in this Article III as the “**Conditions Precedent.**”

3.2 Distributions or Advances for Cape Asbestos Suits. The Manager may make distributions to pay for the costs and expenses of meeting Cape Asbestos Suit obligations to the extent there is no other responsive asset or responsible party for meeting such expenses. Claimants shall serve Cape Asbestos Suits on Cape Intermediate Holdings Ltd. in England, but the Manager has discretion to waive such requirement. To the extent such expenses are the responsibility of third parties, the Manager may advance funds to pay for the costs and expenses of defending against and paying otherwise unreimbursed expenses associated with the defense and settlement of Cape Asbestos Suits (“**Asbestos Claim Expenses**”), pending reimbursement of such asbestos claim expenses by otherwise responsible parties. Such advances will be repaid upon receipt of such funds from responsible parties, and, pending receipt of such reimbursements, shall bear and cumulate interest at the rate of four percent (4.00%) simple interest per annum. To the extent funds are not received from third parties to pay for the Asbestos Claim Expenses subject of such advances on or prior to the Date of Termination of the Fund, then the obligation to repay such advances shall be canceled and voided *ab initio*. Any and all advances shall be documented by one or more promissory notes in the form annexed as Schedule 2 to this Operating Agreement.

3.3 Distributions. When permitted to do so, the Manager shall make distributions to pay Asbestos Claim Expenses as follows:

(a). The Manager shall make distributions hereunder solely with respect to qualifying liabilities as defined in Section 1.468B-1(c) of the Treasury Regulations;

(b). Prior to making any such distribution, the Receiver shall present Required Documentation (as defined herein) to substantiate that qualifying expenditures have been paid or incurred;

(c). Required Documentation shall consist of a declaration under penalty of perjury signed by the Receiver to the effect that qualifying expenditures have been incurred (the “**Declaration**”) in the form annexed at Schedule 3, together with copies of any relevant invoices; and

(d). Receipt of the Declaration and invoices by the Receiver shall constitute conclusive proof that claim expenditures have been paid or incurred. Receipt of the signed Declaration and invoices shall relieve the Manager of any duties or obligations of any kind or nature to verify that expenditures were paid or incurred.

3.4 Distribution Upon Expiration of Term of Fund. In the event this Fund shall be in existence at the expiration of approximately thirty (30) years from the date of its creation, *i.e.*,

December 31, 2055, this Fund shall terminate and the Manager shall, within a reasonable time thereafter and, after paying all accrued administrative expenses, taxes and other obligations of the Fund, distribute the remaining income and principal of this Fund to the extent of its unreimbursed or incurred Asbestos Claim Expenses as provided for herein, distribute all Sub-Funds as required pursuant to documents establishing such Sub-Funds, and, if there is any remaining income and principal of this Fund, to a qualified Section 501(c)(3) organization or organizations which have been organized and operated exclusively for charitable or educational purposes as designated in writing by the Manager from the approved organizations listed in Schedule 4 to this Operating Agreement.

Article IV **Manager**

4.1 Initial Manager. The Receiver is hereby appointed and named as the Manager of this Fund, and such appointment shall become effective upon the acceptance of such responsibilities by execution of this Operating Agreement. The Receiver in his capacity as Manager may form a legal entity, including a corporation, partnership, trust, limited liability company, or limited partnership, to act as the Manager so long as the Receiver has control, voting or otherwise, over the entity.

4.2 Successor Managers. All successor Managers of this Fund shall be appointed by the Receiver or the successor receivers of Cape, subject at all times to approval by the court, if and to the extent required.

4.3 Resignation and Removal. Subject to the Receiver Order, including any amended or supplemental Receiver Order, a Manager of this Fund may resign at any time upon ten (10) days written advance notice to each of the parties hereto, or may be removed by the court by petition of an interested party. Each resigned or removed Manager shall execute all documents and do all acts necessary to vest title of the Fund in the successor Manager. No successor Manager shall be personally responsible for any act or failure to act of a predecessor Manager.

4.4 Fees and Expenses of Manager. The Manager shall be entitled to reasonable compensation for the performance of his duties as Manager. The Manager is entitled to pay reasonable fees and expenses of other parties the Manager employs or retains to assist the Manager with the administration of this Fund, including but not limited to attorneys, accountants, and such other agents and consultants as the Manager, in his sole discretion, deems appropriate to accomplish the purposes of this Fund, *provided, however*, employment and payment of such parties' fees and expenses by the Manager shall not diminish the compensation of the Manager. Such compensation, fees and expenses shall be paid currently and be a proper expense of the income or principal or both of the Fund.

4.5 Indemnification. The Manager shall not be liable, except for his own gross negligence or willful misconduct and, except with respect to claims based on such gross negligence or willful misconduct that are successfully asserted against the Manager. Except as provided in the preceding sentence, this Fund shall and hereby agrees to indemnify and hold harmless the Manager (and any successor Manager) from and against any and all losses, liabilities, claims, actions, damages and expenses, including reasonable attorneys' fees and disbursements, arising

out of and in connection with this Fund. In addition, this Fund shall and hereby agrees to indemnify and hold harmless the Receiver (and any successor Receiver) from and against any and all losses, liabilities, claims, actions, damages and expenses, including reasonable attorneys' fees and disbursements, arising out of and in connection with the Receiver in his capacity as the Receiver or Manager.

4.6 In no event shall the Manager be liable for indirect, punitive, special or consequential damages.

Article V

Investment of Fund

5.1 **General Intent.** It is the purpose and intent of this Fund to maximize the amount of the Fund, including investment income, available to provide a source of funds for Asbestos Claim Expenses.

Article VI

Fund Administration, Record Keeping and Accountings

6.1 **Fund Administration.** This Fund shall be administered by the Manager under the supervision of the Court. The Manager may administer this Fund and the assets of this Fund without prior or subsequent court approval or orders for actions consistent with the Court's Orders. Nothing herein shall prevent the Manager hereof, in the Manager's sole discretion, from seeking and receiving a declaratory judgment from the Court when the Manager deems same appropriate in connection with any matter involving the administration of the Fund. Further, to the extent any of the provisions of this Operating Agreement is incomplete or unclear, there is a change in applicable law, including tax laws, or there is a change in circumstances that frustrates the intent and purpose of this Fund, or is detrimental to Cape, the Manager, in the sole discretion of the Manager, is authorized and empowered to have the Court, upon notice to all parties hereto, reform this Operating Agreement.

6.2 **Fund Accounting.** The Fund shall prepare no less often than annually a detailed Fund accounting setting forth all receipts and disbursements to or from this Fund, as well as the beginning and ending inventory of Fund assets, in accordance with the Manager's generally provided fiduciary accountings. Given the nature of this Fund, it is specifically directed that the Manager shall not be obligated to prepare its accounting reflecting transactions of this Fund as both income or principal receipts and disbursements, and instead, may account for the receipts and disbursements of this Fund without differentiation as to income or principal transactions. In this respect, the Manager is specifically authorized and directed not to account for the transactions applicable to this Fund under or in accordance with any applicable state statutes generally known as the Principal and Income Acts.

6.3 **Report To The Court.** The Manager shall periodically report to the Court the Fund activities. Any Manager serving hereunder after the service of Peter D. Protopapas, shall be obligated to file a bond to secure the faithful performance of his duties hereunder. The cost of such bond shall be paid by the Fund as a necessary expense thereof.

Article VII

Powers of Manager

7.1 **General Powers.** Except as otherwise specifically provided herein, the initial Manager named herein, as well as all successor Managers of this Fund, shall have full power and authority to administer this Fund and the assets contained herein, which powers and authority shall include all the powers and authority set forth herein as well as all other powers and authority conferred by applicable law. The initial Manager and all Successor Managers shall have the power and authority to name agents and to designate functions and responsibilities to such agents, subject at all times to the powers and supervision of the Manager and to the provisions of this Fund.

Article VIII

Tax Matters – Internal Revenue Code § 468B Qualified Settlement Fund

8.1 The Manager shall take all actions which are consistent with classification of the Fund as a Qualified Settlement Fund within the meaning of Treasury Regulations Sections 1.468B-1, *et seq.*, such that all transfers to the Fund by any Transferor will be excludable from the gross income of the Fund.

8.2 Upon establishment of the Fund and in accordance with Treasury Regulations Section 1.468B-2(k)(4), the Manager shall apply for an Employer Identification Number or shall have previously obtained for the Manager pursuant to Internal Revenue Service Form SS-4.

8.3 If applicable, the Manager and all applicable Transferors, or any Transferor as the case may be, shall fully cooperate in filing a relation-back election under Treasury Regulations Section 1.468B-1(j)(2) to treat the Fund as coming into existence as a qualified settlement fund as of the earliest possible date.

8.4 In accordance with Treasury Regulations Section 1.468B-2(k)(1), the Manager shall cause to be filed, on behalf of the Fund, all required federal, state and local tax returns. Each Transferor shall supply to the Manager and to the United States Internal Revenue Service the statement described in the Treasury Regulations no later than February 15 of the year following the calendar year in which such Transferor makes a transfer to the Fund.

8.5 In accordance with Treasury Regulations Section 1.468B-2(j), the taxable year of the Fund shall be the calendar year and the Fund shall use an accrual method of accounting, within the meaning of Treasury Regulations Section 446(c).

8.6 Anything in this Operating Agreement to the contrary notwithstanding, the Manager shall take all such actions as he deems necessary to comply with applicable laws to assure that the Fund will be treated as a Qualified Settlement Fund under Code Section 468B and the Treasury Regulations promulgated thereunder. Further, the Manager may amend, either in whole or in part, any administrative provision of this Operating Agreement which causes unanticipated tax consequences or liabilities inconsistent with the foregoing, or conform to the administrative provisions of this Operating Agreement Fund to the requirements of taxing authorities or tax counsel to the Fund.

Article IX
Miscellaneous Provisions

9.1 Notices. In the event any entity hereto shall desire or be required to give notice to any other party hereto, then such notice shall be in writing addressed to the party who is to receive such notice and deposited in the United States mail with postage prepaid and sent registered or certified mail, return receipt requested, to the following addresses:

If to the Receiver: Peter D. Protopapas
Receiver, Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)
Rikard & Protopapas, LLC
2110 N. Beltline Boulevard
Columbia, South Carolina 29204
Phone: 803.978.6111
Email: pdp@rplegalgroup.com

with a copy to: John T. Lay, Jr.
Gallivan White Boyd
1201 Main Street, Suite 1200
Columbia, South Carolina 29201
E-mail: jlay@GWBlawfirm.com

If to South Carolina Asbestos Victims Compensation QSF LLC: Peter D. Protopapas
Receiver, Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)
Rikard & Protopapas, LLC
2110 N. Beltline Boulevard
Columbia, South Carolina 29204
Phone: 803.978.6111
Email: pdp@rplegalgroup.com

with a copy to Jonathan M. Robinson
Smith Robinson
3200 Devine Street
Columbia, SC 29205
E-mail: jon.robinson@smithrobinsonlaw.com

If to Anglo American US Holdings Inc. c/o Corporation Service Company
112 S. French Street, Suite 105A
Wilmington, Delaware 19801

with copy to: Company Secretary

17 Charterhouse Street
 London, EC1N 6RA, UK
 E-mail: cosecadmin@angloamerican.com

with copy to:

Scott S. Balber
 Benjamin C. Rubinstein
 Herbert Smith Freehills Kramer New York LLP
 1177 Avenue of the Americas
 New York, New York 10036
 Phone: 212-715-9100
 E-mail: scott.balber@hsfkramer.com
benjamin.rubinstein@hsfkramer.com

with copy to:

James H. Elliott, Jr.
 Richardson Plowden & Robinson, P.A.
 235 Magrath Darby Blvd., Ste. 100
 Mt. Pleasant, SC 29464
 Phone: 843.805.6550
 Email: jelliott@richardsonplowden.com

In the event any entity hereto desires to change the address to which its notices shall be sent, or in the event any entity shall relocate or change its address, such party shall immediately provide notice as herein provided to each of the other entities hereto. In addition, this section shall be amended to include information for any additional Transferor.

Notices shall be deemed received for all purposes related to this Operating Agreement five (5) business days after the mailing of such notice as herein provided, whether or not an entity to whom a notice is sent accepts delivery of such notice or for any other reason fails to receive such notice. It shall be the responsibility of each entity to keep informed all the other entities as to their current address. Further, each successor or substitute to an entity listed herein shall be bound by the terms of these notice provisions the same as if such successor or substitute entity was an initial entity to this Operating Agreement.

9.2 Binding Effect. This Operating Agreement shall be binding upon each of the parties hereto, and each party's successor, and assign (to the extent permitted under this Operating Agreement).

9.3 Paragraph Captions and Severability of Provisions. The captions for each of the paragraphs are for convenience only and are not intended to have any specific meaning. Each of the provisions of this Operating Agreement is separate and severable, and if a provision of this Operating Agreement is determined by the court to be unenforceable, the remaining provisions of this Operating Agreement shall remain in full force and effect.

9.4 Applicable Law. This Fund and the Operating Agreement shall be governed and interpreted in accordance with the internal law of the State of South Carolina, except as respects tax matters, which shall be governed by federal law, specifically the Internal Revenue Code.

IN WITNESS WHEREOF, this Operating Agreement has been signed and sealed by the parties hereto to be effective and irrevocable on the day and year first above-written.

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.)

By: _____

Name: Peter D. Protopapas

Title: Receiver

Date: October __, 2025

Accepted and agreed:

MANAGER and MEMBER

By: _____

Name: Peter D. Protopapas

Title: Manager and Sole Member

Date: October __, 2025

Schedule 1 to Operating Agreement

<u>Name and Addresses of Transferor:</u>	<u>Amount Transferred</u>
Escrow Account of Herbert Smith Freehills Kramer New York LLP, on behalf of Anglo American US Holdings Inc.	Settlement Sum as defined in the Settlement Agreement

Schedule 2 to Operating Agreement**[FORM OF PROMISSORY NOTE FOR ADVANCES FOR
ASBESTOS CLAIM EXPENSES]**

\$ _____

Date

For value received, _____ (“**Maker**”), promises to pay to the South Carolina Asbestos Victims Compensation QSF, LLC (“**Payee**”), in lawful money of the United States of America, the principal sum of _____ Dollars (US \$ _____), together with interest in arrears on the unpaid principal balance at an annual rate equal to four percent (4.0%) simple interest, in the manner provided below. Interest shall be calculated on the basis of a year of 365 or 366 days, as applicable, and charged for the actual number of days elapsed.

This Note has been executed and delivered pursuant to and in accordance with the terms and conditions of the South Carolina Asbestos Victims Compensation QSF, LLC Operating Agreement (the “**Agreement**”) and is subject to the terms and conditions of the Agreement, which are, by this reference, incorporated herein and made a part hereof. Capitalized terms used in this Note without definition shall have the respective meanings set forth in the Agreement.

1. Payments.

1.1 Principal and Interest. The principal amount of this Note and all accrued but unpaid interest shall be payable concurrently with the receipt of reimbursement from a third party (including liability insurers) by Maker with respect to Asbestos Claim Expenses (as defined in Section 3.2 of the Agreement). Such payment shall be made on a dollar-for-dollar basis to the extent of such third-party reimbursements, and any remaining unpaid principal and interest shall be repaid concurrently with the receipt of additional reimbursements from third parties with respect to Asbestos Claim Expenses. To the extent such third party reimbursements are not received for Asbestos Claim Expenses with respect to which funds have been advanced pursuant to the terms of this Note within thirty (30) years from the effective date of the Agreement, Maker’s obligation to repay any sums pursuant to this Note shall be canceled and voided *ab initio*.

1.2 Manner of Payment. All payments of principal and interest on this Note shall be made by check at Columbia, South Carolina or at such other place in the United States of America as Payee shall designate to Maker in writing or by wire transfer of immediately available funds to an account designated by Payee in writing. If any payment of principal or interest on this Note is due on a day which is not a Business Day, such payment shall be due on the next succeeding Business Day, and such extension of time shall be taken into account in calculating the amount of interest payable under this Note. “Business Day” means any day other than a Saturday, Sunday or legal holiday in the State of South Carolina.

1.3 Prepayment. Maker may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note, provided that each such prepayment is accompanied by accrued interest on the amount of principal prepaid calculated to the date of such prepayment.

2. Defaults.

2.1 Events of Default. The occurrence of any one or more of the following events with respect to Maker shall constitute an event of default hereunder (“**Event of Default**”):

(a). If Maker shall fail to pay when due any payment of principal or interest on this Note and such failure continues for fifteen (15) days after Payee notifies Maker therein writing.

(b). If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors (a “**Bankruptcy Law**”), Maker shall (i) commence a voluntary case or proceeding; (ii) consent to the entry of an order for relief against it in an involuntary case; (iii) consent to the appointment of a trustee, receiver, assignee, liquidator or similar official; (iv) make an assignment for the benefit of its creditors; or (v) admit in writing its inability to pay its debts as they become due.

(c). If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Maker in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Maker or substantially all of Maker’s properties, or (iii) orders the liquidation of Maker, and in each case the order or decree is not dismissed within 120 days.

(d). Notice by Maker. Maker shall notify Payee in writing within five days after the occurrence of any Event of Default of which Maker acquires knowledge.

2.2 Remedies. Upon the occurrence of an Event of Default hereunder (unless all Events of Default have been cured or waived by Payee), Payee may, at its option (i) by written notice to Maker, declare the entire unpaid principal balance of this Note, together with all accrued interest thereon, immediately due and payable regardless of any prior forbearance, and (ii) exercise any and all rights and remedies available to it under applicable law, including, without limitation, the right to collect from Maker all sums due under this Note. Maker shall pay all reasonable costs and expenses incurred by or on behalf of Payee in connection with Payee’s exercise of any or all of its rights and remedies under this Note, including, without limitation, reasonable attorneys’ fees.

3. Miscellaneous.

3.1 Waiver. The rights and remedies of Payee under this Note shall be cumulative and not alternative. No waiver by Payee of any right or remedy under this Note shall be effective unless in a writing signed by Payee. Neither the failure nor any delay in exercising any right, power or privilege under this Note will operate as a waiver of such right, power or privilege and no single or partial exercise of any such right, power or privilege by Payee will preclude any other or further exercise of such right, power or privilege by Payee. To the

maximum extent permitted by applicable law, (a) no claim or right of Payee arising out of this Note can be discharged by Payee, in whole or in part, by a waiver or renunciation of the claim or right unless in a writing signed by Payee; (b) no waiver that may be given by Payee will be applicable except in the specific instance for which it is given, and (c) no notice to or demand on Maker will be deemed to be a waiver of any obligation of Maker or of the right of Payee to take further action without notice or demand as provided in this Note. Maker hereby waives presentment, demand, protest and notice of dishonor and protest.

3.2 Notices. Any notice required or permitted to be given hereunder shall be given in accordance with the Operating Agreement.

3.3 Severability. If any provision in this Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Note will remain in full force and effect. Any provision of this Note held invalid and unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

3.4 Governing Law. This Note will be governed by the law of the State of South Carolina without regard to conflict of laws principles.

3.5 Parties in Interest. This Note shall bind Maker and its successors and assigns. This Note shall not be assigned or transferred by Payee without the express prior written consent of Maker, except by will or, in default thereof, by operation of law.

3.6 Section Headings, Construction. The headings of Sections in this Note are provided for convenience only and will not affect its construction or interpretation. All references to “**Section**” or “**Sections**” refer to the corresponding Section or Sections of this Note unless otherwise specified.

All words used in this Note will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the words “hereof” and “hereunder” and similar references refer to this Note in its entirety and not to any specific section or subsection hereof.

IN WITNESS WHEREOF, Maker has executed and delivered this Note as of this date first stated above.

By: _____

Name: _____

Title: _____

Schedule 3 to Operating Agreement**[DECLARATION CONCERNING ASBESTOS CLAIM EXPENSES]**

I, _____, hereby certify that the Receiver for Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.), has incurred Asbestos Claim Expenses in the amount of \$ _____, consisting of the following:

<u>Payee</u>	<u>Amount</u>
_____	_____
_____	_____
_____	_____
_____	_____

Copies of invoices for the expenditures, all of which have been paid in full, shall be maintained at the corporate headquarters and are available for inspection by representatives of the Receiver/Manager during regular business hours upon reasonable notice.

**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.)**

Dated: _____

By: _____
Title: _____

Schedule 4 to Operating Agreement

The residuary beneficiaries are as follows:

College of Charleston
Clemson University
University of South Carolina

The Manager reserves the right to add or substitute other universities to the list provided above and to determine the final allocation of the funds to each residuary beneficiary at any time on or before the termination of the South Carolina Asbestos Victims Compensation QSF LLC as provided for by Sections 1.6 and 3.4 of the Operating Agreement.