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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2025-002104

RECORD ON APPEAL
(VOLUME V)

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 in Related Case,

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; Third-Party
Sparrows Offshore, LLC; The Sparrows Group, LLC, ... Defendants,

of which

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

WOMBLE BOND DICKINSON (US) LLP

M. Todd Carroll
S.C. Bar No. 74000
todd.carroll@wbd-us.com
Kevin A. Hall
S.C. Bar No. 15063
kevin.hall@wbd-us.com
M. Elizabeth O'Neill
S.C. Bar No. 104013
elizabeth.oneill@wbd-us.com
1221 Main Street, Suite 1600
Columbia, SC 29201
(803) 454-6504

*Attorneys for Appellants Mohed Altrad and
Altrad Investment Authority SAS*

SMITH ROBINSON, LLC

G. Murrell Smith, Jr.
murrell@smithrobinsonlaw.com
Jonathan M. Robinson
jon.robinson@smithrobinsonlaw.com
Shanon N. Peake
shanon.peake@smithrobinsonlaw.com
3200 Devine Street
Columbia, SC 29205
803.254.5445

Attorneys for Respondent

GORDON REES SCULLY MANSUKHANI,
LLP

A. Victor Rawl, Jr.
S.C. Bar No. 09261
vrawl@grsm.com
677 King Street, Suite 450
Charleston, SC 29403
843.278.5900

*Attorneys for Appellants Charter Consolidated
Ltd., ESAB Corporation, and Central Mining
and Investment Corporation Ltd.*

GALLIVAN, WHITE & BOYD, PA

John T. Lay, Jr.
jlay@gwblawfirm.com
Gray T. Culbreath
gculbreath@gwblawfirm.com
Lindsay A. Joyner
ljoyner@gwblawfirm.com
Eleanor L. Jones
ejones@gwblawfirm.com
1201 Main Street, Suite 1200
Columbia, SC 29201
803.779/1833

Attorneys for Respondent

MORGAN, LEWIS & BOCKIUS LLP

Troy S. Brown
troy.brown@morganlewis.com
Dana E. Becker
dana.becker@morganlewis.com
1701 Market Street
Philadelphia, PA 19103
215.963.5000

Lauren McCulloch Semlinger
lauren.semlinger@morganlewis.com
1000 Louisiana Street, Suite 4000
Houston, TX 77002
713.890.5467

Paul A. Scrudato
paul.scrudato@morganlewis.com
101 Park Avenue
New York, NY 10178
212.309.6000

Attorneys for Respondent

Other Counsel of Record:

KASSEL MCVEY

Theile B. McVey
tmcvey@kassellaw.com
John D. Kassel
jkassel@kassellaw.com
Jamie D. Rutkoski
jrutkoski@kassellaw.com
1330 Laurel Street
Columbia, SC 29201
803.256-4242

Counsel for Plaintiffs

DEAN OMAR BRANHAM SHIRLEY LLP

Charles William Branham, III
tbranham@dobslegal.com
Kevin W. Paul
kpaul@dobslegal.com
David Christopher Humen
dhumen@dobslegal.com
1801 North Lamar Street, Suite 300
Dallas, TX 75202
214.722.5990

Counsel for Plaintiffs

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HEARING

JOHN A. TIBBS AND
MARGARET B. TIBBS

v.

2023-CP-40-01759

3M COMPANY, et al.

*** UNOFFICIAL DAILY COPY TRANSCRIPT ***

BEFORE THE HONORABLE
CHIEF JUSTICE (RET.) JEAN TOAL

DATE TAKEN: Wednesday, October 25, 2023

TIME START: 1:39 p.m.

TIME END: 5:17 p.m.

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

REPORTED BY: Cindy A. Hayden, RMR-CRR
EveryWord, Inc.

APPEARANCES:

ATTORNEYS FOR THE RECEIVER:

GALLIVAN WHITE BOYD
BY: JOHN T. LAY, ESQUIRE
LINDSAY A. JOYNER, ESQUIRE
1201 Main Street, Suite 1200
Columbia, South Carolina 29201
803.724.1800
jlay@gwblawfirm.com
ljoyner@gwblawfirm.com

~ And ~

MORGAN, LEWIS & BOCKIUS LLP
BY: DANA E. BECKER, ESQUIRE
1701 Market Street
Philadelphia, Pennsylvania 19103-2921
215.694.4081
dana.becker@morganlewis.com

ATTORNEYS FOR THIRD-PARTY DEFENDANTS
MR. ALTRAD AND ALTRAD INVESTMENT
AUTHORITY:

WOMBLE BOND DICKINSON
BY: M. TODD CARROLL, ESQUIRE
1221 Main Street, Suite 1600
Columbia, South Carolina 29201
803.454.7730
todd.carroll@wbd-us.com

~ And ~

WOMBLE BOND DICKINSON (US) LLP
BY: M. ELIZABETH O'NEILL, ESQUIRE
One Wells Fargo Center
Suite 3500, 301 South College Street
Charlotte, North Carolina 28202-6037
704.331.4900
elizabeth.oneill@wbd-us.com

(Appearances continued on next page.)

APPEARANCES CONTINUED:

ATTORNEYS FOR THIRD-PARTY DEFENDANTS FIRST
MODE HOLDINGS, INC.; ELEMENT SIX
TECHNOLOGIES (OR) CORP.; LIGHTBOX JEWELRY
INC.; ELEMENT SIX TECHNOLOGIES US
CORPORATION; FOREVERMARK US, INC.; ANGLO
AMERICAN US HOLDINGS INC.; DE BEERS
JEWELLERS (US), INC.; DE BEERS JEWELLERS
LIMITED; DE BEERS PLC; ANGLO AMERICAN PLC;
PLATINUM GUILD INTERNATIONAL (U.S.A.)
JEWELRY, INC.; DE BEERS CENTENARY AG; DE
BEERS UK LIMITED; ELEMENT SIX US
CORPORATION AND DE BEERS CONSOLIDATED
MINES PROPRIETARY LIMITED:

RICHARDSON PLOWDEN
BY: JAMES H. ELLIOTT, JR., ESQUIRE
235 Magrath Darby Boulevard, Suite 100
Mount Pleasant, South Carolina 29464
843.805.6550
jelliott@richardsonplowden.com

ATTORNEYS FOR THIRD-PARTY DEFENDANTS CHARTER
CONSOLIDATED LTD.; ESAB CORPORATION AND
CENTRAL MINING & INVESTMENT CORPORATION, LTD.:

GORDON REES SCULLY MANSUKHANI, LLP
BY: A. VICTOR RAWL, JR., ESQUIRE
40 Calhoun Street, Suite 350
Charleston, South Carolina 29401
843.714.2501
vrawl@grsm.com

ATTORNEYS FOR THIRD-PARTY DEFENDANTS SPARROWS
OFFSHORE, LLC; HAWK BIDCO US, INC.; AND
ARRANCO US, LLC:

RICHARDSON PLOWDEN
BY: STEVEN J. PUGH, ESQUIRE
1900 Barnwell Street
Columbia, South Carolina 29201
803.576.3721
spugh@richardsonplowden.com

1 PROCEEDINGS Page 4 2 * * * 3 THE BAILIFF: All rise. The Honorable 4 Chief Justice Retired Jean Toal presiding. 5 THE COURT: Please be seated. 6 All right. We are in the matter of 7 John A. Tibbs and Margaret B. Tibbs against 8 3M Company, 2023-CP-40-01759. These are 9 various receivership motions, the first of 10 which is a motion to dissolve the Cape plc 11 receivership. 12 Who will speak first? Mr.? 13 MR. CARROLL: Todd Carroll, 14 Your Honor. 15 THE COURT: Mr. Carroll. 16 MS. McVEY: Your Honor, just -- I'm 17 not going to say a word, but I wanted to 18 make a court exhibit an email. 19 There's an issue about service in this 20 case, the service of the summons and 21 complaint. And I've given it to Mr. Lay 22 and to all defense counsel. Just a court's 23 exhibit. It wasn't in the record. 24 THE COURT: Oh. This is the -- oh. 25 This is the issue they raised about whether	1 defendants. Page 6 2 If we might want to talk about, you 3 know, how much time they're going to need 4 for their argument and how much time we're 5 going to need to make sure we get this done 6 and don't carry it over into another date. 7 THE COURT: That's fair. I certainly 8 don't intend to carry it over, and I don't 9 think the proponents of the motions -- the 10 receiver motions want to carry it over, 11 either. 12 All right. What kind of suggestion do 13 you have, Todd, as to how we handle 14 allocation of time here? 15 MR. CARROLL: Your Honor, I think -- 16 so I'm going to present first on the 17 dissolution question. 18 THE COURT: Right. 19 MR. CARROLL: And to the extent any 20 other third-party defendants have stuff to 21 add, then I think they can -- they can do 22 that. 23 But I think to the extent our 24 arguments don't conflict with each other, I 25 think if the record -- if we can all adopt
1 the Park -- the service has been made in Page 5 2 Park -- 3 MS. McVEY: Yes, ma'am. Whether it 4 was the summons or the summons and 5 complaint and that kind of stuff. 6 So I just wanted to -- and I've 7 given -- 8 THE COURT: Right. And I had looked 9 at it, and it has been served. 10 MS. McVEY: Right. 11 THE COURT: Right. 12 MS. O'NEILL: What number did you give 13 us? 14 MS. McVEY: It's Exhibit 1. 15 THE COURT: All right. Very good. 16 Exhibit 1 is received. 17 MR. LAY: Your Honor, John T. Lay for 18 the receiver. 19 I was thinking it might be a good 20 idea, since we've got these three 21 motions -- three tranches of motions, over 22 40 motions that are filed, it looks like 23 there are a lot of common arguments -- 24 THE COURT: Yes. 25 MR. LAY: -- from the third-party	1 and incorporate each other's own Page 7 2 positions -- 3 THE COURT: Well, I'm going to say the 4 filings have many similarities. There are 5 some differences, and I expect counsel for 6 the individual groups will bring those 7 forward. 8 MR. CARROLL: Yes, ma'am. 9 THE COURT: But there are a lot of 10 similarities. 11 All right. So I think what John T. is 12 trying to find out is kind of some -- do 13 you have some global idea of what you-all 14 feel you would need on your side of the 15 fence to talk about these motions? 16 Is the idea to go motion to dissolve 17 and then go to Mr. Lay, motion to dismiss 18 and then go to Mr. Lay? 19 MR. CARROLL: I suppose, Your Honor. 20 THE COURT: I think that's the way to 21 do it. 22 So on the motion to dismiss -- excuse 23 me -- the motion to dissolve, how much 24 total time do you think y'all need? 25 MR. CARROLL: Honestly, Your Honor, it

Page 8 1 depends on your questions. I don't have a 2 very long presentation. 3 THE COURT: Okay. Well, then, 4 John T., I think we are okay. 5 MR. LAY: Sounds fine, Your Honor. 6 THE COURT: And, Mr. Pugh. 7 MR. PUGH: I mean, I can't imagine, if 8 he covers it, I would have more than a few 9 moments. 10 THE COURT: Well, I think we know that 11 we've got lawyers we can trust in this 12 matter. So if it starts, I think, to inch 13 forward where it's not -- anything 14 threatens finishing today, we'll make it 15 move right along. 16 MR. LAY: Thank you. 17 THE COURT: Okay. Thank you. 18 Mr. Carroll, you may proceed. 19 MR. CARROLL: Yes, ma'am. Thank you, 20 Your Honor. 21 May it please the Court. Todd Carroll 22 on behalf Mr. Altrad and Altrad Investment 23 Authority. 24 Your Honor, before I begin, I need to 25 make it -- make clear on the record that my	Page 10 1 done. And none of these are curable, 2 Your Honor. 3 The first reason is that Cape plc was 4 never served with process in the Park case. 5 The materials that were sent to -- 6 allegedly sent to Cape plc were sent to the 7 wrong address. They were sent to the wrong 8 jurisdiction. 9 By the process server's affidavit, 10 there was no actual pleading included in 11 the packet. And there is no -- there is no 12 evidence in the record of any notice of the 13 motion to appoint the receiver over 14 Cape plc in the record. 15 Ms. McVey handed up the Court's 16 Exhibit Number 1 a moment ago. It 17 appear -- I got it shortly before 18 Your Honor did, so I've just had a chance 19 to glance at it. 20 So I haven't -- I haven't fully 21 digested it. But from what I can tell, it 22 appears it's an email exchange between a 23 gentleman named Andrew Morgan and Trey 24 Branham. 25 Mr. Morgan is the guy who testified in
Page 9 1 client is presenting this argument as an 2 alternative to its motion to dismiss for 3 lack of personal jurisdiction. 4 And by discussing this dissolution 5 notion, I don't want there to be any 6 misunderstanding about a waiver of personal 7 jurisdiction. 8 THE COURT: All right. No waivers by 9 any presentations made today by defendants. 10 And I think plaintiffs would -- all right. 11 I think the receiver and his 12 representatives would agree with that. 13 Am I right, Mr. Lay? 14 MR. LAY: Yes, ma'am. You're correct. 15 THE COURT: Very good. You may 16 proceed. 17 MR. CARROLL: Thank you, Your Honor. 18 May it please the Court. Your Honor, 19 my clients have moved to dissolve the Cape 20 plc receivership. We've laid out in our 21 briefing why we think that is, so I will 22 try to be succinct. 23 I have identified ten discrete reasons 24 why the receivership should be dissolved. 25 Standing alone, any of them gets the job	Page 11 1 an affidavit that he served process on 2 Cape plc. And in his email to Mr. Branham, 3 Mr. Morgan says: We normally direct such 4 claims to Cape Intermediate Holdings plc, 5 not Cape plc. 6 That's at the bottom of Page 1 of 7 Court's Exhibit 1. 8 I see the Court's Exhibit 1 has a 9 summons and a complaint attached, and it 10 appears as if that was an attachment to 11 Mr. Branham's email to Mr. Morgan. 12 However, Mr. Morgan's actual affidavit 13 says at Paragraph 6: I served copies of 14 the first amended summons in this matter on 15 Cape plc. 16 Then Exhibit 1 to Mr. Morgan's 17 affidavit are the two cover letters that he 18 sent. Again, not to Cape plc's actual 19 address, as it is a Jersey entity. 20 Mr. Morgan's cover letter says: 21 Enclosed herewith by way of service, the 22 first amended summons in this matter. 23 Makes no mention of an actual 24 pleading. 25 And then, again, it says: The

Page 12 1 enclosure is just the first amended 2 summons. 3 And then there's a second cover 4 letter, this cover letter purporting to go 5 to Cape Intermediate Holdings Limited. 6 And it, too, says that: I am serving 7 the first amended summons in this matter. 8 And it says the enclosure is just the first 9 amended summons. 10 So the affidavit of the gentleman who 11 was the process server in his 12 contemporaneous records show that he only 13 sent the summons, which, of course, is 14 insufficient under South Carolina law and 15 any other international law that would 16 govern service of a foreign entity. 17 In addition, of course, to the 18 preliminary fact that the filing didn't 19 actually go to Cape plc in Jersey. 20 There's no known property in 21 South Carolina of Cape plc. There is no 22 known contact of Cape plc in 23 South Carolina. 24 This Court never acquired personal 25 jurisdiction over Cape plc because there	Page 14 1 in the record to suggest anything like that 2 about Cape plc. 3 Has forfeited its corporate rights -- 4 or forfeited -- yeah, forfeited its 5 corporate rights. There is no such 6 forfeiture in the record. 7 And, in fact, that can only be for -- 8 that is a reference to South Carolina law, 9 which can only happen for a domestic 10 company in South Carolina. So, obviously, 11 that can't apply. 12 And then the final prong of subpart 13 (4) allows a receivership if a company 14 meets the dissolution, insolvency, or 15 forfeiture of corporate rights prong. 16 But if it's a foreign company, it only 17 allows the Court to appoint a receiver over 18 property within South Carolina of foreign 19 companies, of which there is none for 20 Cape plc. 21 And the appointment order also cited 22 Section (5), which is more of a generic 23 catchall. 24 It says: Receivership can be 25 appointed in such other cases as are
Page 13 1 was no service of process on Cape plc, nor 2 does Cape plc have any contacts with the 3 state of South Carolina that appear 4 anywhere in the record. 5 Meaning that it would violate the due 6 process clause for this Court to purport to 7 have personal jurisdiction over it. 8 There is no statutory authority for 9 the Court to appoint a receiver over that 10 foreign entity. 11 15- -- South Carolina Code 15-60-10, 12 subpart (4), allows for -- pardon me. 13 15-65-10, subpart (4), says that a company 14 that is eligible for receivership when it 15 has been dissolved, which is not the case 16 here. 17 Even though the dissolution order said 18 the Cape plc was dissolved, it is not, and 19 the receiver acknowledges that in its 20 opposition filing. It acknowledges that 21 that was an error in the appointment order. 22 It says 15-65-10 (4) allows a 23 receivership when a corporation is 24 insolvent or in imminent danger of 25 insolvency. There's no -- there's nothing	Page 15 1 provided by law or may be in accordance 2 with the existing practice. 3 And there is nothing in the record to 4 suggest anything regarding Cape plc that 5 matches any known practice in the state of 6 South Carolina for receiverships. So 7 there's no statutory authority. 8 At the time the receiver was 9 requested, the Park case had been, quote, 10 fully resolved, by admission of Mr. Park's 11 counsel. For a full nine months, the case 12 did not exist anymore. So that -- the 13 request for receivership was improper as a 14 South Carolina procedural matter. 15 There are no creditors of Cape plc in 16 South Carolina, at least none that anybody 17 knows about. This record certainly 18 contains none. The Park plaintiff's motion 19 for an appointment of receivership 20 identified no Cape plc creditors in 21 South Carolina. 22 Cape plc is a company in Jersey, which 23 is a foreign entity, and this Court has no 24 constitutional authority to have an 25 extraterritorial reach of a receivership

Page 16 1 appointment. Doing so would violate, among 2 others, the dormant commerce clause, the 3 foreign commerce clause. 4 Everything that I've recited to this 5 point, I believe, is generally conceded by 6 the receiver's opposition brief. 7 The receiver actually suggested in his 8 opposition brief that he didn't really even 9 know that he was appointed receiver over 10 Cape plc until we filed our motion to 11 dissolve the receivership. 12 Obviously, it violates every notion of 13 fairness, due process, notice if Cape plc 14 is put in a receivership and the gentleman 15 showing up to speak for Cape plc says, "I 16 didn't even know that was who I was here 17 for." 18 There are clear errors here, Judge. 19 They can't be corrected. And the receiver 20 kind of gives away -- you know, given -- 21 given this host of problems that led to the 22 receivership appointment in the first place 23 and given the receiver's lawful duties as 24 serving as a trustee for the company over 25 which he has been appointed, I would have	Page 18 1 through my punch list. 2 THE COURT: All right. 3 MR. CARROLL: Very good. I told you 4 we'd be quick. 5 THE COURT: Thank you, sir. 6 Mr. Pugh. 7 MR. PUGH: Good afternoon, Your Honor. 8 Steve Pugh on behalf of Defendants ArranCo 9 US, LLC; Hawk Bidco US Inc.; and Sparrows 10 Offshore, LLC. Those are, collectively, 11 the Sparrows defendants. 12 I would note for the record that I and 13 my firm do not represent Sparrows Offshore 14 Group Limited or The Sparrows Group, LLC, 15 as those are unaffiliated entities, so... 16 THE COURT: Let me make sure I 17 understand what you're saying here. All 18 right. Does somebody here represent them? 19 MR. PUGH: I do not believe so. 20 THE COURT: Okay. 21 MR. PUGH: There are unrepresented 22 Sparrows entities. 23 THE COURT: Uh-huh. All right. 24 MR. PUGH: And that's referenced, I 25 believe, in the -- on the omnibus
Page 17 1 expected this crowd to be sitting on our 2 side and saying, "Yeah, this is all wrong. 3 Like, none of this -- none of this -- none 4 of this allows a receivership to be put in 5 place here." 6 But the receiver states in his 7 opposition brief that his work in this case 8 is designed to inure a benefit on Mr. Park, 9 who is not a creditor of Cape plc, had 10 nothing to do with Cape plc. 11 And we've cited authority in our memo 12 that makes it clear that under 13 South Carolina law, a receiver cannot act 14 as an agent of a plaintiff. 15 But here, we have the receiver 16 admitting in his opposition brief that that 17 is precisely what he's trying to do. 18 So, Your Honor, I think that -- that 19 admission just confirms the impropriety of 20 the receivership, and the only legitimate 21 resolution to this motion is to grant it 22 and dissolve the receivership. 23 And I'm glad to answer any questions 24 Your Honor has. I appreciate your 25 indulging me as I went through my -- went	Page 19 1 opposition. They break out who has -- 2 THE COURT: Yeah. I -- 3 MR. PUGH: -- been involved. 4 THE COURT: I know. And my -- my 5 question is this. I mean, obviously, 6 somebody has got to be representing 7 Sparrows. 8 I know that the -- the position that's 9 taken is: (a) we can't be served, we 10 haven't been served; (b) we didn't have 11 anything to do with this anyway. 12 I don't want there to be some 13 companies that, because you take the 14 position that you take with respect to 15 amalgamation of interest or alterego or 16 anything else, that something is left out 17 here, anything that I've got to deal with 18 separate and apart from you. 19 Do you understand what I'm asking? 20 MR. PUGH: I do understand what you 21 mean. And let me -- 22 THE COURT: I'm not going to have that 23 be. 24 MR. PUGH: Understood. And let me 25 answer you directly. I represent an entity

Page 20 1 by the name of Sparrows Offshore, LLC -- 2 THE COURT: Right. 3 MR. PUGH: -- period. I do not 4 represent Sparrows Offshore Group Limited 5 or The Sparrows Group, LLC, and I am 6 unaware of anyone who has appeared for them 7 in this litigation. 8 THE COURT: But they are defendants. 9 I mean, they are -- 10 MR. PUGH: They were named amongst -- 11 THE COURT: They were named as objects 12 of the receiver's interest. Let's put it 13 that way. 14 MR. PUGH: And I believe -- and I'm 15 sure they'll correct me if I'm wrong. But 16 I believe that there are or were on the 17 agenda some motions for entry of default as 18 to a number of parties, including, I 19 believe, those two. 20 THE COURT: Okay. Very good. 21 MR. PUGH: So -- 22 THE COURT: I got the picture. 23 MR. PUGH: Yes. 24 THE COURT: Thank you, sir. 25 MR. PUGH: I understood what you were	Page 22 1 forfeited its charter. And, as Your Honor 2 heard, it had not answered because, as the 3 receiver has admitted in his response in 4 opposition, they had not been served with 5 either the second amended summons and 6 complaint or the motion to appoint the 7 receiver. 8 Your Honor, I took note of something 9 you said earlier today, which was -- and I 10 don't remember what the issue was. But you 11 said: That wasn't a mistake. That was 12 based on my considered judgment. And I 13 have always found that to be correct. 14 And in this case, unfortunately, your 15 considered judgment was based upon some 16 things that simply were mistaken. And we 17 have an order that is based upon some 18 things that were simply mistaken. And 19 those three things -- those three strikes, 20 Your Honor, I would respectfully submit, 21 equal an out, not a valid receivership. 22 There's no such thing as "close enough 23 is good enough" or, you know, "this is what 24 I meant" when we're talking about things of 25 substance. Those are matters of substance,
Page 21 1 trying to do, and I'm trying to make sure 2 that we're on the same sheet of music. 3 THE COURT: Big time, we are. 4 MR. PUGH: Thank you. 5 Your Honor, obviously, we would 6 incorporate the pleadings that we filed and 7 rely on those and the recitation of the 8 underlying record that Mr. Carroll outlined 9 to you a moment ago. 10 As to my clients, I would note for the 11 record that my clients -- Sparrows 12 Offshore, LLC; Hawk Bidco; and ArranCo -- 13 were acquired by an Altrad entity on July 14 11th of 2022, a couple months before the 15 receiver was appointed in Park and once 16 after the Court was advised that the Park 17 case was fully resolved. 18 Your Honor, the order that you entered 19 in March of 2023 says the following: The 20 application is meritorious under the 21 applicable statute because Cape plc has 22 dissolved and Cape, a foreign corporation, 23 has forfeited its charter and has further 24 failed to answer this case. 25 Cape had not dissolved. Cape had not	Page 23 1 not form. 2 My clients would respectfully request 3 that the receivership therefore be 4 dissolved, the order of appointment be 5 vacated because, I would respectfully 6 submit to Your Honor, you can't amend or 7 rewrite or fix those mistakes at this 8 juncture. 9 With that, Your Honor, I'm happy to 10 address any questions you may have. 11 THE COURT: Very good. 12 Mr. Rawl. 13 MR. RAWL: Thank you, ma'am. 14 May it please the Court. For the 15 record, I represent Charter Consolidated, 16 Central Mining, and ESAB. I'll be very 17 brief. 18 Your Honor, we will incorporate all 19 the arguments that have already been made 20 and the briefs that have been made and what 21 I've already submitted. And I won't go any 22 further than that. 23 THE COURT: Thank you, Mr. Rawl. 24 MR. RAWL: Thank you, ma'am. 25 MR. ELLIOTT: Your Honor, if I may.

Page 24 1 THE COURT: Mr. Elliott. 2 MR. ELLIOTT: I don't think I have to 3 get all the way over there, Your Honor. 4 For the record, I represent 16 5 entities. And if it's okay with you, I 6 won't read all those names. I gave a list 7 of the folks I represent to the court 8 reporter earlier. And I think, if that's 9 okay, that would suffice rather than me 10 saying all these folks. I'm happy to read 11 through it, though, if you'd like. 12 THE COURT: If you don't mind giving a 13 list to me. 14 MR. ELLIOTT: As a matter of fact, I 15 was going to pass this up to you. 16 THE COURT: That's perfect. 17 MR. ELLIOTT: Motion to dismiss, but 18 I'll give it to you now. 19 THE COURT: And that's not your only 20 copy, James? You've got -- 21 MR. ELLIOTT: No. I've got 22 assistants. 23 THE COURT: Okay. Very good. 24 MR. ELLIOTT: All these nice folks are 25 very helpful.	Page 26 1 MR. ELLIOTT: In that spreadsheet, 2 there are 10 U.S. entities, and those are 3 the ones joined. 4 THE COURT: Hang on for a minute. All 5 right. I'm going to just do it this way. 6 MR. ELLIOTT: Would you like me to 7 read them then? 8 THE COURT: Yeah. I think that's 9 going to be best, James, just so we can be 10 sure we've got it. 11 But as I look at it, the ones who are 12 not joining in the motion, which are the 13 ones that are not incorporated in the 14 U.S. -- 15 MR. ELLIOTT: Yes, ma'am. 16 THE COURT: -- are De Beers plc, 17 Bailiwick of Jersey; Anglo American plc, 18 England and Wales; De Beers UK Limited, 19 England and Wales; De Beers Consolidated 20 Mines Proprietary Limited, South Africa. 21 MR. ELLIOTT: Two more. 22 THE COURT: Two more? 23 MR. ELLIOTT: Yes, ma'am. It was 24 De Beers Jewellers Limited and De Beers 25 Centenary AG.
Page 25 1 Regardless, as to all those entities, 2 Your Honor, I'll tell you something, that 3 we did file motions to dismiss. But out of 4 some concern about whether or not it might 5 be argued there might be some waiver with 6 regard to -- 7 THE COURT: No waiver. 8 MR. ELLIOTT: Right. And so we did 9 not file a motion to join with the 10 dissolution of the receivership. 11 THE COURT: If you join the 12 dissolution, you will not waive any rights. 13 So if you care to do it that way, you may. 14 MR. ELLIOTT: I do, Your Honor. 15 THE COURT: Very good. 16 MR. ELLIOTT: I'd like to do that, and 17 we adopt all the arguments of the other 18 defendants in this case. 19 THE COURT: Very good. 20 MR. ELLIOTT: Thank you. 21 THE COURT: Thank you, Mr. Elliott. 22 MR. ELLIOTT: Oh. Good point. 23 That list of folks who are joining 24 that motion? 25 THE COURT: Yes, sir.	Page 27 1 THE COURT: Hang on for a minute. 2 Okay. I see them. England, okay. 3 And De Beers -- De Beers Jewellers Limited 4 is England, and De Beers Centenary AG is 5 Switzerland. 6 MR. ELLIOTT: Yes, ma'am. 7 THE COURT: Okay. Very good. 8 All right. Mr. John T. Lay. 9 MR. LAY: Thank you, Your Honor. 10 If it's okay, I'm going to speak from 11 here. I've got a lot of stuff, and it's 12 not going to all fit on the podium, if that 13 works for you. 14 THE COURT: That works for me. 15 And, Madam Court Reporters, can you 16 hear Mr. Lay? 17 THE REPORTER: Yes. 18 THE COURT: Okay. You may go forward. 19 MR. LAY: Thank you, Your Honor. 20 And my response, my remarks are going 21 to be to all of the arguments that have 22 been made here. There seemed to be some 23 debate about that. I think it was 24 corrected yesterday. 25 I'm going to be responding on the

Page 28 1 dissolution motions that have been made. 2 Ms. Becker -- Dana Becker, with Morgan 3 Lewis, is going to be responding on the 4 personal jurisdiction arguments. They're 5 incorporated in some of that. 6 And Ms. Joyner is going to be dealing 7 with some of the motions to dismiss as well 8 as the default. 9 I just wanted to give you our lineup 10 for today, if that's all right. 11 THE COURT: Very well. 12 MR. LAY: All right. Your Honor, this 13 is a case that involves an ongoing and 14 decades-long scheme by the third-party 15 defendants to avoid responsibility for the 16 sale and marketing of asbestos throughout 17 the United States. 18 This is not a guess. There are 19 primary documents that we have access to 20 that have revealed tangibly that this 21 scheme existed and took place. 22 Now, to give you a little bit more 23 background about that, is Cape plc was a 24 company that existed in the United States 25 and did business in the United States	Page 30 1 distributing this asbestos throughout the 2 United States. It is causing U.S. citizens 3 and South Carolina citizens to get sick. 4 And we recognize that we've got to flee or 5 we're going to be exposed to liability in 6 these cases. So what are we going to do?" 7 And this is a classic amalgamation of 8 interest case. It's a classic 9 single-enterprise situation with multiple 10 companies involved under the Cape umbrella 11 and beyond. 12 For example, Cape had officers and 13 directors that were on the board of NAAC 14 and were calling the shots on NAAC, 15 including a decision to liquidate NAAC in 16 the U.S. to make sure that there was no 17 U.S. subsidiary, there was no contact from 18 Cape in the United States. And all of 19 those assets were moved offshore. 20 Nothing was done when NAAC was 21 liquidated to make sure that they were 22 going -- there were funds set aside to pay 23 claims for the harm that had been caused 24 for the product that had been distributed 25 and marketed throughout the United States,
Page 29 1 selling asbestos, marketing asbestos. 2 In one of its subsidiaries, NAAC, they 3 marketed and sold, distributed blue and 4 brown asbestos, some of the worst asbestos. 5 And they controlled 90 percent of the 6 asbestos industry of the brown asbestos in 7 the United States, some of the worst 8 asbestos out there, that in the 1970s, they 9 recognized that they had a problem. 10 In the 1970s, Cape and with their 11 subsidiary NAAC recognized that there was 12 this litigation, asbestos litigation, that 13 was occurring. In 1974, you have the first 14 big verdict on an asbestos case. And they 15 recognized that they had exposure. 16 The response to that was a meeting in 17 Chicago and meetings through many of the 18 companies that were associated with Cape. 19 And I'm going to give you a quick 20 overview, and Ms. Becker is going to give 21 you a more fulsome outline of the -- of how 22 these companies interrelate. 23 But they met, and they recognized, 24 "We've got to flee the jurisdiction. We've 25 made these profits. We have been	Page 31 1 including South Carolina. 2 Now, this all started with -- it's 3 called "the Oppenheimer defendants." And 4 there are books written on this, but we 5 also have access to the primary documents. 6 And the Oppenheimer defendants was a 7 business -- a family that was in business 8 in South Africa that was in the mining 9 business. And they were mining virtually 10 everything. I mean, gold, diamonds, but 11 also brown asbestos. 12 They controlled -- they had 10 percent 13 of the -- their net worth was 10 percent of 14 the GNP for South Africa at one point. 15 So they had multiple companies that 16 were mining this stuff. They had -- Cape 17 was in business in the 1890s. 18 One of the Oppenheimer business 19 interests ended up purchasing Cape and ran 20 Cape through different entities all through 21 the 1970s, when they ended up fleeing the 22 U.S. and taking their assets with them. 23 So that's what was going on. This is 24 a first-wave asbestos defendant, typically. 25 I mean, this is the -- some of the worst

Page 32 1 defendants. Not to be pejorative, but I 2 don't know what else to say. 3 These are defendants -- Cape and the 4 associated entities was aware from 1960 5 that there was a problem with asbestos and 6 it was killing people. 7 They were aware that there were 8 lawsuits going on in the U.S. and they were 9 beginning to be pervasively filed. 10 And they -- despite knowing that 11 asbestos had an issue, they made sure that 12 they shut down their U.S. contacts, made 13 sure that Cape did not have any assets left 14 in the U.S. or anywhere that could create 15 some sort of, in their view, personal 16 jurisdiction. 17 There was complete recognition of 18 their continued exposure internally. "We 19 have an amalgamation of interest. We 20 have -- we have to separate. We have to 21 make sure we're divested from any asbestos 22 interests." 23 There was also recognition that they 24 wanted a marketing arm, like they had with 25 NAAC, they wanted to make sure that	Page 34 1 about the amazing escape of Cape from the 2 asbestos exposure that it created when it 3 was controlling 90 percent of the brown 4 asbestos coming into the United States. 5 They have really not been held to account. 6 Now, the -- you know, we're going to 7 get into what the role of a receiver is 8 because I think there's a misconception of 9 it. 10 But that's really the dynamic that set 11 up this situation where Park ended up suing 12 Cape, and there was no response to that 13 lawsuit. 14 Now, I want to talk through some of 15 the service issues that exist. And before 16 I get there, I want to say this, because I 17 do think it's important to recognize this. 18 I appreciate the tone and 19 professionalism in which they've addressed 20 this motion today. I do. I appreciate it. 21 Because it's far different than the 22 pleadings that were filed and the briefs 23 that were filed two days ago. 24 And you have to be accountable for the 25 words that you use, and these pleadings
Page 33 1 marketing and distribution arm was moved 2 offshore. That was the reason they shut 3 down NAAC. 4 So this is a classic amalgamation 5 of interest situation. Cape still exists. 6 Cape plc has had several different 7 iterations, the Cape Asbestos Group, 8 Cape plc. It existed from 1989 to 2011. 9 Its name changed many times over the years. 10 So in 1989, they changed their name. 11 They dropped the "asbestos" in the 1970s 12 from the name because of the problems going 13 on with the litigation that was starting to 14 build up, to bubble up. 15 But Cape plc, which now is known as 16 Cape Intermediate Holdings Limited, a UK 17 Corporation, still exists. 18 And it was Cape plc in 2011, when 19 there was a simple name change in 2011 and 20 a simple name change in 2013. 21 So this is some of the worst asbestos 22 defendants as we've -- as we've got out 23 there. 24 Now, I will say this. There are books 25 written, business articles that are written	Page 35 1 were white-hot. They were hyperbolic. 2 They were vitriolic. They were pejorative. 3 It was ad hominem attacks on the 4 receiver. It was ad hominem attacks on 5 counsel. It was ad hominem attacks on 6 Your Honor. It was ad hominem attacks on 7 our appellate system, on our Court of 8 Appeals and Supreme Court. It was a 9 pervasive attack. 10 You can look at Footnote 16. You can 11 look at some of the sentences where they 12 are talking about prior receiverships being 13 imposter receiverships. You know, you've 14 got to own what you write. 15 And I don't understand the completely 16 gratuitous attack. If you've got an issue 17 with the receivership, make it and let's 18 deal with it. 19 But talking about other receiverships, 20 attacks on the Court, suggestions of 21 corruption, even an indication that, "We've 22 got to be careful about the receiver's 23 oversight of the funds that are being 24 created. We don't even know what they're 25 doing with it," which is comically absurd.

Page 36 1 That information is being provided. 2 It is in a trust. It is being taken care 3 of as it should have been, and there's been 4 no allegations of any sort of impropriety 5 on that. 6 So, you know, they've got to own that. 7 And sometimes I think you get into a 8 situation when the bit dog barks, and I 9 think this is classically one of those 10 things. 11 We have a situation now where you have 12 Cape and the entities that were complicit 13 in this litigation avoidance scheme. And 14 I'm going to talk to you a little bit about 15 what that is. But they had a litigation 16 avoidance scheme, and these multiple 17 defendants were complicit in it. 18 And they're being held to account for 19 the first time in over 50 years. They 20 haven't even been in a courtroom in the 21 United States, and here we are because a 22 receiver got appointed. 23 And the litigation scheme from a 24 review of the primary documents is simply: 25 Move the assets out and make sure that	Page 38 1 U.K. that default judgments obtained in the 2 U.S. against group companies which are not 3 present or have no place in the U.S., 4 Canada or Mexico, are not enforceable in 5 the U.K. If this or other U.S. judgments 6 were enforceable against group companies in 7 the U.K., this would materially adversely 8 affect on the findings of status of the 9 group. 10 I mean, that's -- that's the plan. 11 It's just -- the problem is, it is an 12 illegal and inappropriate plan. 13 And Cape was responsible and caused 14 harm through its distribution of 90 percent 15 of the brown asbestos in the United States 16 for decades. For decades. And they're 17 being held to account now in this courtroom 18 via the receiver. 19 Now, let's talk about the service 20 issues that have been alleged by the 21 plaintiff. 22 And, to begin with, I want to be sure 23 this is understood because it can get lost 24 in some of the vitriolic arguments that 25 were made in the briefing.
Page 37 1 we're not responding to any lawsuit, no 2 matter what, in the United States. 3 We're going to take the risk that, you 4 know, somebody is going to try to 5 veil-pierce. We're going to take the risk 6 that somebody is going to try to collect. 7 And we don't think a U.K. court is going to 8 honor any sort of judgment in the United 9 States. We are not responding. 10 We know that from primary documents. 11 We know that because they filed pleadings. 12 It's called a "scheme of creditors" in the 13 U.K. in which they say their U.S. policy, 14 their plan in the U.S., is not to... 15 It says the following: The Court of 16 Appeals ruled that -- this was a case that 17 they got involved in in Texas. This is the 18 only case that they've really been brought 19 in in 1990 in the U.S. 20 And they brought in judgments against 21 a number of defendants, including certain 22 group companies, which are the Cape 23 companies, that had no assets, so they 24 could not enforce that judgment in the U.K. 25 Cape has received legal advice in the	Page 39 1 And that's they have created a straw 2 man fallacy here. They have created this 3 idea that Cape plc is this new company that 4 was created in the Bailiwick of Jersey and 5 not the Cape plc that has existed forever 6 and is now known as Cape Intermediate 7 Holdings Limited. 8 Now, Park sued Cape plc. There is an 9 affidavit of service showing that Cape plc 10 and the Cape Intermediate Holdings company 11 were served at the correct address. There 12 is really no debate about that. 13 They're saying, though, that somehow 14 it should have been Cape plc, Bailiwick in 15 Jersey, rather than this company that was 16 selling asbestos and distributing asbestos 17 in the United States for over 100 years, 18 for decades. 19 Now, the complaint described the 20 Cape plc that existed and that was involved 21 in this. The motion to appoint the 22 receiver described in detail who they're 23 talking about, the Cape plc, the 24 successor-in-interest to the Cape Asbestos 25 Group. They understood it. If you read

Page 40 1 it, you can understand it. 2 So their argument is: Because it's 3 not Cape -- it's not Cape plc, Bailiwick of 4 New Jersey, it doesn't count. That's not 5 effective service. That's not the law. 6 That's not the law. 7 Now, I want to hand the Griffin case 8 up to you. 9 All right. The suggestion that we 10 meant Cape or that the plaintiff's attorney 11 when he served it, the Park case, meant 12 Cape plc, the newly created Cape of 2011, 13 which was essentially a tax entity, was the 14 correct entity to be served rather than 15 Cape plc that existed as Cape plc until 16 2011, name changed to Cape -- to Cape 17 Intermediate Holdings plc until 2013, 18 another name change and it became the 19 Cape Intermediate Holdings Limited -- it's 20 the same company. It's the same address. 21 And described in detail in the complaint 22 and in the motion to appoint the receiver. 23 The Griffin case is clear. The 24 misnomer of a corporation has the same 25 effect as the misnomer of an individual.	Page 42 1 have been or was not misled. 2 Is a corporation misled when every 3 reasonable person understand that the 4 Cape plc that is being discussed is the 5 Cape plc that's now Cape Intermediate 6 Holdings Limited, a company that sold 7 asbestos for years in the U.S., that it was 8 Cape Asbestos, Inc., for years, as 9 referenced in the motion? 10 Would a reasonably intelligent person 11 understand that that's the Cape we're 12 talking about, or this newly created 2011 13 company -- I mean, it's not Great Britain. 14 It's like the Puerto Rico of Great Britain, 15 Jersey, the Bailiwick of Jersey, which is a 16 tax company that has no -- never did any 17 business in the U.S., did not sell 18 asbestos. Oh, that's the one that we 19 meant. Of course, that's preposterous. 20 They understand who the Cape company 21 was. It is a misnomer. That company 22 exists as Cape Intermediate Holdings 23 Limited. It was correct service. It's 24 allowed. It does not defeat service in 25 this case.
Page 41 1 Long v. Baking Company, supra: If it 2 later appears that the true name of the 3 corporation is different from the name 4 under which it is sued, then this misnomer 5 is properly a subject of amendment. 6 However, the failure to correct the 7 corporate name does not invalidate the 8 process or the judgment where the misnomer 9 causes the corporation no prejudice. 10 A suit at law is not a children's game 11 but a serious effort on the part of adult 12 human beings to administer justice, and the 13 purpose of process is to bring the parties 14 into court. 15 If it names them in such terms that 16 every intelligent person understands who is 17 meant, as is the case here, it has 18 fulfilled its purpose, and the Court should 19 not put themselves in the position of 20 failing to recognize what is apparent to 21 everyone else. 22 As a general rule, the misnomer of a 23 corporation in a notice, summons, or other 24 step in a judicial proceeding is immaterial 25 if it appears the corporation could not	Page 43 1 This idea of the Cape plc is a 2 complete straw man argument. Nobody meant 3 that. No one understood that. It's at the 4 correct address. It was correct service. 5 There's not an affidavit that's been 6 filed that said: Oh, I feel misled. If 7 there was, they're not a reasonably 8 intelligent person to understand it. 9 This was an obvious service on the 10 correct company. There is no debate. 11 There should be no debate. 12 Now, the second issue is the summons 13 and complaint issue. And I think the 14 suggestion is, because of the use of the 15 word -- the conjunction "and" that summons 16 and complaint is two different documents. 17 Obviously, that's not the case. 18 Summons and complaint is filed as one 19 document. 20 If you look at what Mr. Branham sent 21 to the process server, it says "summons and 22 complaint." He sent the summons to DHL, 23 and he had the attachment, which included 24 the complaint, the amended complaint. 25 It was -- that was the singular

Page 44 1 document. That was presented. There was 2 also an email sent to Altrad. Altrad is 3 one of the companies that controls Cape 4 now. 5 If there had been a problem and there 6 was only a summons that was sent, we would 7 have an affidavit from Altrad that says: 8 We only got a summons. We didn't get a 9 summons and complaint. 10 We would have gotten an affidavit from 11 somebody saying: The only thing we got is 12 a summons. Here's the document we've got. 13 We've got an email that shows the 14 document that was sent to the process 15 server who used an abbreviated form talking 16 about a singular document that was served, 17 which was the summons and complaint. It is 18 a nonissue. It is a nonissue. 19 Next, they suggest that the service of 20 the amended complaint -- the second amended 21 complaint was never served, so this is all 22 a wash as if it didn't exist. Not the law. 23 There was an amended complaint that 24 was served. That was operative, 25 appropriately served. There was a service	Page 46 1 until it's served. 2 But there's still process -- service 3 of process that exists. It doesn't just go 4 away into the ether because they filed a 5 second amended complaint. 6 They never filed an answer, as is 7 their litigation scheme, which is to not 8 respond to lawsuits in the U.S. There's no 9 surprise there. 10 They didn't respond. They still 11 haven't responded. We still haven't heard 12 from them. And they've been served 13 multiple times with multiple entities that 14 are associated with Cape, and they still 15 ain't here. We hadn't heard from them. 16 So this idea, again, that the amended 17 complaint -- second amended complaint is 18 fatal is ridiculous. And it's not true, 19 and it is not supported by the case law. 20 And there's certainly no case that 21 suggests that the service of process that 22 existed with the appropriate service of 23 that complaint disappeared into the ether. 24 It didn't. It still exists, and they 25 haven't responded.
Page 45 1 of process that was effective. That didn't 2 just go away because they filed a second 3 amended complaint. 4 That second amended complaint, until 5 it is served, the operative complaint is 6 the amended complaint that was served 7 appropriately and was the correct complaint 8 at the time that it was served. 9 They never served the second amended 10 complaint. It was never -- it was never 11 the operative complaint as it applied to 12 Cape plc identified as the company that was 13 doing asbestos sales in the U.S. for over a 14 hundred years. 15 There was no surprise there and there 16 was no debate about it. That was what they 17 were served. It was served on the correct 18 party, and the amended complaint was in 19 effect. 20 You know, the idea that oh, we don't 21 have to answer if there's a filed second -- 22 second amended complaint, we have cited a 23 case in our brief that deals with that 24 issue squarely, that the second amended 25 complaint is not an operative complaint	Page 47 1 Now, that's the service issue. So let 2 me talk about the receiver or the issues 3 specifically as to the receiver and the 4 notice of appointment of the motion. 5 It was served by DHL service, just 6 like the summons and complaint. It was not 7 served pursuant to Rule 4.1. 8 Why? Because it ain't required. 9 That's not required to serve 4.1, do a 10 service according to the Hague Convention, 11 which is what they are arguing, with the 12 appointment of the motion. That is not 13 required. 14 There's been appropriate service. 15 They just had to mail it. It was mailed to 16 the last known address, the same address 17 where service was effectuated. So there's 18 proper notice of the motion. 19 Now, there's a suggestion that you, in 20 entering the order, didn't follow all the, 21 quote, necessary steps, which there's no 22 statute or requirement that you go through 23 these things and identify them in the 24 order, but confirm lawful service of 25 process.

Page 48 1 We have. There was lawful service of 2 process. 3 Enter a default judgment against Cape. 4 Not required. 5 Grant default judgment against Cape 6 prior to the receivership being appointed. 7 Not required. 8 Enter a judgment against Cape 9 purporting to reflect the liquidated sum of 10 damages due to Park plaintiffs based on 11 sufficient factual showing. Not required. 12 This was an appointment pursuant to 13 Section 4 and Section 5 of the receivership 14 statute. 15 If you look at Section 5, and we've 16 discussed this in our brief, but Cape's 17 long-running intentional scheme to defraud 18 its tort creditors is reflexive action. It 19 is an old practice in equity and an 20 important principle of law to correct 21 injustice. 22 We have case law that exists. The 23 Hunter case, Amchem versus Hunter. It's an 24 old case that talks about prejudgment. 25 Prejudgment, the appointment of a receiver.	Page 50 1 scenario so that justice can prevail where 2 an amalgamation of interest claim like this 3 one can be pursued against defendants who 4 helped perpetrate this scheme to avoid 5 being held accountable for the harm that 6 was caused with the distribution of their 7 product, asbestos. That's what this is all 8 about. 9 To suggest that a receiver court can't 10 do that -- and not only that, you know, in 11 the briefing to be vitriolic about it and 12 suggesting some sort of the fact of 13 corruption, which is what they were 14 suggesting, for a simple amalgamation 15 of interest lawsuit, where you try to find 16 out whether what we see in black and white 17 in documents is right, did they do this or 18 not and, if they did, South Carolina can 19 hold them accountable. 20 There's South Carolina citizens that 21 died from brown asbestos that was brought 22 into the country by Cape. They can be held 23 to account for that. 24 And Cape, with an appointed receiver, 25 can look to others to make sure those
Page 49 1 Because this Mr. Hunter was moving his 2 assets and moving assets to his sister, 3 moving assets to other family members to 4 avoid having to pay people who were making 5 claims. There was no judgment in that 6 situation. 7 I'm involved in the Murdaugh case. I 8 have been appointed as receiver in that 9 case prejudgment in a tort action, and that 10 has been, now, part of the practice of law 11 in South Carolina. That's what's going on 12 now. 13 When you're moving assets, when you've 14 done something nefarious, when you're 15 trying to move assets that you're not 16 responsible for the harm that you have 17 caused, even though you've made profits by 18 selling asbestos throughout the country and 19 you've done something to move out of the 20 country to avoid being responsible for 21 that, you can be held to account. 22 And our practice of law in 23 South Carolina recognizes that. That's 24 what Section 5 is. 25 It is the flexibility to allow that	Page 51 1 assets are pulled back into Cape to be 2 available for anyone who has a lawsuit with 3 exposure caused by Cape. That's what it's 4 all about. 5 If South Carolina is not going to do 6 it -- not going to do it, who is? I mean, 7 it hasn't happened in 50 years. 8 The first time we're seeing these 9 companies come in to talk to anyone about 10 accountability for what happened with all 11 the asbestos that was brought in was right 12 now. 13 We're finally seeing it for the first 14 time because a receiver got appointed in 15 this case. We're finally seeing them held 16 to account. 17 Now, Section 5 allows this. They've 18 cited one case, this Penn Mutual case, 19 which is incredibly distinguishable. It's 20 about a guy where the Court appointed him 21 to be his own receiver because they thought 22 he was a good guy. And the Court of 23 Appeals said, "No. You can't do that." 24 I mean, that's not what we're talking 25 about here. There's no veil or

Page 52 1 self-piercing going on. You're talking 2 about going after veil-piercing companies 3 that had an amalgamation of interests with 4 Cape, who had a subsidiary in 5 South Carolina that was dissolved. I mean, 6 that's -- we're looking at all of that. 7 That's all we're trying to do. 8 Now, there's been a couple of other 9 issues that were addressed. And they're 10 addressed in our brief, but I want to be 11 sure that we've got it covered. 12 There's a suggestion that this is 13 ultra vires, that we're somehow acting 14 beyond what was allowed, the receiver is 15 doing more than what you allowed. 16 What the receiver is allowed to do is 17 what you have. And according to the law 18 and according to what your order provides, 19 there's no question that a receiver is 20 allowed to pursue claims. They step into 21 the shoes of the receiver -- I mean, of the 22 company and pursue claims like the ones 23 that are being pursued here. They're 24 allowed to do that. 25 Your order recognizes that they can	Page 54 1 document says. The document specifically 2 says this does not include U.S. claims. It 3 makes reference to the scheme or plan to 4 avoid being held responsible for any U.S. 5 meso cases. It specifically says that in 6 the document. 7 So there is no violation. We have an 8 appropriate appointment of a receiver. We 9 have an appointment -- appropriate 10 appointment of a receiver that's doing what 11 he was allowed to do. 12 There is no violation of international 13 comity in that scenario. 14 We have no violation -- any 15 constitutional violations if there's an 16 appropriate appointment of Cape plc or a 17 receiver being appointed for Cape plc now 18 being -- you know, now known as Cape 19 Intermediate Holdings Limited. 20 So I think we have covered all the 21 issues except for this last one, these 22 accusations of bad faith by the receiver, 23 he's not impartial. 24 And I think it's a continuation of 25 what I believe is a -- I don't know if it's
Page 53 1 pursue claims. It says pursuing claims 2 against insurance companies, but that's 3 included but not limited to pursuing claims 4 against insurance companies, which should 5 then suggest other claims are allowed as 6 well. 7 We are squarely within what was -- 8 what is allowed to try to pursue, again, to 9 hold accountable for amalgamation of 10 interests and any assets that were moved 11 and this idea of moving a company that has 12 extraordinary liability beyond the reach of 13 U.S. courts. 14 They're being held to account for 15 that. We're allowed to look at that. 16 Again, because they were suggesting 17 waiver in some of the pleading, I want to 18 make sure I covered it. 19 International comity. It was 20 suggesting that this scheme of creditors 21 means that any -- any asbestos claims can 22 be brought must be brought in the U.K. and 23 we're divesting them of jurisdiction on 24 that. 25 It's ridiculous. It's not what that	Page 55 1 purposeful, but there certainly is an 2 articulated misunderstanding of the role of 3 the receiver. 4 The role of the receiver is not to do 5 the bidding of the company. The role of 6 the receiver is to act as an officer of the 7 court as an arm of the court to try to 8 assimilate assets and make them available 9 for creditors if and when they come. 10 That's what the receiver is doing. 11 It does not mean that they get to 12 ignore the bad behavior. It does not mean 13 that they have to be complicit in bad 14 behavior, including taking on some of the 15 same positions that had been taken by Cape 16 that "we're going to avoid litigation in 17 the U.S. and we're going to do it 18 inappropriately." 19 If it's wrong, the receiver can 20 acknowledge that it's wrong and deal with 21 that. It doesn't suddenly become -- as an 22 appointment of a receiver, the receiver is 23 not in a situation where it becomes 24 complicit with that bad behavior and has to 25 suggest the same wrong arguments.

Page 56 1 It can acknowledge it, pursue it, 2 continue to assimilate assets. That's what 3 this receiver is doing. It's doing it with 4 a straight-up amalgamation of interest 5 lawsuit, veil-piercing, unjust enrichment. 6 There's nothing unique about this 7 suit. And there's an ability to get 8 discovery on it. And if there's not the 9 situation that is revealed in what we see 10 in the primary documents, then litigate it. 11 Show it. Tell us why we're wrong. 12 That's all they've got to do. That's 13 what court is about. Not doing these 14 ad hominem attacks and not revealing to you 15 that Cape plc was created in 2011 and is 16 some tax company that has nothing to do 17 with asbestos and acting like that's who 18 everyone is talking about. 19 Again, no intelligent person would 20 believe that, which is the standard in that 21 Court of appeals standard. 22 So, Your Honor, no. The receivership 23 should not be resolved [sic]. There is 24 effective service. The correct company is 25 in receivership.	Page 58 1 There was never a suggestion, and to 2 over-read that is -- that's not 3 appropriate, that somehow there's a waiver 4 of claims, I mean, future claims against 5 Cape, or the continuing, you know, 6 advancement of a lawsuit against Cape where 7 they're in default. That's not who she was 8 communicating to. 9 She didn't suggest that to Cape. She 10 didn't suggest that to Cape counsel. They 11 didn't rely on that. No one else is 12 relying on that. 13 They're relying on a representation 14 that I don't have a jury trial, that we've 15 got resolution of it. So, no, we disagree 16 with that. We think that is a significant 17 overstatement. 18 THE COURT: The implication of what 19 they're arguing is that this receivership 20 is confined to the Park case. 21 MR. LAY: So the appointment and the 22 appointment order allows the pursuit of 23 claims. 24 The Cape -- the receiver is having to 25 defend claims, defend Cape in a lawsuit,
Page 57 1 If you want to acknowledge that the 2 company is now known as Cape Intermediate 3 Holdings Limited, great. I think you can 4 do that. You can acknowledge that it's a 5 misnomer. That case -- the Griffin case 6 acknowledges that. It doesn't change the 7 fact that there was effective service. 8 That's all. Thank you. 9 THE COURT: Mr. Lay, speak for a 10 minute about the contention that somehow or 11 another this whole thing falls because the 12 Park case was settled. 13 MR. LAY: There was a suggestion that 14 because they were in default, they had not 15 appeared, that the Cape plc had not 16 appeared. Their case was up for trial, a 17 jury trial, and there was notification that 18 there was settlement of the case. 19 There was never any sort of agreement 20 that that meant Cape was off the hook. No 21 one said that. They weren't involved in 22 any way in that discussion. 23 There was a notification to the Court 24 you're not going to be doing a jury trial. 25 We've got a settlement in this case.	Page 59 1 which is part of what their appointment is. 2 And they can deflect. They can look 3 outward and see if someone else should be 4 responsible in whole or in part for the 5 allegations that are being made. 6 Whether that is in the Park case or 7 whether that is in the Tibbs case, they've 8 got that ability as a receiver pursuant to 9 statute and pursuant to the order that you 10 signed. 11 THE COURT: Well, your position, then, 12 is that once the receiver is appointed for 13 a corporation that is alleged to be a 14 corporation that has assets in 15 South Carolina, or it can be a corporation 16 that is responsible for the projection into 17 the stream of commerce in South Carolina 18 products of theirs that causes injury in 19 South Carolina, you're saying that a 20 receiver, once appointed, is the receiver 21 for that corporation no matter what the 22 posture of the liability claims that 23 involve it in South Carolina is? 24 MR. LAY: Yes, ma'am. 25 THE COURT: All right.

Page 60 1 MR. LAY: Thank you. 2 THE COURT: Mr. Carroll, in response. 3 MR. CARROLL: Yes, ma'am. Thank you, 4 Your Honor. 5 So I've got a lot more to say this 6 time around than I did the first time. 7 Your Honor, let me start where Mr. Lay 8 ended. He said several times, "Well, they 9 were in default. They were in default. 10 They were in default." 11 There's not an entry of default 12 anywhere in the Park case for Cape plc. 13 There's just not. There's not an entry of 14 default judgment against Cape plc in the 15 Park case. There's just not. 16 And the reason there is none of that 17 anywhere in the Park case is because 18 Cape plc was never served with process in 19 the first place in the Park case. 20 So this -- I feel like they're trying 21 to overwhelm you with this idea of, well, 22 this was just obvious they were there. No, 23 they weren't. 24 And if they -- if it was so obvious 25 that a person of -- that some intelligent	Page 62 1 Cape plc was not the same as Cape 2 Intermediate Holdings Limited. 3 Now, Mr. Lay's argument -- the 4 receiver's argument. I don't mean to 5 ascribe this to Mr. Lay. 6 The receiver's argument is, well, 7 every -- every buffoon knows that they're 8 really the same thing. 9 Well, the Park -- Mr. Park called them 10 two different things because they are. 11 I was called -- I was called shameful 12 before lunch. I was called unintelligent 13 after lunch. So I've got -- I've got to 14 take a nice deep breath as I continue to 15 walk through these documents, Judge. 16 But this is not -- this -- our 17 argument is not a fiction of our creation. 18 We are taking the record that was handed to 19 Your Honor that has all of these defects in 20 it, and we are pointing out all of these 21 defects. 22 And the only response is, "Yeah. 23 Everybody knew what we really meant." 24 The receiver wasn't even in the Park 25 case. He has no idea what Mr. Park meant
Page 61 1 person would believe it, then all they have 2 to do is show us an affidavit from a 3 process server that says: I looked up 4 Cape plc's address online. It's in Jersey. 5 Here's where I served that at that address. 6 But there is no such -- there is no 7 filing. 8 Mr. Lay did say something that I fully 9 agree with, and I want to -- I want to 10 march through it very carefully, 11 Your Honor. 12 He said -- and he was presenting his 13 argument and got very animated. He said, 14 "You've got to own what you write." 15 I completely agree with that, Judge. 16 I owned everything that we filed in this 17 case and I own everything that's in writing 18 thus far in the case. Let me start with 19 owning what is written. 20 In the Park case, Mr. Park did not 21 name Cape Intermediate Holdings Limited as 22 the only defendant. He named Cape plc as a 23 defendant. He recognized that they're two 24 separate entities. 25 Mr. Park did that. He understood	Page 63 1 or did not mean beyond what is written on 2 the page. 3 You've got to own what you write. 4 Mr. Park wrote that Cape plc and Cape 5 Intermediate Holdings Limited were two 6 separate companies. 7 You've got to own what you write. 8 When Mr. Park moved to have a receiver 9 appointed, his motion says: Plaintiffs, 10 pursuant to South Carolina Code Sections 11 15-65-10 (4) and (5), move this Court to 12 appoint a receiver over Cape plc and its 13 subsidiaries, affiliates, successors and 14 assigners. 15 Cape plc is a defendant in the 16 above-captioned action. That's on Page 1 17 of Mr. Park's motion. There's not one 18 mention of Cape Intermediate Holdings 19 Limited anywhere in that motion. 20 You've got to own what you write. 21 In Your Honor's order, you took 22 Mr. Park's motion at his word, and you 23 recited: Plaintiffs have moved this Court 24 to appoint a receiver over Cape plc 25 pursuant to South Carolina Code Sections

Page 64 1 15-65-10 (4) through (5). 2 Once more, there's no mention of Cape 3 Intermediate Holdings Limited. 4 The argument that, well, no 5 intelligent person would believe Cape -- 6 when Mr. Park and the Court both said 7 Cape plc, period, that you really meant and 8 that they really meant Cape plc, period, is 9 preposterous. 10 How would anybody -- how would anybody 11 be able to read the words that are on the 12 page of the plaintiff's -- Mr. Park's 13 complaint, Mr. Park's motion to appoint a 14 receiver, the Court's order appointing the 15 receiver, and say, "Well, they really mean 16 something other than exactly what's on the 17 page that is consistent among all the 18 filings"? 19 You've got to own what you write. 20 The process server, we were told 21 today, well, the summons and complaint are 22 really one document. 23 Of course they're not one document. 24 That's why the South Carolina Rules of 25 Civil Procedure say they have to be served	Page 66 1 There's not one document in anything 2 that's been filed. And this -- Your Honor, 3 I know you've got a wall of paper stemming 4 from this case and these motions. 5 There's not one thing in anything that 6 has been filed in this case or in the Park 7 case or in any other case that suggests 8 that anybody has ever served Cape plc, a 9 company that has existed for a dozen years 10 in New Jersey, that anybody served them 11 with one stitch of paper. 12 The idea that they -- that a company 13 that has had not one thing to put it on 14 notice of anything happening in the state 15 of South Carolina, much less in Richland 16 County, South Carolina, the fact that we 17 haven't heard from it is not shocking at 18 all. Of course we haven't heard from it. 19 It hasn't heard from anybody in this Court. 20 The -- Your Honor, I -- counsel for 21 the receiver began his argument with a long 22 recitation of what he perceives to be this 23 historical injustice dating back to the mid 24 20th century. 25 Cape plc didn't exist until 2011.
Page 65 1 together. The Court issues the summons. 2 The plaintiff files the complaint. But 3 they have to go together. 4 But you have to own what you write. 5 The processor server, Mr. Morgan, I 6 believe is his name, Paragraph 6 of his 7 affidavit says: I did serve copies of the 8 first amended summons in this matter on 9 Cape plc and Cape Intermediate Holdings 10 Limited at the aforementioned registered 11 address. 12 He again says in his cover letter -- 13 he's owning what he's writing. 14 His cover letters, I've mentioned them 15 the first time I was up here: We enclosed 16 by way of service the first amended summons 17 in this matter. In closure, the first 18 amended summons. 19 He put those exact words on both of 20 his cover letters. No mention of serving 21 any kind of complaint. 22 So when I hear, "Well, where's 23 Cape plc? They haven't even appeared. 24 They're in default," of course they haven't 25 appeared. They never got anything.	Page 67 1 Obviously, it has nothing to do with that. 2 But the receiver's -- the receiver 3 appears to think that his job is to be a 4 crusader on behalf of -- the world? I 5 really don't know. 6 Because there's not one single 7 creditor in South Carolina that anybody has 8 ever identified as saying, "Oh, yeah. 9 Cape plc owes me money." 10 And that's really the fundamental 11 distinction between this case and the 12 Hunter case, which in the Hunter case the 13 Supreme Court -- now, this is 1909. 14 The Supreme Court began with this long 15 recitation of all of these promissory 16 notes, actual -- actual agreements to pay 17 secured and unsecured debts that Mr. Hunter 18 owed. 19 And then it talks about how he was 20 moving money and assets to not only his 21 sister, but also to his lawyer, who was 22 Cole Blease, at the time the president pro 23 tem of the South Carolina Senate. 24 And the Supreme Court said: You can't 25 do that. You can't take your assets and

Page 68 1 give them to somebody else when you know -- 2 when you have a contract to pay somebody 3 else. 4 And so they appointed a receiver over 5 that because there were known debts, actual 6 debts. 7 And Mr. Hunter was trying to, 8 apparently, bypass that by not only giving 9 them -- giving away his assets to family, 10 but also to his own counsel. 11 And in an interesting little footnote 12 in that, part of the reason that he was 13 giving money to then-President Pro Tem 14 Blease was because Mr. Blease was his 15 defense lawyer in multiple manslaughter 16 trials. 17 And two years after the Supreme Court 18 put Mr. Hunter in receivership and in 19 another case in 1909 left him in jail after 20 he was convicted, then Governor Blease 21 pardoned Mr. Hunter and said that the 22 Supreme Court was a bunch of lunatics who 23 doesn't follow their own law. 24 So Governor Blease got the last laugh 25 in this whole episode.	Page 70 1 THE COURT: Are you saying that this 2 receiver is doing that? 3 MR. CARROLL: Well, Your Honor, you 4 know, we didn't contend that in our -- when 5 we filed our motion. 6 But then in response this is what the 7 receiver wrote. This is how the receiver 8 justifies his existence in this case. 9 Now, mind you, this is a receiver who 10 is in Columbia, South Carolina, in a court 11 in Richland County, South Carolina, talking 12 about seizing the assets of a company in 13 Jersey. 14 THE COURT: So that part -- 15 MR. CARROLL: But in his -- 16 THE COURT: That part is an assumption 17 that runs under a lot of what's been filed 18 about these cases -- defendants, that 19 somehow or another, because they are not 20 from here and because they're overseas, 21 that they can't be reached by this Court if 22 they've committed torts here, allegedly. I 23 don't understand that part. 24 What the receiver is contending and 25 what he contended after the receivership
Page 69 1 But the reason that the Court put a 2 receiver in place in that case is because 3 there were known creditors. We have none 4 in this situation. 5 But the Hunter case is also very 6 instructive on another point for which 7 we've cited. 8 The Court ends its discussion by 9 saying: Yeah, there needs to be a receiver 10 in place here, but it can't be the guy that 11 the trial court appointed because he's 12 working for the plaintiff. 13 And at Page 224 in the reporter -- the 14 South Carolina Reporter, Volume 84, 15 the Court writes: The rule is that 16 the Court ought to appoint a receiver 17 entirely impartial. 18 And then it says that this -- that 19 this gentleman couldn't do it because he 20 was one of the agents of the plaintiff 21 actively pressing its claims against the 22 Defendant Hunter and seeking the 23 appointment of the receiver of his 24 property. 25 So we --	Page 71 1 was set up is that the real party in 2 interest in this thing is Cape plc, a 3 company that existed for many, many years 4 and mined and sold asbestos in the United 5 States for many, many years, and in 6 South Carolina for many, many years, which 7 harmed people. 8 And the receivership was set up for 9 that company because it was avoiding all 10 responsibility by (a) saying it's from off 11 and you can't sue me; and (b) the only 12 entity that now exists of which I am at all 13 a part is this company that's headquartered 14 and domesticated in the Bailiwick of 15 Jersey. 16 I don't -- I don't understand the 17 logic that -- I mean, when you talk about 18 that, you seem to imply that an 19 amalgamation of interests could never be 20 considered as a platform for holding 21 entities liable for torts committed in 22 South Carolina. 23 MR. CARROLL: Well -- 24 THE COURT: Is that -- is that the 25 concept?

Page 72 1 Because it's not just the company that 2 was set up in the last ten years in the 3 Bailiwick of Jersey. 4 The contention that's made -- and I 5 don't say you need to agree with it. 6 But the contention that is made is 7 that a company that existed for many years 8 in South Africa and mined asbestos for many 9 years there created a series of entities 10 that it attempted to use to shield it from 11 responsibility for types of material that 12 it distributed in the United States and in 13 South Carolina. 14 That is the premise of this 15 receivership is to hold that entity 16 responsible for what happened here in 17 South Carolina. That's why the 18 receivership was set up. 19 And the receiver's responsibility is 20 not to the plaintiff. The receiver's 21 responsibility is to the corporation and to 22 its responsibility for things it did which 23 affected South Carolina citizens. 24 MR. CARROLL: Your Honor, there's a 25 whole lot to unpack there. I'll --	Page 74 1 only company that was put in a 2 receivership, Cape plc, a company that has 3 existed since 2011 in the Bailiwick of 4 Jersey. 5 THE COURT: There -- there's where 6 we've got a disagreement between you-all. 7 You say -- 8 MR. CARROLL: There's a disagreement 9 between us, but there's not a disagreement 10 in the record. 11 THE COURT: Well, no, sir. There is a 12 disagreement. 13 Because your contention is that 14 Cape plc is an entity that exists in the 15 Bailiwick of Jersey created ten years ago 16 and that that's the only Cape entity that 17 is involved with this receivership. 18 The receiver's contention and then the 19 contention of the petition to appoint a 20 receiver is that Cape plc, the long-time 21 company of South Africa, is the amalgamated 22 centrally responsible party. And that 23 includes the plc -- the Cape plc, Bailiwick 24 of Jersey. 25 The responsible party is not just some
Page 73 1 THE COURT: Well, there's a whole lot 2 to unpack there, but it isn't solved by 3 simply getting up here and saying, "The 4 only thing we can look at is this company 5 that was created in the last ten years in 6 the Bailiwick of Jersey. And they haven't 7 been served properly, and nobody else is 8 responsible." 9 He may ultimately lose either here or 10 at the South Carolina Supreme Court or 11 elsewhere on the question of whether this 12 entity, Cape plc, is really the 13 amalgamation of many interests that 14 committed a tort, because we haven't 15 decided that yet. 16 All that is happening now is that a 17 representative of the company is now in 18 place that would otherwise not be in place 19 to pursue its assets. 20 MR. CARROLL: Your Honor, the company 21 doesn't need a representative in place in 22 Columbia, South Carolina. It exists -- 23 THE COURT: Which company are you 24 talking about? 25 MR. CARROLL: I'm talking about the	Page 75 1 entity created in the last ten years, but 2 rather is the company that was the 3 long-time supplier of material here and 4 that the two are one. That's what 5 amalgamation of interest is all about. 6 And we haven't tried that yet. That 7 is yet to be completely explored. But the 8 averment was made that that is what the 9 situation was, and on the basis of that, 10 the statute allowed the appointment of a 11 receiver to then explore that issue. And 12 that's what's being done now. 13 MR. CARROLL: Your Honor, I -- 14 respectfully, I very much disagree with all 15 of that. 16 THE COURT: I understand that. 17 MR. CARROLL: The motion to appoint -- 18 the motion to appoint the receiver said 19 "Cape plc." I've read that to you a moment 20 ago. 21 The order appointing a receiver said 22 "Cape plc" -- 23 THE COURT: Right. 24 MR. CARROLL: -- which I read to you a 25 moment ago.

Page 76 1 I can't say I'm going to sue 2 McDonald's for the obesity problem in the 3 United States and then have a receiver 4 appointed over Burger King and Wendy's and 5 say, "Well, you knew I was talking about 6 fast food." Which is what the receiver is 7 suggesting here. 8 THE COURT: That's not what he's 9 doing. He's saying that Cape plc is in 10 reality the Cape plc that committed this 11 tort. 12 MR. CARROLL: Again, Your Honor, 13 Cape plc has received nothing at all from 14 anybody in this Court in the Park case, in 15 the Tibbs case. It has nothing to do with 16 the state of South Carolina. 17 THE COURT: I understand. You can say 18 that all day long and continue to say that. 19 MR. CARROLL: Yes, ma'am. 20 THE COURT: But you are referring to a 21 company that was established ten years ago 22 in the Bailiwick of Jersey. 23 MR. CARROLL: I'm talking about -- 24 THE COURT: That's not the company 25 that he says is responsible. He says	Page 78 1 we -- now we're getting into some other 2 things, which is whether the receiver can 3 be a plaintiff. That -- dissolving the 4 receivership has to do with whether it was 5 improperly created. 6 MR. CARROLL: Yes, ma'am. 7 And I think we -- I think that the 8 record makes that clear. 9 I think Mr. -- I think the receiver's 10 entire response argument of "well, we knew 11 what you really meant" underscores the fact 12 that it was -- it was erroneously created 13 in the first place. 14 If they're admitting it and saying, 15 "Well, you know, let's make -- let's make 16 the sharp edge fuzzy so that we can kind of 17 blur some lines here," the lines can't be 18 blurred. 19 A receivership is serious business. 20 The State Supreme Court has issued umpteen 21 opinions saying this is a harsh and drastic 22 remedy. It should be issued with caution. 23 And it's also said if the Court 24 becomes aware of something after the 25 appointment of a receiver that should
Page 77 1 that's a shell intended to distance the 2 real party in interest from responsibility 3 for its harm. 4 MR. CARROLL: Yes, ma'am. 5 And so I said that -- when you raised 6 this, I said there's a lot to unpack there. 7 One of the points that I want to get 8 to in all this is there's not any precedent 9 in the state of South Carolina for a 10 receiver to put on the cloak of a 11 plaintiff, which is what he's doing. The 12 Hunter case says you can't do that. 13 If -- if there's some random 14 amalgamation -- 15 THE COURT: We're mixing apples and 16 oranges here. Let me -- 17 MR. CARROLL: I'm trying -- I'm trying 18 to keep the apples over here and the 19 oranges over here, Judge. 20 THE COURT: Well, what we're trying to 21 do right now is do the first thing, which 22 is to decide whether to dissolve this 23 receivership here. 24 MR. CARROLL: Yes, ma'am. 25 THE COURT: Now, I don't know how	Page 79 1 discontinue the receiver, it is equally 2 harsh to not discontinue the receivership. 3 THE COURT: Well, it's got two things 4 going on. Right now what we're talking 5 about is whether the receivership should 6 have been created. 7 MR. CARROLL: Yes, ma'am. 8 THE COURT: And the request to 9 dissolve is based on that, as I understand 10 it. But we're not here to do something 11 else improper. 12 MR. CARROLL: Well, that -- so we'll 13 get to the -- are you talking about the 14 Rule 14 problem or -- 15 THE COURT: I don't know. I don't 16 know -- 17 MR. CARROLL: Okay. 18 THE COURT: -- what you were referring 19 to and what you're arguing. 20 Right now -- 21 MR. CARROLL: Yes, ma'am. 22 THE COURT: -- I got enough on my 23 plate trying to separate the four motions 24 I'm hearing right now. 25 MR. CARROLL: Yes, ma'am.

Page 80 1 THE COURT: This one is the motion to 2 dissolve the receivership because it was 3 improperly created. 4 MR. CARROLL: Yes, ma'am. Okay. So 5 I'll make my final point and then sit down. 6 You asked me a moment ago about me 7 making a contention about the receivership 8 working for the plaintiff or something like 9 that. 10 And I said, "Well, we didn't 11 originally, but then we got their response 12 brief in opposition." 13 And on Page 22 of the response brief, 14 the receiver -- he's got to own what he 15 writes -- says: In addition, the 16 receiver's ability to successfully marshal 17 assets will directly inure to the benefit 18 of the Park plaintiffs, which allege 19 uncompensated harm from Cape's conduct. 20 That statement, "I am working for the 21 plaintiffs who got me appointed," is what 22 prompted us to note that in our opposition 23 because the Hunter case says you can't do 24 that. So that's -- we didn't gratuitously 25 raise this.	Page 82 1 It's the marshalling of assets so that 2 they can be available to respond, but it 3 does not absolve anybody from showing that 4 they have a valid claim. 5 And it's not the receiver's 6 responsibility to do that. The receiver's 7 responsibility is to hear from plaintiff 8 contentions about the claim, either try it 9 or settle it if it can be settled 10 reasonably. 11 MR. CARROLL: Yes, ma'am. And I'm not 12 sure the receiver views it that way. 13 Again, he's got to own what he writes. 14 This is the introductory paragraph of 15 the complaint that has gotten my clients 16 here. 17 He ends his introductory paragraph: 18 These three groups of third-party 19 defendants have wreaked havoc in the United 20 States, padded their already massive 21 coffers with blood money on top of blood 22 money, and amused themselves with the 23 supposed ingenuity of their scheme to avoid 24 any responsibility. This lawsuit begins 25 their reckoning.
Page 81 1 THE COURT: I think -- I think you've 2 completely misconstrued not only what was 3 said but what's being done here. 4 The receiver is anything but the 5 plaintiff's representative. The receiver 6 is -- 7 MR. CARROLL: He disagrees with that, 8 Judge. 9 THE COURT: Just don't interrupt me 10 for a minute. 11 MR. CARROLL: Yes, ma'am. 12 THE COURT: The receiver, by the 13 appointment I made -- and that's what we're 14 talking about is whether that appointment 15 was correct -- is to marshal the assets of 16 the responsible corporation. All right? 17 Then, when those assets are 18 marshalled, what the receiver does is to 19 defend claims by the plaintiff and defend 20 them strongly and only pay claims that are 21 properly shown. 22 And I think that's -- I interpret that 23 to be what was said by the receiver when 24 mentioning the marshalling of assets in 25 connection with the Park claim.	Page 83 1 That's not what a receiver does. 2 That's not what South Carolina law allows a 3 receiver to do. 4 And for that and every reason we've 5 talked about, Judge, we would respectfully 6 submit that the receivership should be 7 dissolved. 8 THE COURT: Thank you, sir. 9 Mr. Pugh. 10 MR. PUGH: Very briefly, Your Honor. 11 Steve Pugh for what we've identified as 12 Sparrows defendants. 13 In Mr. Lay's argument earlier, he said 14 to you, "Cape plc still exists to this 15 day." 16 The order appointing a receiver for 17 Cape plc, as I mentioned earlier, 18 specifically referenced a dissolution and a 19 forfeiture. 20 Whomever that order was intended to 21 cover, was intended to apply to, there is 22 no evidence in this record of a 23 dissolution, an insolvency, a forfeiture, 24 or a failure to answer an operative 25 complaint, period. Nothing.

Page 84 1 Unfortunately, the basis of the order 2 remains fundamentally incorrect and 3 unfixable. 4 "Cape plc" was a name used by the 5 company for however long that mined 6 asbestos. It is uncontroverted that in 7 2013, that name was changed to Cape 8 Intermediate Holdings Limited. The 9 receiver admits that. 10 And if that order that Your Honor 11 entered on March 17 of 2023 is supposed to 12 apply to anyone other than Cape plc, those 13 multitude of entities -- whether they're on 14 the continent of Africa, Europe or anywhere 15 else -- had to be given statutory notice of 16 the motion and order for appointment. 17 Thank you, Your Honor. 18 MR. LAY: Brief response? 19 THE COURT: Mr. Lay. 20 MR. LAY: The words that came out of 21 Mr. Carroll's mouth was that it was 22 Cape plc, hard stop. It's not Cape plc, 23 hard stop. 24 The motion to appoint the receiver 25 says Cape plc is the successor-in-interest	Page 86 1 didn't get notice of that. 2 And we really didn't understand that 3 the Cape plc that was specifically 4 referenced in the order as the 5 successor-in-interest to Cape Asbestos, had 6 the detail in the motion, we didn't 7 understand that company that was the 8 Cape plc name until 2011, and we've had two 9 name changes since then, we didn't 10 understand that. And we thought it was 11 this newly created company over in the 12 Bailiwick in New Jersey. 13 It's ridiculous. It's a straw man 14 fallacy argument. And their entire 15 argument hinges on that. 16 Everything that they wrote hinges on 17 this: Hey, we thought it was this new 18 company that's a tax company in the 19 Bailiwick of New Jersey. 20 It's just not true. The evidence is 21 there. 22 THE COURT: All right. Okay. That is 23 the motion to dissolve. 24 All right. The motion to dismiss. 25 (Off-the-record conference.)
Page 85 1 to Cape Industries LTD, formerly known as 2 Cape Asbestos Company and Cape Asbestos, 3 with subsidiaries and global affiliates 4 which were and are private companies 5 organized and existing under the laws of 6 the United Kingdom, with its principal 7 place of business in England at all times 8 Cape was involved in all elements of the 9 global asbestos industry. 10 Cape plc and the newly formed Cape plc 11 that's in the Bailiwick of New Jersey 12 actually overlapped for a couple of months. 13 And the address where it was served was the 14 Cape plc in the United Kingdom at Cape plc 15 United Kingdom's address is now known as 16 Cape Intermediate Holdings Limited. 17 The case is clear. There's some sort 18 of misnomer or it is a -- you know, the 19 name that no one would be misled by who is 20 meant in this situation. 21 This is proper service, and there's no 22 problem here. They're having you -- the 23 suggestion is that somehow the Bailiwick of 24 New Jersey, a company created for tax 25 purposes, we didn't understand that. We	Page 87 1 THE COURT: All right. Ten-minute 2 break. Mercy on the court reporter. 3 * * * 4 (Whereupon, there was a recess in the 5 proceedings from 3:00 p.m. to 3:09 p.m.) 6 * * * 7 THE COURT: All right. We're now on 8 the motions to dismiss for lack of personal 9 jurisdiction. 10 Ms. O'Neill, will you begin? Or how 11 do y'all want to begin? 12 MR. ELLIOTT: I'm happy to go first. 13 MS. O'NEILL: It doesn't make -- we 14 actually hadn't talked about it, 15 Your Honor, so... 16 THE COURT: Well, James? 17 MR. ELLIOTT: Sure. I'll go ahead. 18 THE COURT: Are you ready? 19 All right. If you want to -- whatever 20 y'all want to do. I'm not trying to pick a 21 party. 22 MS. O'NEILL: That's fine. Why don't 23 we have Mr. Elliott go for his clients, and 24 then I'll go and then -- 25 THE COURT: Very good. Mr. Elliott.

Page 88 1 MR. ELLIOTT: Thanks, Your Honor. 2 THE COURT: Mr. Elliott, I got your 3 little chart. But I also got your 4 communication of October the 23rd where you 5 list 16 different companies on your motion 6 to dismiss. 7 MR. ELLIOTT: Yes, ma'am. 8 THE COURT: Is that what we're talking 9 about? 10 MR. ELLIOTT: It is, Your Honor. 11 THE COURT: Very good. 12 This is, again, the Tibbs case and, 13 more specifically, the third-party 14 complaint, Cape plc against Anglo American 15 and many others. 16 And this is Mr. James Elliott for 16 17 corporations listed in his letter to 18 the Court of October the 23rd, 2023. 19 Shall I give the court reporter a copy 20 of that? 21 MR. ELLIOTT: You may. But you 22 don't -- she does have a list of all of my 23 clients on the same spreadsheet that I gave 24 you. 25 THE COURT: Okay. Then, very good.	Page 90 1 16 different clients, we felt that there 2 was no other way to do that. 3 THE COURT: Well, they were separately 4 named and you've done just the right thing. 5 So no apologies necessary. 6 MR. ELLIOTT: And as a little more 7 explanation as to what this handout 8 provides is at least a snapshot of the 9 facts as alleged for personal jurisdiction 10 in the -- in the third-party complaint. 11 Okay, Your Honor? I want to make sure 12 you get this. 13 Your Honor, again, these are -- this 14 is 16 motions to dismiss based on lack of 15 personal jurisdiction over these entities 16 within the state of South Carolina. 17 In addition to the oral arguments that 18 I'll make here today, we incorporate and 19 rely on our arguments in our briefs, and we 20 also adopt the arguments of the other 21 third-party defendants, both the oral 22 arguments and -- and what is in their 23 briefs as well, to the extent they're 24 applicable to our client or clients. 25 As an initial matter, Your Honor, I
Page 89 1 You have that. Therefore, it's in the 2 record. All right. 3 You may proceed, Mr. Elliott. 4 MR. ELLIOTT: Thank you, Your Honor. 5 And just by way of explanation, this 6 spreadsheet is intended to help me along 7 and help the Court along with these 8 arguments. 9 We did, of course, file 16 motions 10 because we have 16 separate clients whose 11 contacts have to be reviewed in the face of 12 the allegations and on the motions. 13 The spreadsheet, if Your Honor will 14 note, just to give a little explanation, 15 the names of the companies are, obviously, 16 on the left with their place of 17 incorporation. And we identified the type 18 of business that they're in. 19 And we state some facts about the 20 contacts, the year of corporation, and then 21 we cite to some elements -- some paragraphs 22 in the affidavits that support our motions. 23 And, Your Honor, you have those 24 affidavits in your materials. And I do 25 apologize that it was 16 motions. But with	Page 91 1 know I don't have to explain it to you. 2 But for the record, for personal 3 jurisdiction, the United States Supreme 4 Court and the due process clause of the 5 Constitution requires each of these 6 third-party defendants' contacts with 7 South Carolina be assessed individually. 8 The purported receiver doesn't want 9 Your Honor to do that. 10 What the purported receiver wants to 11 do is lump all of these third-party 12 defendants together, right, skip all the 13 proper steps in doing the analysis, ignore 14 precedent, and then find personal 15 jurisdiction exists as to everyone. 16 And Your Honor knows that would be 17 improper and would violate all of these 18 third-party defendants' constitutional 19 right for due process. 20 So what has to happen? 21 For each entity, you've got to look at 22 these pleadings. You've got to determine 23 if they make out a prima facie case as to 24 each with regard to either general personal 25 jurisdiction, specific personal

jurisdiction, or personal jurisdiction because of some other entity's contacts with South Carolina. But what's important to remember is those allegations can't just be bare and conclusory. They can't be overly broad. They can't make Your Honor attempt to come to some farfetched assumptions. They've got to be specific factual allegations as to each third-party defendant. The first entity that I'd like to talk about -- and I will say, Your Honor, I'm going to go through my arguments with regard to one entity, but there are arguments that apply to all of them. There might have to be some looking at the spreadsheet that I have and there will be dates and indications about what they do as companies so I can move things along. But for this first one, I wanted to illustrate our argument by way of looking at First Mode Holdings, Inc., if you don't mind. I don't believe there's any dispute	involvement with the sale, milling, mining, whatsoever to do with asbestos. So it would be unconstitutional to haul it into court on a specific personal jurisdiction basis given the facts and the un rebutted evidence here. They simply don't make out the power prong or the fairness prong for due process to exist. So what the plaintiffs are -- excuse me -- the third-party plaintiffs are left with is an attempt to establish specific personal jurisdiction through the alleged contacts of others. I'm just going to grab my water real quick, if you don't mind. And they allege three theories. They allege what I call a -- the traditional piercing theory as to my clients in order to -- to pierce the corporate veil. They allege alterego theory, which Your Honor is familiar with. And then the relatively new theory of single enterprise, which some people call the amalgamation theory. So the first thing we have to do --
from the third-party plaintiff that there's no general jurisdiction as to this entity. The affidavit that was supplied to you indicates that First Mode is a Delaware corporation with its principal place of business in the state of Washington. It simply is not at home in South Carolina and is therefore not subject to general jurisdiction in the state of South Carolina. We don't think there's a credible argument that it's subject to specific jurisdiction based on its own acts. The affidavit -- the Adams affidavit avers that First Mode has no contacts directed at South Carolina. And even if it did, it doesn't have anything to do with -- with this case. But regardless, there actually are no contacts with this state. First Mode is a global carbon reduction company that basically is in an effort to reduce the use of diesel in our country, Your Honor. The affidavit indicates that there's no relationship with Cape plc and no	and I'm going to run through this as quickly as I can. But you have to look at the facts as pled and then you've got to apply it to the elements of each of those theories. They've talked a good bit about the facts in their receivership dissolution motion. But what I see in their pleadings is they do talk about NAAC, the North Atlantic -- excuse me -- North American Asbestos Company. It was created in 1953, closed in 1978, and supposedly sold asbestos from South Africa to clients in the U.S., as I understand it, who then sold asbestos to folks in the various states, allegedly including South Carolina. Ultimately important down the road because I'll -- we'll have to look at whether or not they actually make a prima facie case of personal jurisdiction as to NAAC because they're trying to get this piercing theory. So the folks you're trying to pierce

Page 96 1 through have to actually have the 2 connections with the state as to Cape. 3 They, obviously, say they've 4 established NAAC. NAAC committed these bad 5 acts in the U.S., and then it took steps to 6 evade liability, including liquidating NAAC 7 in '78. 8 And then in 1982 -- and I think these 9 dates are important, especially for many of 10 my clients. 11 In 1982, I read that it stopped 12 manufacturing asbestos products. And then 13 it started with a few things up here in 14 court, according to Mr. Lay. 15 Generally, they allege, they make 16 vague and conclusory allegations that 17 there's an historical connection between 18 some undefined or ill-defined group of 19 entities in Cape. That's, I guess, some 20 allegation that's going to ultimately round 21 back into a personal jurisdiction argument. 22 They simply also, as I pointed out in 23 that last page of your handout, they just 24 restate the long-arm statute. 25 And then they make a very vague or	Page 98 1 clients, including First Mode. 2 But what are the elements for 3 amalgamation? 4 And there is some -- it seems to me to 5 be some conflation of the elements of 6 alterego. 7 And I understand alterego can be a 8 basis for piercing, but those elements are 9 four. And there are also elements for the 10 traditional piercing of the corporate veil 11 which have to be pled and sufficient facts 12 indicated to make out that. 13 And then they -- although I will say 14 that I didn't see where they actually 15 outlined the elements of creating a single 16 entity or alleging that a single entity 17 exists. 18 I understand they argued it in their 19 brief, and I do believe that ultimately 20 they failed to make the specific 21 allegations in their pleadings. 22 But with regard to alterego, 23 Your Honor and this Court looks at, first 24 element, you look at the common ownership. 25 You look at financial dependence. You look
Page 97 1 broad statement or allegation -- I think 2 it's in Paragraph 121 or 122 -- that other 3 entities, the non-U.S. entities of Anglo 4 American and De Beers, have a presence in 5 South Carolina through First Mode and then 6 these other U.S. entities with no 7 explanation as to how they have a presence 8 in South Carolina or any other state. 9 So those are sort of the -- what I 10 believe the bare conclusory allegations 11 that we don't believe, as I'll discuss, are 12 sufficient to make out a prima facie case 13 of personal jurisdiction against any of my 14 clients. 15 So -- but the next process, the 16 process we have to go through in our 17 analysis, is are there facts sufficiently 18 pled to make out each of the piercing 19 theories. 20 The three, as I've stated are 21 alterego -- that's sort of the primary one 22 they start out with. It's in their 23 complaint. They actually outline what the 24 elements are. But then they fail to allege 25 any facts that support it as to any of my	Page 99 1 at the selection of the personnel and the 2 failure to observe corporate formalities. 3 And then, fourth, the degree of control 4 over marketing and operational policies. 5 The case laws says, essentially, 6 they've got to prove every -- not prove, 7 but they've got to make a prima facie case 8 of all four of those elements in order for 9 alterego to be the basis for personal 10 jurisdiction. 11 In essence, if you show all of those 12 four elements, you basically find that in 13 this -- in the case of a subsidiary, that 14 subsidiary is functioning basically as, I 15 think, a court -- the cases say "agent or 16 mere department of the parent." 17 So as to First Mode, there's not a 18 specific pled fact that stands for the 19 principal or makes a prima facie showing 20 that somehow First -- a principal of First 21 Mode owned or controlled Cape. There's not 22 an allegation in that pleading that does 23 that. 24 There's not one that indicates Cape 25 was or could have been financially

Page 100 1 dependent on First Mode or vice versa, or 2 an indication of where, when, or how First 3 Mode controlled Cape's executive personnel 4 or how First Mode or Cape failed to observe 5 corporate formalities. 6 And then, finally, nowhere is there an 7 indication of where, when, or how First 8 Mode controlled Cape's operating procedures 9 and marketing. 10 And they couldn't. You can't make 11 that allegation because -- or you can't 12 make out those elements because First Mode 13 Holdings is a global carbon reduction 14 company founded in 2019. They couldn't 15 possibly do it. 16 But, regardless, what they -- 17 throughout their complaint, what they -- 18 and in their arguments, they allege these 19 conclusory allegations about various 20 people, vaguely identified entities. 21 And then they use a statement, open 22 paren, collectively referred to as 23 third-party defendants. 24 And then they say they were all 25 connected to or dominated by an amalgamated	Page 102 1 have to give more than one. There's got to 2 be a number of them. 3 And then it's got to be done in ample 4 fashion. And even if you get there, it's 5 got -- you've got to go show the elements 6 of fundamental unfairness if the corporate 7 structure is not disregarded. 8 And how do they demonstrate that? 9 Under the Sturkie case, they've got to show 10 this client, First Mode, was not aware of 11 the plaintiff's claim against the 12 corporation -- excuse me -- was aware and 13 thereafter acted in a self-serving manner 14 with regard to the property of the 15 corporation and disregarded the plaintiff's 16 claims. 17 As to that theory of piercing, it's 18 devoid of any specific allegations and 19 cannot be the basis for prima facie showing 20 of piercing. 21 Finally, Your Honor, the last theory 22 is the single-enterprise, or they've 23 referred to it as the amalgamation theory, 24 a relatively new theory analyzed under -- I 25 think it's called the Pertuis case by our
Page 101 1 mining empire and mining industry in South 2 Africa from the 1880s to the 1970s. 3 I submit as to alterego, looking at 4 the well-pled -- the pleading, there are no 5 specifically detailed nonconclusory facts 6 that make out that theory as to First Mode. 7 I feel like I'm getting a little 8 laborious. But the traditional piercing 9 elements have to be pled and the prima 10 facie facts shown in nonconclusory fashion. 11 They've got to plead in a more than 12 conclusory fashion how Cape is grossly 13 undercapitalized because of something First 14 Mode did. 15 How did Cape be caused not to follow 16 formalities because of something First Mode 17 did? How did it fail to pay dividends 18 because of something my client did, or 19 become insolvent or have to siphon funds or 20 cause their officers not to be functioning 21 or have no records or become a facade of 22 First Mode? They don't. 23 You don't have to establish all of 24 them through your well-pled and specific 25 pleadings, but you have to give more -- you	Page 103 1 Supreme Court. 2 And at the outset, what I'll note is, 3 at least the cases I've seen or the cases 4 that they cite to were not used or that the 5 single-enterprise theory was not used to 6 confer personal jurisdiction. 7 That case just wasn't there. Maybe in 8 the future, somehow, it can be used to 9 confer personal jurisdiction. 10 But it's not surprising that the cases 11 don't, because you'll -- as -- Your Honor, 12 I don't have to walk you through it. The 13 elements -- it requires a review of the -- 14 of whether or not the elements are 15 satisfied on an entity-by-entity basis. 16 And as -- and because you have to look 17 at personal jurisdiction on an 18 entity-by-entity basis, it can be very 19 difficult to use that. 20 But be that as it may, we've talked 21 about that they argued it in their 22 opposition. Didn't really mention it in 23 their complaint. And the facts, I don't 24 believe, are specifically pled to make it 25 out.

Page 104 1 But what is -- what is that theory? 2 We know that it's not simply that you 3 create a company in order to shield 4 shareholders from liability because there's 5 nothing wrong with that. Our Supreme Court 6 says there's nothing nefarious about doing 7 that. That's exactly what corporations do. 8 It has to be more, also, than there 9 is -- the companies are operationally 10 intertwined. That's not enough to -- for 11 this Court to say all these different 12 entities are single-enterprise entities. 13 What you have to have and then have to 14 share through sufficient nonconclusory 15 facts and make a prima facie showing, that 16 the entities were combined for bad faith, 17 for a bad faith reason, for abuse, fraud, 18 wrongdoing, or injustice resulting from the 19 blurring of those lines. 20 And the analysis as to -- excuse me -- 21 First Mode is there's no allegation that 22 First Mode for some reason combined with 23 Cape (a) because it didn't exist until 24 2019; (b) no allegation that it committed 25 fraud or evaded obligations, circumvented	Page 106 1 sales in South Carolina. 2 They're making a claim for unjust 3 enrichment accounting, et cetera, and that 4 conduct happened in South Africa or England 5 or, you know, some other countries, not -- 6 not South Carolina. 7 But at the end of the day, as to First 8 Mode, they simply don't make out the power 9 prong nor the fairness prong, Your Honor, 10 for hauling that entity into -- into court. 11 And I don't want to go through all 12 those elements. But for each one of my 13 clients, I can, if we feel it need be. 14 But what I'd like to point out is, for 15 example, let's get one that is -- De Beers 16 plc, for example, a foreign entity. You've 17 got the same issues and the same problem. 18 De Beers, all of the same requirements of 19 you can't -- you get even more of the 20 conclusory allegations. You've got to 21 specifically indicate what all of these 22 folks did that gives you a right to pierce 23 these corporate veils and make them 24 responsible for something they weren't 25 involved in, all still applies.
Page 105 1 statutes, undertook to monopolize some area 2 of production, minimized -- excuse me -- 3 conducted criminal conduct, or tried to 4 avoid all that conduct by way of the use of 5 Cape as a front. 6 So we believe a detailed analysis of 7 the pleadings, although they say a lot of 8 things about people that existed in 19 -- 9 in 1880 and board members of this entity or 10 that, it's all very vague. 11 It's covered by references as 12 collectively referred to as third-party 13 defendants or some other single-named 14 entity. But they don't make out the 15 specific -- the specific allegations that's 16 required to make out a prima facie case. 17 And this might be a little bit -- I 18 was thinking about this, the end of 19 these -- this argument where I don't 20 believe they've shown these prima facie 21 case of piercing. 22 But then even if they did make it out, 23 the causes of action, they really don't 24 arise -- at least against my clients, they 25 don't really arise out of Cape's asbestos	Page 107 1 And the same thing with -- with 2 general juris -- general jurisdiction -- 3 personal jurisdiction that is general. 4 Meaning, you're at home in South Carolina. 5 They're a Jersey corporation. Not 6 New Jersey. Jersey over in England. And 7 they also are a principal place of business 8 in Bailiwick Jersey. We have affidavits 9 for all of these entities. 10 In Metsos' -- Mr. Metsos' affidavit, 11 he says that -- and with regard to can they 12 somehow be hailed into court because their 13 specific jurisdiction is South Carolina 14 because some act injured Mr. Tibbs. 15 They can't. They didn't do anything 16 in South Carolina per the unchallenged 17 affidavit of Mr. Metsos. They had nothing 18 to do with anything in South Carolina. 19 They didn't have -- the affidavit 20 indicates they didn't have any -- they've 21 never had shares in Cape entities or vice 22 versa. 23 And there's this indication that -- I 24 presume that there's some -- it's not clear 25 to me. But there might be some argument

Page 108 1 they're trying to make that De Beers plc is 2 dominating and controlling these U.S. 3 entities. 4 The affidavit indicates that there's 5 no shareholder -- there's no shared 6 ownership as between De Beers plc and these 7 ten U.S. entities that, for some reason, 8 the receiver believes that helps them in 9 getting a presence in the U.S., and then 10 having us have a presence in South Carolina 11 when none of those entities have a presence 12 in South Carolina and De Beers plc doesn't 13 own shares in any of those entities. 14 So, similarly, unconstitutional to 15 haul these folks into court here. 16 We are here for -- the reason we have 17 so many of these defendants here is because 18 we were sued and we're here to defend 19 ourselves. 20 It's not some magical thing that 21 somehow South Carolina has brought all 22 these folks together. It's that somehow 23 these folks had an idea that we should be 24 here. 25 I don't know anybody else ever thought	Page 110 1 Your Honor. 2 The arguments are the same. I've got 3 an outline that I did for every single one 4 of them just so I made sure I hit all the 5 different facts, but it's just the same 6 argument over and over and over again. 7 These guys simply don't make out the 8 allegations that are not conclusory or 9 overbroad or says to Judge Toal, Hey, let's 10 make these farfetched assumptions that 11 these fellows are responsible for the acts 12 of someone, ultimately, Cape, without doing 13 the -- you know, making out the allegations 14 in the complaint that shows you how that's 15 so. 16 If you go down the spreadsheet, 17 Your Honor, just for the record, you know, 18 we've got, you know, Element Six 19 Technologies, just by review. They 20 designed, developed, and produced diamonds. 21 They were created in 2018. 22 Lightbox Jewelry. They manufacture, 23 sell laboratory-grown diamonds and jewelry. 24 2017, Element Six Technologies. They 25 make diamond supermaterials. Forevermark,
Page 109 1 that that was a -- the thing that should be 2 done. 3 But we do have a right to come in and 4 say, "Let's follow the law. Let's apply 5 the law to the pleadings the way they 6 should be pled. And if you do that, we 7 think we don't have to go through ten 8 months of depositions and all that. We 9 think you haven't pled this stuff right. 10 We shouldn't have to go through all that." 11 And that's a legitimate argument, that 12 you shouldn't have to jump through these 13 hoops and obstacles when there's no 14 necessity to it, when it's just pleadings 15 that said something like "we're 16 successor-in-interest" with no valid 17 indication of how some entity is a 18 successor to the other or why -- why does 19 "De Beers" have to mean, in quotes, every 20 single other entity that you happen to find 21 and put on a pleading without the more 22 specific allegations as to how that 23 actually can be, Your Honor. 24 De Beers plc is a 2000 entity. And 25 that's right there on your outline,	Page 111 1 they make diamond jewelry. There's a 2 fertilizer company. 3 The entities that are in various 4 markets, and many of them tie back to the 5 jewelry market, but not asbestos. And the 6 vast majority of them are created after -- 7 we've got 2019 -- I'm sorry. 1998. Let me 8 get one other page. 9 In your -- on your spreadsheet -- I 10 think I kept for myself one with two 11 Page 1s. 12 But if you look at the spreadsheet on 13 the -- on the second page, you'll see in 14 gray where there's allegations of things 15 like, you know, when -- I think Charter no 16 longer had any interest in Cape is like 17 1993, and then you've got the date of '78, 18 I think, when NAAC no longer existed. And 19 then in 1982, when Cape's, I guess, stopped 20 selling asbestos. 21 And the idea of that spreadsheet is to 22 show where in relation these entities that 23 I represent were created, what they did, 24 and then compare that to the pleading. 25 And I think you can't but decide that

Page 112 1 they don't make out -- they don't list 2 facts sufficient to confer personal 3 jurisdiction on -- on my folks. 4 THE COURT: Thank you, Mr. Elliott. 5 MR. ELLIOTT: Thank you. 6 THE COURT: All right. Ms. O'Neill. 7 MS. O'NEILL: Thank you, Your Honor. 8 Elizabeth O'Neill on behalf of Mohed 9 Altrad individually and the Altrad 10 Investment Authority. 11 So, Your Honor, when we look at 12 personal jurisdiction, it's important to 13 keep in mind the history of what we're 14 talking about. 15 This is what the record shows: 1893 16 to 1974, there's a company called Cape 17 Asbestos Limited. And in 1974, that 18 company changes its name to Cape Industries 19 Limited. And it's that name till 1981. 20 That's important because, as you've 21 heard all day long and as you've noted in 22 the comments that you've made, the issue 23 here is about companies that are alleged to 24 have mined and sold asbestos fibers, mined 25 and sold it to people who got it in	Page 114 1 jurisdiction. 2 Now, the torts that are supposed to 3 have occurred are in Paragraph 43 of the 4 third-party complaint. 5 The first one is: Failing to file 6 corporate formalities among affiliated 7 entities with the select few entities and 8 individuals dominating the management and 9 operations of Cape and its parent's company 10 Charter Consolidated Limited. 11 Not us. The complaint does not allege 12 that Mr. Altrad or AIA have anything to do 13 with that. 14 43B: Leveraging the common ownership 15 and control of numerous mining and other 16 investment entities to effectively dominate 17 the South African economy and global market 18 for certain forms of asbestos. 19 That's what's supposed to have been 20 happening between 1893 and 1981. 21 Not us. We don't have anything to do 22 and aren't alleged to have anything to do 23 with the South African economy or the 24 mining of asbestos. 25 My client, Mr. Altrad, is a
Page 113 1 products who got it to the state of 2 South Carolina who allegedly hurt South 3 Carolinians. Brown asbestos. Amosite 4 asbestos. That happened during this time 5 period. 6 NAAC -- during this time period, NAAC 7 stopped existing when the company was 8 called Cape Industries Limited. The mining 9 and the sale stopped in 1982. 10 The torts stopped sometime thereafter. 11 The torts allegedly occurred in the state 12 of South Carolina sometime thereafter. 13 And as Your Honor noted, the issue is: 14 Can this Court reach a foreign defendant if 15 they committed torts here? But that's key 16 on personal jurisdiction. 17 The plaintiffs concede, I believe, 18 that there's no general jurisdiction over 19 either Mr. Altrad or Altrad Investment 20 Authority, which I call "AIA" for short. 21 They acknowledge they're not residents 22 of South Carolina and not at home in 23 South Carolina. They acknowledge that in 24 their complaint. 25 So that gets you to specific	Page 115 1 shareholder of a company that owns a 2 company that owns Cape plc, the Jersey 3 entity, which Your Honor has heard about 4 all day long. 5 General allegation of torts Number 3, 6 Paragraph 43C: Creating and operating a 7 Byzantine web of entities with the 8 deliberate purpose of avoiding public 9 scrutiny and escaping the liabilities of 10 the affiliated companies and their 11 shareholders. 12 My client's ownership of Cape plc, the 13 Jersey company, was through a public 14 tender, not a private Byzantine web. And 15 that is acknowledged by the plaintiffs as 16 well. So 43C, not us. 17 43D: Siphoning funds from entities 18 within that web, including Cape's sole 19 American subsidiary -- that's alleged to be 20 NAAC -- to maximize the financial return to 21 the Cape's overseas owners, eliminate 22 liabilities, escape responsibility by 23 neutralizing the risk of asset attachment 24 by tort creditors. 25 NAAC dissolved 1978. My clients have

Page 116 1 no connection to what happened in the '70s 2 or the '80s or the '60s or the '50s or the 3 '90s or even the aughts. Not us. 4 And then: Destroying corporate 5 records and publicly misrepresenting the 6 nature of Cape's business and liability 7 avoidance scheme in the United States, all 8 designed to avoid responsibility to tens of 9 thousands of people injured by Cape 10 Asbestos. 11 My client isn't accused anywhere 12 except for in that general third-party 13 defendant allegation of destroying 14 corporate records. And it didn't have any 15 of these corporate records because it 16 wasn't involved. 17 There's literally no connection 18 between South Carolina and my clients. 19 Mr. Altrad is a private citizen in 20 France. At best, what the complaint 21 alleges is that he's the shareholder of a 22 company that owns another company that in 23 2017 acquired through public tender the 24 shares of Cape plc. 25 That occurred in the U.K., not	Page 118 1 South Carolina. 2 What the complaint alleges about 3 Mr. Altrad is that he's a French Syrian 4 citizen who owns a rugby team. 5 South Carolina doesn't even have a 6 rugby team for Mr. Altrad's team to come 7 here and play. He's never been here. 8 There is nothing in the complaint that 9 says he's a guiding spirit. And there can 10 be nothing because this isn't a small LLC 11 with two members like Charleston Equities. 12 It is an enormous company that he is a 13 shareholder of that owns another company 14 that owns the current version of Cape plc, 15 which doesn't have anything to do with the 16 sale or mining of asbestos and never did. 17 The second case that the plaintiffs 18 rely on is the Hagan case, which Your Honor 19 will remember because we were all here for 20 a long time on the Hagan case, which 21 related to the Covil receivership. 22 And if you will recall, Your Honor, 23 your specific conclusion in that case was 24 that Covil was just a shell. It had gone 25 out of business for a long time and had no
Page 117 1 South Carolina. That link is what, in the 2 briefing but not the third-party complaint, 3 the receiver says, Well, Mr. Altrad 4 controlled everything. He's the guiding 5 spirit. 6 And as we set forth in our brief, they 7 don't have anywhere near what needs to be 8 done for the guiding spirit. 9 First of all, the "guiding spirit" 10 cases they have that they rely on, two 11 unpublished cases, which, as you know, are 12 not required to be considered as precedent, 13 the first one is the Charleston Equities 14 case. 15 In Charleston Equities, you have an 16 LLC formed for the specific purpose of 17 collecting a debt here in South Carolina. 18 And that LLC has two members, and 19 there was evidence that those two members 20 specifically directed that LLC to engage in 21 tortious conduct directed to the state of 22 South Carolina. 23 So small LLC, two people controlling 24 all the decisions, specific evidence of 25 activity directed to the state of	Page 119 1 officers. It had no employees. 2 But it kept appearing and defending 3 lawsuits in the state of South Carolina, so 4 the insurance company must have been 5 calling the shots. That was your 6 conclusion in that case. 7 Well, that is not the case at all with 8 Mr. Altrad or with AIA or any other entity. 9 There's no -- none of these are 10 defunct. None of these don't have 11 employees or officers, and that's not 12 alleged anywhere in the complaint because 13 it's not true. 14 And, more importantly, when we're 15 talking about AIA, which was formed in 16 2011, it can't have any insurance for 17 asbestos liabilities because it was formed 18 in 2011. 19 As Your Honor knows from all of the 20 work that you've done in asbestos, that in 21 about the mid-1980s, insurance stopped 22 being made available for asbestos 23 liabilities. 24 And, in fact, that's one of the things 25 that they complain about with NAAC in the

Page 120 1 third-party complaint, that NAAC 2 specifically didn't get the insurance when 3 it was available. 4 So the company AIA formed in 2011 is 5 not a company -- AIA is a company that has 6 officers and directors. It has employees. 7 It has a board of directors. 8 It's very much different than Covil 9 and the circumstances in which you found 10 that the guiding spirit principle allowed 11 for personal jurisdiction to reach past the 12 corporate entity. 13 So there's no basis for that to be 14 done for Mr. Altrad individually. He has 15 literally no connection at all with the 16 state of South Carolina or the sale of 17 asbestos fibers or the sale of 18 asbestos-containing materials or the 19 creation of NAAC or the liquidation of NAAC 20 or the decision to buy insurance or not 21 insurance, or anything else that happened 22 in the 1970s or '80s. 23 With respect to AIA, the third-party 24 complaint basically has two allegations: 25 It's a French company, which it is, and one	Page 122 1 2017. 2 And then once in a table, where the 3 receiver identifies all the entities it 4 thinks are part of the Altrad third-party 5 defendants. 6 That's it. That's it. Not a single 7 thing about lack of corporate formalities 8 directed to AIA. Not a single thing about 9 no employees or no directors or any of 10 that. Because they can't allege that 11 because it's not true. 12 There's nothing at all in the 13 third-party complaint to make out a prima 14 facie case of veil-piercing, and so nothing 15 for this Court to find personal 16 jurisdiction on. 17 That -- that acquisition that it does 18 talk about, that's that public tender for 19 purchase of shares that I was talking 20 about. 21 That didn't happen in South Carolina. 22 That happened in the United Kingdom. It 23 didn't involve anybody in South Carolina. 24 It didn't involve any property in 25 South Carolina.
Page 121 1 of its subsidiaries acquired the current 2 version of Cape plc in 2017. 3 But what that separate entity did is 4 not -- is not relevant to personal 5 jurisdiction over AIA. 6 The Court cannot -- as Mr. Elliott 7 explained, you can't presume veil-piercing, 8 that there is nothing at all in the 9 complaint that suggests veil-piercing is 10 appropriate for AIA. 11 The veil-piercing allegations, and 12 there are lots of them, they are all about 13 other companies. 14 As we set forth in our initial brief, 15 Your Honor, there are four mentions about 16 AIA in the third-party complaint: 17 One's in the opening paragraph that 18 lists third-party defendants, so it's just 19 a name. 20 The second one, in Paragraph 29, where 21 it acknowledges AIA is not a South Carolina 22 entity and not at home here. 23 One in Paragraph 116, where it alleges 24 a separate subsidiary of AIA acquired and 25 has since controlled Cape since October of	Page 123 1 So there's nothing for this Court to 2 use as a hook in this third-party complaint 3 on this French company or this French 4 citizen. 5 There are conclusory statements in the 6 briefs and there are conclusory statements, 7 as Mr. Elliott suggested, that just repeat 8 the long-arm statute and then say about the 9 Altrad defendants. 10 But those conclusory statements don't 11 get you there. A conclusory statement that 12 Mr. Altrad somehow benefited by what 13 happened 40 years ago in the company that 14 he paid for, there really can be no 15 legitimate argument that AIA's subsidiary 16 that purchased the shares of Cape benefited 17 from some liability avoidance scheme which 18 increased profits 50 years ago. 19 My Ford stock used to be worth \$16. 20 Today, it's worth, I think, 2.80. 21 What happened 40 years ago and the 22 value of the company which may have been 23 enriched 40 years ago is not a basis for 24 jurisdiction over a current owner unless 25 they can show, and they cannot, that the

Page 124 1 current owner, or here one step beyond the 2 current owner, AIA, and then one step 3 beyond that, Mr. Altrad, each somehow 4 benefited. The bare statement that they 5 did is not enough. 6 And the suggestion in the omnibus 7 opposition is, well, if we get discovery, 8 we'll find more. 9 That, as the Court knows, is not how a 10 personal jurisdiction works. The plaintiff 11 either has to be able to make out a prima 12 facie case up front or there's no 13 jurisdiction. 14 There's no "go fish," which is 15 basically what the receiver appears to be 16 asking for in his -- in his opposition 17 through his repeated comments about, well, 18 discovery might get more. 19 And the law in South Carolina -- we 20 put this in our reply brief. The law in 21 South Carolina says that when you have only 22 conclusory statements to support personal 23 jurisdiction, it's not appropriate to allow 24 discovery because that is just a fishing 25 expedition.	Page 126 1 And it's particularly true for 2 Mr. Tibbs because Mr. Tibbs' admission is 3 that his exposure stopped in the 1980s. 4 That's Mr. Tibbs's admission. That's 5 not an allegation. It's an admission. So 6 that's 35 years before my client had 7 anything at all to do with it. 8 So there's literally no way either of 9 my two clients can have any connection. 10 Even if you assume everything that the 11 receiver alleges about the nefarious plot 12 and NAAC and hiding assets and 13 undercapitalizing and deliberately exiting, 14 even if all of that were true, that all 15 happened decades and decades and decades 16 before my client had any relationship to 17 Cape plc, which was done through an 18 arm's-length commercial transaction. 19 So there's just no basis for 20 this Court to -- to exercise personal 21 jurisdiction over these two individuals. 22 So we would respectfully request that 23 our motion for lack of personal 24 jurisdiction be granted and Mohed Altrad 25 and Altrad Investment Authority be
Page 125 1 We've gone through here and we've gone 2 through in our briefs and, for the same 3 legal principles that Mr. Elliott espoused, 4 there is nothing here to meet any basis for 5 asserting personal jurisdiction over a 6 private French citizen who happens to be a 7 shareholder of a company that happens to 8 own a company that happens to own the 9 current version of Cape plc, but not -- 10 keep in mind -- not the current version of 11 what started as Cape Asbestos Limited. 12 And, number two, there's no basis for 13 asserting personal jurisdiction over a 14 French company that owns a company that 15 owns Cape plc currently, the Jersey 16 company. 17 There's literally no connection in the 18 complaint or in any of the receiver's 19 submissions between those French citizens 20 and the alleged tortious conduct which 21 supposedly or allegedly resulted in the 22 sale of asbestos fibers which is alleged to 23 have gotten into products which is then 24 alleged to have gotten in the state of 25 South Carolina.	Page 127 1 dismissed from this case. 2 THE COURT: Mr. Pugh. 3 This thing has slowed down to a crawl 4 is all I can tell you people. We've got 5 this much and then we've got two more 6 motions. 7 So I make that observation, Mr. Pugh. 8 You may proceed. 9 MR. PUGH: And I will interpret that 10 to what I know it to mean, and I will speed 11 it up, Your Honor. 12 Steve Pugh on behalf of the 13 Third-Party Defendants ArranCo US, Hawk 14 Bidco, and Sparrows Offshore, LLC. 15 Your Honor is well aware we filed 16 three separate motions to dismiss for lack 17 of personal jurisdiction for each of those 18 entities. We supported it with affidavits 19 of a director of those entities named 20 Adam Wood, and we would rely on all of 21 those. 22 I'm not going to replot the law 23 grounds that you've heard with Mr. Elliott 24 and Ms. O'Neill go through, Your Honor. 25 You're well aware of that. You don't need

Page 128 1 to hear me say it for the third time. 2 I would point out to the Court that 3 the Sparrows defendants that I represent 4 were acquired by an Altrad entity on 5 July 11, 2022. As you heard Ms. O'Neill 6 state, in October of 2017, an Altrad entity 7 completed the acquisition of a Cape plc 8 entity. 9 At best, there is a horizontal 10 relationship between my clients, the 11 Sparrows defendants, and Cape plc that's 12 akin to cousins who were adopted years 13 later. That's what we're talking about. 14 The complaint is very, very light on 15 the details or allegations as to my newly 16 acquired clients. And perhaps that is 17 borne out by the fact that those clients 18 were formed recently. Sparrows Offshore, 19 LLC, formed in 2003. ArranCo formed in 20 2008. Hawk Bidco in 2012. 21 As Your Honor heard throughout the 22 day, one of the things that's heavily 23 relied upon in the third-party complaint is 24 the conduct or alleged avoidance scheme 25 that was put into place by entities,	Page 130 1 to do with mining, milling, distribution of 2 any asbestos-containing products. 3 None of the Sparrows defendants have 4 any material or direct connection or 5 contacts to South Carolina. We don't have 6 any direct or indirect ownership of 7 Cape plc or any of its current or 8 historical subsidiaries or predecessors, 9 including NAAC. We couldn't. We didn't 10 even exist until decades later. 11 None of the Sparrows defendants have 12 ever been a parent or subsidiary to 13 Cape plc or any of its current or 14 historical subsidiaries or predecessors, 15 including NAAC. Again, decades and decades 16 later. 17 And certainly, none of the Sparrows' 18 horizontal cousins adopted in 2022 -- 19 there's no evidence that they could have 20 possibly or that they do maintain any 21 actual influence, whether it be indirect or 22 otherwise, and certainly not to the level 23 of complete control or dominion over 24 Cape plc or any of its current or 25 historical subsidiaries or predecessors.
Page 129 1 including NAAC, which was incorporated or 2 established in 1953 and dissolved in 1978. 3 25 years before Sparrows Offshore even 4 existed. And 44 years before it was 5 acquired in '22 by an Altrad entity. 6 We've outlined in the motions and the 7 accompanying affidavits all of the things 8 of which there's no evidence of. None of 9 my clients have ever been registered or had 10 their principal place of business in 11 South Carolina. None of my clients have a 12 business operation or ever had a business 13 operation in South Carolina. 14 In fact, the complaint itself, the one 15 place it references my client -- and there 16 are only four references to my clients 17 anywhere in the complaint, the caption, 18 some preliminary paragraphs. 19 And Paragraph 117 has a note that 20 says: The Sparrows defendants were 21 acquired by the Altrad entity as an 22 engineering and maintenance specialist. 23 The Sparrows Offshore, LLC, is a 24 company that manufactures, sells, rents and 25 maintains cranes. We don't have anything	Page 131 1 Earlier this morning, we heard that 2 the third-party complaint was not a guess. 3 We have tangible documents. There are 4 books that have been written about these 5 people and what they did and what they 6 didn't do. Yet, there are no specifics and 7 no allegations that would lead to personal 8 jurisdiction being exercised over my 9 clients because they can't. My clients 10 were formed -- the earliest one formed in 11 2003, and they weren't even invited to this 12 event until last year. 13 There is simply no basis for 14 this Court to exercise jurisdiction over my 15 clients, whether it be under some alterego 16 theory, a theory of some amalgamation or 17 avoidance scheme or whatever -- 18 THE COURT: Okay. I think I get what 19 you're saying, Mr. Pugh. 20 MR. PUGH: I'm wrapping up, I promise 21 you. Your Honor -- I am wrapping up. 22 With that, we would request that you 23 grant our motion to dismiss for lack of 24 personal jurisdiction. I don't know if you 25 have any questions of me, but if you do,

Page 132 1 I'll answer them. 2 THE COURT: Thank you, sir. 3 MR. PUGH: Yes, ma'am. 4 THE COURT: Mr. Rawl. 5 MR. RAWL: Thank you, Justice Toal. 6 Again, for the record, I represent 7 Charter Consolidated, Central Mining, and 8 ESAB. And I will be brief. I will not 9 rehash the law that has been put forth 10 earlier by people smarter than me. 11 But I would like to start just with -- 12 with regard to our motion for personal 13 jurisdiction. 14 A distinction as to who is the 15 third-party plaintiff. We know that it is 16 the receiver for an entity called plc. We 17 also know that the present entity that 18 started off that with Ms. O'Neill's chart 19 here, which was Cape Asbestos Limited from 20 1893 to 1974 and Cape Industries LTD from 21 1974 to 1981, we know who the entity is in 22 that lineage now. We all know in this 23 room. 24 And the reason is, is -- I know that 25 is because in the third-party complaint,	Page 134 1 entity that is in this lineage on the board 2 that was originally Cape Asbestos LTD, you 3 know, changed its name to the Cape 4 Intermediate Holdings plc, another entity 5 was -- picked up the name -- again, another 6 U.K. entity -- Cape plc. 7 The -- kind of the elephant in the 8 room here is we all now know that they're 9 two separate entities. 10 In the Park case, Mr. Park sued both 11 Cape plc and Cape Intermediate Holdings 12 LTD. He knew they were two separate 13 entities. 14 In -- in the Tibbs case, Mr. Tibbs 15 sued -- the same lawyers as Park -- sued 16 Cape plc only and never sued Cape 17 Intermediate Holdings LTD. Nowhere does 18 the receiver state, I am acting on behalf 19 of Cape Intermediate Holdings LTD, the 20 present entity that started as Cape 21 Asbestos LTD in 1893. We all know that. 22 So the problem is we now have this -- 23 your order, Your Honor, that -- appoints 24 the receiver only as Cape plc. He -- the 25 order doesn't give him the authority to
Page 133 1 the receiver sets forth exactly the lineage 2 of Cape. And that is in Paragraph 113 of 3 the third-party complaint. And what it 4 says is: Changes to Cape. Since the 5 1970s, Cape Asbestos Company LTD, the one 6 that Ms. O'Neill put on the board, has 7 undergone several changes to its 8 organization, including: One, changing its 9 name to Cape Industries LTD in 1974, is 10 exactly what it says there; reregistering 11 as a public company and changing its name 12 to Cape Industries plc in 1981; shortening 13 its name to Cape plc in 1989; and then 14 changing its name to Cape Intermediate 15 Holdings plc in 2011; and then -- and 16 reregistering as a private company to 17 become Cape Intermediate Holdings LTD in 18 2013. 19 So at the time the third-party 20 complaint was filed, the receiver already 21 knew who the right entity was. Yet, 22 nowhere in this third-party complaint does 23 the receiver state, I am pursuing the 24 present entity. 25 So the same year that -- that the	Page 135 1 represent the interest of Cape Intermediate 2 Holdings LTD, so he's kind of stuck. 3 So in the present complaint, he never 4 asserts that that's who he's trying to 5 represent, that the -- you know, which is 6 that entity in receivership, but only the 7 Cape plc entity. 8 So if -- if what is in the -- on the 9 face of the third-party complaint is 10 accurate, which Mr. Tibbs sued Cape plc, 11 never Cape International -- Intermediate 12 Holdings LTD, and the receiver brought his 13 action, you know, as third party, which 14 there's Cape International Holdings -- 15 Intermediate Holdings LTD is not a 16 defendant in the case. The only defendant 17 in the case is Cape plc. And so he brings 18 a third-party action on behalf of the 19 entity we know as Cape plc. 20 So if that is the case and there was a 21 snafu somewhere and they -- and even though 22 Mr. Park named both of the entities in 23 the -- his lawsuit and chose the wrong one 24 to request the receivership over, if 25 everything was accurate and it was supposed

Page 136 1 to be the Cape plc, which counsel for the 2 receiver, the first thing he did was stand 3 up and say, this Cape plc entity, which is 4 a U.K. entity that was formed in Jersey, it 5 had nothing to do with asbestos. It's 6 never been to the U.S. You know, it 7 couldn't possibly be -- mean who we are. 8 But they filed a third-party complaint 9 saying that's who they're continuing to 10 represent, Cape plc. 11 And so taking the pleadings on their 12 face as Cape plc, the present entity in the 13 U.K. that was formed in 2011, I agree with 14 Mr. Lay. Mr. Lay says it has nothing to do 15 with asbestos; it has no contacts; it's 16 never done anything in the U.S. 17 If that is the third-party plaintiff 18 that the receiver is acting on behalf of, 19 then all of these -- all of the third 20 parties in this case, that there's no 21 personal jurisdiction. There's no case. 22 This entity wasn't even formed until 2011. 23 It's not the right entity. 24 If the intention is to be for the 25 receiver to be acting on the other entity,	Page 138 1 the case. 2 THE COURT: -- caption of the case. 3 The caption of the case says that. 4 MR. RAWL: That is what is written. 5 THE COURT: It's too late in the day 6 to try to fiddle both ways about that. 7 That's what the complaint says, does it 8 not? 9 MR. RAWL: It is, but that can't be 10 accurate -- 11 THE COURT: Well -- 12 MR. RAWL: -- because one or the 13 other, so... 14 THE COURT: That's a great argument to 15 make, and I understand all the reasons 16 you're making it. But that is not what 17 the -- let's at least be accurate about 18 how the thing is styled because I'm 19 looking right at it. And it's styled 20 Cape plc as a -- individually and as 21 successor-in-interest to Cape Asbestos 22 Company Limited, by and through its 23 appointed receiver. 24 MR. RAWL: That is how it is styled. 25 There is no such thing.
Page 137 1 the one -- which, again, in his own 2 pleading, he explains they know exactly who 3 it is -- then something has to be cleaned 4 up because it's not clear in the pleadings, 5 and that entity has not been served. They 6 don't know what's going on. 7 Now, so my first argument is: If it's 8 this entity that everybody agrees has 9 nothing to do with asbestos and that is the 10 plaintiff here, then there is no claim, and 11 everything that's alleged in the 12 third-party complaint, there's no support 13 for it and the motion -- 14 THE COURT: That's a great argument, 15 Mr. Rawl. 16 MR. RAWL: Thank you, ma'am. 17 THE COURT: But what they -- what 18 they -- this suit was brought by Cape plc 19 successor-in-interest to Cape Asbestos 20 Company Limited, right? 21 MR. RAWL: That is what some clever 22 person -- 23 THE COURT: Don't give me some clever 24 person. I'm just looking at the -- 25 MR. RAWL: That is what is written in	Page 139 1 THE COURT: Oh, well, that's a little 2 bit different argument from the one we've 3 been hearing for a long time, and it's 4 4:15. I sure ain't got time to go down 5 another argument about what you're saying. 6 MR. RAWL: I'm saying if -- if 7 somebody is claiming that Cape plc is now 8 the successor-in-interest to this -- an 9 entity that's -- 10 THE COURT: They claim that in the 11 caption of this case. 12 MR. RAWL: Yes, which is why everybody 13 is pointing out -- 14 THE COURT: That's all that's 15 happening in this argument. 16 MR. RAWL: So my only point is, 17 Your Honor, if -- if we take the pleadings 18 at their face, which is Cape plc -- 19 THE COURT: As successor-in-interest 20 of the other thing. That's what it says. 21 MR. RAWL: Yes, which I will posture 22 does not exist. If they are trying to move 23 on the entity that is actually the 24 successor-in-interest, the receiver admits 25 in this pleading it know -- they know who

Page 140 1 it is, which is not -- and that entity is 2 only referenced once in -- 3 THE COURT: I get -- I get your 4 argument. 5 MR. RAWL: So -- 6 THE COURT: It's been said three or 7 four times. 8 MR. RAWL: So let's move forward -- so 9 if -- let's move forward and assume that 10 the receiver is acting on the other -- on 11 behalf of the other entity, the entity that 12 is the successor-in-interest of Cape 13 Asbestos LTD, which is the Cape Limited. 14 So that -- so if -- with that 15 assumption, I'm going to go through quickly 16 the facts of my clients to show how there 17 is no personal jurisdiction. 18 I will start with -- the entity is 19 called ESAB. It is an entity that does 20 welding equipment. It is referenced 21 exactly twice in the -- in the third-party 22 complaint, once where it says it is a 23 Maryland -- Delaware company that is at 24 home in Maryland. 25 It is then referenced a second time	Page 142 1 back with -- with the formation of Charter, 2 Charter was formed in 1965. And what is 3 alleged in the complaint is Charter was 4 formed by the consolidation of three 5 different companies, the merger of three 6 companies, one of which was Central Mining. 7 And so, you know, in 1982 Cape is no 8 longer having anything to do with asbestos. 9 By that time, Charter does actually have an 10 ownership interest in it. 11 By the -- by 1996, Charter sold all 12 the remaining interest in the entity that 13 was originally known as Cape Asbestos LTD. 14 And this is all straight from the 15 third-party complaint. 16 16 years later, in 2012, Charter, 17 which no longer owns Cape Asbestos and, as 18 the complaint alleges, is no longer doing, 19 you know, all the bad stuff with the 20 Oppenheimers, was purchased by Colfax. 21 At some point, Colfax also purchased a 22 company called ESAB, which is a welding 23 company, not related to -- at that time to 24 Charter. 25 And then, you know, in 2022 Colfax
Page 141 1 only in the last paragraph in the complaint 2 where it says the ESAB in 2022 was spun off 3 from Colfax and became the owner of 4 Charter. 5 And it's probably important -- just 6 very quickly, Your Honor, is the important 7 dates in this matter. These dates are 8 important if you continue, like we just 9 did, from my client's standpoint -- you 10 know, we start with -- we get to -- on 11 this, this is 1981. 12 And as Ms. O'Neill explained to you, 13 the third-party complaint specifically 14 states that Cape by 1982 is out of the 15 asbestos industry and it has sold all of 16 its asbestos mining stuff and it doesn't do 17 anything with asbestos anymore. 18 Then in the late '80s, importantly, in 19 the complaint, in the third-party 20 complaint, the receiver explains that 21 Charter is no longer involved with the 22 Oppenheimers and basically stopped doing 23 all the bad stuff it alleged Charter had 24 done. 25 But, you know -- you know, starting	Page 143 1 spins off another entity, ESAB, as a 2 stand-alone publicly traded company, and 3 with that creates as a -- not direct, but a 4 subsidiary of ESAB, the Charter entity. 5 So, initially, with regard to ESAB, it 6 had no -- Charter wasn't a subsidiary of 7 ESAB until 2022, with the spinoff decades 8 after it is alleged to have done something 9 wrong. And there is no allegation that -- 10 again, ESAB is only referenced once in the 11 complaint that says it was spun off from 12 Colfax and now is the owner. There's no 13 indication that there's any control or 14 untoward activity between ESAB and Charter. 15 So there is -- there are actually zero 16 facts to suggest that Charter -- I mean -- 17 excuse me -- ESAB should stay in the 18 matter. 19 With regard to Central Mining, in the 20 beginning of the third-party complaint, 21 plaintiffs walked through how Central 22 Mining was an important entity in the 23 South African mining world. 24 But specifically the last reference to 25 Central Mining in the third-party complaint

Page 144 1 was that in 1965 Central Mining merged with 2 two other entities to form my other client, 3 Charter. And that is the last reference. 4 So based on the allegations in the 5 complaint, the entity that they're 6 attempting to sue ceased -- merged into 7 Charter. 8 So there are no allegations that it 9 did anything. I'm not even sure why 10 they're being named. But that is Central 11 Mining last referenced in 1965 that it 12 merged with something else to become 13 Charter. 14 Now, Charter is all through the 15 third-party complaint, and Charter was 16 formed in 1965. The allegations in the 17 third-party complaint are that it was 18 controlled by the Oppenheims and that it 19 had at one point a majority control over 20 the entity that was originally known as 21 Cape Asbestos LTD. 22 And it -- you know, all the actions 23 that are alleged that it did, you know, 24 stopped when Cape stopped doing asbestos 25 work, which is, according to the	Page 146 1 that it is bringing this third-party 2 complaint on behalf of, you know, all the 3 past, present and future individuals that 4 were injured by the -- any Cape Asbestos 5 LTD activities. 6 And therefore, based on the 7 allegations of the complaint, it is -- the 8 receiver would be in privity with those 9 earlier plaintiffs; and, therefore, that 10 claim would be barred by res judicata. 11 That is the nutshell of our argument, 12 and I will incorporate all the other 13 arguments that were made by the others. 14 THE COURT: Thank you, Mr. Rawl. 15 MR. RAWL: But especially with regard 16 to Central Mining and with regard to ESAB, 17 there's absolutely -- everything that was 18 alleged was either well before Charter or 19 not until 2022 when, you know, all 20 wrongdoing was going on. Thank you, 21 Your Honor. 22 MS. BECKER: Good afternoon, 23 Your Honor. My name is Dana Becker I'm 24 here on behalf of the receiver. 25 I know we've heard a lot today, and
Page 145 1 third-party complaint, in 1982. And then 2 Charter sold its remaining interest in the 3 Cape Asbestos LTD in 1996. 4 That entity, however, you know, with 5 regard to -- there are no -- all the 6 allegations of any wrongdoing that Charter 7 did were all alleged to have been done in, 8 you know, some other location. There's 9 nothing in the complaint, you know. 10 But with regard to, you know, the 11 underlying allegations of -- of piercing 12 the corporate veil and amalgamation, those 13 arguments are all made back in a slew of 14 cases in the '80s when Charter still owned 15 a portion of Cape -- the entity that was 16 Cape Asbestos LTD. 17 And -- in all of those cases, you 18 know, held after -- some of them after 19 trials, that there was not sufficient 20 evidence to show control between Charter 21 and its -- you know, an entity that owned a 22 portion of, which is what was originally 23 Cape Asbestos LTD. 24 And importantly in this case, the 25 third-party complaint specifically states	Page 147 1 you're more than familiar with the parties' 2 briefings. So I'm going to try to keep it 3 brief. 4 But just to take a step back, this 5 case was filed by the receiver to 6 investigate, identify, preserve and marshal 7 the assets of Cape plc and its affiliates, 8 successors-in-interest, and related 9 affiliates that have benefited from Cape's 10 sale of asbestos in the United States and 11 in particular in South Carolina, and to 12 address the devastating harm that was 13 caused by that conduct. 14 The complaint alleges that the 15 third-party defendants purposefully used 16 Cape and, for a period of time, its wholly 17 owned subsidiary the North American 18 Asbestos Corporation as a mechanism to 19 distribute a lucrative but deadly product 20 throughout the United States and 21 South Carolina at a time when the U.S. 22 market for asbestos was in hyperdrive. 23 And this wasn't just a deadly product. 24 As the complaint alleges, it was a deadly 25 product that the third-party defendants

Page 148 1 knew was deadly. 2 The third-party defendants built out a 3 web of affiliated entities and inserted 4 layers of corporate separation where 5 complexity was the point so that they could 6 hide their roles and create the appearance 7 of distance even though they were acting 8 through and controlling Cape and NAAC all 9 along the way. 10 The complaint alleges that these 11 entities directed Cape to siphon funds 12 outside of the United States to -- to these 13 foreign affiliates; that it made sure that 14 NAAC was underinsured, undercapitalized; 15 and ultimately liquidated when the threat 16 of lawsuits became particularly salient; 17 and ultimately refused to respond to claims 18 or participate, really, in any meaningful 19 way in the American tort system, apparently 20 because of the view that they had no moral 21 responsibility and they were simply victims 22 of the product -- the U.S. product 23 liability cult. 24 The third-party complaint is an 25 incredibly comprehensive pleading, and	Page 150 1 heard today and that we've seen in the 2 briefing is that the third-party defendants 3 are seeking to avoid answering the 4 receiver's claims, because according to 5 them, they're strangers to South Carolina 6 or were formed recently and therefore can't 7 be responsible. Respectfully, that misses 8 the point. 9 This scheme that was alleged in the 10 complaint is essentially a shell game of 11 corporate entities where the third-party 12 defendants chose to use Cape and its 13 subsidiary NAAC as their agent to take 14 advantage of and financially benefit from 15 the massive U.S. market for asbestos. 16 THE COURT: Let's stop right there. 17 MS. BECKER: Okay. 18 THE COURT: All right. One of the 19 biggest complaints for -- on behalf of a 20 lot of the third-party defendants is that 21 they all came into existence way after the 22 Cape-NAAC direct relationship, Cape 23 controlling NAAC; NAAC being the small, 24 just a teeny office in the United States; 25 Cape being the big mining and manufacturing
Page 149 1 we've heard that the third-party 2 defendants' counsel have described it as 3 conclusory or farfetched or thin on facts. 4 It is an incredibly comprehensive 5 pleading that chronicles the relationship 6 between and among these third-party 7 defendants, including those that formed and 8 controlled Cape and NAAC in the first 9 instance and the successors-in-interest and 10 the beneficiaries of those entities, 11 including the current owners of Cape, which 12 I'll note for the record that Cape is still 13 in the asbestos game. Now it's in the 14 asbestos removal game. 15 But the third-party defendants contend 16 that the complaint is not sufficiently 17 specific with respect to any given 18 third-party defendant. 19 But it is hard, standing here today, 20 to fathom a more comprehensively pleaded 21 complaint, particularly given that it was 22 prepared without the benefit of discovery. 23 At a minimum, this is a case that cries out 24 for discovery. 25 The core of the arguments that we've	Page 151 1 entity that used this small entity as a 2 distributor and avoided liability by 3 saying, we don't have any kind of direct 4 relationship with them or any direct 5 relationship with where this material is 6 sold. 7 Those two relationships are well 8 explored in terms of alleging that the 9 truth about the matter is it was a single 10 entity enterprise or amalgamated 11 enterprise. 12 But when you get down to the entities 13 that came into existence long after the 14 events that occurred that led to the 15 injuries of these mesothelioma cases that 16 have exposures many years ago that are now 17 manifest, how does the complaint tie these 18 more recent entities into some sort of 19 direct relationship with the old entities? 20 MS. BECKER: Sure. 21 So the -- the entities that have been 22 only more recently created or only more 23 recently in -- 24 THE COURT: Right. 25 MS. BECKER: -- existence are related

Page 152 1 because they are successors-in-interest or 2 beneficiaries of. So, for example, when -- 3 when -- 4 THE COURT: Well -- 5 MS. BECKER: Oh, sure. 6 THE COURT: -- let's take for a minute 7 that that's what you want to say. 8 MS. BECKER: Okay. 9 THE COURT: The contention is made 10 that this complaint doesn't say X -- 11 like ESAB, for example -- is a 12 successor-in-interest to Cape plc and 13 benefited from this successor-in-interest 14 so that it is now responsible for things 15 that occurred before it was founded because 16 it's a successor. 17 And if the tie is not made there -- 18 this is the allegation in this complaint. 19 Some even go further than that to say the 20 tie can never be made because this entity 21 didn't even exist at that time, so how 22 could it be a successor-in-interest? 23 But at least if it's going to be a 24 successor-in-interest in such a way that it 25 assumes responsibilities of the interests	Page 154 1 relationship financially or assetwise 2 between the two entities. This is simply a 3 entity created long thereafter with no 4 agreements alleged that -- or relationships 5 that allege that they assume the 6 responsibilities of the entity they 7 succeeded or even how that succession 8 works. That's what's gotten me troubled 9 about this thing. 10 MS. BECKER: When Altrad Investment 11 Authority purchased -- through Altrad UK, 12 purchased Cape, it got the benefit of years 13 and years and years of asbestos sales -- 14 THE COURT: Well -- 15 MS. BECKER: -- and -- 16 THE COURT: Okay. I understand that 17 they got the benefit of whatever the 18 company is now worth because of the whole 19 history. But that's not -- they allege -- 20 they contend, the biggest arguments, what 21 would tie them together from the standpoint 22 of a law as it relates to an amalgamated 23 enterprise. 24 The mere fact that they got into 25 business with an entity that had a long
Page 153 1 to which it is a successor, that has to 2 specifically be alleged is the contention. 3 What do you say to that? Because it's 4 certainly not done in this complaint. The 5 complaint is much more general than that 6 and simply says what you just said, that 7 they are successors-in-interest, period, 8 end of conversation. 9 MS. BECKER: What the complaint 10 alleges is that there are entities that 11 entered into this picture later in the 12 process and that benefited from the -- 13 benefited from the parties that were 14 involved in -- in the shipment -- 15 THE COURT: Well, I understand that 16 that's the way the link is described. 17 Ms. O'Neill, for example, makes a very 18 good argument. Well, you know, 50 years 19 ago Ford may have done certain things. It 20 may have been worth something. Is its -- 21 is its successor 50 years later going to be 22 held responsible for what happened 50 years 23 ago -- 24 MS. BECKER: Well -- 25 THE COURT: -- when there's no	Page 155 1 history that kind of culminated in what 2 it's worth today is not enough. That's way 3 too vague and general. 4 What's got to be -- it's got to be 5 much more specifically alleged to bring the 6 entity, controlwise or in some other way, 7 into a situation where it becomes the 8 entity before and therefore assumes its 9 obligations. 10 And it's easy to do when you've got an 11 insurance policy that covers a particular 12 period of time. I mean, the insurers are 13 going -- aren't in love with that. 14 But it's much easier when you've got 15 an insurance policy that you can look at 16 that was written at a time when it says it 17 covers something that only now has 18 manifest. You can understand that. You 19 can deal with that. 20 But here you simply got a company that 21 is kind of at the tail end of a group of 22 companies that merged into each other or 23 bought each other or succeeded each other. 24 How does that meet the standards of 25 control, lack of corporate separateness and

Page 156 1 so forth that make them all one in terms of 2 responsibility? 3 MS. BECKER: The South Carolina single 4 business enterprise or amalgamation theory 5 is a mechanism to hold these third-party 6 defendants as one single amalgamated 7 enterprise that exercised control and that 8 should answer for the debts of -- should 9 answer for the debts of Cape when it 10 cannot. 11 THE COURT: I am very well aware of 12 that. I remember like it was yesterday 13 when Kincaid versus Landing was decided 14 right before I went on the South Carolina 15 Supreme Court when I was very much involved 16 in trying these kinds of cases. 17 And then when I got on the Supreme 18 Court, along came Kennedy Lumber Company, 19 or Kennedy versus Columbia Lumber Company, 20 and that was a big case in which 21 construction responsibility for homeowners' 22 defects was being explored. 23 In that case, I referred to the 24 Kincaid amalgamation theory in saying that 25 financiers need to be aware that if they --	Page 158 1 THE COURT: Why didn't y'all allege 2 that in these pleadings if that's the case? 3 MS. BECKER: Well, those are -- those 4 are publicly -- publicly -- public records 5 what we identified and refer to in our 6 briefing -- 7 THE COURT: I -- I have looked at 8 those things until I'm blue in the face. I 9 know exactly what you're saying. 10 But what I don't see is anything in 11 that complaint that links up the various 12 public statements that you're referring to 13 that deal with the set-aside of a lot of 14 money. That would be a very significant 15 thing if it had been alleged in the 16 complaint. 17 MS. BECKER: And, Your Honor, at this 18 stage, these are publicly -- publicly 19 available records that we talked about in 20 our briefing, and that's something that 21 Your Honor can take judicial notice of. 22 That's certainly part of the argument that 23 we presented in our briefing, and so we 24 think that is properly before you, but not 25 only the idea that the -- that the Altrad
Page 157 1 if they, in effect, become the guy that 2 runs everything, they may have amalgamated 3 their responsibility such that they become 4 that previous company. 5 That hasn't been -- gone Tinkers to 6 Evers to Chance in this particular pleading 7 for this particular group of new companies. 8 That's the problem. 9 There's got to be some activity they 10 engaged in or that they -- some way that 11 they assumed the responsibilities of the 12 previous company. 13 MS. BECKER: Well, I'll submit, 14 Your Honor, that beyond -- beyond 15 benefiting from the history of sales, these 16 entities have -- in particular, the Altrad 17 defendants -- are continuing the litigation 18 avoidance scheme, including, in fact, in 19 this very case. 20 The -- we know that certain of the 21 Altrad entities, including one of the 22 nonresponding entities, has set aside 23 millions of pounds to address asbestos 24 liabilities that it understood it took on 25 when it bought Cape. Those -- that --	Page 159 1 Group publicly touted this purchase as 2 being an exceptional or extraordinary 3 addition for its portfolio a way for it to 4 expand its footprint. 5 And then it also got just not only the 6 benefit of this history of sales, but also 7 saying we're not going to answer for the 8 liability that's associated with these 9 historical sales. 10 And, respectfully, I think that is 11 before you in our briefing and is publicly 12 available and subject -- 13 THE COURT: Let's get to Altrad, for 14 example. All right. What do you do with 15 something like some of these other 16 companies that have no specific 17 relationship at all to the kind of business 18 the asbestos company did? 19 If you say Altrad somehow or another 20 can be tied because they assumed 21 responsibilities for Cape and, in fact, 22 escrowed money or put aside some assets or 23 identified some assets in connection with 24 what responsibility they might have, that's 25 one thing. It sure isn't alleged like that

Page 160 1 in the complaint. That would be one thing. 2 But what about these other companies 3 that -- for which there's no even 4 suggestion of allocation that that kind of 5 relationship exists? They're not even in 6 the same business or pretend to say that 7 that's a business that benefits their 8 organization. 9 MS. BECKER: Well, so we have -- we 10 have alleged in the complaint the 11 defendants that are responsible because 12 they had a historical role in Cape in its 13 litigation avoidance scheme for asbestos 14 liability and then a current role in the 15 Cape avoidance -- the asbestos avoidance 16 scheme. 17 But with respect to, for example, some 18 of the U.S. subsidiaries, how might they be 19 liable? The complaint alleges that each of 20 the defendant groups have a long history of 21 abusing these notions of corporate 22 separation in operating as a single 23 business enterprise. 24 So, for example, the complaint alleges 25 that De Beers, Anglo, Charter effectively	Page 162 1 that the defendants will continue engaging 2 in the corporate maneuvers that are alleged 3 in the complaint, including the example of 4 the Sparrows entity in Scotland going into 5 liquidation. 6 And the U.S.-based entities' 7 defendants are also particularly relevant 8 to the constructive trust claim, which is a 9 proper and appropriate remedy -- 10 THE COURT: No question constructive 11 trust is something that can be used. I'm 12 very familiar with that area, of course. 13 I've written on it. 14 What we've got is a pleading situation 15 in front of me right now. That's what's 16 got me concerned. 17 MS. BECKER: As Your Honor has already 18 seen from our briefing, there are 19 additional -- there's additional 20 information we've discovered based on the 21 factual record. And to the extent -- we 22 can amend our complaint to include some of 23 those facts in the -- in the -- in an 24 amended version of the complaint. And I 25 propose that then in parallel we proceed to
Page 161 1 operated as the same company. They were 2 alterego of and dominated Cape. 3 And so discovery may inform precisely 4 how the parent -- parent entities interact 5 with and dominate those U.S. subsidiaries 6 but -- for the purpose of maximizing their 7 profits within the United States. 8 But we also know that given the 9 egregious history of the liability 10 avoidance, it's appropriate to keep these 11 entities in as defendants in this 12 litigation to ensure that at the end of 13 this action there -- there's a viable means 14 of recovering on a judgment. 15 Without keeping them in, there may be 16 a risk of foreign defendants which are 17 liable simply liquidating their U.S. 18 interest to escape liability. And we've 19 actually even seen that since this 20 third-party complaint was filed. 21 One of the entities, one of the 22 Sparrows entities liquidated two or three 23 weeks after the third-party complaint was 24 filed. 25 So there is a real and serious concern	Page 163 1 discovery. But we certainly can amend to 2 include some of the facts that we've 3 included in our briefing. 4 THE COURT: Okay. 5 MS. BECKER: The -- what we heard from 6 the third-party defendants was a focus on 7 what the particular contacts with 8 South Carolina are for each of these 9 entities. 10 And to Your Honor's questions, 11 entities that aren't based in 12 South Carolina can't avoid answering to 13 those hurt in South Carolina when they 14 dominated and controlled Cape in its 15 strategic targeting of the U.S. market. 16 And later-created entities also 17 can't avoid answering to the -- to those 18 hurt by Cape Asbestos if they're the 19 successors-in-interest to the entities that 20 controlled and dominated Cape and 21 participated in -- 22 THE COURT: No question but what -- 23 that statement, it's a true statement. 24 It's what the pleadings say about how 25 the successor-in-interest became -- how

Page 164 1 that came into being and how that 2 successor-in-interest became responsible. 3 I'm a lot more impressed with hearing 4 about Altrad setting up a fund to protect 5 its liability -- potential liability in 6 these things as something that would point 7 to its status as a successor-in-interest. 8 But we don't have that with -- we've had 9 some very broad discussion about that in a 10 very general way. In a very compelling 11 way. I mean, that -- to tell you, that 12 complaint is a work of art in terms of 13 describing a system of avoiding 14 responsibility. 15 But you've got a whole lot of specific 16 entities, and all of them are saying, hey, 17 it's not me. You weren't specific enough. 18 With some of them, you're pretty 19 specific. But with many of them, they are 20 newly created entities, and some hook has 21 got to be put on connecting them in a 22 pretty specific way to being created with 23 the acceptance of responsibility for all of 24 what went before. That's what's got me 25 concerned.	Page 166 1 the example we talked about Altrad 2 Investment Authority, Mr. Altrad, and so 3 on. 4 THE COURT: Okay. I don't want to cut 5 you off, but I want to get some kind of -- 6 we're at quarter of 5:00 now. 7 MS. BECKER: Okay. I want to just 8 briefly touch on something that -- that 9 came up in our brief that I think is worth 10 reiterating that I haven't -- that hasn't 11 been acknowledged by any of the third-party 12 defendants. 13 But that in a complex case like this, 14 including cases that involve allegations of 15 agency relationships, it may -- it may make 16 sense to delay a decision on personal 17 jurisdiction, which allows there to be a 18 more accurate judgment than one made solely 19 on the basis of affidavits. 20 And we have seen in the case law, 21 including as Your Honor has said, there 22 is -- the -- the inquiry with respect to 23 personal jurisdiction at the -- alterego at 24 the personal jurisdiction stage is a more 25 lenient one. That's -- and that is in
Page 165 1 MS. BECKER: Well -- 2 THE COURT: I don't have that problem 3 in the insurance area. They've got the 4 responsibility on the plan. They wrote the 5 policy. 6 MS. BECKER: And I think, as we 7 discussed, there are points that we can add 8 into an amended complaint that will help to 9 do that. 10 But I'd also note that part of the 11 challenge here is that this scheme that's 12 alleged is -- is really for the purpose of 13 making it difficult to get where we are 14 today in court and for court to exercise 15 jurisdiction over these entities so that 16 they can answer for -- for the wrong that's 17 happened. 18 Now, because of the way this scheme 19 has operated, to make it very difficult to 20 identify exactly who did what and when, 21 there are some limitations that discovery 22 would be helpful. 23 But I do think, as we've discussed, 24 based on the briefing so far, there's more 25 that we could add to tie, for example -- in	Page 167 1 recognition of sometimes there is a -- more 2 discovery to figure out exactly what these 3 relationships are. 4 I think Your Honor is well familiar 5 with the particular allegations that we 6 focused on with respect to why we think 7 that the Court can exercise jurisdiction on 8 an alterego theory or a single business 9 enterprise theory. 10 But to the extent -- and I want to be 11 respectful of keeping the process moving. 12 But to the extent you have any questions 13 about our arguments there -- 14 THE COURT: Your general theory, I 15 don't have any questions about. I'm pretty 16 familiar with that area. It's applying it 17 to this particular constellation of 18 entities that's got me concerned. 19 The concept of how a jurisdiction 20 could be applied in this kind of situation 21 if the proper tie is made, that is not 22 something that worries me. Because in 23 these matters, all these various motions, 24 averments of the complaint are construed in 25 the light most favorable to the nonmoving

Page 168 1 party. I certainly understand those basics 2 about how you look at something like this 3 at this moment in time, and I don't 4 hesitate to rule that way. 5 I am very concerned about what the 6 averments of this specific complaint to tie 7 each one of these entities into, at least 8 by pleading of what we have right now. 9 You can certainly get the benefit of 10 all averments and all this other 11 enormous -- I mean, I've got a lot more 12 than averments. The defendants themselves 13 put a lot of things in play, the enormous 14 submission of exhibits and so forth that 15 I've got. 16 So I've got a lot of material. But 17 the complaint needs to tie that together, 18 or in some way the memorandum of the 19 parties need to tie that together. That's 20 what I'm struggling with. 21 MS. BECKER: And I think we would ask 22 that we have the opportunity to present you 23 with an amended complaint that helps to 24 make some more of those ties, and we also 25 request that during that process discovery	Page 170 1 MS. O'NEILL: So for the record -- 2 THE COURT: I understand that. 3 MS. O'NEILL: -- for the record, we 4 would submit that what is in the briefs is 5 not enough to get personal jurisdiction 6 over the two defendants who have brought 7 the motion. 8 THE COURT: I understand. 9 MS. O'NEILL: Thank you. 10 THE COURT: All right. Wait a minute. 11 What's happening here? 12 MS. O'NEILL: We're trying to shorten 13 it. 14 THE COURT: Well, good, because I'm 15 about to rule, so... 16 If y'all want to have five minutes to 17 discuss matters, that's fine with me. But 18 otherwise, yours truly is going to do what 19 I always do. 20 MS. O'NEILL: No. We're ready. 21 THE COURT: Do y'all want to have five 22 minutes to talk about things? 23 MS. O'NEILL: No. We're good. 24 THE COURT: Mr. Lay. 25 MR. LAY: It might be good to have
Page 169 1 proceed. 2 THE COURT: All right. I understand 3 your argument. 4 MS. O'NEILL: May I briefly, 5 Your Honor, on one point? 6 THE COURT: I'm not going to entertain 7 a whole bunch of arguments. I think I -- 8 the questions that I have objected 9 certainly let you know that I understand 10 the arguments that have been made by the 11 plaintiffs. I'll give you a very short 12 time -- 13 MS. O'NEILL: One point -- I will 14 stand right here. That's how short it is 15 going to be. 16 THE COURT: You're just doing it 17 because I mentioned Altrad. I understand 18 that. 19 MS. O'NEILL: It is. We would just 20 like to point out to the Court that the 21 reference that's in the briefs to the 22 Altrad entity setting aside money to pay 23 claims, that's not AIA. It's a different 24 entity. And so -- 25 THE COURT: You made that --	Page 171 1 five minutes to make sure we'll be nice and 2 get out of here quicker. 3 THE COURT: Very good. 4 MR. LAY: Thank you. 5 THE COURT: All right. Y'all talk for 6 five minutes. All right. I'll come back 7 here about five of 5:00. 8 * * * 9 (Whereupon, there was a recess in the 10 proceedings from 4:45 p.m. to 4:54 p.m.) 11 * * * 12 THE BAILIFF: Remain seated. Come to 13 order, please. 14 THE COURT: Okay. First of all, have 15 y'all got anything to say to me? 16 MR. RAWL: No, ma'am. 17 THE COURT: Okay. 18 MR. LAY: I'm not sure we do. I mean, 19 we're trying to work out an agreement on 20 it. But I think we just need to hear from 21 you on what you're thinking. And then we 22 can do repleading, if necessary, on some of 23 the -- some of the defendants. And there's 24 some that it sounds like are not at issue 25 and can move forward on discovery on

Page 172 1 those -- 2 THE COURT: Okay. Well -- 3 MR. LAY: -- if it's okay with 4 Your Honor. 5 THE COURT: First of all, I do not see 6 where we really explored the motion for 7 protective orders. So I don't invite a 8 whole bunch of argument this late in time 9 in the evening. But, Mr. Lay, tell me 10 about your motions for protective orders. 11 MR. LAY: Well, Your Honor, they -- 12 they moved for protective order to make 13 sure these motions have been heard, 14 essentially. And if they've now been 15 heard, there's some defendants where 16 there's not a pleading issue. Clearly, 17 enough has been pled, and it's time to move 18 forward on that discovery. 19 To the extent that there are 20 defendants that -- where you're concerned 21 there may be additional allegations made in 22 the complaint, and we're able to do that, 23 we can amend the complaint and add those 24 and not move forward on discovery on those 25 defendants that -- where you think there	Page 174 1 the complaint -- third-party complaint, but 2 I think you need to address that. 3 MR. LAY: Yes, Your Honor. 4 THE COURT: So with regard to that 5 order, I would ask that that order be -- 6 that a draft of that order be sent to 7 opposing counsel -- today is the 25th? -- 8 all right -- by -- by November 8, and that 9 a response from defense counsel be sent by 10 the 15th. 11 I don't propose to change my mind 12 about denying the motion to dissolve, 13 but -- and that is -- of course, we're in 14 this new world where people think it's 15 appealable. I don't think that's a 16 appealable. But I certainly think it ought 17 to be developed in such a way that if an 18 appeal is going to be attempted, it's got 19 in there enough to deal with the 20 particulars. 21 Now, let me jump for a moment to the 22 motion for protective order. I am going to 23 stay any discovery until we deal with the 24 motions to dismiss and motions for entry of 25 default. And really, it's a motion to
Page 173 1 should be some additional allegations made. 2 THE COURT: All right. Well, here's 3 what I'm going to do. 4 MR. LAY: You -- yes, ma'am. 5 THE COURT: All right. 6 MR. LAY: I figured you'd tell us. 7 THE COURT: Okay. With regard to the 8 motion to dissolve, I'm not going to 9 dissolve the receivership. I'm sure that 10 comes at no surprise. And I would put with 11 Mr. Lay the responsibility for developing 12 an order that denies the motions to 13 dissolve. 14 And I think I made enough by way of 15 queries and questions for y'all to 16 understand it. My history about this thing 17 is such that at this moment I will not 18 attempt to dissolve this receivership. 19 But there are certainly some questions 20 that need to be responded to in the denial, 21 particularly the alleged defect in pleading 22 and the issue that the Park suit has 23 settled and all that kind of thing. I 24 don't think that makes a difference, but -- 25 particularly in light of the averments of	Page 175 1 dismiss, I think, we need to enter more 2 into and deal with at this moment more than 3 anything else, because that's the one that 4 I'm the most up in the air about. 5 I want to first say that I don't want 6 to go through amending this complaint 7 again, having that being the vehicle for 8 trying to fix this problem. 9 The complaint is a very comprehensive 10 complaint. There are many, many exhibits 11 that have been filed on both sides in 12 connection with the prosecution of the 13 motion to dismiss and the defense against 14 the motion to dismiss. 15 I think there's plenty of information 16 in the material from which determinations 17 can be made as to which of the -- what is 18 it? -- 33 entities meet the requirements 19 of -- I think there's plenty to meet the 20 require -- to address whether or not in 21 each instance the requirements of piercing 22 the corporate veil, alterego, or single 23 entity or amalgamated entity are met. 24 And that is what I want to be done in 25 the proposed order that is made, is that

Page 176 1 with respect to each of these entities, to 2 analyze what there is in the complaint that 3 allows these entities to be thought to be 4 part of an amalgamated entity such that 5 they can be held responsibly for torts that 6 occurred in South Carolina through the sale 7 and distribution of asbestos. 8 I will say with respect to the 9 arguments about service, I frankly think 10 the Hunter case is dispositive on misnomer. 11 So I do not oppose to deal with the case or 12 deal with the issues of the case of any 13 defendant in the case and dismiss them on 14 the basis of service. But that is a long 15 way from saying whether they are 16 legitimately in the case by means of the 17 affirmance of the complaint that tie them 18 into a relationship such that they are part 19 of an amalgamated entity. And that's what 20 I want to see in a writing by the receiver. 21 And as I say, I don't -- with respect 22 to the entry of default, I'm not going to 23 figure out how to solve this problem by 24 entering a default in the Park case. I 25 don't think that's appropriate or necessary	Page 178 1 THE COURT: -- propose that, too. 2 If y'all think there's -- Mr. Carroll, 3 I'm going to wait until you quit consulting 4 with Ms. O'Neill before I go forward, okay? 5 MS. O'NEILL: I'm asking him if he had 6 questions. 7 THE COURT: Well -- 8 MS. O'NEILL: He does not. 9 THE COURT: Good. 10 All right. If parties feel in the 11 interim that I need to do something by way 12 of a protective order, I will consider 13 that. But I say here now that I am -- that 14 I want to pause any further discovery in 15 this matter now. And I can file a short 16 order to that effect. 17 But I say from the bench now as an 18 order of the Court that I am pausing 19 discovery -- further discovery in this 20 matter until we resolve the issue of who 21 ought to be in this matter, if anybody. 22 And that's going to depend on how this 23 order is drawn, all right, denying the 24 motions to dismiss and, of course, what is 25 said in response to that by all of you who
Page 177 1 or something that I will do at this time. 2 Yes, ma'am? 3 MS. JOYNER: Your Honor, the 4 entries -- the motions for entry of default 5 are actually in the Tibbs case. There are 6 seven entities -- 7 THE COURT: You're talking about the 8 seven entities that haven't -- 9 MS. JOYNER: Yes, ma'am. 10 THE COURT: -- responded at all? 11 MS. JOYNER: And I have the proposed 12 orders here. 13 THE COURT: Well, just present those 14 at the time. That -- you know, again, 15 their default may yet be something to look 16 at, but -- all right. If they haven't 17 responded at all, then it does make sense 18 to default them. 19 MS. JOYNER: Yes. And they have not 20 responded at all. In our motion, there are 21 affidavits from me with the -- 22 THE COURT: Well, just -- when you 23 propose the order -- the substantive order, 24 just -- 25 MS. JOYNER: Propose that, too.	Page 179 1 represent -- includes Mr. Pugh, 2 Ms. O'Neill, Mr. Carroll, Mr. Rawl, 3 everybody. 4 Y'all all are going to have a shot at 5 that after -- in the deadlines I've 6 indicated after plaintiff files. And 7 basically, what I try to do is two weeks 8 for each side. 9 This is too important and too complex 10 for me to not let you have a little time to 11 look at it. And if it turns out that these 12 deadlines cannot for some reason be met, 13 then you'll let me know, I'm sure, and 14 we'll see what can be done to address it. 15 But this is, for sure, something that 16 my vetters will review, as they should, 17 with -- there's already a lot of heat and 18 light about receiverships in general. This 19 would be even more of a complex matter that 20 would undoubtedly have to ultimately be 21 resolved in the appellate process. 22 What I don't -- what I'm trying to 23 avoid is this maddening "appeal every 24 nonappealable order" kind of thing that's 25 gotten into some of these more normal

Page 180 1 cases. 2 But this one is a different kettle of 3 fish, for sure, and a much more complex 4 one. And I want to give it my very best 5 attention as a circuit court judge to be 6 sure that all matters are teed up in a 7 reasonable way for what will for sure be a 8 review of these matters. 9 And, again, I've got my questions as 10 to whether those for whom the motion to 11 dismiss is denied. Well, I don't have any 12 question at all. It's nonappealable. It's 13 an interlocutory order, and the rule speaks 14 specifically to it. 15 But I can't help what happens in this 16 world we live in now where everything is 17 appealed. But that is another reason why I 18 want to be very specific on both sides of 19 this issue about what I do. 20 So now that I've said what I'm going 21 to do, questions? First -- well, I'll do 22 this -- I'm kind of going on -- first, I go 23 to Mr. Lay. 24 MR. LAY: I think we are straight, 25 Your Honor. Thank you.	Page 182 1 MS. O'NEILL: -- of whatever. 2 THE COURT: And, plaintiffs, if that 3 doesn't give you enough time, just let me 4 know. 5 MR. LAY: Yes, ma'am. 6 THE COURT: We can adjust this. This 7 is going to be a long plan, so I'm not 8 trying to pressure you unduly. And this is 9 a complicated matter with a whole lot of 10 documents. So if you need more time, go on 11 and speak up now or speak up later. 12 MR. LAY: We're good. I think we're 13 good. November 27th works. 14 THE COURT: No. November 27th is not 15 you. 16 MR. LAY: November 8th works. Excuse 17 me. 18 THE COURT: I think you know -- 19 MR. LAY: November 8th. 20 THE COURT: I gave you November 8th, 21 but if that doesn't work, then speak up 22 now. 23 MR. LAY: We're good. November 8th 24 works. 25 THE COURT: Okay. And then the 27th
Page 181 1 THE COURT: All right. Now, 2 Ms. O'Neill. 3 MS. O'NEILL: I have a couple of 4 questions. I understood the Court to say 5 that the receiver should be drafting a 6 motion to deny, the motion to dissolve, and 7 that we -- that should be given to the 8 defense counsel by the 8th. Then I thought 9 I heard you say the defense should have two 10 weeks, which would be the 22nd. 11 THE COURT: That would be the 22nd. I 12 agree. 13 MS. O'NEILL: Okay. So -- 14 THE COURT: Is that right before 15 Thanksgiving? 16 MS. O'NEILL: Yeah. 17 THE COURT: When is Thanksgiving, the 18 23rd? 19 MR. CARROLL: It's the next day. 20 MS. O'NEILL: It's the next day, yeah. 21 THE COURT: Well, let's give you until 22 the 27th, then. 23 MS. O'NEILL: All right. So the 24 defendants have until the 27th -- 25 THE COURT: Correct.	Page 183 1 for you, Ms. O'Neill. 2 MS. O'NEILL: Yes, I understand that. 3 THE COURT: And you, Mr. Pugh. 4 MR. PUGH: I understand. 5 THE COURT: And you, Mr. Rawl, and 6 whoever else is involved in this matter on 7 the defense side. 8 MS. O'NEILL: All right. Second 9 question. 10 THE COURT: Yes, ma'am. 11 MS. O'NEILL: You also instructed the 12 receiver to draft a proposed order 13 analyzing what's in the third-party 14 complaint that allows each individual 15 defendant to be subject to personal 16 jurisdiction under this amalgamation 17 theory. What are the dates that's due? 18 THE COURT: This all -- now, wait a 19 minute. Hold the phone, Ms. O'Neill. I'm 20 not going to give you five different 21 orders, no. Let me explain -- 22 MS. O'NEILL: It's the same -- same 23 day? 24 THE COURT: Let me explain again what 25 I'm doing here. Number one: Motion to

Page 184 1 dissolve denied. 2 MS. O'NEILL: Correct. 3 THE COURT: Number two: Motion to 4 dismiss, that is the overall motion that 5 involves all these things -- 6 MS. O'NEILL: Yes. 7 THE COURT: -- amalgamation, personal 8 jurisdiction and all those other things, 9 all included in this. 10 MS. O'NEILL: Yes. 11 THE COURT: With regard to -- because 12 those motions to dismiss are made on 13 several bases. One of them is we don't 14 think there's any jurisdiction here. The 15 other is the amalgamations theory is all 16 wrong and we're not amalgamated. 17 MS. O'NEILL: Yes. 18 THE COURT: I want to have the 19 plaintiffs send me an order that they -- 20 that indicates their best shot as why 21 motion to dismiss should be denied on each 22 of those theories. 23 MS. O'NEILL: I understand. 24 THE COURT: And they will do that. 25 And then when they do that, then they	Page 186 1 what I've just done. So if you've got any 2 questions, make it quick. 3 MR. RAWL: Yes, ma'am. I understood 4 that you are giving the plaintiffs leave to 5 amend their complaint. 6 THE COURT: No, sir. Absolutely not. 7 I'm not giving them leave to do any kind of 8 amending of their complaint. That might 9 happen at some later date. 10 I -- how in the world you can think 11 that, I don't know. So maybe just calm 12 down a little since it's 5:00. 13 All right. And, by the way, you were 14 not left out of this discussion, 15 Mr. Elliott. With respect to all 16 of 16 yours, you -- they will be doing the same 17 thing. 18 It's all 33 of these defendants that 19 they are going to deal with. In each case, 20 they're going to tell me what the 21 jurisdictional situation is and how I 22 should rule that, and what the amalgamation 23 situation is and how I should rule that. 24 MS. O'NEILL: And also -- is it 25 also -- just to make sure we're all on the
Page 185 1 will tell me with respect to each defendant 2 how service -- or how personal jurisdiction 3 works and how amalgamation works. 4 Sometimes they're pretty similar, but, you 5 know, it depends. 6 And then that's it. 7 So it's not going to be two different 8 orders. It'll be one order. And then it 9 will go around to each defendant and 10 propose what they would rule if they were 11 ruling on each of them. 12 And then you-all are going to take 13 that, and you're going to go down each one 14 of them and say what you would rule if you 15 were me. 16 MS. O'NEILL: Understand. Understood. 17 I was just trying to make sure I 18 understood the dates, and I think -- 19 plaintiffs' counsel understands. 20 THE COURT: Everybody -- everybody 21 understands what's going on? 22 And, Mr. Rawl, if you are confused at 23 all, then I don't know if I'm going to hear 24 from you because you have the least number 25 of defendants and the most advantage by	Page 187 1 same page, also how we think you should 2 rule on the 12(b)(1), 12(b)(6) -- 3 THE COURT: No. I'm not going to -- 4 Ms. -- Ms. O'Neill, I am asking them -- 5 they can do it how they want to -- 6 MS. O'NEILL: Okay. 7 THE COURT: -- you know. But I -- I'm 8 not going to have them anticipate what 9 you'd like to say. Nobody got up here and 10 argued one darn thing specifically about 11 any of those things. 12 MS. O'NEILL: I understand, 13 Your Honor. That was actually what Mr. Lay 14 and I had talked about, was we were going 15 to submit that to the Court on briefs -- 16 THE COURT: Well -- 17 MS. O'NEILL: -- the 12(b)(1), 18 12(b)(6) -- 19 THE COURT: -- let me -- let me tell 20 you. I've got enough to say grace over 21 with with this. You're now going to do 22 12(b) motions on me? No. I'm not going to 23 accept that right now. 24 We've got a motion to dismiss. I know 25 what that looks like. I know what the

Page 188 1 presumptions are with that. And I know 2 what the exhibits mean in a motion like 3 that. 4 And I know that whatever I rule by way 5 of denying it is not immediately 6 appealable. I'm going to deal with those 7 things first. 8 If y'all come back later on on 9 12(b)(6) or 12(b)(1) or any of those other 10 things, that's going to be a different 11 kettle of fish. But I'm not going to -- we 12 haven't discussed any of that here today. 13 MS. O'NEILL: We've not, Your Honor. 14 It just -- it was on the record for today, 15 and that's why I was just trying to make 16 sure I understood. 17 THE COURT: Well, if it was on the 18 record for today, it wasn't argued 19 before -- 20 MS. O'NEILL: No. It was on the 21 agenda. I'm sorry. It was on the agenda. 22 I apologize. 23 THE COURT: Okay. 24 MS. O'NEILL: We did not argue it. 25 THE COURT: We did not argue it.	Page 190 1 THE COURT: All right. 2 Now, Mr. Elliott. 3 MR. ELLIOTT: Your Honor, I know that 4 you said that if we need more time to let 5 you know with regard to the motion to 6 dismiss that's going to be sent to us. 7 We do have 16 defendants, and so I'm 8 just -- it may mean that we need more time. 9 But it sounds like you said it's okay 10 if we need a little bit more time. I can 11 just email you -- 12 THE COURT: Just let me know. 13 MR. ELLIOTT: Yeah. But we'll work 14 hard to get it done. 15 THE COURT: I mean, they -- they have 16 a problem more than you do. They've got 33 17 they've got to deal with, the plaintiffs 18 do. You've only got 16 you've got to mess 19 with. 20 So I -- I -- 21 MR. ELLIOTT: True. 22 THE COURT: -- I hear your pain, but I 23 don't know how much I feel your pain. 24 MR. LAY: And I've got no sympathy at 25 all.
Page 189 1 MS. O'NEILL: We did not. 2 THE COURT: I'm not -- I'm not ready 3 to do that right now. I'm ready to take 4 the most obvious thing we talked about all 5 day long and deal with it and sort the 6 sheep from the goats, if I can do it on the 7 basis of those. 8 The 12(b)s will be your attempt to get 9 some people to stay in and get them out on 10 some other basis, and that may well be what 11 you'd like to do. 12 I may allow an amended complaint to 13 that and all kinds of other things, but 14 there are different considerations that 15 apply to that. 16 MS. O'NEILL: Understood. 17 THE COURT: This is kind of the 18 baseline entry-level who stays in, who 19 doesn't. 20 MS. O'NEILL: Understood, Your Honor. 21 Thank you. 22 THE COURT: Okay. I -- it's just too 23 complicated for me to do it the other way. 24 MS. O'NEILL: Thank you for the 25 clarification.	Page 191 1 THE COURT: All right. Mr. Pugh, 2 you're the only one who hasn't said a word. 3 MR. PUGH: I think I'm good, 4 Your Honor. 5 THE COURT: Okay. Good. 6 And, Mr. Rawl, do you now understand 7 where we are? 8 MR. RAWL: Somewhat, yes, ma'am. Yes, 9 ma'am. 10 THE COURT: Okay. Okay. I didn't 11 mean to be so frustrated with you. I'm 12 tired. And the Phillies lost. So why I 13 should be sad about that, I don't know 14 since they beat my butt, in retrospect. 15 Okay. All right. Anything else for 16 the good of the cause before I let 17 everybody go? 18 Let me say one thing before I do let 19 you go, and that is this: I've rarely had 20 as many excellent briefs and thoughtful 21 analyses. 22 Even when you put all the rhetoric 23 aside, I've rarely had things that was as 24 well briefed as what I received from y'all 25 on these very complicated matters. So I

1 thank you for that. 2 It made me go down a different road on 3 a lot of cases, some of which Tina Cundari 4 worked with me on. She's probably gone 5 down memory lane as well. 6 But thank you very much, all of you. 7 MR. LAY: Thank you, Your Honor. 8 THE COURT: All right. Court will be 9 adjourned. 10 And I -- hey, just one more little 11 thing I meant to say. Just one more little 12 thing I meant to say. 13 If it turns out that some further 14 conversation, motion hearing or whatnot, 15 has got to be had with all of this, 16 understand that I'm not precluding that. 17 And that particularly speaks to what 18 Ms. O'Neill tried to get into, which was 19 the 12(b)s. Certainly, they're going to 20 have to have -- be some hearings on those 21 no matter what happens with the rest of 22 this. 23 But if on this thing something further 24 needs to be done, I wouldn't love it, but I 25 would entertain it if you let me know.	Page 192
1 Okay? All right. 2 MR. CARROLL: Thank you, Judge. 3 THE COURT: Thank you. 4 - - - 5 (Proceedings concluded at 5:17 p.m.) 6 - - - 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 193

1 CERTIFICATE OF REPORTER

2 I, Cindy A. Hayden, Registered Merit
3 Reporter and Notary Public for the State of South
4 Carolina at Large, do hereby certify:

5 That the foregoing proceedings were taken
6 before me on the date and at the time and location
7 stated on Page 1 of this transcript; that the
8 foregoing proceedings as typed is a true, accurate
9 and complete record of the proceedings to the best
10 of my ability.

11 I further certify that I am neither
12 related to nor counsel for any party to the cause
13 pending or interested in the events thereof.
14 Witness my hand, this 26th of October, 2023.

15 _____
16 Cindy A. Hayden,
17 Registered Merit Reporter
18 Notary Public
19 State of South Carolina at Large
20 My Commission expires:
21 July 27, 2030
22
23
24
25

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,	)	
	)	Civil Action No. 2023-CP-40-01759
Plaintiffs,	)	
	)	In Re:
v.	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
3M COMPANY, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	
*****	)	
	)	
CAPE PLC, individually and as successor in	)	
interest to CAPE ASBESTOS COMPANY	)	<u>MOHED ALTRAD AND ALTRAD</u>
LIMITED, by and through its duly appointed	)	<u>INVESTMENT AUTHORITY SAS'S</u>
Receiver Peter D. Protopapas,	)	<u>OBJECTIONS TO THE CAPE PLC</u>
	)	<u>RECEIVER'S PROPOSED ORDER</u>
Third-Party Plaintiff,	)	<u>REGARDING THE MOTION TO</u>
	)	<u>DISSOLVE THE RECEIVERSHIP</u>
v.	)	<u>AND MOTIONS TO DISMISS FOR</u>
	)	<u>LACK OF PERSONAL</u>
ANGLO AMERICAN PLCS, <i>et al.</i> ,	)	<u>JURISDICTION</u>
	)	
Third-Party Defendants.	)	

A. THIRD-PARTY DEFENDANTS' OBJECTIONS TO PROPOSED ORDER DENYING THEIR MOTION TO DISSOLVE THE RECEIVERSHIP

Third-Party Defendants Altrad Investment Authority S.A.S. (hereinafter "AIA") and Mohed Altrad (hereinafter "Mr. Altrad") respectfully object to the proposed order submitted by the purported Receiver for Cape PLC for myriad reasons:

1. **Wrong Entity.** The proposed order seemingly tries to trick the Court regarding on which entity's behalf the Receiver is appearing. Page 3 states that Ms. Park named "Cape PLC, individually and as successor in interest to Cape Asbestos Company Ltd." as a defendant in the *Park* case. But Ms. Park's allegation was simply incorrect; Cape PLC is not a successor in interest to Cape Asbestos Company Ltd. Cape PLC was formed in 2011 as a Jersey company, and this is

obvious from Jersey's public company database. Despite this undisputed, unambiguous point, the order then attempts to blur the lines that separate these obviously-distinct companies by defining "Cape" as meaning "Cape Intermediate Holdings Limited (f/k/a Cape Intermediate Holdings PLC) (together with all predecessors in interest, 'Cape')." (Proposed Order at 3.) The proposed order then uses its definition of "Cape" to encompass both Cape PLC and Cape Intermediate Holdings Ltd. within the scope of the receivership, which is not what the Court ordered when it appointed a receiver over Cape PLC.

This modification of the receivership appointment order to treat Cape PLC and Cape Intermediate Holdings Limited as the same defendant is contrary to law, and contrary to the *Park* Plaintiffs' own pleading—they named those two entities as separate defendants in separate amendments to the complaint. The Court cannot treat them as one and the same, for all the reasons described below. The Court should not endorse a misleading attempt to modify and redefine what entity is subject to the purported receivership. The fact that the *Park* Plaintiffs apparently did not understand Cape PLC's corporate history—which is available for public viewing through the Jersey public company database—does not give the Court or the Receiver the authority to alter the scope of the receivership (including attempting to altogether change the entity in receivership) through a proposed order in a different case.

What's more, in *Park* itself, the Receiver acknowledged that his appointment is purportedly for Cape PLC and has nothing to do with Cape Intermediate Holdings Limited. He filed a third-party complaint in that case and described the receivership as being on behalf of "Cape, PLC by and through its duly appointed Receiver, Peter D. Protopapas." (Third-Party Complaint at 1 in *Park* (filed Apr. 12, 2023).) There was no mention of Cape Intermediate Holdings Limited in that filing, which was made less than a month after the appointment order was entered, making it obvious that the Receiver's argument in this case that his appointment extends to CIHL is

contrived. He should be judicially estopped from taking these obviously inconsistent positions solely to perpetuate his own interests in being a receiver. *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997) (“Judicial estoppel precludes a party from adopting a position in conflict with one earlier take in the same or related litigation. The purpose or function of the doctrine is to protect the integrity of the judicial process or the integrity of court rather than to protect litigants from allegedly improper or deceitful conduct by their adversaries.”). Notably, a motion to dissolve the receivership was filed in *Park* in September 2023, and it remains pending.

2. **No Service.** The proposed order parlays its misleading definition of “Cape” to cover up other dispositive problems with the receivership. For instance, the proposed order wrongly states: “In December 2021, the *Park* Plaintiffs served the named Cape entities, which (as has been their practice for decades) never answered, moved, or otherwise responded.” (Proposed Order at 4.) This position appears again on Pages 15 through 22. This is not true and finds no evidentiary support in the record of this case, or in the *Park* case. The record is undisputed on the following points:

- Cape PLC is not the same entity as Cape Intermediate Holdings Limited.
- The Second Amended Complaint in *Park*—the actual operative pleading—was never served on either Cape PLC or Cape Intermediate Holdings Limited.
- There is no proof that any complaint was actually included in any mailing made to Cape PLC or to Cape Intermediate Holdings Limited.
- There is no proof that anything was ever sent to Cape PLC. In fact, the Receiver argues that the very entity on whose behalf he purports to act was never involved in the “underlying *Park* and *Tibbs* Lawsuits.”
- The *Park* Plaintiffs represented to the Court in June 2022 that the case was “fully resolved,” nine months before the Court purported to appoint a receiver over Cape PLC.

All of these points were **conceded by the Receiver**, as detailed in the Altrad Defendants’ reply in support of dissolving the receivership, and they are all dispositive against the Receiver.

Now, though, the Receiver has presented the Court with a proposed order that pretends that the *Park* Plaintiffs served “a copy of the complaint and summons addressed to Cape PLC and Cape Intermediate Holdings Ltd.” in *Park*. (Proposed Order at 18.) But there is no evidence of this.

The affidavit of the supposed process server is unambiguous that he mailed only the “First Amended Summons” to the wrong address for Cape PLC, and that he mailed only the “First Amended Summons” to Cape Intermediate Holdings Limited. This is the only evidence in the record. As a matter of law, that does not effectuate service on either entity, as the *Park* Court subsequently approved the *Park* Plaintiffs motion to amend, and the *Park* Plaintiffs filed a further-amended complaint before the deadline to respond to the First Amended Complaint would have expired (assuming *arguendo* that it had been served in the first place). See Rules 4 and 4.1, SCRCPP (requiring both a summons and complaint to be served to effect process); Rule 12(a), SCRCPP (requiring a properly-served defendant to respond to a complaint within 30 days); *Schein v. Lamar*, 284 S.C. 252, 255, 325 S.E.2d 573, 574 (Ct. App. 1985) (“Since the First Amended Complaint has been superseded by the Second Amended Complaint, it is no longer the operative pleading in the case. Thus, any questions as to the sufficiency of the First Amended Complaint are now moot.”) (emphasis added).¹

Without actual proof of legitimate service of an operative pleading, the Court cannot claim to have personal jurisdiction over Cape PLC (the entity over which the Court purportedly

¹ South Carolina law is unambiguous on this point. However, the Receiver has included two out-of-jurisdiction cases in the proposed order that he implies undercuts the controlling South Carolina authority. One is *Thompson v. Victoria Fire & Casualty Co.*, 32 F. Supp. 2d 847, 848–49 (D.S.C. 1999), where a federal court held only that the propriety of removal must be evaluated against the pleadings as they existed at the time of removal—a point that has nothing to do with service of an inoperative pleading. The other is *Doe v. Unocal Corp.*, 27 F. Supp. 2d 1174 (C.D. Cal. 1998), which has been explicitly rejected by other courts in that same circuit. See *United States ex rel. Goulooze v. Levit*, Case No. CV 05-1011-PHX-JAT, 2006 U.S. Dist. LEXIS 77913, at *8 n.4 (D. Ariz. Oct. 24, 2006) (“For a number of reasons, the Court rejects *Doe*.”). The Court should reject the proposed order’s attempt to cite illusory authority that contradicts actual controlling South Carolina law.

appointed a receiver) or Cape Intermediate Holdings Limited (an entity over which the Court never purported to appoint a receiver but which the proposed order pretends it did). *See, e.g., Abdulla v. S. Bank*, 439 S.C. 391, 403-04, 887 S.E.2d 138, 144-45 (Ct. App. 2023) (affirming dismissal of a defendant for lack of personal jurisdiction when a plaintiff failed to present evidence sufficient to prove that exercising personal jurisdiction over the defendant would comport with the Due Process Clause).

An order issued without personal jurisdiction is void. *See Innovative Waste Mgmt. Inc. v. Crest Energy Partners GP, LLC*, 423 S.C. 611, 613, 815 S.E.2d 780, 781 (Ct. App. 2018) (“Void judgment are defined as those from courts that lacked personal or subject matter jurisdiction, or failed to provide due process.”), *aff’d as modified on unrelated point* 425 S.C. 568, 824 S.E.2d 214 (2019). Rather than endorsing the legally and factually indefensible positions presented by the proposed order, the Court should enforce this basic point of law and vacate its appointment order.

3. **Not Two Entities with the Same Name.** Pages 15 through 19 suggest that the *Park* Plaintiffs did not mean exactly what they said when they attempted to sue “Cape PLC individually.” The entire discussion on these pages is constructed around an argument that the *Park* Plaintiffs meant to sue an entity other than the one identified in their (1) pleadings and (2) proposed order to appoint a receiver; the one identified in (3) the order appointing a receiver; and the one the Receiver himself identifies in (4) his third-party complaint in *Park*.

This is not credible. The *Park* Plaintiffs haven’t even appeared in this case to present an argument of any sort. The entire discussion found on these pages is based on nothing more than the Receiver’s attempt to justify his own appointment through *post hoc* speculation about what the *Park* Plaintiffs intended (and what the Court intended when it granted the receivership motion in *Park*). If the *Park* Plaintiffs sued an entity they did not intend to, and if the *Park* Plaintiffs asked the Court to appoint a receiver over an entity they did not intend to, and if the Court granted that

motion without holding a hearing and without even considering any evidence on the point, then the *Park* Plaintiffs have a duty to speak up and say so and request that the rulings that have led to this receivership be vacated. But they haven't. This very same motion to dissolve the Cape PLC Receivership is even pending in *Park*, yet Mr. Park has never appeared in this case (or his own) and suggested that the Receiver's speculation as to the *Park* Plaintiffs' intentions is correct. The Court cannot possibly continue a receivership and modify its scope based on the Receiver's self-serving speculation that a plaintiff in a different case meant something other than what that plaintiff said in his filings with the Court.

Likewise, even though Cape PLC is a current company that exists in Jersey, the proposed order pretends that the "Third-Party Defendants argue there are two entities with the name 'Cape PLC.'" (Proposed Order at 16.) This is false. None of the third-party defendants have argued that there are "two entities with the same name." Instead, the third-party defendants have unequivocally demonstrated that there is one entity named Cape PLC, it exists in Jersey, it has never been served with anything in this case or in *Park*, and there isn't any evidence to suggest otherwise. This is the actual evidence and argument presented, and **it is unrebutted and undisputed** in the record before this Court.

Finally, this is not a case of a "misnomer" as the proposed order suggests. In *Griffin v. Capital Cash*, 310 S.C. 288, 423 S.E.2d 143 (Ct. App. 1992), the correct defendant was sued in its "d/b/a" name, a name under which it held itself out to the public as the correct business name. As the Court of Appeals explained: "It is clear, however, that First Deposit National Bank is authorized to use the name [Capital Cash] and that it actually conducted business under the name. It is also undisputed that it was the only name under which First Deposit National Bank did business with Griffin. Griffin mailed her complaint to Capital Cash by certified mail return receipt

requested to the address listed on her monthly billing statements. There is no dispute that Capital Cash received the pleadings.” *Id.* at 290-91, 423 S.E.2d at 145.

Griffin has nothing to do with the situation here, where the only evidence in the record is that the *Park* Plaintiffs mailed only an inoperative summons to Cape Intermediate Holdings Limited, and that they tried to mail an inoperative summons to Cape PLC at the wrong address. This isn’t a situation like *Griffin* where a single company was operating under a d/b/a name; this case involves different companies operating under their own names, neither of which were ever served with an operative summons and complaint from the *Park* case. The proposed order contains an obvious legal error, and the Court should reject it.

4. **No Notice of Appointment.** In addition to service of process in *Park* being improper and ineffective—and thus leaving the Court without personal jurisdiction over either Cape PLC or Cape Intermediate Holdings Limited—there is **no evidence in the record** indicating that Cape PLC (over which the Receiver was supposedly appointed) or Cape Intermediate Holdings Limited (which does not appear anywhere in the motion to appoint a receiver, or in the appointment order itself) was ever provided notice of the *Park* Plaintiffs’ untimely motion to have a receiver appointed over Cape PLC. Under South Carolina law, such notice was required. S.C. Code Ann. §§ 15-65-20 & -30. Page 22 of the proposed order wrongly states “[t]he record evidence indicates notice was given,” but there is no such “evidence” in the record, only a passing remark from the *Park* Plaintiffs’ lawyers in their motion to appoint a receiver over Cape PLC. *See Landry v. Landry*, 430 S.C. 153, 163, 843 S.E.2d 491, 496 (2020) (reiterating that “it is well settled that statements by counsel are not evidence”).

5. **No Authority for Receivership.** The receivership order cited South Carolina Code §§ 15-65-10(4) and (5) when appointing a receiver over Cape PLC. In the proposed order, the Receiver abandons any argument that he was properly appointed pursuant to Subsection (4); that

was obviously legal error, and the Receiver concedes as much in his proposed order. Appointment is not authorized under S.C. Code Ann. § 15-65-10(4) because Cape PLC (and Cape Intermediate Holdings Limited) are not dissolved, are not insolvent, and do not have property in South Carolina. The Receiver argues that appointment under subsection (4) is proper because Cape PLC has “forfeited its corporate rights,” but this is a term of art that refers to a judicial forfeiture action resulting in a final forfeiture judgment by a South Carolina court pursuant to established South Carolina law. *See, e.g.*, S.C. Code Ann. § 39-3-20 (authorizing the Attorney General to “begin an action against such domestic corporation to forfeit its charter” for certain antitrust violations (emphasis added)). Neither Cape PLC nor CIHL is a South Carolina company, and neither has been subject to any judicial proceeding resulting in the final forfeiture of its charter pursuant to South Carolina law. As such, the Court finds no basis for appointment under S.C. Code Ann. § 15-65-10(4).

But as to Subsection (5), the proposed order is simply wrong in that it indicates that a South Carolina state court has extraterritorial authority to appoint a receiver over an international corporate entity that is a going concern, where there is *no evidence in the record* that it is trying to “evade its tort creditors,” as wrongly suggested on Page 24 of the proposed order. As a matter of law, Cape PLC (and Cape Intermediate Holdings Limited, for that matter) have no “tort creditors” in South Carolina. At most, there are plaintiffs who are hopeful that they may at some point in the future become “creditors” of Cape PLC, but there currently is not a single “creditor” of Cape PLC (or Cape Intermediate Holdings Limited, for that matter) anywhere in South Carolina.

That is the fundamental distinguishing point between this case and *Virginia-Carolina Chemical Co. v. Hunter*, 84 S.C. 214, 66 S.E. 177 (1909), where the defendant had numerous actual creditors in South Carolina. Cape PLC (and Cape Intermediate Holdings Limited, for that matter) have no creditors in South Carolina, and they have no property in South Carolina—they

are beyond this Court's jurisdiction for purposes of appointing a receiver as a matter of law. *See, e.g., Frink v. Nat'l Mut. Fire Ins. Co.*, 90 S.C. 544, 549, 74 S.E. 33, 35 (1912) ("That a receiver has no extra territorial authority is too well settled to require the citation of authority."); *Pollock v. B.&L. Ass'n*, 48 S.C. 65, 74, 25 S.E. 977, 980 (1896) (reciting that "a receiver has no extra territorial power of official action, none of which the Court appointing him can confer, with authority to enable him to go into a foreign jurisdiction to take possession of the debtor's property," that "[r]eceivers appointed by one jurisdiction are not entitled as of right to recognition in other jurisdictions, and courts of equity cannot acquire extra territorial jurisdiction over property by appoints receivers," and "[t]he power of a receiver only extends to the boundaries of the territorial jurisdiction of the court appointing him") (cleaned up). The Receiver even conceded the absence of any South Carolina connection. (*See* Receiver's Mem. in Opp'n to Dissolving the Receivership at 18-19 (conceding that Cape PLC "lacks assets in South Carolina").) Appointment is not authorized under S.C. Code Ann. § 15-65-10(5) because appointment of a receiver over an active foreign entity without assets in South Carolina is not "in accordance with the existing practice" in South Carolina. The receiver has not identified one South Carolina case appointing a receiver in circumstances remotely similar to those presented here.

The Receiver has no answer to this because he is presenting the Court with a proposed order that is legally indefensible and has the Court unconstitutionally operating outside of its jurisdictional boundaries. Particularly in the pre-judgment appointment context before the Court, this receivership is improper because it would strip an active foreign company of its ability to defend itself in all future asbestos cases in South Carolina before any finding of liability in even one case. As it stands, the proposed order runs afoul of the South Carolina authority cited above and the constitutional principles animating those cases: the Interstate and Foreign Commerce Clauses, the Due Process Clause, the Equal Protection Clause, the Takings Clause, the Equal

Protection Clause, and the Supremacy Clause all require state courts to stay within their state's boundaries and prevent courts from seizing assets over which they have no jurisdiction. Accordingly, the Court should reject the proposed order that runs directly contrary to South Carolina law and purports to have the Court operate without authority.

6. **Misconduct By Receiver.** Finally, Pages 4 through 15 of the proposed order celebrate the Receiver's third-party claims against the Third-Party Defendants and present this case as being properly asserted to vindicate claims against entities who are allegedly "responsible for the bodily injury underlying the claims against Cape, including specifically those claims asserted by South Carolinians." (Proposed Order at 5.)

This is factually impossible, as Cape PLC—the entity over which the Receiver was appointed—did not exist until 2011 and has no contact with South Carolina.

But it is also legally incorrect. In South Carolina, a receiver is prohibited from serving as an agent of the plaintiff. *See Hunter*, 84 S.C. at 224, 66 S.E. at 180 (prohibiting courts from appointing "one of the agents of the plaintiff" as a receiver). Yet, that is precisely what this Receiver is purporting to do, and it is precisely what the proposed order authorizes (despite the first page of the appointment order requiring the Receiver "to protect the interests of Cape whatever they may be").

The Receiver even conceded this point in his earlier filings. (*See* Receiver's Mem. in Opp'n to Dissolving the Receivership at 22 ("In addition, the Receiver's ability to successfully marshal assets will directly inure to the benefit of the *Park* Plaintiffs, which allege uncompensated harm from Cape's conduct.")) That is legal error and should be rejected by the Court.

B. OBJECTIONS TO PROPOSED ORDER DENYING MOTIONS TO DISMISS FOR LACK OF PERSONAL JURISDICTION

AIA and Mr. Altrad additionally object to the Receiver's proposed order denying each of their Motions to Dismiss for Lack of Personal Jurisdiction. The proposed order constitutes an error of law because it seeks to deny the motions based on statements that are unsupported by the objective evidence in the record and which fail to meet the requirements of the South Carolina long-arm statute and the Due Process Clause of the Fourteenth Amendment. In particular, AIA and Mr. Altrad object to the proposed order as being improper on the following grounds:

1. "It is well-settled that the party seeking to invoke personal jurisdiction over a nonresident defendant via our long-arm statute bears the burden of proving the existence of personal jurisdiction." *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 327, 594 S.E.2d 878, 882 (Ct. App. 2004). "At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by a prima facie showing of jurisdiction either in the complaint or in affidavits." *Id.* at 328, 594 S.E.2d at 882.

2. South Carolina's long-arm statute authorizes personal jurisdiction over a non-resident "who acts directly or by an agent as to a cause of action arising from the person's ... commission of a tortious act in whole or in part in this State ...," subject to the constitutional limits of the Due Process Clause of the Fourteenth Amendment. "Due process requires that there exist minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Abdulla v. S. Bank*, 439 S.C. 391, 400, 887 S.E.2d 138, 143 (Ct. App. 2023) (citations omitted).

3. The Third-Party Complaint makes no allegations against Mr. Altrad or AIA that support the imposition of personal jurisdiction over either of these Third-Party Defendants. The totality of the allegations against them in the Third-Party Complaint are:

- a. Once in the opening paragraph listing the Third-Party Defendants;
 - b. Once in Paragraphs 25 and 29 to acknowledge that neither Mr. Altrad nor AIA is a resident of the State of South Carolina;
 - c. Once in Paragraph 116 to acknowledge that another entity – not AIA – allegedly “acquired and since controlled Cape” more than forty years after the alleged sale of asbestos fibers and creation of the alleged liability avoidance scheme;
 - d. Once in Paragraph 117 to allege that since Mr. Altrad is “President and Founder” of “Altrad Group” he must therefore control it and everything it owns and does, with a footnote to a news article about his sponsorship of a French rugby team.
 - e. Identification of them in Paragraph 119 as part of the factually inaccurate aggregation of entities the Receiver contends comprises the “Altrad Third-Party Defendants.”
4. There is nothing in the Third-Party Complaint or in the Receiver’s briefing that shows, alleges, or suggests that Mr. Altrad or AIA committed a tortious act in whole or in part in the State of South Carolina.
5. There is nothing in the Third-Party Complaint or in the Receiver’s briefing that shows, alleges, or suggests that Mr. Altrad or AIA had any agent who committed a tortious act in whole or in part in the State of South Carolina.
6. There is nothing in the Third-Party Complaint or in the Receiver’s briefing that shows, alleges, or suggests that anything Mr. Altrad or AIA did, sold, or put into commerce caused Mr. Tibbs – or any other person – to be exposed to asbestos anywhere in the world, including but not limited to within the State of South Carolina.
7. There is nothing in the Third-Party Complaint or in the Receiver’s briefing that shows, alleges, or suggests that any agent of Mr. Altrad or AIA caused Mr. Tibbs – or any other

person – to be exposed to asbestos anywhere in the world, including but not limited to within the State of South Carolina.

8. At the October 25, 2023, hearing, this Court acknowledged that the allegations in the Third-Party Complaint are legally insufficient to support the exercise of personal jurisdiction over these Defendants. *See*, Ex. A, TR at 158/1-2, 7-15:

“[W]hat I don’t see if anything in that complaint that links up the various public statements that you’re referring to that deal with the set-aside of a lot of money. That would be a very significant thing if it had been alleged in the complaint.”

9. The Court specifically articulated the deficiencies as to personal jurisdiction over the alleged current owners of Cape as a cause for concern regarding the exercise of the Court’s authority:

But you’ve got a whole lot of specific entities, all of them are saying, hey, It’s not me. You weren’t specific enough. With some of the, you’re pretty specific. But with many of them, they are newly created entities, and some hook has got to be put on connecting them in a pretty specific way to being created with the acceptance of responsibility for all of what went before, that’s what’s got me concerned.

TR. at 164/15-25.

10. At the October 25, 2023, hearing, the Receiver tacitly acknowledged these deficiencies and sought to correct the defects in its allegations by responding to the Court’s concerns with requests for leave to amend the Third-Party Complaint. TR at 163/1-3; 168/21 – 169/1.

11. The Court rejected this request, specifically holding that amendment should not be “the vehicle for trying to fix this problem.” The Court instructed the Receiver “to analyze what there is in the complaint that allows these entities to be thought to be part of an amalgamated entity such that they can be held responsibly (*sic*) for torts that occurred in South Carolina through the distribution of asbestos.” TR. at 175/4-8; 176/2-7.

12. This is legal error, as there is no authority that would allow the Court to exercise personal jurisdiction over disparate defendants based on an “amalgamation” or a “single-business enterprise” theory. The United States Supreme Court has been clear that “[e]ach defendant’s contact with the forum State must be assessed individually” for purposes of personal jurisdiction. *Calder v. Jones*, 465 U.S. 783, 790 (1984). The Receiver has presented the Court with several alleged “enterprise” cases, but none of those cases actually applied such a theory to establish personal jurisdiction over numerous defendants; instead, the “theory” was always limited to a merits inquiry about liability. *See See Las Palmas Assocs. v. Las Palmas Ct. Assocs.*, 235 Cal. App. 3d 1120, 1249–50 (1991) (stating that “under the single-enterprise rule, liability can be found between sister companies,” without addressing personal jurisdiction); *Walbeck v. I’On, Co.*, 439 S.C. 568, 590–94, 889 S.E.2d 537, 548–50 (2023) (similar); *Pertuis*, 423 S.C. at 655, 817 S.E.2d at 280 (“formally recogniz[ing] today this single business enterprise theory” of liability without evaluating its applicability to the personal jurisdiction analysis); *Duong*, No. 2:17-cv-01089-DC, 2019 WL 13109647, at *13 (D.S.C. Sept. 25, 2019) (rejecting applicability of the “single business enterprise theory” of personal jurisdiction because “there are no contacts for the court to impute” to each of the individual defendant entities); *Dofrman v. Marriott Int’l Hotels, Inc.*, No. 99 CIV 10496(CSH), 2002 WL 143643, at *11 (S.D.N.Y. Jan. 3, 2002) (exercising personal jurisdiction based on an alter-ego finding that there was an “agency relationship” between the two companies); *Ruiz v. Economics Lab., Inc.*, 290 F. Supp. 701, 703 (D.P.R. 1968) (similar). Accordingly, the Receiver’s entire theory of personal jurisdiction fails as a matter of law.

13. The Receiver’s proposed order purporting to find sufficient basis to exercise personal jurisdiction over Mr. Altrad and AIA does not rely on the obviously and admittedly insufficient allegations of the Third-Party Complaint. Instead, it seeks to invoke personal

jurisdiction based entirely upon arguments presented by the Receiver in opposition to the Motion to Dismiss.

14. “When a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction.” *Abdulla v. S. Bank*, 439 S.C. 391, 400 (Ct. App. 2023) (citing *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007)). The Receiver’s proposed order does not satisfy this requirement because it is predicated upon argument and unsupported inadmissible hearsay rather than evidence. None of the materials cited in the Receiver’s proposed order actually rebuts the facts set forth in AIA and Mr. Altrad’s Motions to Dismiss for Lack of Personal Jurisdiction.

15. The “legal opinion” affidavits of James Buxton, Esq., and Eric Talley, J.D., that the Receiver submitted with its Omnibus Opposition to the Motion to Dismiss for lack of personal jurisdiction are not sufficient to rebut the sworn factual statements contained in the AIA and Altrad affidavits demonstrating the complete lack of any activity related to the State of South Carolina, let alone any purposeful availment of conducting activities within the State. These “legal opinion” affidavits are based only upon inadmissible hearsay and, thus, are legally insufficient to rebut the factual statements contained in the affidavits submitted by Mr. Altrad and AIA. This makes them ineligible to form the predicate for the exercise of personal jurisdiction for multiple reasons, including but not limit to:

- a. Conclusory hearsay affidavits have been specifically rejected as a basis for exercising personal jurisdiction in South Carolina. *See, e.g., Yarborough & Co. v. Schoolfield Furniture Indus., Inc.*, 275 S.C. 151, 153, 268 S.E.2d 42, 43 (1980); *Callum v. CVS Health Corp.*, 137 F. Supp. 3d 817, 835 (D.S.C. 2015).

- b. Neither of the legal opinion affiants have any personal knowledge regarding the business of AIA or Mr. Altrad – or for that matter, of any of the Third-Party Defendants, or even of the business of mining and selling asbestos fibers, and/or its use in commercial products.
- c. The legal opinion affidavits are nothing more than proposed interpretations of the law the Receiver wishes the Court to adopt. Opinions on legal issues are rarely admissible and can never form the factual basis for the exercise of personal jurisdiction. *See, e.g., Carter v. Bryant*, 429 S.C. 298, 313, 838 S.E.2d 523, 531 (Ct. App. 2020); *State v. Commander*, 396 S.C. 254, 264, 721 S.E.2d 413, 418 (2011); *Dawkins v. Fields*, 354 S.C. 58, 65–67, 580 S.E.2d 433, 436–37 (2003); *Green v. State*, 351 S.C. 184, 198, 569 S.E.2d 318, 325 (2002); *O’Quinn v. Beach Assocs.*, 272 S.C. 95, 106–07, 249 S.E.2d 734, 739–40 (1978) *State v. Morris*, 376 S.C. 189, 205, 656 S.E.2d 359, 367 (2008).
- d. The legal opinion affidavits are, by the Receiver’s own admissions, factually and legally incorrect. They argue that personal jurisdiction is appropriate over all 33 Third-Party Defendants. In a direct response to the Court’s concerns about the lack of sufficient allegations to support personal jurisdiction, on November 20, 2023, the Receiver voluntarily dismissed 11 Third-Party Defendants. (Ex. B 11/20/2023 Email of John T. Lay). This means that the legal opinion affidavits are at least 33.33% inaccurate, yet they are still cited in their entirety as a basis for the proposed order.

16. The complete absence of jurisdictional facts as to Mr. Altrad or AIA in the Third-Party Complaint and elimination of the unsupported conclusory hearsay masquerading as inadmissible legal opinion affidavits leaves as the only basis for imposition of personal jurisdiction

annual reports of the Altrad Group and various websites that the Receiver cited not in the Third-Party Complaint, but only in its Omnibus Memorandum In Opposition to Motions To Dismiss.

17. The first website cited in the proposed order as “evidence” of grounds for personal jurisdiction over AIA and Mr. Altrad relates to Altrad Group’s acquisition of the Sparrows Group on 11 July 2022. <https://www.altrad.com/en/newsreader/altrad-completes-acquisition-of-engineering-and-maintenance-specialist-sparrows-group.html>. There is no reference to the State of South Carolina and the word “asbestos” does not appear anywhere in the article, nor do the names “Cape,” “Cape Asbestos,” “Cape Industrial Holdings Limited,” Altrad Investment Authority S.A.S., or Mohed Altrad.

18. The second website cited in the proposed order as “evidence” of grounds for exercising personal jurisdiction over AIA and Mr. Altrad also pertains to the Sparrows acquisition. <https://aberdeenbusinessnews.co.uk/sparrows-spreads-its-wings-as-altrad-sparrows/>. It too has no reference to South Carolina, and also does not contain the word “asbestos” or the names “Cape,” “Cape Asbestos,” “Cape Industrial Holdings Limited,” Altrad Investment Authority S.A.S., or Mohed Altrad.

19. Equally inadequate are the websites: <https://www.reuters.com/article/cape-ma-altrad-investment/altrad-investment-to-buy-uk-oil-services-firm-cape-for-332-2-mln-pounds-idUSL4N1JY2KG> and <https://vertikal.net/en/news/story/41603/sparrows-leadership-team-to-go>. Both of these websites suffer from the same complete absence of any facts which could support imposition of personal jurisdiction over these non-resident defendants as a matter of law: no references to South Carolina, the word “asbestos” or the names “Cape,” “Cape Asbestos,” “Cape Industrial Holdings Limited,” Altrad Investment Authority S.A.S., or Mohed Altrad. The vertikal.net website actually contains statements which *contradict* the proposed order’s articulated reasons for exercising personal jurisdiction over AIA and Mohed Altrad. That article notes that

Altrad companies generally “operate autonomously as an individual entity” – a declaration very much at odds with the proposed order’s findings that everything the Receiver includes in the group labelled “Altrad Defendants” is a single entity controlled entirely by Mohed Altrad.

20. The proposed order purports to predicate the exercise of personal liability over Mohed Altrad based upon a news report regarding a finding that Mr. Altrad conspired with the World Rugby vice-chairman Bernard Laporte for certain sponsorship rights for Altrad Group. Rugby has nothing to do with asbestos and South Carolina does not have a professional rugby team which makes the article wholly irrelevant to the question of personal jurisdiction. Nor does there appear any support for exercise of personal jurisdiction in the embedded link to a 2015 profile of Mr. Altrad discussing his management style long before Altrad Group purchased the shares of Cape PLC through public subscription, acquired Sparrows Group, established Altrad Services or the dozens of other corporate growth activities that have occurred in the intervening eight years. Notably missing from either the article about Mr. Altrad’s ownership and sponsoring goals for French rugby teams or the profile: any reference to the State of South Carolina, the words “asbestos,” “Cape,” “Cape Asbestos,” “Cape Industrial Holdings,” or Altrad Investment Authority S.A.S.

21. Nor is there any evidence to support the imposition of personal jurisdiction over these defendants within any of the company web-pages cited with the proposed order:

- a. <https://www.altrad.com/en/newsreader/altrad-combines-cape-plc-nsg-and-hertel-to-create-uks-largest-industrial-service-provider.html>. This news report on the Altrad website announces the creation of Altrad Services in 2018, but importantly contains no reference to asbestos, Altrad Investment Authority, or Mohed Altrad. Further, while it does reference “Cape PLC” – even the Receiver now acknowledges that is a Jersey corporation and not in any way a successor-in-interest

to any entity that mined or sold asbestos fiber or engaged in the alleged liability avoidance scheme at the center of the Receiver's liability theory.

- b. The next is simply a link to the page showing a timeline of the company's development: <https://www.altrad.com/en/our-history.html>. There is no reference to the United States in general or to South Carolina in particular, asbestos or Altrad Investment Authority S.A.S.
- c. The final link presented as a proposed basis for the exercise of personal jurisdiction again fails to present any link to South Carolina, asbestos, or any "Cape" entity, <https://www.altrad.com/en/governance.html#:~:text=It%20is%20headed%20Mohed,humanist%20conception%20of%20the%20company> is also lacking in any facts that would support the imposition of personal jurisdiction over these Third-Party Defendants. Much to the contrary, instead of supporting the proposed order's finding that Mohed Altrad is the "spirit guide" who personally controls all decisions of all of the companies, the web-page specifically states that although it is a privately held company, the Altrad Group follows the rules for governance of publicly listed French companies. The website makes clear that Altrad Group is led by multiple people including 11 members of the Board of Directors "who guarantee the objectivity of the proceedings" through a system of governance that "reinforces the power of control and independence of directors."

22. The only website the Receiver cites that is even remotely related to his self-appointed "day of reckoning" is: <https://www.constructionnews.co.uk/health-and-safety/altrad-makes-118m-provision-for-asbestos-claims-14-04-2023/#:~:text=Altrad%20has%20set%20aside%20%C2%A3,historic%20alleged%20exposure%20to%20asbestos>. That website reports that "Altrad Services" which it describes as "the UK arm of France-based Altrad" set aside money "to

deal with a string of historical allegations linked to asbestos exposure.” It contains no reference to the United States in general or South Carolina in particular. Nor does it contain any reference to the Third-Party Defendants over whom the website is allegedly being used to assert personal jurisdiction: Altrad Investment Authority S.A.S. and Mohed Altrad.

23. SCRE 201 permits judicial notice of adjudicative fact only when it is “one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” This is identical to the federal rule. C. McCormick, *McCormick on Evidence* §§ 328 and 331 (4th ed. 1992). Under this rule, the Court may only take judicial notice of *facts*. It may not take judicial notice of any *interpretation* of those facts. *United States v. Garcia*, 855 F.3d 615, 621–22 (4th Cir. 2017). There are no facts in any of the websites included in the proposed order that justify exercise of personal jurisdiction over these non-resident defendants as a matter of law.

24. The proposed order denying the AIA and Mohed Altrad Motions to Dismiss for Lack of Personal Jurisdiction invites this Court to deny the motions based not upon facts contained in the record, but upon the Receiver’s interpretation of website content viewed through the prism of his self-appointed quest to bring a “day of reckoning.” The evidence cited therein as the basis of the order is insufficient as a matter of law to support the exercise of personal jurisdiction over these non-resident Third-Party Defendants.

CONCLUSION

As drafted, the proposed order has the Court rewriting its appointment order to altogether change the entity over which the Receiver is supposedly appointed. It purports to rely on “evidence” that simply does not exist. And it asks the Court to issue rulings that wildly exceed its constitutional and statutory boundaries. Similarly, the proposed order purports to exercise this

Court's jurisdiction based upon citations to the record that do not contain the necessary facts or evidence to support the exercise of that discretion.

It is unfair for the Receiver to put the Court in this position, where he is asking the Court to issue an order that is both unlawful and unjust. The Court should reject it accordingly and, instead, should reconsider its October 25, 2023, oral ruling denying the Third-Party Defendants' motion to dissolve the receivership and should grant that motion. The illusory nature of the foundation for the proposed exercise of personal jurisdiction should also be rejected. The Court should not be misled into the proposed improper exercise of its jurisdiction. The Receiver's proposed order should be rejected and the AIA and Mohed Altrad Motions to Dismiss for Lack of Personal Jurisdiction and to Dissolve the Cape PLC Receivership should be granted in their entirety.

Finally, if the Court rejects these objections and enters an order proposed by the Receiver, the Altrad Defendants respectfully move for the Court to modify any proposed order to include the following sentence to ensure that either the automatic stay is in place or to issue a supersedeas to maintain the status quo pending an appeal: "In the event this order is appealed, the effect of this order and any other order it modifies shall be stayed pursuant to Rule 241(d)(1), SCACR, upon filing and service of a notice of appeal." Immediately staying the receivership so that the State's appellate courts can review this situation is the only way to ensure that scores of public and private resources are not improperly wasted during the pendency of an appeal, and the Court should reject any proposed order from the Receiver that does not also immediately stay the receivership for purposes of any appeal.

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

/s/ M. Todd Carroll

M. Elizabeth O'Neill (S.C. Bar No. 104013)

M. Todd Carroll (S.C. Bar No. 74000)

One Wells Fargo Center

301 South College Street, Suite 3500

Charlotte, North Carolina 28208

Ph.: (704) 350-6310

1221 Main Street, Suite 1600

Columbia, South Carolina 29201

Ph.: (803) 454-6504

Elizabeth.ONeill@wbd-us.com

Todd.Carroll@wbd-us.com

WBD.SCAsbestos@wbd-us.com

*Attorneys for Third Party Defendants Altrad
Investment Authority S.A.S. and Mohed Altrad*

December 4, 2023

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

JOHN A. TIBBS and MARGARET B. TIBBS,

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

Plaintiffs,

In Re:

v.

Asbestos Personal Injury Litigation
Coordinated Docket

3M COMPANY, et al.,

Defendants.

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

Third-Party Plaintiff,

v.

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

Third-Party Defendants.

**ESAB CORPORATION'S RESPONSE AND OBJECTION TO THIRD-PARTY
PLAINTIFF'S PROPOSED ORDER DENYING CERTAIN THIRD-PARTY
DEFENDANTS' MOTIONS TO DISSOLVE RECEIVERSHIP AND THIRD-PARTY
DEFENDANTS' MOTIONS TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

Third-Party Defendant ESAB Corporation (“ESAB”), by and through its undersigned counsel, submits this Response and Objections to Third Party Plaintiff Cape PLC’s, by and through its Receiver Peter D. Protopapas (the “Receiver”), Proposed Order Denying Certain Third-Party Defendants’ Motions to Dissolve Receivership and Third-Party Defendants’ Motions to Dismiss for Lack of Personal Jurisdiction (the “Proposed Order”).¹

A. **Introduction.**

The Proposed Order should be rejected because the Third-Party Complaint does not allege jurisdiction over ESAB. Indeed, the 146-paragraph Third-Party Complaint only references ESAB in two paragraphs, which simply allege that ESAB is a Delaware corporation with its principal place of business in Maryland and that ESAB is the current parent and successor-in-interest to third-party defendants Charter Consolidated Ltd. (“Charter Consolidated”) and Central Mining & Investment Corporation (“Central Mining”).² As the Court cautioned at oral argument on October 25, 2023, this is insufficient to plead jurisdiction, especially for an entity like ESAB that did not have any relationship with any of the entities until decades after the subject events transpired and 25 years after Charter Consolidated had any ownership interest in Cape Intermediate Holdings Limited, formerly known as Cape PLC, and formerly known as Cape Asbestos Company Ltd. (collectively, “Cape”) (which is the “hook” through which the Receiver attempts to hold ESAB responsible). Additionally, although the Court identified this significant pleading deficiency at oral

¹ ESAB hereby joins in, incorporates, and adopts, as if fully set forth herein, all objections to the Receiver’s Proposed Order advanced by other Third-Party Defendants, including but not limited to, any arguments made therein or in proposed orders granting motions to dismiss and/or motions to dissolve receivership, any memoranda in support, and arguments made orally on the record, to the extent that such arguments are not adverse to ESAB.

² Third-Party Compl., at ¶¶ 20, 124.

argument, the Receiver's subsequent Proposed Order fails to rectify the defects and does not provide any additional facts that could support a finding of jurisdiction over ESAB in this action.

In sum, the Third-Party Complaint's allegations as to ESAB, both substantively and jurisdictionally, rest on ESAB's alleged ownership of Charter Consolidated 25 years after Charter Consolidated severed ties with Cape. These general, attenuated ownership allegations fall far short of the requisite "hook... connecting [ESAB] in a pretty specific way...with acceptance of responsibility for all of what went before."³ As a result, the Proposed Order should be rejected.

B. The Receiver's Proposed Order Denying ESAB's Motion To Dismiss Should Be Rejected.

The Court should reject the Receiver's Proposed Order and dismiss the Third-Party Complaint as to ESAB because the Court lacks personal jurisdiction over ESAB.⁴ Indeed, the Receiver has not alleged facts, as opposed to conclusory allegations, sufficient to support personal jurisdiction over ESAB in the State of South Carolina.

1. The Receiver fails to address the fatal deficiencies in the Third-Party Complaint as to personal jurisdiction over ESAB.

The Receiver's Proposed Order, like the Third-Party Complaint, does not address the factors required to demonstrate that personal jurisdiction over ESAB is appropriate under an alter ego or single business enterprise theory. Instead, the Proposed Order continues to make broad, sweeping generalizations about ESAB that are not grounded in any facts or analysis, such as the Third-Party Complaint "ties ESAB to Cape through its subsidiaries" (without explanation or support) and that ESAB, as a parent company "may bear responsibility" for Charter Consolidated

³ See Ex. 1 (Unofficial Daily Copy Tr., Oct. 25, 2023 Hearing Tr. ("Hearing Tr.")), at 164:20-24.

⁴ See Rule 12(b)(2).

and Central Mining.⁵ As the Court recognized during the hearing on the Motions to Dismiss, however, a blanket assertion that ESAB is “the alleged successor in interest” is insufficient to meet the pleading standard required for personal jurisdiction.⁶ “The mere fact that [a subsequently formed company] got into business with an entity that had a long history that kind of culminated in what it’s worth today is not enough. That’s way too vague and general. What’s got to be – it’s got to be much more specifically alleged to bring the entity, controlwise or in some other way, into a situation where it becomes the entity before and therefore assumes its obligations.”⁷

Under South Carolina law, there must be more than a generic assertion of successor liability for an entity to actually be deemed a successor.⁸ However, as the Court acknowledged during the hearing, the Third-Party Complaint “doesn’t say X -- like ESAB, for example -- is a successor-in-interest to Cape plc and benefited from this successor-in-interest so that it is now responsible for things that occurred before it was founded because it’s a successor.”⁹ Nor does the Third-Party Complaint (or the Proposed Order) allege that ESAB somehow assumed the responsibilities of Charter Consolidated, Central Mining, or Cape, through any of the methods that would allow

⁵ See Proposed Order, at 70.

⁶ See Ex. 1 (Hearing Tr.), at 152:9 – 153:16.

⁷ See Ex. 1 (Hearing Tr.), at 154:24 – 155:9. ESAB attempted to resolve this issue with counsel for the Receiver, but the Receiver continues to insist that personal jurisdiction exists over ESAB. See Ex. 2 (Email from Vic Rawl to John T. Lay, Lindsay Joyner, and Brian Barnwell, dated Nov. 22, 2023).

⁸ See *Nationwide Mut. Ins. Co. v. Eagle Window & Door, Inc.*, 424 S.C. 256, 263, 818 S.E.2d 447, 451 (2018) (“Ordinarily, in the absence of a statute, a successor or purchasing corporation is not liable for the debts of a predecessor or seller unless: (1) there was an agreement to assume such debts; (2) the circumstances surrounding the transaction amount to a consolidation or merger of the two corporations; (3) the successor company was a mere continuation of the predecessor; or (4) the transaction was entered into fraudulently for the purpose of wrongfully defeating creditors’ claims.”).

⁹ See Ex. 1 (Hearing Tr.), at 152:9 – 153:16.

successor liability under South Carolina law (for example, by way of an agreement assuming liability for Charter Consolidated, Central Mining, or Cape).¹⁰

The Court should further reject the Receiver's argument that the Court has specific jurisdiction over ESAB solely based on Cape's purported jurisdictional contacts in South Carolina through an alter ego, veil piercing theory, or single business enterprise theory.¹¹ Despite the Receiver's bald protestations to the contrary, the Third-Party Complaint does not (and could not, especially since ESAB did not obtain any ownership interest in Charter Consolidated or Central Mining until 2022) allege any facts related to *ESAB's* control over Cape. Instead, the Receiver devotes great portions of the Third-Party Complaint and the Proposed Order to focusing on facts about other entities' control over each other, none of which has any relevance to ESAB, let alone the analysis of whether ESAB exercised sufficient control over Cape (an entity that it had no connection to at all) to pierce the corporate veil. Conclusory allegations that ESAB controlled Cape because ESAB's recently acquired subsidiaries previously had a majority ownership of Cape and had common directors or employees decades prior to ESAB's acquisition are woefully insufficient. First, it is well settled law in South Carolina that majority ownership and common officers or

¹⁰ See Ex. 1 (Hearing Tr.), at 153:21– 154:9 (“[I]s its successor 50 years later going to be held responsible for what happened 50 years ago . . . when there’s no relationship financially or assetwise between the two entities. This is simply a entity created long thereafter with no agreements alleged that . . . they assume the responsibilities of the entity they succeeded or even how that success works. That’s what’s gotten me troubled about this thing.”); see also *Nationwide Mut. Ins. Co.*, 424 S.C. at 263, 818 S.E.2d at 451. Furthermore, the Receiver's attempt to manufacture successor liability through the introduction of new evidence mere hours before ESAB was required by the Court to respond to the Proposed Order (and months after briefing on the motion to dismiss was complete), should be soundly rejected.

¹¹ See *ScanSource, Inc. v. Mitel Networks Corp.*, 11-00382, 2011 WL 2550719, at *4 (D.S.C. June 24, 2011) (dismissing claims for lack of personal jurisdiction on alter ego and veil piercing theories as plaintiff “failed to support its allegation that [parent company’s] subsidiaries are merely facades for [its] operations”).

directors, standing alone, simply do not “support the conclusion the subsidiary is its parent’s alter ego or agent for the transaction of its business.”¹² Second, even if Charter Consolidated and Central Mining controlled Cape (they did not),¹³ the Third-Party Complaint still must allege sufficient facts to pierce the corporate veil between ESAB and Charter Consolidated / Central Mining, which the Third-Party Complaint does not even attempt to do.

Furthermore, any business that ESAB conducts related to its welding and cutting equipment business in South Carolina, which was not even alleged in the Third-Party Complaint, is wholly irrelevant to specific jurisdiction over ESAB in this case. Specific jurisdiction requires that the causes of action must “arise out of or relate to” ESAB’s contacts with South Carolina.¹⁴ Under no interpretation of the Third-Party Complaint (or the Tibbs Suit) do any claims by any party arise out of or relate to sales by ESAB of welding and cutting equipment in South Carolina.

2. The Court should adopt ESAB’s proposed language granting its Motion to Dismiss.

¹² *Yarborough & Co. v. Schoolfield Furniture Indus., Inc.*, 275 S.C. 151, 153–54, 268 S.E.2d 42, 44 (1980); *Jones ex rel. Jones v. Enter. Leasing Co.-Se.*, 383 S.C. 259, 267, 678 S.E.2d 819, 823–24 (Ct. App. 2009).

¹³ *See Craig v. Lake Asbestos of Quebec, Ltd.*, 843 F.2d 145, 152 (3d Cir. 1988) (after trial on the merits directly addressing alter ego allegations, and relying on the same facts alleged in the Third-Party Complaint, determining that the Charter purported to be liable was not the alter ego of Cape because there was “no evidence” that “Charter’s intrusion into Cape’s affairs [was] even constant or day-to-day. Moreover, and significantly, the district court found that ‘[t]he two corporate groups each maintained separate books, records, bank accounts, offices and staff; each consulted their own financial advisors, accountants and stockbrokers.’”); *see also In re Charter Defs.*, 1989 U.S. Dist. LEXIS 15591 (E.D. Pa. May 18, 1989) (dismissing all claims, cross-claims, and third-party claims asserted against Charter Consolidated in all cases pending in the Eastern District of Pennsylvania because Charter Consolidated is not the alter ego of Cape); *Culbreth v. Amosa, Ltd.*, 898 F.2d 13 (3d Cir. 1990) (affirming summary judgment dismissal because Charter Consolidated is not the alter ego of Cape); *Simmons v. AC&S, Inc.*, No. 84-1170 (W.D. Ark. June 4, 1985) (granting motion to dismiss for lack of personal jurisdiction because Charter Consolidated is not the alter ego of Cape).

¹⁴ *See Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1025 (2021).

As the Third-Party Complaint fails to allege sufficient facts to demonstrate that personal jurisdiction over ESAB is proper, the Court should adopt the below language in its Order granting ESAB's Motion to Dismiss for lack of personal jurisdiction:¹⁵

Although the Third-Party Complaint alleges that ESAB is the parent company of and successor in interest to Central Mining and Charter Consolidated, those allegations, without more, are insufficient as a matter of law to establish personal jurisdiction over ESAB. The Third-Party Complaint does not assert general jurisdiction over ESAB and, instead, only purports to allege specific jurisdiction over ESAB solely because it became the parent company of two entities, Central Mining and Charter Consolidated, in 2022, decades after both of those companies ended any involvement with asbestos.¹⁶

Critically, however, the Third-Party Complaint fails to allege any facts as to how or why ESAB is the successor to Charter Consolidated and Central Mining such that ESAB assumed the responsibilities of Charter Consolidated and Central Mining. *See e.g., Nationwide Mut. Ins. Co. v. Eagle Window & Door, Inc.*, 424 S.C. 256, 269, 818 S.E.2d 447, 454 (2018) (acknowledging that South Carolina

¹⁵ ESAB has not attempted to do a redline of all the necessary changes to the Receiver's Proposed Order to reflect that the Motions to Dismiss for Personal Jurisdiction were granted in part and denied in part (as opposed to fully denied). If the Court would like, ESAB can certainly provide a redline showing every instance where language in the Proposed Order would need to be amended.

¹⁶ Although the Receiver raised in its Opposition to ESAB's Motion to Dismiss that ESAB may be subject to specific jurisdiction because it is a welding company that has "dozens of dealers and repair centers selling ESAB products through South Carolina," none of these allegations appear in the Third-Party Complaint. Even if the Court were to consider these allegations, however, they are insufficient to establish specific jurisdiction over ESAB in this matter because this action does not "arise out of or relate to" to ESAB's welding activities. *See Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 655 S.E.2d 476 (2007).

“corporate law generally favors the free transfer of assets and disfavors successor liability” and that the standard for successor liability is strict). The Third-Party Complaint contains no allegations that there are any agreements wherein ESAB assumed responsibilities for Charter Consolidated or Central Mining (nor does the Third-Party Complaint even attempt an explanation for how ESAB would have assumed successor liability to Charter Consolidated and Central Mining). Additionally, the Third-Party Complaint fails to allege that ESAB merged with Charter Consolidated or Central Mining, that ESAB was a “mere continuation” of Charter Consolidated or Central Mining, or that the spin-off where ESAB became the parent of Central Mining and Charter Consolidated was “entered into fraudulently for the purpose of wrongfully defeating creditors’ claims.” *Id.*, at 263.

Although the Receiver argues that certain entities are playing an active and current role in avoiding Cape’s asbestos liabilities (and therefore successor liability attaches), the Receiver does not make these same allegations as to ESAB. Given that the Third-Party Complaint fails to allege any factual hook that ESAB, an entity that did not become the parent of Central Mining and Charter Consolidated until 2022, was created with the acceptance of liability for Charter Consolidated’s and Central Mining’s alleged former conduct, the Court cannot find that successor liability attaches to establish personal jurisdiction.

Furthermore, the Third-Party Complaint does not allege any facts related to ESAB’s control over Cape, Charter Consolidated, or Central Mining, such that the Court could find personal jurisdiction under an alter ego or single business enterprise theory. Although no single factor is determinative in an alter ego or

single business enterprise theory, courts generally examine factors such as overlapping officers and directors, the parent's capacity to influence major business decisions, whether separate books or records are maintained, whether an integrated sales system exists between the entities, whether the entities present a common marketing image, and whether the entities have formal separate structures but maintain unified operations. *In re Polyester Staple Antitrust Litig.*, 2008 WL 906331, at *13–14, *16 (W.D.N.C. Apr. 1, 2008) (finding exercise of personal jurisdiction over parent company proper where “the management personnel within [the subsidiaries] regularly sought approval from [the parent company] on matters beyond strategy and general business policy”). Here, however, the Third-Party Complaint simply fails to address any of these factors with respect to ESAB.

Because the Third-Party Complaint does not allege sufficient facts to show that personal jurisdiction exists over ESAB, the Court therefore grants ESAB's Motion to Dismiss for lack of personal jurisdiction.

C. General Objections To The Receiver's Proposed Order Denying Third-Party Defendants' Motions to Dismiss For Lack of Personal Jurisdiction.

Outside of the specific section solely devoted to ESAB, ESAB also objects to other sections of the Receiver's Proposed Order related to personal jurisdiction on numerous grounds.

ESAB objects to the Proposed Order because, in the section on the standard for ruling on motions to dismiss for lack of personal jurisdiction, the Receiver fails to include important aspects of the legal standard. Specifically, the Proposed Order should have included a discussion of the burden when a nonresident defendant attacks the allegations of the complaint and submits factual affidavits. Furthermore, the Receiver fails to include that each defendant's conduct must be

assessed individually. ESAB therefore proposes that the Court include the following language in the discussion of the standard for ruling on motions to dismiss for lack of personal jurisdiction:

When a nonresident defendant attacks the allegations of a complaint based on jurisdiction, a plaintiff bears the burden of proving subject-matter jurisdiction. *Elridge v. City of Greenwood*, 503 S.E.2d 191, 197 (S.C. Ct. App. 1998). The court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction. *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 655 S.E.2d 476, 478 (2007). Given that numerous Third-Party Defendants have submitted factual affidavits attacking the allegations in the Third-Party Complaint, Cape must do more than state general and conclusory allegations and instead must present, by affidavit or otherwise, facts showing that this Court has jurisdiction over the Third-Party Defendants. Moreover, “[e]ach defendant’s contacts with the forum State must be assessed individually.” *Calder v. Jones*, 465 U.S. 783, 790 (1984).

ESAB also objects to the sections purportedly relaying the standards for alter ego theory and the single business enterprise theory of personal jurisdiction because they fail to indicate that each of these theories must be applied on a defendant-by-defendant basis. In other words, a plaintiff cannot group plead, but must show how each defendant acted as the alter ego or was part of a single business enterprise. Accordingly, ESAB proposes that the Court include the following language in the applicable sections on the standards for alter ego theory and single business enterprise theory:

In order to establish personal jurisdiction under an alter ego theory, a plaintiff must separately establish that each defendant was the alter ego of the entity

that the South Carolina courts have personal jurisdiction over. It is “plainly unconstitutional” to group defending parties together to meet this burden in establishing personal jurisdiction. *See Rush v. Savchuk*, 444 U.S. 320, 331-32 (1980).

In order to establish personal jurisdiction under a single business enterprise theory, a plaintiff must separately establish that each defendant was part of a single business enterprise with the entity that the South Carolina courts have personal jurisdiction over. It is “plainly unconstitutional” to group defending parties together to meet this burden in establishing personal jurisdiction. *See Rush v. Savchuk*, 444 U.S. 320, 331-32 (1980).

ESAB further objects to the Proposed Order because it purports to make factual findings that are inappropriate at this stage of the litigation. *See HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 632–33, 699 S.E.2d 699, 703–04 (Ct. App. 2010). ESAB proposes that the Court include the below language to make clear that, for purposes of the Order, the Court is taking as true the allegations in the Third-Party Complaint and is not making any findings as to the truth of those allegations:

For purposes of this Order, the Court has taken as true the allegations contained in the Third-Party Complaint and has resolved all factual disputes in favor of Cape, even if the Court has doubts as to whether Cape can ultimately prove the facts discussed herein. *See HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 632–33, 699 S.E.2d 699, 703–04 (Ct. App. 2010).

Finally, ESAB objects to the portion of the Proposed Order that finds sufficient evidence of personal jurisdiction over Cape, Central Mining, and Charter Consolidated. In order for the

Court to find personal jurisdiction over ESAB because of conduct by Cape, Central Mining, or Charter Consolidated, the Court must also find that personal jurisdiction exists as each of these entities.¹⁷ As discussed more fully by Central Mining and Charter Consolidated, the Third-Party Complaint fails to establish that a South Carolina court has personal jurisdiction over them.¹⁸ Furthermore, Cape's purported contacts with South Carolina, even if imputed to ESAB (through Charter Consolidated and Central Mining), are insufficient to establish specific jurisdiction. The only contact with South Carolina that the Third-Party Complaint mentions is that Cape sold asbestos in the United States, including in South Carolina.¹⁹ Importantly, however, the claims asserted against ESAB do not arise out of any asbestos sold in South Carolina (nor does the Third-Party Complaint make such an assertion). For that matter, there are not even any allegations in Plaintiffs' Complaint or the Third-Party Complaint that Tibbs was exposed to amosite asbestos sold or mined by Cape.²⁰

Although specific jurisdiction can certainly be established by an entity's contacts with South Carolina, the critical distinction between general and specific jurisdiction is that, for specific

¹⁷ See *e.g.*, *Duong v. N. Am. Transportation Servs. LLC*, 2019 WL 13109647, at *13 (D.S.C. Sept. 25, 2019) (holding that, even if the single business enterprise theory applied, plaintiff failed to allege jurisdictional facts necessary to establish personal jurisdiction).

¹⁸ See Third-Party Defendant Central Mining And Investment Corp. Ltd.'s Response And Objection To Third-Party Plaintiff's Proposed Order Denying Certain Third-Party Defendants' Motions To Dissolve Receivership And Third-Party Defendants' Motions To Dismiss For Lack Of Personal Jurisdiction, filed December 4, 2023; Third-Party Defendant Charter Consolidated Ltd.'s Response And Objection To Third-Party Plaintiff's Proposed Order Denying Certain Third-Party Defendants' Motions To Dissolve Receivership And Third-Party Defendants' Motions To Dismiss For Lack Of Personal Jurisdiction, filed December 4, 2023.

¹⁹ See *e.g.*, Third-Party Compl., at ¶¶ 75–76. Technically, the Receiver does not even allege that Cape directly sold asbestos in South Carolina, but instead seeks to first impute NAAC's contacts in South Carolina to Cape, before trying to impute NAAC's contacts to ESAB.

²⁰ See *generally* Third-Party Compl.

jurisdiction, the claims must actually arise from the contacts with the state.²¹ The Third-Party Complaint asserts four causes of action: unjust enrichment, constructive trust, alter ego or piercing the corporate veil liability, and accounting. None of these claims arise out of Cape's purported sales of asbestos to any particular entity or person in South Carolina (or even arise from the use of asbestos in South Carolina) and, instead, arise out of purported conduct in South Africa, the United Kingdom, and other places outside of South Carolina. Unless the claims actually arise from Cape's contacts in South Carolina, the mere fact that Cape's jurisdictional contacts may be imputed to ESAB (they should not) is insufficient for this Court to assert personal jurisdiction over ESAB.²²

D. Objections To The Receiver's Proposed Order Denying Third-Party Defendants' Motions to Dissolve The Receivership.

Although ESAB is not rearguing the Motion to Dissolve the Receivership, it continues to object to the denial of the Motion for the below reasons:

- The Proposed Order fails to address the Receiver's argument that naming Cape PLC as the entity in receivership was merely a "misnomer," and instead merely attempts to blur the identity of the company in receivership. The Court should clearly set forth whether the entity in receivership is Cape PLC or Cape Intermediate Holdings Limited. If the Court agrees with the Receiver's misnomer argument (which it should not for the reasons mentioned herein and in other Third-Party Defendants' objections to the Proposed Order), then the Court should clearly set forth its ruling and include in any order the following language:

²¹ See *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 655 S.E.2d 476 (2007).

²² See *Outpost Cap. Mgmt., LLC v. Prioleau*, 2017 WL 5514513, at *7 (D.S.C. Nov. 16, 2017) (finding that even an entities' contacts could be imputed to defendant through an alter ego theory, the court still did not have specific jurisdiction over defendant because the claims against defendant did not arise from the entities' contacts with South Carolina).

For the reasons argued by the Receiver at the hearing, the Court finds that the entity in Receivership is Cape Intermediate Holdings Limited, formerly known as Cape PLC, and formerly known as Cape Asbestos Company Ltd. (together herein referred to as “Cape”).

- The order purporting to appoint the Receiver (“Receivership Order”) was filed on March 17, 2023, in *Park v. Armstrong International, Inc.*, Case No. 2021-CP-40-02727 (“*Park Lawsuit*”), and was procured by “Keith Park, individually and as the Personal Representative of the Estate of Isabella Park” (“Moving Party”) nine months after the trial date and after that matter was reported to be “fully resolved.”
- Moving Party did not allege that he is a judgment creditor or any other type of creditor of Cape PLC, nor does the motion to appoint the Receiver (“Park Receiver Motion”) identify any creditors of Cape PLC.
- The Receivership Order purports to appoint the Receiver “because Cape PLC as the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) (“Cape Asbestos”) and its subsidiaries and global affiliates (collectively, “Cape” or the “Company”) have dissolved and Cape, a foreign corporation, has forfeited its charter and has further failed to answer in this case.” Each of these facts was asserted in the Park Receiver Motion and are demonstrably incorrect. Cape PLC, a Jersey company formed in 2011, has not dissolved or forfeited its charter and is not the “successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.).”²³

²³ Park, Tibbs, and the Receiver all affirmatively plead that Cape PLC is an existing and ongoing company. Park, in his underlying Complaint, named both Cape PLC and Cape Intermediate Holdings Limited as defendants in the amended complaint, alleging that both are active and existing companies. Park Amended Compl., at ¶¶ 26 – 27. This is true and belies the assertion in

There was no evidence submitted in the *Park* Lawsuit (in the record) showing that Cape PLC (or any Cape entity) was properly served with the operative Summons, Second Amended Complaint, or Motion for Appointment of Receiver.

- There was no evidence submitted in the *Park* Lawsuit demonstrating that notice of the Park Receiver Motion was provided to Cape PLC, alleged Cape PLC affiliates or to Third-Party Defendants as required by SC Code Ann. 15-65-20 and 15-65-30. Likewise, there is no evidence that the Receivership Order was provided to Cape PLC, alleged Cape PLC affiliates or to certain Third-Party Defendants as required by SC Code Ann. 15-65-20 and 15-65-30. ESAB was not provided with notice of the Park Receiver Motion prior to the entry of the Receivership Order.

- Neither the Park Receiver Motion nor the Receivership Order identify any specific “property within this State” or even generally the existence of any “property within this State” of Cape PLC, alleged Cape PLC affiliates or to any Third-Party Defendants as required by SC Code Ann. 15-65-10(4).

- The Receivership Order violates basic tenets of due process and constitutional law because it purports to give a South Carolina receiver authority over property that is not located in and has no relationship to South Carolina and because no impacted parties were given prior notice of the Park Receiver Motion. The Park Receiver Motion neither identified the property sought to be placed in the hands of a receiver nor provided any evidence regarding the value of the property so sought to be placed in the hands of a receiver. The Receivership Order does not include “a

the Park Receiver Motion and the finding in the Receivership Order that Cape PLC was dissolved. The Receiver, in this Third-Party Complaint in *Tibbs*, likewise alleged that Cape PLC is active and existing. See Third-Party Compl., at ¶ 40.

clause fixing the value of the property” sought to be placed in the hands of a receiver as required by SC Code Ann. 15-65-60 (“Whenever the court or judge before whom such application [to appoint receiver] is made shall appoint a receiver before final judgment in the cause there shall be inserted in the order of appointment a clause fixing the value of the property for which the bond may be given, as prescribed in Section 15-65-50.”).

- The Receiver’s Third-Party Complaint seeks not to protect the interests of the company over which he has purportedly been given authority, but to generate liability for that company and obtain an impermissible advisory opinion on alter ego and veil piercing liability against the Third-Party Defendants when no asbestos exposure liability against any Cape PLC entity has been adjudicated in any South Carolina court.

E. Conclusion.

For the reasons stated above, ESAB respectfully requests the Court enter an Order dismissing the Third-Party Complaint over ESAB pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure.

Dated: December 4, 2023

GORDON REES SCULLY MANSUKHANI, LLP

BY: /s/ A. Victor Rawl, Jr.
A. Victor Rawl, Jr. (SC 09261)
Email: vrawl@grsm.com
40 Calhoun Street, Suite 350
Charleston, SC 29407
Telephone: 843-714-2501

Counsel for Third-Party Defendant ESAB Corporation

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

JOHN A. TIBBS and MARGARET B. TIBBS,

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

Plaintiffs,

In Re:

v.

Asbestos Personal Injury Litigation
Coordinated Docket

3M COMPANY, et al.,

Defendants.

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

Third-Party Plaintiff,

v.

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

Third-Party Defendants.

**THIRD-PARTY DEFENDANT CENTRAL MINING AND INVESTMENT CORP.
LTD.'S RESPONSE AND OBJECTION TO THIRD-PARTY PLAINTIFF'S PROPOSED
ORDER DENYING CERTAIN THIRD-PARTY DEFENDANTS' MOTIONS TO
DISSOLVE RECEIVERSHIP AND THIRD-PARTY DEFENDANTS' MOTIONS TO
DISMISS FOR LACK OF PERSONAL JURISDICTION**

Third-Party Defendant Central Mining and Investment Corp. Ltd. (“Central Mining”), by and through its undersigned counsel, submits this Response and Objections to Third Party Plaintiff Cape PLC’s, by and through its Receiver Peter D. Protopapas (the “Receiver”), Proposed Order Denying Certain Third-Party Defendants’ Motions to Dissolve Receivership and Third-Party Defendants’ Motions to Dismiss for Lack of Personal Jurisdiction (the “Proposed Order”).¹

A. **Introduction.**

The Proposed Order should be rejected because the Third-Party Complaint does not sufficiently allege jurisdiction over Central Mining. As an initial matter, there is no dispute, and the Proposed Order appears to concede, that there is no general jurisdiction over Central Mining because it is not “at home” in South Carolina. Furthermore, the Proposed Order does not attempt to establish specific jurisdiction over Central Mining through any action by Central Mining in South Carolina and, instead, inaccurately attempts to label Central Mining as the alter ego of or part of a single business enterprise with Cape Intermediate Holdings Limited, formerly known as Cape PLC, and formerly known as Cape Asbestos Company Ltd. (collectively, “Cape”). Despite the Third-Party Complaint’s heated rhetoric, however, it fails to sufficiently allege *facts* demonstrating that Central Mining (as opposed to other Third-Party Defendants) had the requisite dominion and control over Cape to justify specific jurisdiction based on alter ego or single business enterprise theories.

The Proposed Order fails to address these deficiencies and, instead, rehashes the same conclusory allegations that Central Mining controls Cape because it was the majority shareholder

¹ Charter Consolidated adopts the objections to the Receiver’s Proposed Order advanced by other Third-Party Defendants, including but not limited to, the arguments made therein, any memoranda in support, and arguments made orally on the record.

of Cape, seconded employees to Cape, and had a majority on the board of directors. These allegations, however, are woefully insufficient as a matter of law to demonstrate complete dominion and control by Central Mining over Cape such that Cape “manifest[ed] no separate interest of its own.” Accordingly, the Court should reject the Proposed Order and dismiss Central Mining from the Third-Party Complaint for lack of personal jurisdiction.

B. The Receiver’s Proposed Order Denying Central Mining’s Motion To Dismiss Should Be Rejected.

The Court should reject the Receiver’s Proposed Order and dismiss the Third-Party Complaint as to Central Mining because the Court lacks jurisdiction over Central Mining.² Indeed, the Receiver has not alleged facts, as opposed to conclusory allegations, that are sufficient to support jurisdiction over Central Mining in the State of South Carolina.

1. The Receiver fails to address the fatal deficiencies in the Third-Party Complaint as to personal jurisdiction over Central Mining.

The Receiver’s Proposed Order does not address the factors required to demonstrate that personal jurisdiction over Central Mining is appropriate under an alter ego or single business enterprise theory. Instead, the Proposed Order continues to make broad, sweeping generalizations about Central Mining’s purported “control” over Cape that, as a matter of law, are insufficient to sustain an alter ego or single business enterprise theory.

Importantly, the Third-Party Complaint does not include facts specific to how Central Mining controlled Cape and certainly does not allege facts sufficient to even remotely demonstrate that Central Mining had “total domination and control” over Cape³ such that Cape “manifest[ed]

² See Rule 12(b)(2).

³ Indeed, after examining this issue on the merits, other courts have determined that no such requisite domination and control exists. *See Craig v. Lake Asbestos of Quebec, Ltd.*, 843 F.2d 145, 152 (3d Cir. 1988) (after trial on the merits directly addressing alter ego allegations, and relying

no separate interest of its own.”⁴ Instead, the Receiver spends a great portion of the Third-Party Complaint (and the Proposed Order) focusing on facts about others’ control over Central Mining, which is wholly irrelevant to the analysis of whether Central Mining exercised sufficient control over Cape to pierce the corporate veil.⁵

In fact, the *only* specific allegations as to control between Central Mining and Cape are that: (1) Central Mining was initially organized to take over the assets and business interests of a third-party organization that held “interests” in Cape Asbestos;⁶ (2) Central Mining was a major shareholder in Cape in the mid-1900s;⁷ (3) Central Mining “second[ed] employees to Cape”;⁸ and (4) Central Mining used its expertise to “improve” Cape’s performance.⁹ These conclusory allegations that Central Mining controlled Cape¹⁰ are woefully insufficient given that it is well

on the same facts alleged in the Third-Party Complaint, determining that the Charter (which was defined in the court’s findings to include Central Mining) purported to be liable was not the alter ego of Cape because there was “no evidence” that “Charter’s intrusion into Cape’s affairs [was] even constant or day-to-day. Moreover, and significantly, the district court found that ‘[t]he two corporate groups each maintained separate books, records, bank accounts, offices and staff; each consulted their own financial advisors, accountants and stockbrokers.’”); *see also In re Charter Defs.*, 1989 U.S. Dist. LEXIS 15591 (E.D. Pa. May 18, 1989) (dismissing all claims, cross-claims, and third-party claims asserted against Charter Consolidated in all cases pending in the Eastern District of Pennsylvania because Charter Consolidated is not the alter ego of Cape); *Culbreth v. Amosa, Ltd.*, 898 F.2d 13 (3d Cir. 1990) (affirming summary judgment dismissal because Charter Consolidated is not the alter ego of Cape); *Simmons v. AC&S, Inc.*, No. 84-1170 (W.D. Ark. June 4, 1985) (granting motion to dismiss for lack of personal jurisdiction because Charter Consolidated is not the alter ego of Cape).

⁴ *Oskin*, 400 S.C. at 400, 735 S.E.2d at 465; *Colleton Cnty. Taxpayers Ass’n.*, 371 S.C. at 237, 638 S.E.2d a 692.

⁵ *See e.g.*, Third-Party Compl., at ¶¶ 57–59; Proposed Order, at 66-67.

⁶ Third-Party Compl., at ¶ 48.

⁷ *Id.*, at ¶ 50.

⁸ *Id.*, at ¶ 50.

⁹ *Id.*, at ¶ 52.

¹⁰ *See e.g.*, Third-Party Compl., at ¶¶ 140–141; Proposed Order, at 66-67.

settled law in South Carolina that majority ownership and common officers or directors, standing alone, simply do not “support the conclusion the subsidiary is its parent’s alter ego or agent for the transaction of its business.”¹¹

The Court should, therefore, grant Central Mining’s Motion to Dismiss for lack of personal jurisdiction because the Receiver does not allege sufficient facts to show that Central Mining dominated and controlled Cape such that the Court should use Cape’s jurisdiction contacts with South Carolina as a basis for personal jurisdiction over Central Mining.¹²

2. The Court should adopt Central Mining’s proposed language granting its Motion to Dismiss.

As the Third-Party Complaint fails to allege sufficient facts to demonstrate that personal jurisdiction over Central Mining is proper, the Court should adopt the below language in its Order granting Central Mining’s Motion to Dismiss for lack of personal jurisdiction:¹³

Although the Third-Party Complaint alleges that Central Mining is the alter ego of or part of a single business enterprise with Cape, those allegations, without more, are insufficient as a matter of law to establish personal jurisdiction over

¹¹ *Yarborough & Co. v. Schoolfield Furniture Indus., Inc.*, 275 S.C. 151, 153–54, 268 S.E.2d 42, 44 (1980); *Jones ex rel. Jones v. Enter. Leasing Co.-Se.*, 383 S.C. 259, 267, 678 S.E.2d 819, 823–24 (Ct. App. 2009).

¹² See e.g., *In re Joseph Walker & Co., Inc.*, 522 B.R. 165, 193 (Bankr. D.S.C. 2014) (refusing to find alter ego liability where company “maintained separate bank accounts, obtained credit lines based solely upon its own assets and liabilities, obtained and possessed its own federal tax identification number and accordingly paid taxes when they became due” and employed separate legal counsel and accounting firms).

¹³ Central Mining has not attempted to do a redline of all the necessary changes to the Receiver’s Proposed Order to reflect that the Motions to Dismiss for Personal Jurisdiction were granted in part and denied in part (as opposed to fully denied). If the Court would like, Central Mining can certainly provide a redline showing every instance where language in the Proposed Order would need to be amended.

Central Mining. The Third-Party Complaint does not assert general jurisdiction over Central Mining and, instead, only alleges specific jurisdiction over Central Mining through an alter ego theory or single business enterprise theory of personal jurisdiction.

Critically, however, the Third-Party Complaint does not allege sufficient facts related to Central Mining's control over Cape, such that the Court could find personal jurisdiction under an alter ego or single business enterprise theory. Although no single factor is determinative in an alter ego or single business enterprise theory, courts generally examine factors such as overlapping officers and directors, the parent's capacity to influence major business decisions, whether separate books and records are maintained, whether an integrated sales system exists between the entities, whether the entities present a common marketing image, and whether the entities have formal separate structures but maintain unified operations. *In re Polyester Staple Antitrust Litig.*, 2008 WL 906331, at *13–14, *16 (W.D.N.C. Apr. 1, 2008) (finding exercise of personal jurisdiction over parent company proper where “the management personnel within [the subsidiaries] regularly sought approval from [the parent company] on matters beyond strategy and general business policy”). Here, however, the Third-Party Complaint relies exclusively on only four factual allegations: (1) Central Mining was initially organized to take over the assets and business interests of a third-party organization that held “interests” in Cape Asbestos (Third-Party Compl., at ¶ 48); (2) Central Mining was a major shareholder in Cape in the mid-1900s (*Id.*, at ¶ 50); (3) Central Mining

“second[ed] employees to Cape” (*Id.*, at ¶ 50); and (4) Central Mining used its expertise to “improve” Cape’s performance (*Id.*, at ¶ 52).

These allegations are insufficient as a matter of law. Having an overlap in interests and paying for certain personnel does not rise to the level of Central Mining having “constant” or day to day control over Cape required to pierce the corporate veil. This is especially true given that South Carolina courts have repeatedly held that “[c]ommon officers and/or directors and public identification of one corporation as the other’s subsidiary do not, without more, support the conclusion the subsidiary is its parent’s alter ego or agent for the transaction of its business.” *Yarborough & Co.*, 275 S.C. at 153–54, 268 S.E.2d at 44; *Jones ex rel. Jones*, 383 S.C. at 267, 678 S.E.2d at 823–24. Furthermore, the Third-Party Complaint’s generic allegations, such as a “failure to follow corporate formalities” and “domination and control . . . over Cape’s . . . executive personnel and board of directors” (see Third-Party Compl., at ¶ 140), which are merely a rewording of the *Sturkie* Factors, are insufficient as a matter of law. See *David*, 626 S.E.2d at 3 (requiring more than “generic allegations and conjecture” to sustain malpractice claim); *Paradis*, 819 S.E.2d at 153 (confirming that code pleading is required in South Carolina and that code pleading is not as “lenient” as federal notice pleading); see also J. F. Flanagan, S.C. Civ. P. § 8.B. (“[T]he pleader must describe each element of the cause of action in terms of the facts of the case.”); *Mincey v. World Savings Bank FSB*, 614 F. Supp. 2d 610 (D.S.C. 2008) (rejecting plaintiffs’ attempt to allege veil-piercing or alter ego based on conclusory allegations with no specific facts); *Pro Slab, Inc. v. Argos USA Corp.*, 2018 WL 6985008, at *5 (D.S.C. June

28, 2018), *reconsideration granted on other grounds*, 2018 WL 6985010 (D.S.C. Dec. 3, 2018) (granting defendants’ motions to dismiss where the “amended complaint contains no factual allegations to support [the] legal conclusion” that certain affiliated corporate entities were alter egos of one another).

Because the Third-Party Complaint does not allege sufficient facts to show that the Court has personal jurisdiction over Central Mining through an alter ego or single business enterprise theory, the Court therefore grants Central Mining’s Motion to Dismiss for lack of personal jurisdiction.

C. General Objections To The Receiver’s Proposed Order Denying Third-Party Defendants’ Motions to Dismiss For Lack of Personal Jurisdiction.

Outside of the specific section solely devoted to Central Mining, Central Mining also objects to other sections of the Receiver’s Proposed Order related to personal jurisdiction on numerous grounds.

Central Mining objects to the Proposed Order because, in the section on the standard for ruling on motions to dismiss for lack of personal jurisdiction, the Receiver fails to include important aspects of the legal standard. Specifically, the Proposed Order should have included a discussion of the burden when a nonresident defendant attacks the allegations of the complaint and submits factual affidavits. Furthermore, the Receiver fails to include that each defendant’s conduct must be assessed individually. Central Mining therefore proposes that the Court include the following language in the discussion of the standard for ruling on motions to dismiss for lack of personal jurisdiction:

When a nonresident defendant attacks the allegations of a complaint based on jurisdiction, a plaintiff bears the burden of proving subject-matter jurisdiction.

Elridge v. City of Greenwood, 503 S.E.2d 191, 197 (S.C. Ct. App. 1998). The court

is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction. *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 655 S.E.2d 476, 478 (2007). Given that numerous Third-Party Defendants have submitted factual affidavits attacking the allegations in the Third-Party Complaint, Cape must do more than state general and conclusory allegations and instead must present, by affidavit or otherwise, facts showing that this Court has jurisdiction over the Third-Party Defendants. Moreover, “[e]ach defendant’s contacts with the forum State must be assessed individually.” *Calder v. Jones*, 465 U.S. 783, 790 (1984).

Central Mining also objects to the sections purportedly relaying the standards for alter ego theory and the single business enterprise theory of personal jurisdiction because they fail to indicate that each of these theories must be applied on a defendant-by-defendant basis. In other words, a plaintiff cannot group plead, but must show how each defendant acted as the alter ego or was part of a single business enterprise. Accordingly, Central Mining proposes that the Court include the following language in the applicable sections on the standards for alter ego theory and single business enterprise theory:

In order to establish personal jurisdiction under an alter ego theory, a plaintiff must separately establish that each defendant was the alter ego of the entity that the South Carolina courts have personal jurisdiction over. It is “plainly unconstitutional” to group defending parties together to meet this burden in establishing personal jurisdiction. *See Rush v. Savchuk*, 444 U.S. 320, 331-32 (1980).

In order to establish personal jurisdiction under a single business enterprise theory, a plaintiff must separately establish that each defendant was part of a single business enterprise with the entity that the South Carolina courts have personal jurisdiction over. It is “plainly unconstitutional” to group defending parties together to meet this burden in establishing personal jurisdiction. *See Rush v. Savchuk*, 444 U.S. 320, 331-32 (1980).

Central Mining further objects to the Proposed Order because it purports to make factual findings that are inappropriate at this stage of the litigation. *See HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 632–33, 699 S.E.2d 699, 703–04 (Ct. App. 2010). Central Mining proposes that the Court include the below language to make clear that, for purposes of the Order, the Court is taking as true the allegations in the Third-Party Complaint and is not making any findings as to the truth of those allegations:

For purposes of this Order, the Court has taken as true the allegations contained in the Third-Party Complaint and has resolved all factual disputes in favor of Cape, even if the Court has doubts as to whether Cape can ultimately prove the facts discussed herein. *See HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 632–33, 699 S.E.2d 699, 703–04 (Ct. App. 2010).

Finally, Central Mining objects to the portion of the Proposed Order that finds sufficient evidence of personal jurisdiction over Cape. In order for the Court to find personal jurisdiction over Central Mining because of conduct by Cape, the Court must also find that personal

jurisdiction exists as to Cape.¹⁴ Cape's purported contacts with South Carolina, even if imputed to Central Mining, are insufficient to establish specific jurisdiction. The only contact with South Carolina that the Third-Party Complaint mentions is that Cape sold asbestos in the United States, including in South Carolina.¹⁵ Importantly, however, the claims asserted against Central Mining do not arise out of any asbestos sold in South Carolina (nor does the Third-Party Complaint make such an assertion). For that matter, there are not even any allegations in Plaintiffs' Complaint or the Third-Party Complaint that Tibbs was exposed to amosite asbestos sold or mined by Cape.¹⁶

Although specific jurisdiction can certainly be established by an entity's contacts with South Carolina, the critical distinction between general and specific jurisdiction is that, for specific jurisdiction, the claims must actually arise from the contacts with the state.¹⁷ The Third-Party Complaint asserts four causes of action: unjust enrichment, constructive trust, alter ego or piercing the corporate veil liability, and accounting. None of these claims arise out of Cape's purported sales of asbestos to any particular entity or person in South Carolina (or even arise from the use of asbestos in South Carolina) and, instead, arise out of purported conduct in South Africa, the United Kingdom, and other places outside of South Carolina. Unless the claims actually arise from Cape's contacts in South Carolina, the mere fact that Cape's jurisdictional contacts may be imputed to

¹⁴ See *e.g.*, *Duong v. N. Am. Transportation Servs. LLC*, 2019 WL 13109647, at *13 (D.S.C. Sept. 25, 2019) (holding that, even if the single business enterprise theory applied, plaintiff failed to allege jurisdictional facts necessary to establish personal jurisdiction).

¹⁵ See *e.g.*, Third-Party Compl., at ¶¶ 75–76. Technically, the Receiver does not even allege that Cape directly sold asbestos in South Carolina, but instead seeks to first impute NAAC's contacts in South Carolina to Cape, before trying to impute NAAC's contacts to Central Mining.

¹⁶ See generally Third-Party Compl.

¹⁷ See *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 655 S.E.2d 476 (2007).

Central Mining (they should not) is insufficient for this Court to assert personal jurisdiction over Central Mining.¹⁸

D. Objections To The Receiver’s Proposed Order Denying Third-Party Defendants’ Motions to Dissolve The Receivership.

Although Central Mining is not rearguing the Motion to Dissolve the Receivership, it continues to object to the denial of the Motion for the below reasons:

- The Proposed Order fails to address the Receiver’s argument that naming Cape PLC as the entity in receivership was merely a “misnomer,” and instead merely attempts to blur the identity of the company in receivership. The Court should clearly set forth whether the entity in receivership is Cape PLC or Cape Intermediate Holdings Limited. If the Court agrees with the Receiver’s misnomer argument (which it should not for the reasons mentioned herein and in other Third-Party Defendants’ objections to the Proposed Order), then the Court should clearly set forth its ruling and include in any order the following language:

For the reasons argued by the Receiver at the hearing, the Court finds that the entity in Receivership is Cape Intermediate Holdings Limited, formerly known as Cape PLC, and formerly known as Cape Asbestos Company Ltd. (together herein referred to as “Cape”).

- The order purporting to appoint the Receiver (“Receivership Order”) was filed on March 17, 2023, in *Park v. Armstrong International, Inc.*, Case No. 2021-CP-40-02727 (“*Park*

¹⁸ See *Outpost Cap. Mgmt., LLC v. Prioleau*, 2017 WL 5514513, at *7 (D.S.C. Nov. 16, 2017) (finding that even an entities’ contacts could be imputed to defendant through an alter ego theory, the court still did not have specific jurisdiction over defendant because the claims against defendant did not arise from the entities’ contacts with South Carolina).

Lawsuit”), and was procured by “Keith Park, individually and as the Personal Representative of the Estate of Isabella Park” (“Moving Party”) nine months after the trial date and after that matter was reported to be “fully resolved.”

- Moving Party did not allege that he is a judgment creditor or any other type of creditor of Cape PLC, nor does the motion to appoint the Receiver (“Park Receiver Motion”) identify any creditors of Cape PLC.

- The Receivership Order purports to appoint the Receiver “because Cape PLC as the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) (“Cape Asbestos”) and its subsidiaries and global affiliates (collectively, “Cape” or the “Company”) have dissolved and Cape, a foreign corporation, has forfeited its charter and has further failed to answer in this case.” Each of these facts was asserted in the Park Receiver Motion and are demonstrably incorrect. Cape PLC, a Jersey company formed in 2011, has not dissolved or forfeited its charter and is not the “successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.).”¹⁹ There was no evidence submitted in the *Park* Lawsuit (in the record) showing that Cape PLC (or any Cape entity) was properly served with the operative Summons, Second Amended Complaint, or Motion for Appointment of Receiver.

- There was no evidence submitted in the *Park* Lawsuit demonstrating that notice of the Park Receiver Motion was provided to Cape PLC, alleged Cape PLC affiliates or to Third-

¹⁹ Park, Tibbs, and the Receiver all affirmatively plead that Cape PLC is an existing and ongoing company. Park, in his underlying Complaint, named both Cape PLC and Cape Intermediate Holdings Limited as defendants in the amended complaint, alleging that both are active and existing companies. Park Amended Compl., at ¶¶ 26 – 27. This is true and belies the assertion in the Park Receiver Motion and the finding in the Receivership Order that Cape PLC was dissolved. The Receiver, in this Third-Party Complaint in *Tibbs*, likewise alleged that Cape PLC is active and existing. See Third-Party Compl., at ¶ 40.

Party Defendants as required by SC Code Ann. 15-65-20 and 15-65-30. Likewise, there is no evidence that the Receivership Order was provided to Cape PLC, alleged Cape PLC affiliates or to certain Third-Party Defendants as required by SC Code Ann. 15-65-20 and 15-65-30. Central Mining was not provided with notice of the Park Receiver Motion prior to the entry of the Receivership Order.

- Neither the Park Receiver Motion nor the Receivership Order identify any specific “property within this State” or even generally the existence of any “property within this State” of Cape PLC, alleged Cape PLC affiliates or to any Third-Party Defendants as required by SC Code Ann. 15-65-10(4).

- The Receivership Order violates basic tenets of due process and constitutional law because it purports to give a South Carolina receiver authority over property that is not located in and has no relationship to South Carolina and because no impacted parties were given prior notice of the Park Receiver Motion. The Park Receiver Motion neither identified the property sought to be placed in the hands of a receiver nor provided any evidence regarding the value of the property so sought to be placed in the hands of a receiver. The Receivership Order does not include “a clause fixing the value of the property” sought to be placed in the hands of a receiver as required by SC Code Ann. 15-65-60 (“Whenever the court or judge before whom such application [to appoint receiver] is made shall appoint a receiver before final judgment in the cause there shall be inserted in the order of appointment a clause fixing the value of the property for which the bond may be given, as prescribed in Section 15-65-50.”).

- The Receiver’s Third-Party Complaint seeks not to protect the interests of the company over which he has purportedly been given authority, but to generate liability for that company and obtain an impermissible advisory opinion on alter ego and veil piercing liability

against the Third-Party Defendants when no asbestos exposure liability against any Cape PLC entity has been adjudicated in any South Carolina court.

E. Conclusion.

For the reasons stated above, Central Mining respectfully requests the Court enter an Order dismissing the Third-Party Complaint over Central Mining pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure.

Dated: December 4, 2023

GORDON REES SCULLY MANSUKHANI, LLP

BY: /s/ A. Victor Rawl, Jr
A. Victor Rawl, Jr. (SC 09261)
Email: vrawl@grsm.com
40 Calhoun Street, Suite 350
Charleston, SC 29407
Telephone: 843-714-2501

*Counsel for Third-Party Defendant Central
Mining and Investment Corp. Ltd.*

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

JOHN A. TIBBS and MARGARET B. TIBBS,

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

Plaintiffs,

In Re:

v.

Asbestos Personal Injury Litigation
Coordinated Docket

3M COMPANY, et al.,

Defendants.

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

Third-Party Plaintiff,

v.

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

Third-Party Defendants.

**THIRD-PARTY DEFENDANT CHARTER CONSOLIDATED LTD.'S
RESPONSE AND OBJECTION TO THIRD-PARTY PLAINTIFF'S PROPOSED ORDER
DENYING CERTAIN THIRD-PARTY DEFENDANTS' MOTIONS TO DISSOLVE
RECEIVERSHIP AND THIRD-PARTY DEFENDANTS' MOTIONS TO DISMISS FOR
LACK OF PERSONAL JURISDICTION**

Third-Party Defendant Charter Consolidated Ltd. (“Charter Consolidated”), by and through its undersigned counsel, submits this Response and Objections to Third Party Plaintiff Cape PLC’s, by and through its Receiver Peter D. Protopapas (the “Receiver”), Proposed Order Denying Certain Third-Party Defendants’ Motions to Dissolve Receivership and Third-Party Defendants’ Motions to Dismiss for Lack of Personal Jurisdiction (the “Proposed Order”).¹

A. **Introduction.**

The Proposed Order should be rejected because the Third-Party Complaint does not sufficiently allege jurisdiction over Charter Consolidated. As an initial matter, there is no dispute, and the Proposed Order appears to concede, that there is no general jurisdiction over Charter Consolidated because it is not “at home” in South Carolina. Furthermore, the Proposed Order does not attempt to establish specific jurisdiction over Charter Consolidated through any action by Charter Consolidated and, instead, inaccurately attempts to label Charter Consolidated as the alter ego of or part of a single business enterprise with Cape Intermediate Holdings Limited, formerly known as Cape PLC, and formerly known as Cape Asbestos Company Ltd. (collectively, “Cape”). Despite the Third-Party Complaint’s heated rhetoric, however, it fails to sufficiently allege *facts* demonstrating that Charter Consolidated (as opposed to other Third-Party Defendants) had the requisite dominion and control over Cape to justify specific jurisdiction based on alter ego or single business enterprise theories. The Proposed Order fails to address these deficiencies and, instead, rehashes the same generic allegations related to Charter Consolidated’s relationship with the Anglo/De Beers group (not Cape).

¹ Charter Consolidated adopts the objections to the Receiver’s Proposed Order advanced by other Third-Party Defendants, including but not limited to, the arguments made therein, any memoranda in support, and arguments made orally on the record.

The only allegations about the relationship between Cape and Charter Consolidated that the Proposed Order relies on to support alter ego and single business enterprise theories of personal jurisdiction is that Charter Consolidated was a majority owner of Cape starting in 1969 (until 1996) and that Cape was Charter Consolidated's "primary operating company and principal industrial subsidiary." As a matter of law, these allegations are woefully insufficient to demonstrate complete dominion and control by Charter Consolidated over Cape. Accordingly, the Court should reject the Proposed Order and dismiss Charter Consolidated from the Third-Party Complaint for lack of personal jurisdiction.

B. The Receiver's Proposed Order Denying Charter Consolidated's Motion To Dismiss Should Be Rejected.

The Court should reject the Receiver's Proposed Order and dismiss the Third-Party Complaint as to Charter Consolidated because the Court lacks jurisdiction over Charter Consolidated.² Indeed, the Receiver has not alleged facts, as opposed to conclusory allegations, that are sufficient to support jurisdiction over Charter Consolidated in the State of South Carolina.

1. The Receiver fails to address the fatal deficiencies in the Third-Party Complaint as to personal jurisdiction over Charter Consolidated.

The Receiver's Proposed Order does not address the factors required to demonstrate that personal jurisdiction over Charter Consolidated is appropriate under an alter ego or single business enterprise theory. Instead, the Proposed Order continues to make broad, sweeping generalizations about Charter Consolidated's purported "control" over Cape that, as a matter of law, are insufficient to sustain an alter ego or single business enterprise theory.

² See Rule 12(b)(2).

Importantly, the Third-Party Complaint does not allege facts sufficient to even remotely demonstrate that Charter Consolidated had “total domination and control” over Cape³ such that Cape “manifest[ed] no separate interest of its own.”⁴ Instead, the Receiver spends a great portion of the Third-Party Complaint (and the Proposed Order) focusing on facts about others’ control over Charter Consolidated, which is wholly irrelevant to the analysis of whether Charter Consolidated exercised sufficient control over Cape to pierce the corporate veil.⁵

In fact, the *only* specific allegations as to control between Charter Consolidated and Cape are that: (1) Charter Consolidated was the majority owner of Cape starting in 1969;⁶ (2) Charter Consolidated “second[ed] and compensate[ed] key personnel for Cape’s management”;⁷ (3) Charter Consolidated used its “influence” in South Africa to allow Cape to profit from mining and

³ Indeed, after examining this issue on the merits, other courts have determined that no such requisite domination and control exists. *See Craig v. Lake Asbestos of Quebec, Ltd.*, 843 F.2d 145, 152 (3d Cir. 1988) (after trial on the merits directly addressing alter ego allegations, and relying on the same facts alleged in the Third-Party Complaint, determining that the Charter purported to be liable was not the alter ego of Cape because there was “no evidence” that “Charter’s intrusion into Cape’s affairs [was] even constant or day-to-day. Moreover, and significantly, the district court found that ‘[t]he two corporate groups each maintained separate books, records, bank accounts, offices and staff; each consulted their own financial advisors, accountants and stockbrokers.’”); *see also In re Charter Defs.*, 1989 U.S. Dist. LEXIS 15591 (E.D. Pa. May 18, 1989) (dismissing all claims, cross-claims, and third-party claims asserted against Charter Consolidated in all cases pending in the Eastern District of Pennsylvania because Charter Consolidated is not the alter ego of Cape); *Culbreth v. Amosa, Ltd.*, 898 F.2d 13 (3d Cir. 1990) (affirming summary judgment dismissal because Charter Consolidated is not the alter ego of Cape); *Simmons v. AC&S, Inc.*, No. 84-1170 (W.D. Ark. June 4, 1985) (granting motion to dismiss for lack of personal jurisdiction because Charter Consolidated is not the alter ego of Cape).

⁴ *Oskin*, 400 S.C. at 400, 735 S.E.2d at 465; *Colleton Cnty. Taxpayers Ass’n.*, 371 S.C. at 237, 638 S.E.2d a 692.

⁵ *See e.g.*, Third-Party Compl., at ¶¶ 57–59; Proposed Order, at 68-69 (“the Third-Party Complaint alleges the distinctions between *Charter* and *Anglo* were superficial) (emphasis added).

⁶ *See* Third-Party Compl., at ¶ 55.

⁷ *See* Third-Party Compl., at ¶ 61.

exporting asbestos;⁸ and (4) Cape’s chairman was also a director for Charter Consolidated.⁹ These allegations are insufficient as a matter of law.¹⁰ These conclusory allegations that Charter Consolidated controlled Cape are woefully insufficient given that it is well settled law in South Carolina that majority ownership and common officers or directors, standing alone, simply do not “support the conclusion the subsidiary is its parent’s alter ego or agent for the transaction of its business.”¹¹

The Court should, therefore, grant Charter Consolidated’s Motion to Dismiss for lack of personal jurisdiction because the Receiver does not allege sufficient facts to show that Charter Consolidated dominated and controlled Cape such that the Court should use Cape’s jurisdiction contacts with South Carolina as a basis for personal jurisdiction over Charter Consolidated.¹²

2. The Court should adopt Charter Consolidated’s proposed language granting its Motion to Dismiss.

⁸ *Id.* at ¶ 61.

⁹ *Id.* at ¶ 78.

¹⁰ *Yarborough & Co.*, 275 S.C. at 153–54, 268 S.E.2d at 44; *Jones ex rel. Jones*, 383 S.C. at 267, 678 S.E.2d at 823–24.

¹¹ *Yarborough & Co. v. Schoolfield Furniture Indus., Inc.*, 275 S.C. 151, 153–54, 268 S.E.2d 42, 44 (1980); *Jones ex rel. Jones v. Enter. Leasing Co.-Se.*, 383 S.C. 259, 267, 678 S.E.2d 819, 823–24 (Ct. App. 2009).

¹² *See e.g., In re Joseph Walker & Co., Inc.*, 522 B.R. 165, 193 (Bankr. D.S.C. 2014) (refusing to find alter ego liability where company “maintained separate bank accounts, obtained credit lines based solely upon its own assets and liabilities, obtained and possessed its own federal tax identification number and accordingly paid taxes when they became due” and employed separate legal counsel and accounting firms).

As the Third-Party Complaint fails to allege sufficient facts to demonstrate that personal jurisdiction over Charter Consolidated is proper, the Court should adopt the below language in its Order granting Charter Consolidated's Motion to Dismiss for lack of personal jurisdiction:¹³

Although the Third-Party Complaint alleges that Charter Consolidated is the alter ego of or part of a single business enterprise with Cape, those allegations, without more, are insufficient as a matter of law to establish personal jurisdiction over Charter Consolidated. The Third-Party Complaint does not assert general jurisdiction over Charter Consolidated and, instead, only alleges specific jurisdiction over Charter Consolidated through an alter ego theory or single business enterprise theory of personal jurisdiction.

Critically, however, the Third-Party Complaint does not allege sufficient facts related to Charter Consolidated's control over Cape, such that the Court could find personal jurisdiction under an alter ego or single business enterprise theory. Although no single factor is determinative in an alter ego or single business enterprise theory, courts generally examine factors such as overlapping officers and directors, the parent's capacity to influence major business decisions, whether separate books or records are maintained, whether an integrated sales system exists between the entities, whether the entities present a common marketing image, and whether the entities have formal separate structures but maintain unified operations.

¹³ Charter Consolidated has not attempted to do a redline of all the necessary changes to the Receiver's Proposed Order to reflect that the Motions to Dismiss for Personal Jurisdiction were granted in part and denied in part (as opposed to fully denied). If the Court would like, Charter Consolidated can certainly provide a redline showing every instance where language in the Proposed Order would need to be amended.

In re Polyester Staple Antitrust Litig., 2008 WL 906331, at *13–14, *16 (W.D.N.C. Apr. 1, 2008) (finding exercise of personal jurisdiction over parent company proper where “the management personnel within [the subsidiaries] regularly sought approval from [the parent company] on matters beyond strategy and general business policy”). Here, however, the Third-Party Complaint relies exclusively on only four factual allegations: (1) Charter Consolidated was the majority owner of Cape starting in 1969 (*see* Third-Party Compl., at ¶ 55); (2) Charter Consolidated “second[ed] and compensate[ed] key personnel for Cape’s management” (*Id.*, at ¶ 61); (3) Charter Consolidated used its “influence” in South Africa to allow Cape to profit from mining and exporting asbestos (*Id.* at ¶ 61); and (4) Cape’s chairman was also a director for Charter Consolidated (*Id.* at ¶ 78).

These allegations are insufficient as a matter of law. Having an overlap in interests and paying for certain personnel does not rise to the level of Charter Consolidated having “constant” or day to day control over Cape required to pierce the corporate veil. This is especially true given that South Carolina courts have repeatedly held that “[c]ommon officers and/or directors and public identification of one corporation as the other’s subsidiary do not, without more, support the conclusion the subsidiary is its parent’s alter ego or agent for the transaction of its business.” *Yarborough & Co.*, 275 S.C. at 153–54, 268 S.E.2d at 44; *Jones ex rel. Jones*, 383 S.C. at 267, 678 S.E.2d at 823–24. Furthermore, the Third-Party Complaint’s generic allegations, such as a “failure to follow corporate formalities” and “domination and control . . . over Cape’s . . . executive personnel and board of directors” (*see* Third-Party Compl., at ¶ 140), which are merely a rewording of the

Sturkie Factors, are insufficient as a matter of law. *See David*, 626 S.E.2d at 3 (requiring more than “generic allegations and conjecture” to sustain malpractice claim); *Paradis*, 819 S.E.2d at 153 (confirming that code pleading is required in South Carolina and that code pleading is not as “lenient” as federal notice pleading); *see also* J. F. Flanagan, S.C. Civ. P. § 8.B. (“[T]he pleader must describe each element of the cause of action in terms of the facts of the case.”); *Mincey v. World Savings Bank FSB*, 614 F. Supp. 2d 610 (D.S.C. 2008) (rejecting plaintiffs’ attempt to allege veil-piercing or alter ego based on conclusory allegations with no specific facts); *Pro Slab, Inc. v. Argos USA Corp.*, 2018 WL 6985008, at *5 (D.S.C. June 28, 2018), *reconsideration granted on other grounds*, 2018 WL 6985010 (D.S.C. Dec. 3, 2018) (granting defendants’ motions to dismiss where the “amended complaint contains no factual allegations to support [the] legal conclusion” that certain affiliated corporate entities were alter egos of one another).

Because the Third-Party Complaint does not allege sufficient facts to show that the Court has personal jurisdiction over Charter Consolidated through an alter ego or single business enterprise theory, the Court therefore grants Charter Consolidated’s Motion to Dismiss for lack of personal jurisdiction.

C. General Objections To The Receiver’s Proposed Order Denying Third-Party Defendants’ Motions to Dismiss For Lack of Personal Jurisdiction.

Outside of the specific section solely devoted to Charter Consolidated, Charter Consolidated also objects to other sections of the Receiver’s Proposed Order related to personal jurisdiction on numerous grounds.

Charter Consolidated objects to the Proposed Order because, in the section on the standard for ruling on motions to dismiss for lack of personal jurisdiction, the Receiver fails to include

important aspects of the legal standard. Specifically, the Proposed Order should have included a discussion of the burden when a nonresident defendant attacks the allegations of the complaint and submits factual affidavits. Furthermore, the Receiver fails to include that each defendant's conduct must be assessed individually. Charter Consolidated therefore proposes that the Court include the following language in the discussion of the standard for ruling on motions to dismiss for lack of personal jurisdiction:

When a nonresident defendant attacks the allegations of a complaint based on jurisdiction, a plaintiff bears the burden of proving subject-matter jurisdiction. *Elridge v. City of Greenwood*, 503 S.E.2d 191, 197 (S.C. Ct. App. 1998). The court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction. *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 655 S.E.2d 476, 478 (2007). Given that numerous Third-Party Defendants have submitted factual affidavits attacking the allegations in the Third-Party Complaint, Cape must do more than state general and conclusory allegations and instead must present, by affidavit or otherwise, facts showing that this Court has jurisdiction over the Third-Party Defendants. Moreover, “[e]ach defendant’s contacts with the forum State must be assessed individually.” *Calder v. Jones*, 465 U.S. 783, 790 (1984).

Charter Consolidated also objects to the sections purportedly relaying the standards for alter ego theory and the single business enterprise theory of personal jurisdiction because they fail to indicate that each of these theories must be applied on a defendant-by-defendant basis. In other words, a plaintiff cannot group plead, but must show how each defendant acted as the alter ego or was part of a single business enterprise. Accordingly, Charter Consolidated proposes that the

Court include the following language in the applicable sections on the standards for alter ego theory and single business enterprise theory:

In order to establish personal jurisdiction under an alter ego theory, a plaintiff must separately establish that each defendant was the alter ego of the entity that the South Carolina courts have personal jurisdiction over. It is “plainly unconstitutional” to group defending parties together to meet this burden in establishing personal jurisdiction. *See Rush v. Savchuk*, 444 U.S. 320, 331-32 (1980).

In order to establish personal jurisdiction under a single business enterprise theory, a plaintiff must separately establish that each defendant was part of a single business enterprise with the entity that the South Carolina courts have personal jurisdiction over. It is “plainly unconstitutional” to group defending parties together to meet this burden in establishing personal jurisdiction. *See Rush v. Savchuk*, 444 U.S. 320, 331-32 (1980).

Charter Consolidated further objects to the Proposed Order because it purports to make factual findings that are inappropriate at this stage of the litigation. *See HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 632–33, 699 S.E.2d 699, 703–04 (Ct. App. 2010). Charter Consolidated proposes that the Court include the below language to make clear that, for purposes of the Order, the Court is taking as true the allegations in the Third-Party Complaint and is not making any findings as to the truth of those allegations:

For purposes of this Order, the Court has taken as true the allegations contained in the Third-Party Complaint and has resolved all factual disputes in favor of Cape, even if the Court has doubts as to whether Cape can ultimately prove

the facts discussed herein. See *HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 632–33, 699 S.E.2d 699, 703–04 (Ct. App. 2010).

Finally, Charter Consolidated objects to the portion of the Proposed Order that finds sufficient evidence of personal jurisdiction over Cape. In order for the Court to find personal jurisdiction over Charter Consolidated because of conduct by Cape, the Court must also find that personal jurisdiction exists as to Cape.¹⁴ Cape’s purported contacts with South Carolina, even if imputed to Charter Consolidated, are insufficient to establish specific jurisdiction. The only contact with South Carolina that the Third-Party Complaint mentions is that Cape sold asbestos in the United States, including in South Carolina.¹⁵ Importantly, however, the claims asserted against Charter Consolidated do not arise out of any asbestos sold in South Carolina (nor does the Third-Party Complaint make such an assertion). For that matter, there are not even any allegations in Plaintiffs’ Complaint or the Third-Party Complaint that Tibbs was exposed to amosite asbestos sold or mined by Cape.¹⁶

Although specific jurisdiction can certainly be established by an entity’s contacts with South Carolina, the critical distinction between general and specific jurisdiction is that, for specific jurisdiction, the claims must actually arise from the contacts with the state.¹⁷ The Third-Party Complaint asserts four causes of action: unjust enrichment, constructive trust, alter ego or piercing

¹⁴ See e.g., *Duong v. N. Am. Transportation Servs. LLC*, 2019 WL 13109647, at *13 (D.S.C. Sept. 25, 2019) (holding that, even if the single business enterprise theory applied, plaintiff failed to allege jurisdictional facts necessary to establish personal jurisdiction).

¹⁵ See e.g., Third-Party Compl., at ¶¶ 75–76. Technically, the Receiver does not even allege that Cape directly sold asbestos in South Carolina, but instead seeks to first impute NAAC’s contacts in South Carolina to Cape, before trying to impute NAAC’s contacts to Charter Consolidated.

¹⁶ See generally Third-Party Compl.

¹⁷ See *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 655 S.E.2d 476 (2007).

the corporate veil liability, and accounting. None of these claims arise out of Cape's purported sales of asbestos to any particular entity or person in South Carolina (or even arise from the use of asbestos in South Carolina) and, instead, arise out of purported conduct in South Africa, the United Kingdom, and other places outside of South Carolina. Unless the claims actually arise from Cape's contacts in South Carolina, the mere fact that Cape's jurisdictional contacts may be imputed to Charter Consolidated (they should not) is insufficient for this Court to assert personal jurisdiction over Charter Consolidated.¹⁸

D. Objections To The Receiver's Proposed Order Denying Third-Party Defendants' Motions to Dissolve The Receivership.

Although Charter Consolidated is not rearguing the Motion to Dissolve the Receivership, it continues to object to the denial of the Motion for the below reasons:

- The Proposed Order fails to address the Receiver's argument that naming Cape PLC as the entity in receivership was merely a "misnomer," and instead merely attempts to blur the identity of the company in receivership. The Court should clearly set forth whether the entity in receivership is Cape PLC or Cape Intermediate Holdings Limited. If the Court agrees with the Receiver's misnomer argument (which it should not for the reasons mentioned herein and in other Third-Party Defendants' objections to the Proposed Order), then the Court should clearly set forth its ruling and include in any order the following language:

For the reasons argued by the Receiver at the hearing, the Court
finds that the entity in Receivership is Cape Intermediate Holdings

¹⁸ See *Outpost Cap. Mgmt., LLC v. Prioleau*, 2017 WL 5514513, at *7 (D.S.C. Nov. 16, 2017) (finding that even an entities' contacts could be imputed to defendant through an alter ego theory, the court still did not have specific jurisdiction over defendant because the claims against defendant did not arise from the entities' contacts with South Carolina).

Limited, formerly known as Cape PLC, and formerly known as Cape Asbestos Company Ltd. (together herein referred to as “Cape”).

- The order purporting to appoint the Receiver (“Receivership Order”) was filed on March 17, 2023, in *Park v. Armstrong International, Inc.*, Case No. 2021-CP-40-02727 (“*Park Lawsuit*”), and was procured by “Keith Park, individually and as the Personal Representative of the Estate of Isabella Park” (“Moving Party”) nine months after the trial date and after that matter was reported to be “fully resolved.”
- Moving Party did not allege that he is a judgment creditor or any other type of creditor of Cape PLC, nor does the motion to appoint the Receiver (“Park Receiver Motion”) identify any creditors of Cape PLC.
- The Receivership Order purports to appoint the Receiver “because Cape PLC as the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) (“Cape Asbestos”) and its subsidiaries and global affiliates (collectively, “Cape” or the “Company”) have dissolved and Cape, a foreign corporation, has forfeited its charter and has further failed to answer in this case.” Each of these facts was asserted in the Park Receiver Motion and are demonstrably incorrect. Cape PLC, a Jersey company formed in 2011, has not dissolved or forfeited its charter and is not the “successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.).”¹⁹

¹⁹ Park, Tibbs, and the Receiver all affirmatively plead that Cape PLC is an existing and ongoing company. Park, in his underlying Complaint, named both Cape PLC and Cape Intermediate Holdings Limited as defendants in the amended complaint, alleging that both are active and existing companies. Park Amended Compl., at ¶¶ 26 – 27. This is true and belies the assertion in the Park Receiver Motion and the finding in the Receivership Order that Cape PLC was dissolved. The Receiver, in this Third-Party Complaint in *Tibbs*, likewise alleged that Cape PLC is active and existing. See Third-Party Compl., at ¶ 40.

There was no evidence submitted in the *Park* Lawsuit (in the record) showing that Cape PLC (or any Cape entity) was properly served with the operative Summons, Second Amended Complaint, or Motion for Appointment of Receiver.

- There was no evidence submitted in the *Park* Lawsuit demonstrating that notice of the Park Receiver Motion was provided to Cape PLC, alleged Cape PLC affiliates or to Third-Party Defendants as required by SC Code Ann. 15-65-20 and 15-65-30. Likewise, there is no evidence that the Receivership Order was provided to Cape PLC, alleged Cape PLC affiliates or to certain Third-Party Defendants as required by SC Code Ann. 15-65-20 and 15-65-30. Charter Consolidated was not provided with notice of the Park Receiver Motion prior to the entry of the Receivership Order.

- Neither the Park Receiver Motion nor the Receivership Order identify any specific “property within this State” or even generally the existence of any “property within this State” of Cape PLC, alleged Cape PLC affiliates or to any Third-Party Defendants as required by SC Code Ann. 15-65-10(4).

- The Receivership Order violates basic tenets of due process and constitutional law because it purports to give a South Carolina receiver authority over property that is not located in and has no relationship to South Carolina and because no impacted parties were given prior notice of the Park Receiver Motion. The Park Receiver Motion neither identified the property sought to be placed in the hands of a receiver nor provided any evidence regarding the value of the property so sought to be placed in the hands of a receiver. The Receivership Order does not include “a clause fixing the value of the property” sought to be placed in the hands of a receiver as required by SC Code Ann. 15-65-60 (“Whenever the court or judge before whom such application [to appoint receiver] is made shall appoint a receiver before final judgment in the cause there shall be

inserted in the order of appointment a clause fixing the value of the property for which the bond may be given, as prescribed in Section 15-65-50.”).

- The Receiver’s Third-Party Complaint seeks not to protect the interests of the company over which he has purportedly been given authority, but to generate liability for that company and obtain an impermissible advisory opinion on alter ego and veil piercing liability against the Third-Party Defendants when no asbestos exposure liability against any Cape PLC entity has been adjudicated in any South Carolina court.

E. Conclusion.

For the reasons stated above, Charter Consolidated respectfully requests the Court enter an Order dismissing the Third-Party Complaint over Charter Consolidated pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure.

Dated: December 4, 2023

GORDON REES SCULLY MANSUKHANI, LLP

BY: /s/ A. Victor Rawl, Jr
A. Victor Rawl, Jr. (SC 09261)
Email: vrawl@grsm.com
40 Calhoun Street, Suite 350
Charleston, SC 29407
Telephone: 843-714-2501

*Counsel for Third-Party Defendant
Charter Consolidated Ltd.*

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

JOHN A. TIBBS and MARGARET B. TIBBS,

Plaintiffs,

v.

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

3M COMPANY *et al.*,

Defendants.

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

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

Third-Party Plaintiff,

**ORDER DENYING CERTAIN THIRD-
PARTY DEFENDANTS' MOTIONS TO
DISSOLVE RECEIVERSHIP AND
THIRD-PARTY DEFENDANTS'
MOTIONS TO DISMISS FOR LACK OF
PERSONAL JURISDICTION**

v.

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

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

Third-Party Defendants.

This matter came before the Court on the (i) Motions to Dissolve the Receivership contained in various motions filed by Mohed Altrad, Altrad Investment Authority S.A.S. (“AIA”), Hawk BidCo US Inc., Arranco US, LLC, and Sparrows Offshore, LLC, Charter Consolidated Ltd. (“Charter”), Central Mining & Investment Corporation Ltd. (“Central Mining”), and ESAB Corporation (“ESAB”) (together, the “Dissolution Motions”)¹; and (ii) the Motions to Dismiss the Third-Party Complaint for lack of personal jurisdiction filed by Anglo American PLC, De Beers PLC, individually and as successor in interest to De Beers S.A., De Beers Centenary AG, De Beers Consolidated Mines Ltd. (n/k/a De Beers Consolidated Mines Proprietary Ltd.), De Beers UK Ltd., De Beers Jewellers Ltd., De Beers Jewellers US, Inc., Anglo American US Holdings Inc., Element Six US Corp., Element Six Technologies US Corp., Element Six Technologies (OR) Corp., First Mode Holdings, Inc., Platinum Guild International (U.S.A.) Jewelry Inc., Lightbox Jewelry Inc., Forevermark US Inc., Anglo American Crop Nutrients (U.S.A.), LLC, Charter, ESAB, Central

¹ At the October 25, 2023 hearing in this matter, certain of the Third-Party Defendants (and specifically, the ten U.S. subsidiaries among the Oppenheimer Third-Party Defendants) advised of their intention to join the Dissolution Motions. On October 26, 2023, those entities each filed a Motion to Join the Dissolution Motions; because each of those ten entities has since been dismissed without prejudice, those Motions to Join the Dissolution Motions are moot.

Mining, Mohed Altrad, AIA, Hawk BidCo US Inc., Arranco US, LLC, and Sparrows Offshore, LLC (together, the “Personal Jurisdiction Motions”). Having considered the Dissolution Motions and the Personal Jurisdiction Motions and related memoranda and supporting affidavits, along with the Third-Party Plaintiff’s Omnibus Oppositions to those motions, the Affidavit of James T.H. Buxton, Esq. (“Buxton Affidavit”), the Affidavit of Eric L. Talley, Ph.D., J.D. (“Talley Affidavit”), and the supporting materials submitted to the Court, the Court denies the Dissolution Motions and denies the Personal Jurisdiction Motions for the reasons set forth below.

FACTUAL AND PROCEDURAL BACKGROUND OF ORDERS

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

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

On June 9, 2021, less than five months from her diagnosis, and only five days after filing her lawsuit, Ms. Park passed away. On November 17, 2021, Ms. Park’s son, Keith, amended the complaint, appearing individually and as personal representative to Ms. Park’s estate (the “*Park* Plaintiffs”), to assert a wrongful death action. *See* First Amended Compl., *Park et al. v. Armstrong Int’l, Inc., et al.*, No. 2021-CP-4002727 (Nov. 17, 2021). The amended complaint added Cape Intermediate Holdings Limited (f/k/a Cape Intermediate Holdings PLC) (together with all predecessors in interest, “Cape”) as a defendant. Cape Intermediate Holdings Limited and Cape

PLC were identified as successors in interest to Cape Asbestos Company Ltd. *Id.* at 9; *see also id.* at ¶¶ 26–27. In December 2021, the *Park* Plaintiffs served the named Cape entities, which (as has been their practice for decades) never answered, moved, or otherwise responded.

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

On March 6, 2023, the *Park* Plaintiffs filed a motion for “this Court to appoint a receiver over Cape PLC and its subsidiaries, affiliates, successors, and assigns.” Motion to Appoint Receiver, *Park et al. v. Armstrong Int’l, Inc. et al.*, No. 2021-CP-4002727 (Mar. 6, 2023) (“Appointment Motion”), at 1. The Appointment Motion was made under S.C. Code §§ 15-65-10(4) and (5),² on the basis that a named defendant, Cape PLC, “is the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)” and, with “its subsidiaries and global affiliates[,] . . . were and are private companies organized and existing under the laws of the United Kingdom, with its principal place of business in England.” *Id.* at 1. The Appointment Motion described Cape PLC’s longstanding litigation-avoidance strategy—starting nearly a half century earlier, in the late 1970s—by which Cape (with its subsidiaries, affiliates, successors, and assigns) “decided to simply accept default judgments in asbestos lawsuits [that] could not be enforced.” *Id.* at 2.

On March 17, 2023, this Court granted the request pursuant to S.C. Code § 15-65-10(5), as well as § 15-65-10(4) in the alternative, and appointed a receiver for Cape PLC, as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.). Order, *Park et al. v. Armstrong Int’l, Inc. et al.*, No. 2021-CP-4002727 (Mar. 17, 2023) (“Appointment Order”), at 1.

² Section 10-65-10(4) and (5) authorize the appointment of a receiver where (i) a corporation has been dissolved, is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights; and (ii) “[i]n such other cases as are provided by law or may be in accordance with the existing practice,” respectively.

Pursuant to the Appointment Order and South Carolina law, the Receiver has “power and authority [to] fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape”—in proper satisfaction of claims against Cape —“whatever they may be.” *Id.* The Appointment Order further vested the Receiver with “rights, authority and powers with respect to” Cape’s property, including to “obtain from any . . . third party, any financial records belonging to or pertaining to” Cape. *Id.* at 2.

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

On June 30, 2023, the Receiver filed the Third-Party Complaint, asserting claims against the Third-Party Defendants for (i) unjust enrichment (first cause of action), (ii) constructive trust (second cause of action), (iii) alter ego and veil-piercing liability (third cause of action), and (iv) accounting (fourth cause of action).³ Each of the Third-Party Defendants named in the Third-Party Complaint are alleged to have facilitated, caused, or directed Cape’s U.S.-based asbestos sales and liability-avoidance scheme, or otherwise acted as successors in interest to or beneficiaries of entities involved in that scheme, and are therefore responsible for the bodily injury underlying the claims against Cape, including specifically those claims asserted by South Carolinians.⁴

³ Seven of the Third-Party Defendants named in the Third-Party Complaint have not acknowledged service or otherwise participated in this action. The Receiver has filed motions for entry of default as to those entities that have not responded, and the Court has requested from the Receiver an order granting the same.

⁴ On November 17, 2023, the Receiver dismissed, without prejudice, 11 entities identified as Oppenheimer Third-Party Defendants, including Anglo American Crop Nutrients (U.S.A.), LLC; Anglo American US Holdings Inc.; De Beers Jewellers Ltd.; De Beers Jewellers US, Inc.; Element Six Technologies (OR) Corp.; Element Six Technologies US Corp.; Element Six US Corp.; First Mode Holdings, Inc.; Forevermark US Inc.; Lightbox Jewelry Inc.; and Platinum Guild International (U.S.A.) Jewelry Inc.

IV. Summary of the Third-Party Complaint's Allegations.

The 65-page Third-Party Complaint alleges a remarkable system of avoiding responsibility for the harm caused by Cape's asbestos over a period of decades. In doing so, it categorizes the Third-Party Defendants into three groups: the Altrad Third-Party Defendants (Third-Party Compl. ¶ 119); the Oppenheimer Third-Party Defendants (*id.* ¶ 122); and the Charter Third-Party Defendants (*id.* ¶ 124). The Third-Party Complaint (along with other publicly available information and the affidavits filed in support of the Omnibus Oppositions to the Personal Jurisdiction Motions and the Dissolution Motions) comprehensively describe the alleged interconnected history of Cape and certain of these entities, their alleged dominion over the South African commodity mining industry, and their alleged role in controlling, continuing, and/or benefiting from Cape's strategic exploitation of the U.S. asbestos market as well as its accompanying alleged scheme to insulate itself, and its foreign affiliates and agents, from the resulting litigation exposure, with the allegations summarized below—which pursuant to the applicable standard are assumed to be true for the purpose of deciding the Personal Jurisdiction Motions.

A. Cape

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

In 1953, Cape established North American Asbestos Corporation (“NAAC”) “to operate as [its] wholly controlled instrumentality for the ‘purpose of expediting and facilitating the movement’ of asbestos from South African mines into the United States (including in South Carolina).” *Id.* ¶¶ 70, 72. The two decades following Cape’s formation of NAAC were Cape’s “most bountiful years.” *Id.* ¶ 70. Cape effectively enjoyed an asbestos monopoly, controlling 90% of the global supply of amosite asbestos and dominating the distribution of other types of asbestos. *Id.* ¶ 69.

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

At Cape’s direction and consistent with its company-wide policy, NAAC purchased “wholly inadequate” insurance coverage to address its massive future products liability exposure. *Id.* ¶ 80. In addition to allegedly maintaining egregious and inhumane labor practices for its

indigenous workers in its South African mines, Cape—as supported by other members of the broader Oppenheimer business empire—also is alleged to have actively suppressed information about the known risks of asbestos in the United States and used misinformation to influence public opinions about asbestos. *See id.* ¶¶ 81–88.

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

If Cape in the future should set up or acquire any U.S. Company or business, then such Company or business would be deemed to be an asset of Cape, even though acquired after entry of any default judgments. Such new Company or business would be considered an asset of Cape in the U.S. and subject to garnishment to satisfy the default judgments.

Ex. 70 to Omnibus Opp. to Personal Jurisdiction Motions (Dec. 23, 1975 Correspondence from S. Milwid (Lord, Bissell & Brook) to A. J. Penna, Esq. (Cape Industries Ltd.)), at CAPE000142.⁵

⁵ Except where specifically stated otherwise, all citations to exhibit numbers herein are in reference to exhibits that were submitted with the Receiver’s Omnibus Opposition to Motions to Dismiss for Lack of Personal Jurisdiction on October 18, 2023.

Effective January 31, 1978, Cape liquidated NAAC, siphoning any remaining assets out of the United States to Cape Industries Overseas Ltd., an entity wholly owned by Cape Industries Ltd., in an effort to reduce the assets available to creditors. Third-Party Compl. ¶¶ 94–96. This strategy was allegedly taken directly from the Oppenheimer playbook, *i.e.*, distributing commodities mined in South Africa in the United States at great profits, draining those domestic profits for the benefit of foreign affiliates, and liquidating (at least formally) any U.S. presence when liability was imminent. *Id.* ¶ 97. Despite the dissolution of NAAC, the Third-Party Complaint alleges that Cape “contemplated ways to continue the flow of asbestos to U.S. customers and asbestos profits out of the United States.” *Id.* ¶ 98. For example, through NAAC’s final President, Cape allegedly facilitated the formation of Continental Products Corporation to act as a commission agent for the future sales of South African asbestos in the United States. *Id.* ¶¶ 94–96, 99. The stated purpose for doing so was to “eliminate or reduce as much as possible the exposure in the United States of [South African mining companies] to [product liability] lawsuits.” *Id.* ¶ 101.

Although Cape entered into certain agreements to address a fraction of the bodily harm caused by its asbestos around the world, including through a 2006 Scheme of Agreement with former employees in the United Kingdom, Cape has allegedly “done *nothing* about its massive unpaid responsibility for the death and illness caused by its asbestos products in South Carolina and elsewhere in the United States.” *Id.* ¶ 114.

B. The Altrad Third-Party Defendants.

Since 2017, Cape has been part of the Altrad Group, of which various entities, along with Mohed Altrad,⁶ its French–Syrian founder and President (who is alleged to have been recently

⁶ As of 2017, Mohed Altrad “h[e]ld 77.78% of the [company’s] shares.” Ex. 88 (Altrad 2017 Annual Report), at 20. As of August 31, 2022, Mr. Altrad held 77.45% of the company’s shares.

convicted on bribery charges, and is currently serving a suspended sentence in France), have been named as Third-Party Defendants. Third-Party Compl. ¶¶ 113, 116–119 & nn. 39–40. Specifically, the “Altrad Third-Party Defendants” include:

- Cape subsidiaries or affiliates based in the United Kingdom: Cape Holdco Ltd., Cape UK Holdings NewCo Ltd., Cape Industrial Services Group, Ltd., and Altrad Services Ltd. (f/k/a Cape Industrial Services Ltd.);⁷
- Cape owners based in the United Kingdom and France: The foreign Altrad Group entities that now own and control Cape, *i.e.*, AIA and Altrad UK Ltd., with their majority shareholder and founder, Mohed Altrad (*id.* ¶ 116); and
- Cape U.S. affiliates: Certain Altrad Group U.S. subsidiaries, including Hawk Bidco US Inc., Arranco US, LLC, Sparrows Offshore, LLC, and the Sparrows Group, LLC, as were part of Sparrows Offshore Group, Ltd. d/b/a the “Sparrows Group” (n/k/a “Altrad Sparrows”) based in Aberdeen, Scotland.⁸ *Id.* ¶¶ 117, 119

Ex. 89 (Altrad 2022 Annual Report), at 71. Just one month later, Mr. Altrad held 97.6% of the company’s shares. *Id.*

⁷ The Receiver originally named The Law Debenture Corporation PLC (“Law Debenture”) as an Altrad Third-Party Defendant, based on public information suggesting that it was a “Person with Significant Control” of Cape as of 2016. Third-Party Compl. ¶ 113. After receiving additional information from Law Debenture’s counsel regarding the nature of its “control,” which was based on representing the interests of certain persons in the United Kingdom also injured by Cape asbestos, the Receiver dismissed Law Debenture on August 21, 2023, without prejudice.

⁸ On July 11, 2022, Altrad completed the acquisition of “the Sparrows Group.” Press Release, *Altrad Completes Acquisition of Engineering and Maintenance Specialist Sparrows Group* (July 11, 2022), <https://www.altrad.com/en/newsreader/altrad-completes-acquisition-of-engineering-and-maintenance-specialist-sparrows-group.html>. Within two weeks of being served with the Third-Party Complaint on July 14, 2023, Sparrows Offshore Group Ltd. passed a resolution to liquidate on July 27, 2023 (while other Sparrows entities continue to operate at the same registered address, including Sparrows Offshore International Group Ltd.). As of October 2, 2023, Altrad announced the rebranding of the “Sparrows Group” to “Altrad Sparrows.” Aberdeen Business

The Third-Party Complaint alleges that each of these entities are either successors in interest to Cape and its subsidiary and affiliated entities, or beneficiaries from—and continuing participants in—Cape’s liability avoidance scheme. *Id.* ¶ 119. Notably, seven of the 12 Altrad Third-Party Defendants have failed to respond to the Third-Party Complaint, including Altrad UK Ltd.; Cape Industrial Services Ltd., n/k/a Altrad Services Ltd. (since June 1, 2021); Cape Holdco Ltd.; Cape Industrial Services Group Ltd.; Cape UK Holdings Newco Ltd.; Sparrows Offshore Group Ltd.; and The Sparrows Group LLC.⁹

The Altrad Group’s publicly available annual report for fiscal year 2017 touted the acquisition of Cape as an “exceptional opportunity” to acquire “one of the world’s leading providers of services to industry.”¹⁰ Ex. 88 (Altrad 2017 Annual Report), at 40. In its annual report for the year ended August 31, 2022, Altrad Services Ltd.—which is named as a Third-Party

News, *Altrad Spreads Its Wings as Altrad Sparrows* (Oct. 2, 2023), <https://aberdeenbusinessnews.co.uk/sparrows-spreads-its-wings-as-altrad-sparrows/>.

⁹ Due to those failures to appear, the Receiver filed default motions against those seven entities, with supporting proof of service, from August 18 through 29, 2023, and the Court intends to enter default as to those entities by separate order. The five responding Altrad Third-Party Defendants—Mr. Altrad, Altrad Investment Authority S.A.S., Hawk Bidco US Inc., Arranco US, LLC, and Sparrows Offshore, LLC—filed motions to dismiss the Third-Party Complaint and motions to dissolve the Receivership.

¹⁰ At this stage in the proceeding, the Court can properly take notice of certain facts that are “not subject to reasonable dispute,” including certain public statements or reports consistent with the alleged corporate history and relationships of the Third-Party Defendants presented to the Court by the Receiver in connection the Omnibus Oppositions to the Personal Jurisdiction Motions and the Dissolution Motions. *See* Rule 201(b), SCRE (explaining that courts can take judicial notice of facts that are “not subject to reasonable dispute”); *id.* 201(f) (“Judicial notice may be taken at any stage of the proceeding”). Consideration of these published facts, as have been submitted to the Court, is also consistent with the Court’s obligation to “[v]iew[] the complaint’s allegations, and the inferences from them, in the light most favorable to” the non-movant, and to construe pleadings liberally “so that substantial justice is done between the parties.” *HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 632–33, 699 S.E.2d 699, 703–04 (Ct. App. 2010).

Defendant but has not responded to the Third-Party Complaint—acknowledged Cape’s responsibility for harm from asbestos exposure, reporting that the Altrad Group had set aside £118 million to address certain *non-U.S.* historical claims relating to asbestos exposure. Ex. 90 (Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022), at 50 n.23 (“The Group continues to receive claims, from both individuals and insurance companies, in connection with historical alleged exposure to asbestos. Where claims are determined to have merit, the costs are provided for and claims are settled in the ordinary course, otherwise claims are defended.”); *see also* Joshua Stein, *Altrad Makes £118m Provision for Asbestos Claims*, Construction News (Apr. 14, 2023).¹¹

C. The Oppenheimer Third-Party Defendants.

The five Oppenheimer Third-Party Defendants that remain in this action include Anglo American PLC, De Beers PLC (individually and as successor in interest to De Beers S.A.), De Beers Centenary AG, De Beers Consolidated Mines Ltd. (n/k/a De Beers Consolidated Mines Proprietary Ltd.), and De Beers UK Ltd.¹² Anglo American PLC is alleged to be the ultimate parent company for each of the Oppenheimer Third-Party Defendants, as well as successor in interest to Anglo American Corporation of South Africa Ltd. Third-Party Compl. ¶ 121.

¹¹ Available at <https://www.constructionnews.co.uk/health-and-safety/altrad-makes-118m-provision-for-asbestos-claims-14-04-2023/#:~:text=Altrad%20has%20set%20aside%20%C2%A3,historic%20alleged%20exposure%20to%20asbestos.>

¹² Those entities currently have presence, operations, and business in the United States, including in South Carolina, through Oppenheimer Third-Party Defendants Anglo American Crop Nutrients (U.S.A.), LLC, Anglo American US Holdings Inc., De Beers Jewellers US, Inc., Element Six US Corp., Element Six Technologies US Corp., Element Six Technologies (OR) Corp., First Mode Holdings, Inc., Forevermark US Inc., Lightbox Jewelry Inc., and Platinum Guild International (U.S.A.) Jewelry Inc. Those U.S. based entities were dismissed from the case, without prejudice, on November 17, 2023.

Certain Oppenheimer Third-Party Defendants, including as successors in interest, were allegedly instrumental in the initial formation of Cape in 1893 and its significant international expansion in the 1940s through 1970s, and have since reaped the financial benefits of its dominance of the asbestos trade. As alleged, an asbestos-mining syndicate was established in 1891 to act in coordination with powerful commodity mining interests in South Africa, with Francis Oats—a director and the eventual chairman of De Beers Consolidated Mines Ltd.—forming the Cape Mineral Syndicate “to exploit asbestos reserves” in South Africa. *Id.* ¶ 45. By late 1893, the Cape Asbestos Company Ltd. was organized in the United Kingdom to (i) take over the Cape Mineral Syndicate’s mining operations, and (ii) manufacture asbestos products in England. From the outset, Cape was a De Beers-affiliated project, with its leadership drawn from the DeBeers ranks. *Id.* As alleged in the Third-Party Complaint, Cape was managed, funded, and controlled by members of the key leadership of De Beers. *Id.* at ¶ 47. In fact, Ludwig Breitmeyer, Cape’s first long term Chairman (from 1894 until 1930), managed Cape while serving, with associates, as part of the Corner House Group that “domina[ted] mining in South Africa into the 1920s,” when Sir Ernest Oppenheimer displaced him and effected the takeover of De Beers and various other mining interests (which eventually included Cape). *Id.* ¶¶ 48–49.

Around 1925, Sir Ernest Oppenheimer allegedly took control of the De Beers mining empire and became its chairman by 1930. *Id.* ¶ 49. That control was aided by the fact that Oppenheimer also controlled the Anglo American Corporation of South Africa Ltd., which he formed to “bring about an ‘amalgamation between’ various mines and other business interests.” *Id.* By the middle of the twentieth century, Oppenheimer allegedly had aligned these interests such that Cape was the asbestos-mining leg of an amalgamated mining empire based out of South Africa that included the De Beers diamond monopoly and the mining powerhouse of Anglo associated

with the Oppenheimer business dynasty. *Id.* ¶ 51. These affiliations were alleged to be essential to Cape’s success, including because Anglo dominated the mining industry and was the core of South Africa’s economy. *Id.* ¶¶ 52–53, 62 (detailing Oppenheimer family’s *modus operandi* to “structure[] and coordinate[] ‘a web of secret companies’ to avoid financial liabilities” and decline to acknowledge the overlapping and connecting control within that web).

D. The Charter Third-Party Defendants.

The Charter Third-Party Defendants include Charter, its subsidiary, Central Mining, and ESAB, the parent company, as well as allegedly successor in interest to, Charter and Central Mining (beginning in or around 2022). *See* Third-Party Compl. ¶ 124. Like Cape, Central Mining and Charter were critical parts of the international growth of the Oppenheimer family’s business interests. Central Mining, as an Anglo-controlled entity, was the majority shareholder in Cape and controlled its board and directed its operations. *Id.* ¶¶ 50–52. When the Oppenheimer family created Charter in 1965 by merging Central Mining with two other mining companies, the combined entity served as Anglo’s “international investment arm.” *Id.* ¶ 54. While Charter had direct and indirect interests in Cape from its founding, by 1969 Charter had acquired majority ownership of Cape. *Id.* ¶ 55. Cape was Charter’s primary operating company and principal industrial subsidiary, and, by extension, Cape and its subsidiaries were part of the Anglo American Group of companies that dominated the South African mining economy. *Id.* ¶¶ 55–56, 61–62.

The Third-Party Complaint further alleges the purported corporate separation between Charter and Anglo was superficial, with the entities sharing office space, personnel, and board members and with the Oppenheimers consistently dominating Charter’s board and ownership. *Id.* ¶¶ 57, 59. As alleged, Charter operated such that “every move was made in the interest of De Beers and Anglo,” and in particular to “further[] the amalgamated Oppenheimer empire’s effort to extend its grasp to North America.” *Id.* ¶ 58 (brackets and internal quotation marks omitted). Or

as alleged, Charter was designed to serve as a corporate cushion for Anglo that could quickly purge cash to other Oppenheimer-affiliated entities and add a level of separation between Anglo and Cape in an attempt to insulate Anglo from the liability associated with a profitable asbestos business. *Id.* ¶ 65. The Oppenheimer family’s control of Central Mining, Charter, Cape, and its other enterprises was allegedly central to the management of its businesses and the domination of the South African mining economy. *Id.* ¶¶ 67–68.

By 1993, the Oppenheimer dynasty allegedly chose to demote the role of Charter in its portfolio of businesses, with Charter re-registering as a public company (renamed Charter PLC). *Id.* ¶ 123. Three years later, Charter sold its interest in Cape for approximately £48 million. *Id.* In 2008, Charter PLC became Charter International PLC, and was acquired by Colfax Corporation (“Colfax”) in 2012 at a valuation of \$2.4 billion. *Id.* (disclosing Charter’s exposure to asbestos-related lawsuits in the United States but assessing that exposure as not “material” and making no reserves). In 2022, Colfax spun off ESAB, allegedly continuing as the parent company of Charter and Central Mining and their successor in interest. *Id.* ¶ 124.

**ORDER DENYING CERTAIN THIRD-PARTY DEFENDANTS’
MOTIONS TO DISSOLVE THE RECEIVERSHIP**

For the reasons set forth below, and as also stated on the record on October 25, 2023, and in consideration of the filings in this matter and oral arguments by all parties, the Court denies Third-Party Defendants’ Dissolution Motions.

I. Cape Was Properly Served in *Park*.

Third-Party Defendants argue the Receivership should be dissolved because Cape was not properly served with the *Park* summons and complaint. Based upon the showings by the Receiver, this contention is incorrect. The Court finds Cape was properly served in the *Park* case with the First Amended Summons and First Amended Complaint, which pleaded claims against an entity

existing in the United Kingdom since 1893, Cape PLC, n/k/a Cape Intermediate Holdings Ltd., for the wrongful death allegedly caused by the company's historical asbestos business.

The Court is disturbed by evidence in the record indicating a decades-long practice by Cape of ignoring asbestos lawsuits filed against it in the United States—simply accepting defaults ostensibly because it believes defaults entered by this Court cannot be enforced. Cape's own disclosures are before the Court, and they reveal Cape never intends to respond to litigation pending in the United States in the future, because that would purportedly "have a materially adverse effect on the financial status of the Group and almost certainly result in insolvency proceedings." It is against that backdrop that the Court examines Third-Party Defendants' arguments regarding service and ultimately rejects them as unfounded.

A. The Proper Entity Was Served.

As confirmed by the Proof of Service presented by the Receiver as well as the other service-related paperwork submitted for the Court's consideration—including the e-mail offered by the *Park* Plaintiffs at the October 25, 2023 hearing and admitted as a Court exhibit—the *Park* Plaintiffs properly served Cape PLC in the United Kingdom, *i.e.*, the Cape entity for which the Receiver has been appointed, with the First Amended Complaint.

Third-Party Defendants argue there are two entities with the name "Cape PLC." The first one is the original Cape PLC, which has existed for approximately 130 years in the United Kingdom in various iterations. This 130-year-old entity is alleged to have sold most of the blue (crocidolite) and brown (amosite) asbestos in the United States and in South Carolina, including by and through its American subsidiary, NAAC. As the liability associated with asbestos became known to this entity, it allegedly fled the jurisdiction and began implementing a sophisticated liability-avoidance scheme.

The second Cape PLC, on the other hand, is a new entity allegedly created in the Bailiwick of Jersey in April 2011 and identified for the first time in this litigation—not by the Receiver or by the *Park* Plaintiffs, but by Third-Party Defendants in their responsive pleadings to the Receiver’s Third-Party Complaint. Cape’s own materials indicate this new Bailiwick of Jersey entity was formed recently to act as a “holding company of the Cape Group” for tax purposes, with the new entity being a “Singapore and Jersey tax resident.”

Despite this clear distinction between two entities that may have borne the same name but nevertheless exist in different jurisdictions with different backgrounds, Third-Party Defendants point to this new Bailiwick of Jersey entity as the reason why they claim service by the *Park* Plaintiffs was ineffective. According to Third-Party Defendants, the *Park* Plaintiffs actually meant to sue, and therefore should have served, this new Cape PLC entity and not the Cape PLC entity with the 130-year pedigree of selling or otherwise profiting from asbestos (including through “asbestos removal” services). The Court finds no merit in this argument. Other than the common name, there is no evidence the *Park* Plaintiffs meant to sue the new Bailiwick of Jersey entity as a defendant in their asbestos exposure lawsuit. The new entity was not organized in the United Kingdom; the new entity has existed for less than 20 years; and there is no indication in the record the new entity was the same entity that historically sold asbestos in the United States (nor could there be given its relative infancy). Indeed, the Altrad Third-Party Defendants’ own briefing takes the position that no one can “legitimately claim that [the Jersey entity] has any liability . . . for an obvious reason: the Tibbs family alleges that their exposure to asbestos ended in the ‘early 1980s,’ but Cape PLC did not even exist until 2011.” Counsel for AIA, Mr. Altrad, and Altrad UK Ltd. likewise acknowledged at the October 25 hearing that the Jersey entity “[o]bviously . . . has nothing to do with” the UK entity’s historic asbestos sales. Hearing Tr. 66:20-67:1 (Oct. 25, 2023).

It therefore strains credulity for Third-Party Defendants to premise their ineffective service argument on a foundational assumption the *Park* Plaintiffs meant to sue a different entity, and one that had “nothing to do with” the underlying claims.

Having disposed of Third-Party Defendants’ red herring argument related to the new Cape PLC entity, the salient question is whether the *Park* Plaintiffs effectively served the 130-year old Cape PLC entity organized under the laws of the United Kingdom. The record reveals service was effectuated in December 2021. Specifically, as reflected in an affidavit signed March 8, 2022, by an English process server, he mailed¹³ a copy of the complaint and summons addressed to Cape PLC and Cape Intermediate Holdings Ltd.—identifying both “individually and as successors to Cape Asbestos Company Limited.” *See* Ex. A to Notice of Filing of *Ommitted* [sic.] Exhibit, *Park et al. v. Armstrong Int’l, Inc. et al.*, No. 2021-CP-4002727 (Aug. 28, 2023) (“Cape POS Exhibit”), at 1–6, 12–13. The affidavit explains why two named entities were served: “Cape PLC” was the name of the company between August 1, 1989 and June 27, 2011, while “Cape Intermediate Holdings Ltd.” was the company’s current name at the time of service. *Id.* at 2. More specifically, the English process server swore that on December 14, 2021, he served “copies of the First Amended Summons in this action on Cape PLC and Cape Intermediate Holdings Limited” at their registered address, with cover letters explaining that the claims were brought against them as successors in interest to Cape Asbestos Company Limited. *Id.* at 2, 5–6. Pursuant to procedural rules in England, the “proceedings [were] deemed to have been served” two days after mailing, *i.e.*, on December 16, 2021. *Id.* at 3. The process server also indicated that he emailed materials to an official address affiliated with Altrad and designated for the receipt of asbestos-related claims

¹³ The affidavit indicates that the service copies were contained in an oversize envelope, with a large-letter stamp, indicating sizeable contents, rather than just a couple sheets of paper.

against Cape (elclaimsaltraduk@altrad.com). This evidence reveals the *Park* Plaintiffs intended to serve the older Cape PLC entity using (perhaps out of an abundance of caution) both formerly-known-as and currently-known-as nomenclature.

To the extent it was error for the service paperwork to include the “formerly known as” name of the entity, the Court finds that misnomer does not render service of process ineffective. South Carolina law is clear that a misnomer does not render service ineffective. *See Griffin v. Capital Cash*, 310 S.C. 288, 292, 423 S.E.2d 143, 146 (Ct. App. 1992) (“A suit at law is not a children’s game, but a serious effort on the part of adult human beings to administer justice; and the purpose of process is to bring parties into court. If it names them in such terms that every intelligent person understands who is meant, as is the case here, it has fulfilled its purpose; and courts should not put themselves in the position of failing to recognize what is apparent to everyone else. As a general rule the misnomer of a corporation in a notice, summons, or other step in a judicial proceeding is immaterial if it appears the corporation could not have been, or was not, misled.” (internal citations omitted)).

The Court finds no evidence in the record or presented by Third-Party Defendants to suggest the *Park* lawsuit was brought or intended to be brought against the newly created Bailiwick of Jersey entity as opposed to against the 130-year-old entity responsible for bringing asbestos to the United States, such that the former and not the latter should have been served. The record unambiguously points to the conduct of the 130-year-old Cape PLC entity, not the newly formed Bailiwick of Jersey entity, which is at issue in these cases, and service on that entity was effectuated in December 2021. To the extent the “Cape PLC” name should not have been included in the service of process paperwork because it was a “formerly known as” name rather than a current name, that misnomer does not render service ineffective.

B. Both the Summons and Complaint Were Served on Cape.

Third-Party Defendants next argue service of process by the *Park* Plaintiffs was defective because only the summons was served without the accompanying complaint. This argument appears to be based solely on the process server's use of the term "summons" in reference to the documents he served. Regardless of what the process server titled the service paperwork, the other record evidence reveals *both* the summons and the complaint documents were served on Cape: An email from counsel for the *Park* Plaintiffs to the process server (made a Court exhibit at the hearing) indicates counsel provided the process server with a single PDF document containing *both* the summons and the complaint, and in the *Park* lawsuit, the "First Amended Summons" and "First Amended Complaint" refer to two parts of the same document filed on November 17, 2021 (the summons is found in the first 4 pages while the complaint comprises the remaining 66 pages). Although individuals involved in the service may have referred to the combined document as "the summons," it is clear from the contents that a combined document containing both the summons and the complaint was served on Cape. Moreover, as previously noted, the record indicates the process server emailed the same materials to an Altrad-affiliated official address designated for the receipt of asbestos-related claims against Cape (elclaimsaltraduk@altrad.com); no Altrad entity has provided a response or other indication that only the summons had been sent to that email address. For all of these reasons, the Court finds evidence in the record to indicate both the summons and the complaint were served on Cape.

C. The Amendment of the Complaint Does Not Render Service Ineffective.

Third-Party Defendants argue that even if the proper Cape entity was served with both the summons and complaint—which both commenced the action pursuant to Rule 3, SCRCP, and S.C. Code § 15-3-20(B) and effectuated service of process pursuant to Rules 4 and 4.1, SCRCP—that

service of process somehow was later voided by the filing one week later of a Second Amended Complaint, which was never served on Cape by the *Park* Plaintiffs.

The Court finds this argument flawed for several reasons. First, filing an amended complaint without serving it does not abrogate effective service of process of a prior complaint. The *Park* lawsuit was commenced as to Cape once service of the prior complaint occurred, giving this Court the foundation to exercise jurisdiction over those served defendants to include Cape. As S.C. Code § 15-3-20(B) provides, “A civil action is commenced when the summons and complaint are filed with the clerk of court if actual service is accomplished within one hundred twenty days after filing.” That occurred in this case, and it cannot be undone or abrogated by the filing of a later amended complaint.

Nor does the filing of an amended complaint under Rule 15 automatically supersede a prior complaint—abrogation only occurs *after service* of the amended complaint. *See e.g., Doe v. Unocal Corp.*, 27 F. Supp. 2d 1174, 1180 (C.D. Cal 1998) (denying motion to dismiss for “insufficiency of service of process,” when an operative complaint rather than an amended complaint was served, because “[a]n original complaint is only superseded . . . when the amended complaint is properly served, not when it is filed.”); *Thompson v. Victoria Fire & Cas. Co.*, 32 F. Supp. 2d 847, 848 (D.S.C. 1999) (assessing the originally served complaint for purposes of removal, rather than an amended complaint that was not served). Indeed, as Rule 5(a), SCRCP, makes clear, the *Park* Plaintiffs were not required to serve Cape again with the Second Amended Complaint. There were no new or additional claims for relief asserted against Cape in the Second Amended Complaint. South Carolina “courts have long held that in order to establish that service has been properly perfected, the plaintiff need only show compliance with the civil rules on service of process,” and when rules of service of process “are followed, there is a presumption of proper

service.” *See McClurg v. Deaton*, 380 S.C. 563, 579, 671 S.E.2d 87, 96 (Ct. App. 2008). Here, they were followed, and service of process occurred.

Voiding prior effective service on a named defendant because the complaint was amended one week later (but asserts no new claims against that defendant) would not serve the “principal object of service of process,” *i.e.*, “to give notice to the defendant corporation of the proceedings against it” and to allow the Court to exercise jurisdiction. *Mull v. Ridgeland Realty, LLC*, 387 S.C. 479, 485, 693 S.E.2d 27, 30 (Ct. App. 2010) (emphasis added) (finding service complied with the law, despite allegations of a technical defect). When, as here, rules on service of process “are followed, there is a presumption of proper service.” *McClurg*, 380 S.C. at 579, 671 S.E.2d at 96.

Accordingly, the Court finds the evidence of records shows the proper Cape entity was served with process of both the summons and complaint in the *Park* lawsuit, forming the foundation for this Court to exercise jurisdiction over Cape and institute the Receivership that certain Third-Party Defendants now seek to dissolve.

II. The Receiver Was Properly Appointed.

A. Proper Notice of the Appointment Motion was Provided to Cape.

Third-Party Defendants argue the *Park* Plaintiffs were required to serve the Motion for Appointment. That too is incorrect. The law does not require formal service of process when the Court is considering appointing a receiver over a defendant that has been served but not appeared; only **notice** of the application for a receivership is required. *See* S.C. Code Ann. §§ 15-65-20, -30; Rule 4.1, SCRPC.

The record evidence indicates notice was given: The *Park* Plaintiffs provided notice of the appointment by DHL mailing to the same address at which Cape was served, with the Motion for Appointment identifying Cape PLC as “the successor in interest to Cape Industries Ltd. (f/k/a Cape

Asbestos Company Ltd.)” that is “organized and existing under the laws of the United Kingdom, with its principal place of business in England.”¹⁴ The Court further rejects any argument the Receivership is void because the paperwork included a “formerly known as” name for the Cape entity; the Court finds—as it did before—that any such misnomer does not void the notice under *Griffin*.¹⁵ South Carolina rules “do not turn on parsing strict technicalities or debating murky legal abstractions,” *McCall v. IKON*, 363 S.C. 646, 651, 611 S.E.2d 315, 317 (Ct. App. 2005), and when—as here—a party is identified “in such terms that every intelligent person understands who is meant, as is the case here, [process] has fulfilled its purpose; and courts should not put themselves in the position of failing to recognize what is apparent to everyone else.” *Griffin*, 310 S.C. at 292, 423 S.E.2d at 146 (citation omitted). The law does not require this Court to exalt technical form over substance, and the substance of proper notice of the receivership motion was provided to Cape.

B. This Court Had Authority to Appoint the Receiver.

Third-Party Defendants attack the Court by claiming it failed to take what they erroneously claim are “necessary steps” prior to instituting the Receivership, including holding Cape in default

¹⁴ Although the motion for appointment of the receiver as originally filed omitted proof of service as an attachment to the filing due to a clerical error, that omission was corrected on August 28, 2023. This Court has no reason to disbelieve representations by counsel for the *Park* Plaintiffs—as officers of this Court—that service had been made and that they intended to include that documentation, and regardless, such omission does not negate that Cape was properly served. *See* Rule 4.1(c)(2), SCRCPP (noting the unintentional “[f]ailure to make proof of service does not affect the validity of the service.”).

¹⁵ Although the Third-Party Defendants also point to technical errors in the motion for appointment of the receiver (conflating the March 8, 2022 supporting affidavit date with the December 16, 2021 effective date of service and referencing the Second Amended Complaint rather than the First Amended Complaint), all of which the Receiver acknowledged, those technicalities do not abrogate service of process, invalidate the Receivership, or otherwise require dissolution.

and entering a judgment reflecting a liquidated sum due to the *Park* Plaintiffs. This argument reads requirements into the statute that do not exist, completely misconstruing what is required for appointment of a receiver under South Carolina law—especially in the context of a company like Cape, for which a receiver was appointed under subsection (5) of S.C. Code § 15-65-10.

Subsection (5) does not require entry of default or much less entry of a judgment; instead, it authorizes the Court to appoint a receiver “either in or out of court . . . [i]n such other cases as are provided by law or may be in accordance with the existing practice, except as otherwise provided in this Code.” In turn, appointment of a Receiver over Cape was proper under subsection (5) based on evidence of Cape’s long-running, intentional scheme to evade its tort creditors by refusing to appear in the United States, including in South Carolina. Subsection (5) reflects an “old practice” of equity and “important principle of law” to correct injustice which is particularly applicable to Cape given its efforts “to defeat [its] creditors by an act or course of conduct which indicates moral fraud—a conscious intent to defeat, delay, or hinder his creditors in the collection of their debts.” *Virginia-Carolina Chem. Co. v. Hunter*, 84 S.C. 214, 66 S.E. 177, 179 (1909) (citing *Miller v. Hughes*, 33 S.C. 530, 12 S.E. 419 (1890)). Because Cape set its numerous tort creditors, including the *Park* Plaintiffs, “at arm’s length by refusing . . . to take any interest in the satisfaction of their claims,” there was a “prima facie case . . . warranting the appointment of a receiver.” *Id.* at 180. Accordingly, these so-called procedural prerequisites to which Third-Party Defendants point and then claim were violated are simply more red herrings; those processes are *irrelevant* to the grounds on which the Receiver for Cape was appointed.

South Carolina jurisprudence, particularly in recent years, provides widespread evidence of an “existing practice” of appointing a receiver—even in the absence of a judgment—where the Court is concerned that the party at issue may move assets and avoid litigation. This Court has

appointed numerous receivers for this reason in the context of the asbestos docket, and one need look no further than other dockets in this State, such as the appointment of co-receivers for defendant Richard Alexander Murdaugh, for additional evidence of an “existing practice” in this State. Here, given Cape’s stated litigation-avoidance strategy, which the Court has no reason to believe Cape would abandon in order to respond to the *Park* lawsuit, there were ample legal, equitable, and/or public policy concerns to warrant the appointment of a receiver over Cape.

Accordingly, the Court finds no valid grounds to dissolve the Cape Receivership, which was proper when imposed, and, as such, Third-Party Defendants’ Motions to Dissolve are denied.¹⁶

¹⁶ Although the Order appointing the Receiver incorrectly described Cape as “dissolved,” even though Cape is still a going concern in the United Kingdom, that does not impact the legality of the Receivership, as dissolution of the entity placed in receivership is not required under subsection (5). Additionally, the Court notes certain arguments by Third-Party Defendants that the Receiver for Cape exceeded his authority by taking certain actions, including filing the Third-Party Complaint against them; those are not arguments to dissolve the Receivership, however, and therefore will be taken up by the Court, if necessary, to consider arguments under Rule 12, SCRCP.

**ORDER DENYING THIRD-PARTY DEFENDANTS’
MOTIONS TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

For the reasons set forth below, and in consideration of the filings in this matter and oral arguments by all parties, the Court denies the Third-Party Defendants’ Personal Jurisdiction Motions.

I. Standard for Ruling on Motions to Dismiss for Lack of Personal Jurisdiction.

In evaluating a motion to dismiss for lack of personal jurisdiction pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure, the plaintiff has the burden of making a *prima facie* showing that jurisdiction is properly asserted. *Brown v. Inv. Mgmt. & Res., Inc.*, 323 S.C. 395, 475 S.E.2d 754, 756 (1996); *see also Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005) (“At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by a *prima facie* showing of jurisdiction either in the complaint or in affidavits.”). To require more of the plaintiff than a *prima facie* showing of personal jurisdiction at the pretrial stage “would require a much greater degree of specificity in the pleadings than is currently mandated by the South Carolina Rules of Civil Procedure.” *Brown*, 323 S.C. at 399, 475 S.E.2d at 756; *Duncan v. Orthosc, LLC*, 2023 WL 2731496, at *1–2 (S.C. Ct. Com. Pl. Mar. 31, 2023). Affidavits may be submitted to show jurisdiction, but it is often sufficient for the Court to rely on a complaint’s allegations to exercise of jurisdiction. *Brown*, 475 S.E.2d at 756.

When assessing whether a plaintiff has made a *prima facie* showing of jurisdiction, this Court must take as true the allegations of the non-moving party and resolve all factual disputes in its favor. *HHHunt Corp.*, 699 S.E.2d at 704 (factual disputes should be resolved in favor of the non-moving party even if the “court doubts the plaintiff will prevail in the future”). If there are any factual disputes based on what is submitted in affidavits, those too are resolved in favor of the non-movant plaintiff. *Id.* South Carolina courts recognize that, in complex cases, it may be

desirable to delay a decision on personal jurisdiction to allow the parties to conduct discovery, “which might lead to a more accurate judgment than one made solely on the basis of affidavits.” *Brown*, 323 S.C. at 400 (quoting 5A Charles A Wright & Arthur R. Miller, Federal Practice & Procedure § 1351 (Supp. 1995)); cf. *Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982) (where the jurisdictional facts are intertwined with the facts central to the merits of the dispute, deferring resolution of that factual dispute to a proceeding on the merits “is the better view”).

In determining whether personal jurisdiction exists over a non-resident defendant, the court must perform a two-step analysis. First, the court determines whether the South Carolina long-arm statute provides a basis for asserting jurisdiction over the defendant. See *Young v. FDIC*, 103 F.3d 1180, 1191 (4th Cir. 1997). Second, the court determines whether the exercise of personal jurisdiction violates the Due Process Clause of the Fourteenth Amendment. *Anita’s N.M. Style Mexican Food, Inc. v. Anita’s Mexican Foods Corp.*, 201 F.3d 314, 317 (4th Cir. 2000). The South Carolina long-arm statute has been construed to be coextensive with the limits of the Due Process Clause of the U.S. Constitution. *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 130 (1992). As a result, the dual jurisdictional requirements collapse into a single inquiry as to whether the defendant has “certain minimum contacts” with the forum, such that “maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal citations omitted).

Personal jurisdiction is exercised as either general jurisdiction or specific jurisdiction. *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007).¹⁷ A court may exercise specific jurisdiction over a defendant, including a non-resident

¹⁷ General jurisdiction exists where a defendant has “continuous and systematic” contacts with the forum state, the defendant “may be sued in [the forum] state for any reason, regardless of where the relevant conduct occurred.” *CFA Inst. v. Inst. of Chartered Fin. Analysts of India*, 551 F.3d

defendant, if the litigation results from alleged injuries arising out of or relating to that defendant's contacts with South Carolina. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984). When determining whether specific jurisdiction exists, a court considers:

- (1) the extent to which the defendant has purposefully availed himself of the privilege of conducting activities in the state;
- (2) whether the plaintiff's claims arise out of those activities directed at the state; and
- (3) whether the exercise of personal jurisdiction would be constitutionally reasonable.

Charleston Equities, Inc. v. Winslett, 2017 WL 10504748, at *2 (D.S.C. Aug. 8, 2017) (brackets omitted) (quoting *Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs., Inc.*, 334 F.3d 390, 397 (4th Cir. 2003)).

II. Other Equitable Grounds for Exercising Personal Jurisdiction.

A. The Alter Ego Theory of Personal Jurisdiction.

South Carolina's long arm statute vests a court with jurisdiction over "a person who acts directly *or by an agent* as to a cause of action arising from" that person's (i) "causing tortious injury or death in this State by an act or omission outside this State," and by "regularly . . . engag[ing] in [a] persistent course of conduct, or deriv[ing] substantial revenue from goods used

285, 292 n.15 (4th Cir. 2009) (citations omitted). When the defendant is a corporation, "general jurisdiction requires affiliations 'so continuous and systematic as to render [the foreign corporation] essentially at home in the forum State,' *i.e.*, comparable to a domestic enterprise in that State." *Daimler AG v. Bauman*, 571 U.S. 117, 133 n.11 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). "General jurisdiction attaches even when the nonresident defendant's contacts with the forum state are not directly related to the cause of action, if the defendant's contacts are both continuous and systematic." *Leggett v. Smith*, 386 S.C. 63, 73, 686 S.E.2d 699, 704 (Ct. App. 2009). Because the Receiver's response to the Personal Jurisdiction Motions focused on establishing specific jurisdiction, the Court likewise focuses its discussion on specific jurisdiction.

or consumed or services rendered in this State,” and/or (ii) “production, manufacture, or distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed.” S.C. Code §§ 36-2-803(4), (8) (emphasis added).

A court can exercise personal jurisdiction over a foreign corporation if the non-resident corporation has a subsidiary or affiliate that is subject to the court’s personal jurisdiction and if the subsidiary or affiliate functions as its agent or mere department in a manner that justifies treating it as an alter ego and/or piercing the corporate veil. *Wright v. Waste Pro USA, Inc.*, 2019 WL 3344040, at *5 (D.S.C. July 25, 2019).¹⁸ Indeed, personal jurisdiction “can properly be asserted over a corporation not physically present in the forum state if another with sufficient minimum contacts is acting as its alter ego.”¹⁹ *Hagan v. Armstrong Int’l*, 2020 S.C. C.P. LEXIS 649, at *5–6 (Richland Cnty. Ct. Com. Pl. June 29, 2020) (quoting *Trans Pac. Ins. Co. v. Trans-Pac. Ins. Co.*, 1991 WL 152300, at *2 (E.D. Pa. July 31, 1991)); accord *In re North Dakota Personal Injury Asbestos Litig.*, 737 F. Supp. 1087, 1094–95 (D.N.D. 1990) (citing *Lakota Girl Scout Council, Inc.*

¹⁸ Traditionally, South Carolina courts have recognized at least two tests that will subject a corporation to the court’s personal jurisdiction through its affiliate—alter ego and piercing the corporate veil. *Wright*, 2019 WL 3344040, at *5; *Builder Mart of Am., Inc. v. First Union Corp.*, 349 S.C. 500, 511, 563 S.E.2d 352, 358 (Ct. App. 2002), *overruled on other grounds by Farmer v. Monsanto Corp.*, 353 S.C. 553, 579 S.E.2d 325 (2003); *Afa Polytek (N. Am.) Inc. v. Clorox Co.*, 2014 WL 12608562, at *6 (D.S.C. Jan. 17, 2014). These theories have overlapping considerations. *Wright*, 2019 WL 3344040, at *8 (describing overlapping corporate veil and alter ego analyses); see generally *Sturkie v. Sify*, 280 S.C. 453, 458, 313 S.E.2d 316 (Ct. App. 1984).

¹⁹ Fundamentally, the jurisdictional inquiry concerns whether a particular party is properly before the Court. See, e.g., *Daimler*, 571 U.S. 117 at 125 (observing that personal jurisdiction involves court’s authority over a particular defendant); *Sky Cable, LLC v. DIRECTV, Inc.*, 886 F.3d 375, 391–92 (4th Cir. 2018); *Cent. States, Se. & Sw. Areas Pension Fund v. Cent. Transp., Inc.*, 841 F.2d 92, 95–96 (4th Cir. 1988) (noting that jurisdiction involves question of “proper parties”). When a company is the alter ego of its sole member, for example, the alter ego and the member are effectively the same entity. Accordingly, the jurisdictional contacts of the individual and alter ego entity are one in the same. *Sky Cable, LLC*, 886 F.3d at 392.

v. Havey Fund-Raising Mgmt., Inc., 519 F.2d 634 (8th Cir. 1975)); *see also Lucas v. Gulf & Western Indus., Inc.*, 666 F.2d 800, 806 (3d Cir. 1981); *Certified Bldg. Prods., Inc. v. Nat'l Labor Relations Bd.*, 528 F.2d 968 (9th Cir. 1976)); *see also Wm. Passalacqua Builders, Inc. v. Resnick Developers S., Inc.*, 933 F.2d 131, 142–43 (2d Cir. 1991) (when parties are alter egos of one another, a “jurisdictional objection evaporates” because “the alter egos are treated as one entity”) (cited by *Wright*, 2019 WL 3344040, at *5); *Mendez v. Pure Foods Mgmt. Grp., Inc.*, 2016 WL 183473, at *1–7 (D. Conn. Jan. 14, 2016) (“Under the agency test, the court may attribute the subsidiary’s actions to the parent if the parent exerts considerable control over the activities of the subsidiary.”); *see also Gourdine v. Karl Storz Endoscopy-Am., Inc.*, 223 F. Supp. 3d 475, 487 (D.S.C. 2016) (finding specific jurisdiction over foreign entity under agency and alter ego theory). Indeed, “[t]he entire point of the alter-ego doctrine is that a defunct, dissolved or undercapitalized entity is responsible for causing injury,” but because that entity is dominated or controlled by others, those others are also liable. *Hagan*, 2020 S.C. C.P. LEXIS 649, at *14.

When deciding whether to impute an entity’s contacts to an affiliated company, courts “examine all relevant factors that relate to the intimacy of the relationship” between the affiliated entities and may consider factors such as overlapping officers and directors, the parent’s capacity to influence major business decisions, whether separate books or records are maintained, whether an integrated sales system exists between the entities, whether the entities present a common marketing image, and whether the entities have formal separate structures but maintain unified operations. *In re Polyester Staple Antitrust Litig.*, 2008 WL 906331, at *13–14, *16 (W.D.N.C. Apr. 1, 2008) (finding exercise of personal jurisdiction over parent company proper where “the management personnel within [the subsidiaries] regularly sought approval from [the parent company] on matters beyond strategy and general business policy”). “The existence or absence of

any single factor is not determinative, as the analysis is driven by the facts of the particular case.” *Id.* at *14; *see also Gourdine*, 223 F. Supp. 3d at 487 (imputing contacts of entity over which court had specific jurisdiction to foreign affiliate under agency theory).²⁰ Moreover, jurisdictional contacts can also be imputed to an individual alter ego. *See Patin v. Thoroughbred Power Boats Inc.*, 294 F.3d 640, 653 (5th Cir. 2002) (jurisdictional contacts may be imputed to an individual alter ego consistent with due process).

Finally, the Court addresses an apparent misunderstanding of alter ego law imbedded in the Third-Party Defendants’ arguments: They erroneously assert the alter ego theory is limited to parent–subsidiary relationships. To the contrary, South Carolina law is clear that the alter ego theory of personal jurisdiction does not require a finding of a parent–subsidiary relationship. As this Court recognized previously in the context of the Covil Receivership:

There is . . . no requirement that the Insurers be an officer, director or shareholder of Covil for alter ego to apply. Plaintiffs make no such allegation, ***nor does alter ego theory require a finding of a parent-subsidiary relationship.*** South Carolina jurisprudence requires only that the appropriate level of dominion and control was exercised, and that injustice occurred as a result.

²⁰ Similarly, the Fourth Circuit has addressed Maryland’s “so-called ‘agency’ test,” stating that it “allows a court to attribute the actions of a subsidiary corporation to the foreign parent corporation only if the parent exerts considerable control over the activities of the subsidiary.” *Mylan Labs., Inc. v. Akzo, N.V.*, 2 F.3d 56, 61–62 (4th Cir. 1993) (“Central to the exertion of such control, and thus to whether the corporate veil may be pierced, is whether significant decisions of the subsidiary must be approved by the parent. Other relevant factors include whether the parent and the subsidiary maintain separate books and records, employ separate accounting procedures, and hold separate directors’ meetings. Another consideration in deciding whether to pierce the corporate veil is the level of interdependence between parent and subsidiary; if the Maryland courts are to refrain from exercising jurisdiction over the parent, the subsidiary [must] have some independent reason for its existence, other than being under the complete domination and control of another legal entity simply for the purpose of doing its act and bidding. Finally, the court must find that Akzo knew, or should have known, that its conduct would have some impact in Maryland.” (citations and internal quotation marks omitted)).

Hagan, 2020 S.C. C.P. LEXIS 649, at *15 (emphasis added).

B. Amalgamation of Interests (Single Business Enterprise) Theory.

South Carolina courts recognize another method—distinct from traditional alter ego and veil piercing doctrines—to hold separate entities responsible for harm caused by another business, *i.e.*, the “amalgamation of interests” theory or the “single business enterprise” theory.²¹ This theory provides another framework by which this Court can exercise personal jurisdiction over the Third-Party Defendants, because where affiliated entities function as a single enterprise, South Carolina law may require the enterprise as a whole to answer for the debts and liabilities of its members. *See Las Palmas Assocs. v. Las Palmas Ctr. Assocs.*, 235 Cal. App. 3d 1220, 1249–50, 1 Cal. Rptr. 2d 301, 318 (1991) (“[U]nder the single-enterprise rule, liability can be found between sister companies. The theory has been described as follows: ‘In effect what happens is that the court, for sufficient reason, has determined that though there are two or more personalities, there is but one enterprise; and that this enterprise has been so handled that it should respond, as a whole, for the debts of certain component elements of it.’” (quotations and citation omitted)) (cited by *Pertuis v. Front Roe Rests., Inc.*, 423 S.C. 640, 817 S.E.2d 273, 279 n.5 (2018)).

This concept was first recognized in South Carolina by the court of appeals in *Kincaid v. Landing Development Corp.*, 289 S.C. 89, 344 S.E.2d 869 (Ct. App. 1986) and initially described as the “amalgamation of interests” theory. The Court of Appeals in *Kincaid* affirmed the trial court’s finding that three related corporations (a development corporation, a management

²¹ Although other jurisdictions do not use the term “amalgamation,” other states have recognized that, in some instances outside of the traditional veil piercing context, certain enterprises choose to conduct their business in such a way that the law should no longer regard the various corporations as distinct entities. *Pertuis*, 817 S.E.2d at 279 & n.5 (citing cases). The *Pertuis* court observed that at least 14 states recognize some sort of single business enterprise theory.

corporation, and a construction corporation) sued for negligent construction and breach of warranty were properly regarded as a single entity, because the evidence showed “an amalgamation of corporate interests, entities, and activities so as to blur the legal distinction between the corporations and their activities.” *Kincaid*, 344 S.E.2d at 874. Thereafter, the South Carolina Supreme Court recognized the theory in *Kennedy v. Columbia Lumber & Manufacturing Co., Inc.*, finding a lender could be liable if “it is so amalgamated with the developer or builder so as to blur its legal distinction.” 299 S.C. 335, 384 S.E.2d 730, 734 (1989) (concluding amalgamation was not appropriate at liability stage and affirming trial court). The theory also was considered in a series of cases involving construction defects. *Magnolia N. Prop. Owners’ Association v. Heritage Communities, Inc.*, 397 S.C. 348, 725 S.E.2d 112 (Ct. App. 2012); *Pope v. Heritage Communities, Inc.*, 395 S.C. 404, 717 S.E.2d 765 (Ct. App. 2011).

In 2018, the South Carolina Supreme Court formally recognized and named the theory the “single business enterprise theory,” describing it as follows:

[W]here multiple corporations have unified their business operations and resources to achieve a common business purpose and where adherence to the fiction of separate corporate entities would defeat justice, courts have refused to recognize the corporations’ separateness, instead regarding them as a single enterprise-in-fact, to the extent the specific facts of a particular situation warrant.

Pertuis, 817 S.E.2d at 279; *see also id.* at 281 (“We formally recognize today this single business enterprise theory[.]”). In doing so, the Court in *Pertuis* made clear that, to combine different corporate entities into a single business enterprise, there must also be a showing of “bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities’ legal distinctions.” *Id.* at 281. In other words, “when corporations are not operated as separate entities but rather integrate their resources to achieve a common business purpose, each constituent corporation may be held liable for debts incurred in pursuit of that business purposes.” *Id.* at 279

n.5 (“Factors to be considered in determining whether the constituent corporations have not been maintained as separate entities include but are not limited to the following: common employees; common offices; centralized accounting; payment of wages by one corporation to another corporation’s employees; common business name; services rendered by the employees of one corporation on behalf of another corporation; undocumented transfers of funds between corporations; and unclear allocation of profits and losses between corporations.”).

More recently, the South Carolina Supreme Court concluded amalgamation was appropriate in a dispute between homeowners and housing developers. *Walbeck v. I’on Co., LLC*, 439 S.C. 568, 889 S.E.2d 537 (2023). In *Walbeck*, the trial court amalgamated several developers’ interests in connection with claims asserted by two homeowners relating to the failure to convey certain real property community amenities to a homeowners’ association (“HOA”). The Court of Appeals initially affirmed the trial court’s finding amalgamation was warranted but subsequently reversed that finding in a substituted decision, concluding there was no evidence of “bad faith, abuse, fraud, wrongdoing, or injustice **resulting from** the blurring of the entities’ legal distinctions.” *Walbeck*, 889 S.E.2d at 550 (emphasis in original). The South Carolina Supreme Court reversed, holding the Court of Appeals correctly analyzed the issue initially but erred in its second opinion:

While it is true that courts should be hesitant to invade the corporate form, here there is more than enough evidence that the creation of various entities furthered Developers’ abilities to refrain from doing that which they repeatedly told the HOA and the residents they would do—turn over the disputed amenities to the HOA. As this Court stated in *Pertuis*, “the corporate structure should not shield—fraud, **evasion of existing obligations**, circumvention of statutes, monopolization, criminal conduct, and the like.”

Id. at 550 (quoting reference omitted) (emphasis in original).

Certain of the Third-Party Defendants argue the single business enterprise theory cannot be used to support personal jurisdiction. They are incorrect. Like the alter ego theory, the single business enterprise theory is an equitable doctrine, and one that courts in South Carolina have recognized “could be used to obtain personal jurisdiction over” foreign parent and “sister” entities. *E.g., Duong v. N.A. Transp. Servs. LLC*, 2019 WL 13109647, at *13 (D.S.C. Sept. 25, 2019). Other states that have adopted the single business enterprise, or an analogous theory, have found the same. *See, e.g., Dorfman v. Marriot Int’l Hotels, Inc.*, 2002 WL 14363, at *11 (S.D.N.Y. 2002) (finding exercise of personal jurisdiction where foreign parent exercised sufficient control over operations of subsidiary or, in the alternative, there was an agency relationship such that “the companies are engaged in a single business enterprise that relies on the joint efforts of various Otis affiliates, which are coordinated and controlled by Otis Elevator”); *Ruiz v. Economics Lab., Inc.*, 190 F. Supp. 701, 703–04 (D.P.R. 1968) (denying motion to dismiss on jurisdictional grounds where foreign entities were part of single business enterprise).

III. Grounds for Exercising Personal Jurisdiction Over Cape.

As a threshold matter, the Court addresses the Third-Party Defendants’ contention the allegations contained in the Third-Party Complaint fail to establish personal jurisdiction over Cape. The Court finds their characterization to be incorrect, as the Third-Party Complaint alleges in meticulous detail Cape’s contacts and conduct—including its efforts to market massive quantities of asbestos throughout to the lucrative U.S. market over a period of decades, despite its knowledge that those efforts would injure and kill thousands of people, including in South Carolina—and easily satisfies the requirements of South Carolina’s long-arm statute. *See, e.g.,* Third-Party Compl. ¶¶ 72–76 (noting nationwide distribution of certain asbestos, over which Cape had a monopoly, and prior rejection of an objection to the exercise of personal jurisdiction in South

Carolina with respect to a Cape entity and alleging that “Cape deliberately and purposefully availed itself of the entirety of the United States market for asbestos fiber, including the South Carolina market.”).

Specifically, this Court finds it has jurisdiction over Cape as “a person who act[ed] directly or by an agent as to a cause of action arising from” Cape’s and NAAC’s (i) “causing tortious injury or death in this State by an act or omission outside this State,” and by “regularly . . . engag[ing] in [a] persistent course of conduct, or deriv[ing] substantial revenue from goods used or consumed or services rendered in this State,” and/or (ii) “production, manufacture, or distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed.” S.C. Code §§ 36-2-803(4), (8).

In addition, and as the South Carolina Court of Common Pleas for the County of Barnwell ruled more than 40 years ago, the exercise of personal jurisdiction in South Carolina over Cape’s American subsidiary, NAAC, is proper. *See* Ex. 38 (*In re Asbestosis Cases*, Apr. 7, 1980 Order) at 3 (“I find that a conscious pattern of product distribution nationally which results in the product being incorporated in another product which was used in this state such as occurred here is a sufficient constitutional basis upon which to attach in personam jurisdiction.”). Accordingly, independent of Cape’s own connection with this State (including facilitating the sale and distribution of Cape asbestos from South African mines to locations in South Carolina), the allegations regarding Cape’s effective domination of NAAC, including pursuant to alter ego, veil-piercing, and/or business-enterprise doctrines, as well as the allegation that NAAC acted as Cape’s agent, separately provide a proper basis to exercise personal jurisdiction over Cape.

IV. Grounds for Exercising of Jurisdiction Over the Remaining Third-Party Defendants.

The Court separately addresses below each of the Third-Party Defendants remaining in this litigation who have responded by moving to dismiss the Third-Party Complaint and finds the Receiver has made the requisite *prima facie* jurisdictional showing for personal jurisdiction under an alter ego theory, guiding light, and/or single business enterprise theory, and/or have purposefully availed themselves to the jurisdiction of this Court, including through longstanding business activities directed at the United States, including South Carolina, with respect to the mining, marketing, and/or distribution of asbestos and other minerals, which gives rise to the claims against them.

As a threshold matter, this Court (and many others) recognize the alter ego test for personal jurisdiction *is less stringent* than the alter ego test for liability. *Hagan*, 2020 S.C. C.P. LEXIS 649, at *7; *Stuart v. Spademan*, 772 F.2d 1185, 1198 n.12 (5th Cir. 1985) (citing *Marine Midland Bank, N.A. v. Miller*, 664 F.2d 899, 904 (2d Cir. 1981)); *see also Gourdine*, 223 F. Supp. 3d at 483 (“If the jurisdictional facts are so intertwined with the facts upon which the ultimate issues on the merits must be resolved, then the entire factual dispute is appropriately resolved only by a proceeding on the merits. In such case, a district court may assume jurisdiction, reserve the question of jurisdiction, and determine relevant jurisdictional facts on a motion going to the merits or at trial.” (citations and internal quotation marks omitted)); *Bakker v. 3CLogic, Inc.*, 2015 WL 13760013, at *3 (D.S.C. Sept. 23, 2015) (“Given the fact intensive nature of this analysis, and that the court at this stage in the litigation must construe all relevant allegations in the light most favorable to [the party alleging alter ego], the court finds [that party] has offered sufficient evidence of personal jurisdiction to allow full discovery to proceed. Full discovery will n[ot] offend traditional notions of fair play and substantial justice”); *see also Talley Affidavit* ¶ 45

(detailing relative frequency of veil piercing and observing that “courts are ‘more lenient’ when it comes to piercing for purposes of obtaining jurisdiction”).

A. The Altrad Third-Party Defendants.

The Third-Party Complaint, along with the submitted affidavits and publicly available materials presented to the Court, adequately alleges facts sufficient to support the exercise of personal jurisdiction over each of the Responding Altrad Third-Party Defendants—the current owners of Cape—under an alter ego, guiding light, and/or single business enterprise theory. *See* Third-Party Compl. ¶¶ 113–19, 125–41. The Altrad Third-Party Defendants are alleged to be responsible, with Cape, for an ongoing scheme to evade responsibility for harm caused to South Carolinians by Cape’s asbestos, while also financially benefiting from that scheme as effective alter egos of Cape. As detailed below, the Court finds that consistent with fair play and substantial justice, it can exercise jurisdiction over each of these Responding Altrad Third-Party Defendants, based on the record before the Court at this early stage.

i. Altrad Investment Authority S.A.S. (AIA)

a. Alter Ego Theory.

The Third-Party Complaint makes a *prima facie* showing that Cape is AIA’s alter ego. South Carolina courts determining whether to exercise jurisdiction based on the alter-ego theory often consider the following factors: (i) common ownership, (ii) financial independence, (iii) the degree of selection of executive personnel and failure to observe corporate formalities; and (iv) the degree of control over marketing and operational policies. *Builder Mart*, 563 S.E.2d at 358. Ultimately, the key touchstone for the alter ego theory under South Carolina law is “that the appropriate level of dominion and control was exercised, and that injustice occurred as a result.” *Hagan*, 2020 S.C. C.P. LEXIS 649, at *15 (emphasis added). Put differently, to exercise personal

jurisdiction under this theory, the plaintiff “must show that the subsidiary functions as the agent or mere department of the parent”—that is, that the subsidiary does all the business that the parent corporation could do if were on its own. *Builder Mart*, 563 S.E.2d at 358. The Third-Party Complaint, along with the affidavits in the record and the additional publicly available facts set forth in the briefing or submitted to the Court, easily satisfies this standard with respect to AIA.

First, with respect to common ownership, AIA, the head of the Altrad Group and the ultimate parent of all of the corporate Altrad Third-Party Defendants, allegedly owns, controls, and effectively *is* Cape. In 2017, AIA acquired Cape for approximately £332.2 million through its wholly owned subsidiary Altrad UK Ltd., which (i) was incorporated in June 2017 for the specific purpose of acquiring Cape, (ii) acts as a “wholly owned subsidiary of AIA [that has been] financed by AIA through a current account,” and (iii) also “proceeded to refinance Cape’s debt” as part of the acquisition. Third-Party Compl. ¶ 116; Ex. 88 (Altrad 2017 Annual Report), at 42, 44; Reuters, Altrad Investment to Buy UK Oil Services Firm Cape for 332.2 Mln Pounds (July 7, 2017);²² see *Patin v. Thoroughbred Power Boats Inc.*, 294 F.3d 640, 653 (5th Cir. 2002) (acknowledging that jurisdictional contacts of a predecessor corporation may be imputed to a successor corporation consistent with due process). Indeed, Altrad’s 2017 Annual Report announced it “holds 100% of Cape,” *i.e.*, the entity that engaged in decades of asbestos sales in the United States and South Carolina directly and through its wholly owned subsidiary, NAAC, and touted the acquisition as an “exceptional opportunity” to acquire “one of the world’s leading providers of services to industry.” Ex. 88 (Altrad 2017 Annual Report), at 40. AIA continues to own and control Cape to today. Third-Party Compl. ¶ 116.

²² Available at <https://www.reuters.com/article/cape-ma-altrad-investment/altrad-investment-to-buy-uk-oil-services-firm-cape-for-332-2-mln-pounds-idUSL4N1JY2KG>.

Second, in the six years since AIA’s acquisition of Cape, Cape has depended on AIA financially.²³ In its annual report for the year ended August 31, 2022, Altrad Services Ltd. stated “[t]he Board of [AIA] (the ultimate parent company) manages risk at a Group level.” Ex. 90 (Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022), at 3. The 2022 annual report acknowledged that “[m]any of [AIA’s] operating environments have associated health and safety risks” and specifically highlighted the Altrad Group’s responsibility for such risks in connection with Cape: “The Company [Altrad Services Ltd.] is maintaining a provision in respect of lodged and future industrial disease claims for which the Board of Directors of Cape plc believes the Group to be liable, arising on alleged exposure to previously manufactured asbestos products.” *Id.* at 4. As a result, the Altrad Group set aside a £118.1 million provision of funds to address certain non-U.S. historical claims relating to asbestos exposure “for which the Board believes *the Group may become liable*” (the “Provision of Funds”). Ex. 90 (Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022), at 50 n.23 (emphasis added); *see also* Joshua Stein, *Altrad Makes £118m Provision for Asbestos Claims*, Construction News (Apr. 14, 2023).²⁴

AIA is the ultimate parent company of Altrad Services Limited, the entity that made the Provision of Funds, and has provided a letter of support of Altrad Services Limited as a going

²³ AIA directly benefitted from Cape’s historic asbestos monopoly (*i.e.*, large profits becoming long-term assets) and its litigation-avoidance strategy (*i.e.*, avoiding asbestos liabilities associated with the business it acquired). It also has continued that strategy, directing Cape to refuse to participate in litigation in the United States relating to its historic asbestos sales (including in the *Park* lawsuit).

²⁴ Available at <https://www.constructionnews.co.uk/health-and-safety/altrad-makes-118m-provision-for-asbestos-claims-14-04-2023/#:~:text=Altrad%20has%20set%20aside%20%C2%A3,historic%20alleged%20exposure%20to%20asbestos.>

concern in connection with that entity's latest financial statements. Ex. 90 (Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022), at 24, 50 n.23. This Provision of Funds—which reportedly “captured all expected material industrial disease scheme liabilities for which the Board believes the Group may become liable”—does not contemplate compensation for asbestos exposure claims asserted by South Carolinians or other American asbestos claimants. *Id.*

Third, publicly available information demonstrates that Altrad exercises control over the organization and executive team of Cape. In a press release dated September 10, 2018, Altrad announced it “combined Cape PLC, NSG and Hertel to create [the] UK’s largest industrial services provider to the petrochemical, energy, and infrastructure industries.” Altrad Website, *Altrad Combines Cape plc, NSG and Hertel to create UK’s Largest Industrial Service Provider* (Sept. 10, 2018), available at <https://www.altrad.com/en/newsreader/altrad-combines-cape-plc-nsg-and-hertel-to-create-uks-largest-industrial-service-provider.html>. After the acquisition, certain Cape entities were rebranded with the Altrad name. See Third-Party Compl. ¶ 116 (referencing Altrad Services Ltd., f/k/a Cape Industrial Services Ltd.). Further, the Altrad Group has a pattern of replacing the management of the companies it acquires, as it did in when it replaced, *en masse*, the leadership team of the Sparrows Group it acquired in July 2022. *Sparrows Leadership Team to Go* (Apr. 24, 2023), available at <https://vertikal.net/en/news/story/41603/sparrows-leadership-team-to-go>.

Fourth, the allegations in the Third-Party Complaint and the record before the Court at this stage of the litigation demonstrate AIA controls Cape’s operational policies. AIA “manages risk at a Group level,” including with respect to asbestos-related claims. Ex. 90 (Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022), at 3. As

part of its risk management for the Altrad Group, AIA has continued Cape's policy of litigation avoidance, with Cape refusing to participate in litigation in the United States relating to its historic asbestos sales (including in the *Park* lawsuit), and instead accepting default judgments on the gamble they will never be enforceable. The continuation of this scheme is evidenced not only by Cape's lack of appearance in the *Park* lawsuit, even after the appointment of a Receiver, but also by the non-appearance of seven of the 12 Altrad Third-Party Defendants in this action.

While AIA has responded to the Third-Party Complaint, certain of its instrumentalities have refused to do so. For example, Altrad UK Ltd., the entity through which AIA purchased Cape and which is represented by the same counsel as AIA, has not appeared.²⁵ Similarly, Altrad Services Ltd. (f/k/a Cape Industrial Services Ltd.), the entity that set aside the Provision of Funds totaling £118 million for purposes of addressing Cape's liability for certain non-U.S. historical claims relating to asbestos exposure (reported as capturing "all expected material industrial disease scheme liabilities for which the Board believes *the Group* may become liable"), likewise failed to appear. Both of these entities are wholly owned subsidiaries of AIA and entities for which AIA is responsible for risk management (including with respect to asbestos claims). Ex. 90 (Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022), at 24, 50 n.23. In other words, AIA has benefitted from and now directs Cape's efforts to avoid answering to victims in the United States, including in South Carolina. *Hagan*, 2020 S.C. C.P. LEXIS 649, at *14 (Richland Cnty. Ct. Com. Pl. June 29, 2020) (finding the "entire point of the alter-ego doctrine is that a defunct, dissolved or undercapitalized entity is responsible for causing injury" but because that entity is dominated or controlled by others, those others are also liable).

²⁵ See Ex. 87 (Joyner, Lay, and Carroll Email Exchange, dated August 18–20, 2023).

b. Single Business Enterprise.

The Third-Party Complaint also makes a *prima facie* showing of personal jurisdiction over AIA pursuant to the single business enterprise theory, which requires “a showing of more than the various entities’ operations are intertwined” as well as “evidence of bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities’ legal distinctions.” *Pertuis*, 817 S.E.2d at 280–81.

As detailed above, AIA has owned and controlled Cape since 2017. It has allegedly benefitted from Cape’s historic asbestos monopoly (*i.e.*, large profits becoming long-term assets) yet avoided the liabilities associated with that monopoly through Cape’s litigation-avoidance strategy (*i.e.*, avoiding asbestos liabilities). It continues that strategy to this day, directing Cape to refuse to participate in litigation in the United States relating to its historic asbestos sales (including in the *Park* lawsuit). The Third-Party Complaint alleges in great detail a scheme of bad faith, abuse, fraud, wrongdoing, and injustice resulting from the intentional blurring of the entities’ legal distinctions, namely, the scheme pursuant to which Cape—through its agents, like NAAC—distributed asbestos into the United States (including into South Carolina), concealed the harms of asbestos, siphoned the funds from those sales to co-conspirators located outside of the United States, and avoided liability in the United States for the known harm that Cape’s asbestos would—and did—cause, and continues to cause, in the United States broadly, and in South Carolina specifically.

Based on these allegations and the record, AIA is subject to this Court’s personal jurisdiction as an alter ego to Cape or, in the alternative, as part of an amalgamated, single business enterprise that collectively endeavored to sell massive amounts of Cape’s deadly asbestos in the

United States, including in South Carolina, and to avoid answering to U.S. creditors and other injured parties for their asbestos-related injuries and harm.

ii. Mohed Altrad.

The Court also finds the Receiver made the required *prima facie* showing that Mohed Altrad is the alter ego to Cape, and/or the “guiding spirit” of AIA and the Altrad Group.²⁶ The Third-Party Complaint alleges that, since its acquisition of Cape in 2017, the Altrad Third-Party Defendants—under the control of their founder and namesake—have directed, allowed, facilitated, or benefitted from Cape’s longstanding scheme to avoid liability stemming from its decades of sales of asbestos in the United States, including in South Carolina, despite its known health hazards. *See* Third-Party Compl. ¶¶113–19, 125–41. As alleged, and reflected in even the limited record before the Court at this stage of the litigation, under Mr. Altrad’s leadership, the Altrad Third-Party Defendants have continued Cape’s wrongful litigation-avoidance strategy while continuing to profit from Cape’s ongoing business. The Third-Party Complaint, coupled with the record developed to date including through affidavits, exhibits to the parties’ briefing related to the motions to dismiss, and publicly available records of which this Court can take judicial notice, collectively make the required *prima facie* showing that, as the founder and President of the Altrad Group, and as the majority shareholder, Mr. Altrad controls such decisions. *Id.* ¶ 118; Ex. 88 (Altrad 2017 Annual Report), at 20; Ex. 89 (Altrad 2022 Annual Report), at 71.

²⁶ The South Carolina Supreme Court has stated that “the single business enterprise theory is not to be used to amalgamate an individual with a company” and that it “exists as an equitable remedy for plaintiffs whenever they have been wronged *by business entities* with blurred identities.” *Stoneledge and Lake Keowee Owners’ Ass’n, Inc. v. IMK Dev., Co., LLC*, 435 S.C. 109, 866 S.E.2d 542, 551-52 (2021) (emphasis in original). As a result, this Court’s exercise of personal jurisdiction over Mr. Altrad is premised on the alter ego theory.

Each of the *Builder Mart* factors counsel in favor of this Court’s exercise of jurisdiction over Mr. Altrad. **First**, Mr. Altrad owns nearly all of the Altrad Group, including Cape. As of 2017, the year AIA acquired Cape, Mr. Altrad “h[e]ld 77.78% of the [company’s] shares.” Ex. 88 (Altrad 2017 Annual Report), at 20. As of August 31, 2022, Mr. Altrad held 77.45% of the company’s shares. Ex. 89 (Altrad 2022 Annual Report), at 71. By September 30, 2022, **Mr. Altrad held 97.60% of the company’s shares.**²⁷ *Id.* (depicting new shareholder structure as of September 30, 2022, as 97.60% owned by Mohed Altrad and 2.40% owned by “Others”).

Second, as the overwhelmingly dominant owner of all of the Altrad Group, all of its entities—including AIA and Cape—are financially dependent on Mr. Altrad.

Third, Mr. Altrad controls AIA, which as detailed above, directed the reorganization and combination of Cape following its acquisition and has a practice of replacing the management of the companies it acquires.

Fourth, Mr. Altrad exercises control over the Altrad Group’s, and by extension Cape’s, operational policies. *Builder Mart*, 563 S.E.2d at 358. Just as AIA controls Cape’s operational policies, including relating to risk management relating to asbestos claims, as detailed above, Mr. Altrad—as its founder, President, dominant majority shareholder, avowed leader, and namesake—controls AIA. Third-Party Compl. ¶¶ 116, 118, 119; *see also* Affidavit of M. Altrad ¶ 32. *See* Ex. 90 (Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022), at 3. As the Altrad Group’s website states, Mr. Altrad “still le[ads]” the

²⁷ Months later, in December 2022, a French court found Mr. Altrad guilty of bribery, influence peddling, and misuse of corporate assets. Third-Party Compl. ¶ 118; *see also* Chase Peterson-Withorn, *Who is Mohed Altrad, the Billionaire Scaffolding King Found Guilty of Rugby Bribery?* (Dec. 13, 2022), available at <https://www.forbes.com/sites/chasewithorn/2022/12/13/who-is-mohed-altrad-the-billionaire-scaffolding-king-found-guilty-of-rugby-bribery/?sh=44120ed43846>.

Altrad Group of companies. Altrad Website, *Our History*, <https://www.altrad.com/en/our-history.html> (“Today, the group is still led by its founder, Mohed Altrad.”). The “Governance” section of the Altrad Group’s website states that “General Management defines the strategy for the Altrad Group. It is headed by Mohed Altrad, founder and President of the group, and by Jan Vanderstraeten and Ran Oren, joint-Chief Executive Officers.” Altrad Website, *Governance*, <https://www.altrad.com/en/governance.html#:~:text=It%20is%20headed%20by%20Mohed,humanist%20conception%20of%20the%20company>.

Moreover, it is well established that when a court has engaged in traditional veil piercing, it may exercise personal jurisdiction vicariously over an individual like Mr. Altrad if the court has jurisdiction over the individual’s alter ego company. *Hagan*, 2020 S.C. C.P. LEXIS 649, at *6; *see also Newport News Holdings Corp. v. Virtual City Vision, Inc.*, 650 F.3d 423, 433 (4th Cir. 2011) (observing that courts have “consistently acknowledged that it is compatible with due process to exercise personal jurisdiction over an individual . . . who is an alter ego” (citation omitted)); *cf. Ranza v. Nike, Inc.*, 793 F.3d 1059, 1072–73 (9th Cir. 2015) (noting that alter ego test “may be used to extend personal jurisdiction”); *see also Patin*, 294 F.3d at 653 (jurisdictional contacts may be imputed to an individual alter ego consistent with due process).

There is another basis for this Court to exercise personal jurisdiction over Mr. Altrad. As the U.S. District Court for the District of South Carolina explained in *Charleston Equities*, 2017 WL 10504748, at *4, there is an additional conceptual framework to analyze the imputation of jurisdictional contacts to an individual who serves as the “guiding light” or “guiding spirit” for its alter ego corporate entity. At this preliminary stage, the Receiver has made a *prima facie* showing that Mr. Altrad satisfies this framework. Under this “guiding spirit” theory, a court may hold an individual subject to personal jurisdiction even though he committed the wrongful act outside of

South Carolina, as long as there is “some showing of direct, personal involvement by the corporate officer in some decision or action which is causally related to the plaintiff’s injury.” *Charleston Equities*, 2017 WL 10504748, at *4. As the majority shareholder, founder, President, Board member, and person who “still le[ads]” the Altrad Group and AIA, Mr. Altrad is the “guiding spirit.” Based on his various roles and the extent of his ownership, Mr. Altrad necessarily controls the Altrad Group, and with it, Cape. Third-Party Compl. ¶ 118; *Charleston Equities*, 2017 WL 10504748, at *4 (owners and directors of Charleston Equities were “necessarily . . . the ‘guiding spirit’ for any action undertaken” by it).

As such, at this preliminary stage, the Court finds the Receiver has made the required *prima facie* showing to support the exercise of personal jurisdiction over Mr. Altrad, the President, the founder, the face, and the majority owner of the Altrad Group, as an alter ego to Cape and/or as its guiding light and spirit. *Charleston Equities*, 2017 WL 10504748, at *4; *see also Springs Indus., Inc. v. Gasson*, 923 F. Supp. 823, at 827–28 (D.S.C. 1996) (finding minimum contact established because “[a]t this stage of the proceedings, [the plaintiff] has alleged sufficient facts to show that [officer] was involved in the decision making which is causally related to its injury and that he was, at least in part, the guiding spirit behind the wrongful conduct”).

iii. U.S. Subsidiaries of the Altrad Group — Sparrows Offshore, LLC, Hawk Bidco, US, LLC, and Arranco US, LLC.

a. Alter Ego.

The Third-Party Complaint also makes a *prima facie* showing of personal jurisdiction over Sparrows Offshore, LLC, Hawk BidCo US, LLC, and Arranco US, LLC pursuant to the alter ego theory.²⁸ As alleged in the Third-Party Complaint and reflected in other documents before the

²⁸ Sparrows Offshore, LLC, Hawk BidCo US, LLC, and Arranco US, LLC collectively challenged this Court’s personal jurisdiction over them in a single brief. In support of that brief, each of these

Court, on July 11, 2022, AIA completed the acquisition of “the Sparrows Group,” including Sparrows Offshore, LLC, Hawk BidCo US, LLC, and Arranco US, LLC.²⁹ Third-Party Compl. ¶ 117 & n.38; Press Release, *Altrad Completes Acquisition of Engineering and Maintenance Specialist Sparrows Group* (July 11, 2022), <https://www.altrad.com/en/newsreader/altrad-completes-acquisition-of-engineering-and-maintenance-specialist-sparrows-group.html>.

First, since July 2022, Cape and the “Sparrows Group” have shared common ownership as part of the Altrad Group, which in turn is owned almost entirely by Mr. Altrad. *See* Third-Party Compl. ¶ 117. **Second**, both are allegedly controlled and financially dependent on AIA, under the direction of Mr. Altrad. *Id.* ¶ 116–18. **Third**, consistent with its alleged control of Cape (*id.* ¶ 116), AIA appears to control the selection of executive personnel over the Sparrows entities. *See id.* ¶ 118. The record reflects that despite initially announcing that the “Sparrows Group” would “be run autonomously by its existing management,” by April 2023 (less than a year after the

three entities submitted an affidavit from the same person—Adam C. Wood—who held the title of “Director” in each entity. *See* Affidavit of Adam C. Wood ¶ 2 (“I am a Director of Hawk Bidco (US) Inc. (‘Hawk Bidco’).”); Affidavit of Adam C. Wood in Support ¶ 2 (“I am Director of ArranCo US, LLC (‘ArranCo’).”); Affidavit of Adam C. Wood ¶ 2 (“I am a Director and the Senior Vice President of Sparrows Offshore, LLC (‘Sparrows Offshore’).”). These entities admit that they share the same directors. *E.g.*, Affidavit of Adam C. Wood in Support ¶ 38 (Arranco shares “same directors” with Sparrows Offshore and Hawk BidCo).

²⁹ As alleged, the “Sparrows Group” acquired by the Altrad Group in July 2022 also included Sparrows Offshore Group, Ltd. (based in Aberdeen, Scotland) and the Sparrows Group LLC (a Delaware LLC created in March 2023). The Altrad Third-Party Defendants that have responded to the Third-Party Complaint have disclaimed any “affiliation or association” with those two non-responding entities. According to the Receiver, however, that disclaimer conflicts with public materials regarding their affiliations, in which Altrad has touted its recent acquisition of the Sparrows Group, which on information and belief includes these two entities. *See, e.g.*, Altrad Press Release, *Altrad Agrees to Acquire Sparrows Group* (Mar. 2, 2022), <https://www.altrad.com/en/newsreader/altrad-agrees-to-acquire-sparrows-group.html>. At this stage, factual disputes should be resolved in favor of the Receiver, as the non-moving party. *HHHunt Corp.*, 699 S.E.2d at 704.

acquisition), AIA terminated its leadership team (including its CEO, CFO, CTO, HSEQ, HR director, and executive director for the Middle East, India, Caspian, and Asia Pacific) *en masse* and installed its own management team that would report to AIA and Mr. Altrad. Sparrows Leadership Team to Go (Apr. 24, 2023), *available at* <https://vertikal.net/en/news/story/41603/sparrows-leadership-team-to-go> (reporting that announcement “came as a complete surprise to many of those that will be affected”). *Fourth*, and ultimately, AIA (as a corporate instrumentality of Mr. Altrad) is plausibly alleged to exercise control over both Cape and the Sparrows entities’ operations. *See* Third-Party Compl. ¶¶ 116–19. Despite announcing that Sparrows would “be run autonomously by its existing management as a separate entity within Altrad,” in October 2, 2023, Altrad announced the rebranding of the “Sparrows Group” to “Altrad Sparrows.” Aberdeen Business News, *Altrad Spreads Its Wings as Altrad Sparrows* (Oct. 2, 2023), <https://aberdeenbusinessnews.co.uk/sparrows-spreads-its-wings-as-altrad-sparrows/>; *see also* *Builder Mart*, 563 S.E.2d at 358.

b. Single Business Enterprise.

The Court further finds the Third-Party Complaint makes a *prima facie* showing of personal jurisdiction over Sparrows Offshore, LLC, Hawk BidCo US, LLC, and Arranco US, LLC pursuant to the single business enterprise theory. As alleged, and reflected in the documents before the Court at this preliminary stage, these entities have been absorbed into and intertwined with AIA—the current owner, controller, and successor-in-interest to Cape—and the broader Altrad Group, which continues to benefit from Cape’s sale of asbestos and evasion of its associated liabilities to tort victims within the United States, including South Carolina.

Moreover, like the broader Altrad Group’s continuation of Cape’s litigation avoidance strategy, Sparrows Offshore, LLC, Hawk BidCo US, LLC, and Arranco US, LLC have been part

of that scheme to insulate capital from American creditors, with Sparrows Offshore Group Ltd. passing a resolution to liquidate on July 27, 2023, *within two weeks of being served with the Receiver's Third Party Complaint in this case*, while each of Sparrows Offshore, LLC, Hawk BidCo US, LLC, and Arranco US, LLC continue to operate apparently as part of the Altrad Group. *Pertuis*, 817 S.E.2d at 280–81. That decision to liquidate soon after service may (or may not) be part of a combined, coordinated effort to evade liabilities associated with Cape's historic business activities, which at this stage, the Court believes sufficient to exercise personal jurisdiction with respect to affiliated "Altrad Sparrows" entities that have appeared.

The Court expresses similar concern that certain affiliates of these Altrad Group members share a common registered address with Cape and have been served in this third-party action (including at least one entity also represented by counsel for Mr. Altrad and AIA) but nevertheless have not appeared in this action—a decision consistent with Cape's *modus operandi* of litigation avoidance. Accordingly, the Court believes these actions—following the filing of the Third-Party Complaint—further buttress allegations of and concerns regarding ongoing bad faith, abuse, fraud, wrongdoing, or injustice being perpetuated by and within the Altrad Group, including with respect to the management of these "Altrad Sparrows" entities.

Based on these allegations and the record, and at this preliminary stage, the Court finds Sparrows, Hawk BidCo, and Arranco are subject to this Court's personal jurisdiction as an alter ego to Cape or, in the alternative, as part of a single business enterprise that collectively endeavored to sell, or benefit from the sale of Cape's asbestos in the United States, including South Carolina, while avoiding answering to U.S. creditors for the resulting harm. *See, e.g., Ex. 70*, at CAPE000142 (1975 correspondence acknowledging risk of exposure of future-acquired U.S. companies or businesses to U.S. courts to satisfy default judgments entered against Cape).

B. The Oppenheimer Third-Party Defendants.

The Court also finds that it has personal jurisdiction over the five Oppenheimer Third-Party Defendants that remain in this action.³⁰ These Third-Party Defendants include Anglo American PLC (in England), De Beers Consolidated Mines Ltd. (in South Africa), De Beers Centenary AG (in Switzerland), De Beers PLC (in the Bailiwick of Jersey), and De Beers UK Ltd. (in England).

As alleged in the Third-Party Complaint, and further buttressed by documents presented to the Court, these Third-Party Defendants bear responsibility, whether individually or as a matter of successor responsibility, for the claims presented against them. In particular, members of the “De Beers Group,” Anglo American Corporation of South Africa, Ltd., and other parts of the Oppenheimer “Greater Group” are alleged to have exerted significant control over Cape, which was alleged to have been part of the premier amalgamated mining and *marketing* empire of the twentieth century, as reflected in the figure below (from Paragraph 54 of the Third-Party Complaint).³¹

³⁰ As originally named, De Beers S.A. is now identified as a predecessor in interest to De Beers PLC, and the other 11 Oppenheimer Third-Party Defendants have been voluntarily dismissed by the Receiver, without prejudice.

³¹ Compare De Beers Group Website, *A Diamond Is Forever*, <https://www.debeersgroup.com/about-us/a-diamond-is-forever> (touting “A Diamond is Forever” as the “Slogan of the Century,” rolled out in 1947 to advertise diamonds—for which the Anglo/De Beers Group had an effective monopoly—to American consumers, including in South Carolina) with the entirety of Third-Party Complaint (alleging highly profitable scheme during the same decades to promote amosite and crocidolite asbestos—for which the Anglo/De Beers Group had an effective monopoly—to American consumers, including in South Carolina, and then direct and promote the attempted evasion of tort liability by Cape and its Anglo/De Beers affiliates).



As set forth below, the Court finds there are numerous allegations, especially at this initial stage of the proceeding, that support exercising jurisdiction over the remaining five Oppenheimer Third-Party Defendants, including as a matter of successor liability for Anglo American Corporation of South Africa Ltd. and/or De Beers Consolidated Mines Ltd. *See Brown v. American Ry. Express Co.*, 128 S.C. 428, 123 S.E. 97, 98–99 (1924) (identifying bases for successor liability, *e.g.*, (i) there was an agreement to assume such obligations; (ii) the circumstances surrounding the transaction amount to a consolidation or merger of the two corporations; (iii) the successor company was a mere continuation of the predecessor; or (iv) the transaction was entered into fraudulently to wrongfully defeat creditors’ claims). The Third-Party Complaint also alleges extensive facts indicating that Anglo American Corporation of South Africa Ltd. and/or De Beers Consolidated Mines Ltd.—including through Charter—exerted significant control and operational oversight over Cape, acting as its alter ego, including without limitation having (i) been involved in the formation of Cape (Third Party Compl. ¶¶ 42, 45, 47, 49); (ii) overlapping officers, directors, and share ownership among the organizations (including through Charter) (*id.* ¶¶ 45, 47, 49, 55–56, 59–61, 67), (iii) a capacity to influence or control major business decisions of Cape, including

relating to personnel (*id.* ¶¶ 50–52, 54, 58 & n.10, 59, 61, 67), (iv) a common marketing image, or mechanism for influence over business and governmental stakeholders (*id.* ¶¶ 53, 59–60, 62–63, 68–69); (v) a plan to create corporate complexity and artificial corporate separation and to make strategic divestitures to avoid answering to American creditors (*id.* ¶¶ 53 & n.7, 59, 62, 64–67, 105–109); and/or (vi) unity of operations, including a common physical addresses, despite formally separate structures (*id.* ¶¶ 54, 57). *See, e.g., In re Polyester Staple Antitrust Litig.*, 2008 WL 906331, at *13–14, *16 (supporting application of personal jurisdiction over parent entity that was required for consultation or approval of certain corporate decisions at issue); *see also Builder Mart*, 563 S.E.2d at 358. At this early stage in the proceeding, these allegations (including documents in support) are more than sufficient to impute the jurisdictional contacts of Cape and its American subsidiary, NAAC.

Further, these allegations—which are well supported with documentation, including statements in Third-Party Defendants’ annual reports and by their corporate officers in sworn testimony—suggest substantial relationship intimacy between the Cape Asbestos Company Ltd., De Beers Consolidated Mines Ltd., Anglo American Corporation of South Africa Ltd., and other members of the Oppenheimer business empire (including Charter) beginning in the 1890s and continuing as late as the 1990s, even after Cape purported to stop selling asbestos.

For the same reasons jurisdiction is proper under an alter ego theory, so too can the single business enterprise theory confer jurisdiction over Anglo American Corporation of South Africa Ltd. and De Beers Consolidated Mines Ltd. The Third-Party Complaint alleges facts showing these entities controlled Cape (through Charter and other members of the Oppenheimer mining empire) during the years in which Cape was shipping asbestos into the United States with the assistance of NAAC, demonstrating that the entities were acting with a “common business purpose.” Third-

Party Compl. ¶ 70; *Pertuis*, 817 S.E.2d at 279; *Duong*, 2019 WL 13109647, at *13 (recognizing use of single business enterprise doctrine to obtain personal jurisdiction over” foreign parent and “sister” entities). Indeed, the Third-Party Complaint specifically alleges unified or integrated business operations and resources to achieve a common business purpose, including use of common employees and unclear allocation of profits and losses between corporations, as Cape’s production and distribution chain is alleged to have been supported by Oppenheimer-affiliated businesses in South Africa and elsewhere, which also profited from continuation of the asbestos trade. *See* Third-Party Compl. ¶¶ 52–53, 57, 61–62, 67–69, 120 (alleging use of Central Mining engineers by Cape, whom were paid by Anglo American; how “Cape’s affiliations . . . were key to Cape’s success”; that Cape’s/Charter’s close association with other South African companies allowed it to “‘exercise . . . influence’ in Apartheid-era South Africa”; and that “Cape was owned, controlled, operated by, and dominated in furtherance of and in concert with Oppenheimer business interests in South Africa, the United Kingdom, and elsewhere—to those entities’ substantial financial benefit”).

As a result of these contacts, moreover, persons have allegedly been harmed, including in South Carolina, and there is a more than a suggestion of bad faith, abuse, fraud, wrongdoing, or injustice by the Oppenheimer Third-Party Defendants with respect to their perpetuation of this common business purpose and blurring of the distinction among the numerous members in the Anglo/De Beers Group of companies. *See, e.g.*, Talley Affidavit ¶ 41 (stating, as a matter of economic analysis, that “[a]ssuming the facts as alleged in the third-party complaint by the Receiver are true . . . , they resemble a textbook case of strategic and inefficient asset stripping—one that suggests the costs of [limited liability] exceed the benefits of [limited liability] in these circumstances,” and thus the “economic case for disregarding the veil of limited liability among

the defendants (or a sizeable number of them) appears strong”). In fact, as their own annual reports acknowledge, members of this “group system” are provided “a full range of administrative and technical services and [are] able, by virtue of [their] financial strength and standing, to [be] assure[d] . . . capital for expansion and development.” Ex. 20 (Anglo 1974 Annual Report), at 3. In turn, the Third-Party Complaint alleges in great detail that this group affiliation furthered Cape’s asbestos business and provided the roadmap for its liability-avoidance scheme.³² *See, e.g.*, Third-Party Compl. ¶¶ 102–03 (alleging that Cape asbestos mines were sold to another company also in the Oppenheims’ extensive investment portfolio). Accordingly, contacts from Cape and NAAC are also properly imputed to these Third-Party Defendants under an amalgamated, single business enterprise theory. For these reasons, and as also discussed further below, the Court finds that the exercise of personal jurisdiction over them would not offend traditional notions of fair play and substantial justice.

i. Anglo American PLC.

Anglo American PLC is alleged to be a corporation organized under the laws of England, United Kingdom, with its principal place of business in London, England, United Kingdom. Third-

³² Although affiants for the Oppenheimer Third-Party Defendants disclaim direct involvement in the sales of asbestos, the Third-Party Complaint alleges otherwise, including that Cape was part of a global amalgamated mining empire which—as part of a common business enterprise—extracted from South Africa and sold and marketed to customers in the United States, including South Carolina, numerous types of raw materials, including asbestos (as well as diamonds, copper, gold, coal, uranium, etc.). *Compare* Third-Party Compl. ¶¶ 51, 67–69 (alleging various interests in minerals and other resources, also mined from South Africa and sold predominantly to the United States) *with* Anglo American H1 2023 Results, at 66 (July 27, 2023) (identifying “USA” as still responsible for the majority of “Global Diamond Jewellery Demand,” with China a distant second with 10% of demand, according to De Beers-commissioned analytics and consumer studies), *available at* <https://www.angloamerican.com/~media/Files/A/Anglo-American-Group-v5/PLC/investors/reports/anglo-american-half-year-2023-results-presentation.pdf>. It is well-established that factual disputes should be resolved in favor of the Receiver, the non-moving party, at this stage. *See HHHunt Corp.*, 699 S.E.2d at 704.

Party Compl. ¶ 2. In addition, Anglo American PLC is expressly alleged to be a successor in interest to Anglo American Corporation of South Africa Ltd. As the Third-Party Complaint further alleges, in 1998, “Anglo American Corporation of South Africa Ltd. moved its headquarters to London and re-registered as Anglo American PLC, which involved complex changes to its corporate structure that included absorbing [other Oppenheimer entities] and moving assets out of South Africa (thereby mitigating the risk of post-Apartheid nationalization).” *Id.* ¶ 121 n.41.

Other materials provided to the Court since the filing of the Third-Party Complaint on June 30, 2023, also appear to support the Receiver’s assertions that Anglo American PLC (“AA PLC”) may bear responsibility as a successor in interest to Anglo American Corporation of South Africa Ltd. and/or De Beers Consolidated Mines Ltd., including in light of the structure and terms of the 1998 merger between Anglo American Corporation of South Africa Ltd. (“AAC”) and other Oppenheimer business interests.³³ For example, as part of that formal combination of businesses, it was reported in financial press that (i) the “Boards of De Beers Consolidated Mines Limited and De Beers Centenary AG (together ‘De Beers’) announce[d] that they [had] agreed in principle to support the formation of AA plc for AAC and Minorco [*i.e.*, the international investment arm that replaced Charter], and to accept AA plc shares in respect of De Beers’ shareholdings of 38.2

³³ See, e.g., Lynne Duke, *Mining Firm’s Move Splits South Africans*, The Washington Post (Oct. 18, 1998), <https://www.washingtonpost.com/archive/politics/1998/10/18/mining-firms-move-splits-south-africans/fd90b101-ebc7-4de2-a0e9-f17f0793e3dd/> (referencing “restructuring plan that will move the South African and global mining giant’s headquarters to London,” including as “a decision to merge with its offshore natural resources arm, Luxembourg-based Minorco SA,” but with its “major shareholders . . . remain[ing] South African[,] [p]rimary among them [being] the Johannesburg-based De Beers Consolidated Mines Ltd., the world’s largest diamond miner and marketer, as well as the Oppenheimer family which owns De Beers”); Darren Schuettler, *Anglo Merger with Minorco to Create Mining Giant*, J. of Commerce (Oct. 15, 1998), https://www.joc.com/article/anglo-merger-minorco-create-mining-giant_19981015.html (“Anglo said the deal, which will effectively end the company’s 81-year corporate presence in the country of its birth, was necessary to protect shareholder interests in post-apartheid South Africa.”).

percent in AAC and 22.5 percent in Minorco,” and (ii) “a number of listed and unlisted companies and joint ventures” would continue “in which De Beers and AAC have common direct interests,” because as:

part of the restructuring of AAC, the Boards of De Beers and AAC [had] agreed in principle that all De Beers’ holdings in these companies and joint ventures will be disposed of to AAC in return for an entitlement to AAC shares which will be converted into shares in AA plc on completion of the combination of AAC and Minorco.

Anglo American, Minorco to Merge in Stock Swap, Bloomberg (Oct. 15, 1998), <https://www.bloomberg.com/press-releases/1998-10-15/anglo-american-minorco-to-merge-in-stock-swap>.

In addition, in line with the Receiver’s allegation that the “Oppenheimer Third-Party Defendants have increased their business activities in the United States” (Third-Party Compl. ¶ 122), Anglo American PLC has lobbied and is actively lobbying the U.S. government, implicating the State of South Carolina as well. *See* U.S. Senate Lobbying Report (July 18, 2023), <https://lda.senate.gov/filings/public/filing/2ae34448-9d9b-4218-899a-3040666a499a/print/> (identifying interest “in engagements related to the investment in critical minerals exploration and extraction in Southern Africa”). That lobbying, moreover, is alleged to be part of a longstanding campaign by the Anglo/De Beers Group to establish a foothold of influence in the United States, including as potentially relevant to Cape, and as alleged in the Third-Party Complaint. *See id.* ¶ 70 (alleging that Cape was included as “part of the Oppenheimer empire’s global expansion” in the 1950s—1970s).

Based on these allegations and the record presently before the Court, the Court finds (i) the Receiver has made the required *prima facie* showing that Anglo American PLC, whether individually or as a successor in interest to De Beers Consolidated Mines Ltd. and/or Anglo

American Corporation of South Africa Ltd., was an alter ego of Cape or part of an amalgamated, single business enterprise, or benefitted from the use of Cape as its agent, with respect to the mining, production, manufacture, and distribution of asbestos fiber (among other valuable minerals, metals, and other materials handled by the Oppenheimer mining empire) from South Africa to the United States, including to South Carolina, and (ii) the exercise of personal jurisdiction over Anglo American PLC is proper at this time, including based on the longstanding activities and business of the Anglo/De Beers Group to mine, market, and distribute various minerals, including asbestos and diamonds,³⁴ to the United States of America, including South Carolina.

ii. De Beers Consolidated Mines Ltd.

De Beers Consolidated Mines Ltd. (n/k/a De Beers Consolidated Mines Proprietary Ltd.) is alleged to be a corporation organized under the laws of the Republic of South Africa, with its principal place of business in Kimberley, Northern Cape, South Africa. Third-Party Compl. ¶ 5. De Beers Consolidated Mines Ltd. is among certain Oppenheimer Third-Party Defendants—with or through predecessors in interest—alleged to have owned, controlled, operated, or dominated Cape in furtherance of or in concert with Oppenheimer business interests in South Africa, the United Kingdom, and elsewhere, thereby financially benefiting with respect to Cape’s asbestos business in the United States and its perpetuation of the liability-avoidance scheme. *See id.* ¶¶ 120–21. As summarized above, the Third-Party Complaint alleges—in substantial detail—a connection between “De Beers” and Cape beginning in the 1890s and continuing at least through the time that

³⁴ *See also* Gill Nelson *et al.*, *The Risk of Asbestos Exposure in South African Diamond Mine Workers*, *Annals of Occupational Hygiene*, Vol. 55 (July 2011) (“Asbestos is associated with the South African diamond mining industry, primarily due to the nature of kimberlite but also the location of the diamond mines in relation to asbestos deposits.”), *available at* <https://academic.oup.com/annweh/article/55/6/569/175512>.

Cape initiated its liability-avoidance scheme in the late 1970s. *See id.* ¶¶ 45, 112, 122 (defining “De Beers,” as referenced in the Third-Party Complaint, to include De Beer’s Consolidated Mines Ltd. “with its affiliates and successors in interest” in the “De Beers Group,” as controlled by Anglo American PLC, which act as “successors in interest and beneficiaries of Cape’s liability-avoidance scheme, co-responsible for Cape’s tortious conduct”).

Based on these allegations and the record before the Court at this preliminary stage, the Court finds (i) the Receiver has made the required *prima facie* showing that De Beers Consolidated Mines Ltd. (n/k/a De Beers Consolidated Mines Proprietary Ltd.) was an alter ego of Cape or part of an amalgamated, single business enterprise, or benefiting from the use of Cape as its agent, with respect to the mining, production, manufacture, and distribution of asbestos fiber (among other valuable minerals, metals, and other materials handled by the Oppenheimer mining empire) from South Africa to the United States of America, including to South Carolina, and (ii) the exercise of personal jurisdiction over De Beers Consolidated Mines Ltd. is proper at this time, including based on the longstanding activities and business of the Anglo/De Beers Group to mine, market, and distribute various minerals, including asbestos and diamonds, to the United States of America, including South Carolina.

iii. De Beers Centenary AG.

De Beers Centenary AG is alleged to be a corporation organized under the laws of Switzerland, with its principal place of business in Emmenbrücke, Switzerland. Third-Party Compl. ¶ 4. De Beers Centenary AG is among certain Oppenheimer Third-Party Defendants—with or through predecessors in interest—alleged to have owned, controlled, operated, or dominated Cape in furtherance of or in concert with Oppenheimer business interests in South Africa, the United Kingdom, and elsewhere, thereby financially benefiting from Cape’s asbestos

business in the United States and its perpetuation of the liability-avoidance scheme. *See id.* ¶¶ 120–21. De Beers Centenary AG is also alleged to be involved in expanding business activities in the United States, including bringing litigation and enforcing trademarks or other valuable rights, under the De Beers name. *Id.* ¶ 122. Moreover, this entity is effectively alleged to be a successor in interest to De Beers Consolidated Mines Ltd. (as formed in 1888) and responsible for actions as part of various entities in the “De Beers Group,” which have been created since the 1970s and act as “successors in interest and beneficiaries of Cape’s liability-avoidance scheme, co-responsible for Cape’s tortious conduct.” *See id.* ¶¶ 45, 112, 122.

Other public materials buttress the Receiver’s assertions that De Beers Centenary AG may bear responsibility as a successor in interest to Anglo American Corporation of South Africa Ltd. and/or De Beers Consolidated Mines Ltd., in light of the terms and structure of its creation in 1990 by being spun off from De Beers Consolidated Mines Ltd. *See, e.g., De Beers to Become 2 Companies*, N.Y. Times (Mar. 7, 1990) (“De Beers Consolidated Mines Ltd., the huge South African diamond mining concern, said today that it would split itself in two and base one of the newly formed companies in Switzerland. The Swiss company will oversee De Beers’s foreign businesses, which accounted for 80 percent of the company’s 1989 net profit. The move appeared to be an attempt by the company to minimize its exposure to potential political turbulence in South Africa, where a newly energized black majority has vowed to nationalize major industries if it wins power from the white minority.”).³⁵

³⁵ *See also, e.g.,* Indictment, *United States v. General Elec. Co. et al.*, No. CR-2-94-019 (S.D. Ohio Feb. 17, 1994) (collectively referring to De Beers Consolidated Mines Ltd. and De Beers Centenary AG as “De Beers,” responsible for “own[ing] or control[ing] various companies that manufactured, distributed, and sold industrial diamond products”), *available at* <https://www.justice.gov/sites/default/files/atr/legacy/2006/03/20/indictment.pdf>; *De Beers Signs Pact for Soviet Diamonds*, Roanoke Times (July 26, 1990) (referencing a multi-billion dollar agreement between De Beers Centenary AG and the Soviet Union, accomplished because the

Based on these allegations and the record before the Court at this preliminary stage, the Court finds (i) the Receiver has made the required *prima facie* showing that De Beers Centenary AG, whether individually or as a successor in interest to De Beers Consolidated Mines Ltd. and/or Anglo American Corporation of South Africa Ltd., was an alter ego of Cape or part of an amalgamated, single business enterprise, or benefitted from the use of Cape as its agent, with respect to the mining, production, manufacture, and distribution of asbestos fiber (among other valuable minerals, metals, and other materials handled by the Oppenheimer mining empire) from South Africa to the United States of America, including to South Carolina, and (ii) the exercise of personal jurisdiction over De Beers Centenary AG is proper at this time, including based on the longstanding activities and business of the Anglo/De Beers Group to mine, market, and distribute various minerals, including asbestos and diamonds, to the United States of America, including South Carolina.

iv. De Beers PLC.

De Beers PLC is alleged to be a corporation organized under the laws of the Bailiwick of Jersey, with its principal place of business in St. Helier, Jersey. Third-Party Compl. ¶ 3. De Beers PLC is among certain Oppenheimer Third-Party Defendants—with or through predecessors in interest—alleged to have owned, controlled, operated, or dominated Cape in furtherance or in concert with Oppenheimer business interests in South Africa, the United Kingdom, and elsewhere, thereby financially benefiting with respect to Cape’s asbestos business in the United States and its perpetuation of the liability-avoidance scheme. *See id.* ¶¶ 120–21. Moreover, this entity is

Soviets were willing to “openly do business” only with the Swiss arm of De Beers, having “refused to deal directly with the South African company because of apartheid”), *available at* <https://scholar.lib.vt.edu/VA-news/ROA-Times/issues/1990/rt9007/900726/07260532.htm>.

effectively alleged to be a successor in interest to De Beers Consolidated Mines Ltd. (as formed in 1888) and responsible for actions as part of various entities in the “De Beers Group,” which have been created since the 1970s and act as “successors in interest and beneficiaries of Cape’s liability-avoidance scheme, co-responsible for Cape’s tortious conduct.” *See id.* ¶¶ 45, 112, 122.

As this Third-Party Defendant admits, it was formed in 2000 as a “[h]olding company of De Beers group.” Oppenheimer Personal Jurisdiction Chart (submitted by Third-Party Defendants to the Court during the hearing on Oct. 25, 2023). Other public materials likewise buttress the Receiver’s assertions that De Beers PLC may bear responsibility as successor in interest to Anglo American Corporation of South Africa Ltd. and/or De Beers Consolidated Mines Ltd., in light of De Beers PLC directly controlling De Beers Consolidated Mines Ltd. (with 74% shareholding as of 2021) and effectively being dominated by Anglo American PLC (with 85% shareholding). *See* De Beers Consolidated Mines Proprietary Ltd. Manual, at 2 (June 2021), https://www.debeersgroup.com/~/_media/Files/D/De-Beers-Group-V2/documents/dbcm-and-subsidiaries-paia-manual.pdf; De Beers PLC Annual Financial Statements for the Year Ended 31 December 2022, at 2 (“The Company is the holding company for the De Beers Group of companies, which consists of the Company, and all entities (which include subsidiaries, joint arrangements and associates) that are controlled, jointly controlled or significantly influenced by the Company (the ‘Group’ or ‘De Beers’). . . . De Beers is 85% owned by Anglo American plc, with the remaining 15% interest held by the Government of the Republic of Botswana.”). De Beers PLC also acts as a direct successor in interest to a Duchy of Luxembourg holding company also named as a Third-Party Defendant in this lawsuit, De Beers S.A., which ceased operation in 2016, after its registered office was changed to the Bailiwick of Jersey and name changed to De Beers PLC. *See* Minutes of De Beers S.A. Shareholders Meeting, at 3 (Nov. 10, 2016).

Based on these allegations and the record before the Court at this preliminary stage, the Court finds (i) the Receiver has made the required *prima facie* showing that De Beers PLC, whether individually or as a successor in interest to De Beers Consolidated Mines Ltd. and/or Anglo American Corporation of South Africa Ltd., was an alter ego of Cape or part of an amalgamated, single business enterprise, or benefitted from the use of Cape as its agent, with respect to the mining, production, manufacture, and distribution of asbestos fiber (among other valuable minerals, metals, and other materials handled by the Oppenheimer mining empire) from South Africa to the United States of America, including to South Carolina, and (ii) the exercise of personal jurisdiction over De Beers PLC is proper at this time, including based on the longstanding activities and business of the Anglo/De Beers Group to mine, market, and distribute various minerals, including asbestos and diamonds, to the United States of America, including South Carolina.

v. De Beers UK Ltd.

De Beers UK Ltd. is alleged to be a corporation organized under the laws of England, United Kingdom, with its principal place of business in London, England, United Kingdom. Third-Party Compl. ¶ 7. De Beers UK Ltd. is among certain Oppenheimer Third-Party Defendants—with or through predecessors in interest—alleged to have owned, controlled, operated, or dominated Cape in furtherance or in concert with Oppenheimer business interests in South Africa, the United kingdom, and elsewhere, thereby financially benefiting with respect to Cape’s asbestos business in the United States and its perpetuation of the liability-avoidance scheme. *See id.* ¶¶ 120–21. De Beers UK Ltd. is also alleged to be involved in expanding business activities in the United States under the De Beers name, including bringing litigation and enforcing trademarks or other valuable rights. *Id.* ¶ 122. Moreover, this entity is effectively alleged to be a successor in interest

to De Beers Consolidated Mines Ltd. (as formed in 1888) and responsible for actions as part of various entities in the “De Beers Group,” which have been created since the 1970s and act as “successors in interest and beneficiaries of Cape’s liability-avoidance scheme, co-responsible for Cape’s tortious conduct.” *See id.* ¶¶ 45, 112, 122.

Other public materials buttress the Receiver’s assertions that De Beers UK Ltd. may bear responsibility as a successor in interest to Anglo American Corporation of South Africa Ltd. and/or De Beers Consolidated Mines Ltd., in light of the terms and structure of its creation in 1986 (*e.g.*, as a potential forerunner to other corporate maneuvers of the Anglo/De Beers Group to mitigate corporate/geopolitical risks during the 1990s through major reorganizations, as referenced above). In addition, materials published by De Beers UK Ltd. confirm the close relationship and operation with other members of the De Beers Group, with De Beers UK Ltd. acting as a “wholly-owned subsidiary of De Beers plc,” which in turn “is an 85% owned subsidiary of Anglo American plc,” whose “principal activity is the provision of corporate functions and marketing services for the De Beers Group . . . and development and maintenance of intellectual property.” De Beers UK Limited Annual Report and Financial Statements for the Year Ended 31 December 2022, at 1.

Based on these allegations and the record before the Court at this preliminary stage, the Court finds (i) the Receiver has made the required *prima facie* showing that De Beers UK Ltd., whether individually or as a successor in interest to De Beers Consolidated Mines Ltd. and/or Anglo American Corporation of South Africa Ltd., as an alter ego of Cape or part of an amalgamated, single business enterprise, or benefitted from the use of Cape as its agent, with respect to the mining, production, manufacture, and distribution of asbestos fiber (among other valuable minerals, metals, and other materials handled by the Oppenheimer mining empire) from South Africa to the United States of America, including to South Carolina, and (ii) the exercise of

personal jurisdiction over De Beers UK Ltd. is proper at this time, including based on the longstanding activities and business of the Anglo/De Beers Group to mine, market, and distribute various minerals, including asbestos and diamonds, to the United States of America, including South Carolina.

C. The Charter Third-Party Defendants.

The Receiver also has alleged sufficient facts to make a *prima facie* showing that the exercise of jurisdiction is proper over the Charter Third-Party Defendants under both the alter ego and single business enterprise theories. As alleged in the Third-Party Complaint, and further supported by publicly available materials that have been presented to the Court, both Charter and Central Mining were alter egos of Cape—used to exert significant control over Cape and to expand the Oppenheimer family’s business holdings internationally. *E.g.*, Third-Party Compl. ¶¶ 54, 58. As their parent and alleged successor in interest, ESAB runs Central Mining and Charter, exercising control over these two entities critical to Cape’s business and perpetuation of the liability-avoidance scheme (including in furtherance of the Oppenheimer mining empire, *supra*). For the reasons described below, jurisdiction should be exercised over the Charter Third-Party Defendants.

i. Central Mining.

a. Alter Ego.

The Third-Party Complaint alleges specific facts indicating that Central Mining, an Anglo-controlled entity, exerted significant control and operational oversight over Cape, acting as its alter ego. The Third-Party Complaint alleges facts in support of each of the *Builder Mart* factors. As alleged, in 1905, Central Mining was organized “to take over the assets and business interests of Wernher, Beit & Co., which included interests in Cape Asbestos”—*i.e.*, common ownership.

Third-Party Compl. ¶ 48. Central Mining or other affiliates of the Corner House Group continued to control Cape in the 1930s and after. *See id.* ¶ 50 & n.4. As of the Second World War, Central Mining “had become affiliated as an ‘Oppenheimer’ company’ and was also Cape’s majority shareholder.” *Id.* By 1949, Central Mining controlled Cape’s board of directors. *Id.* Central Mining’s control over Cape was not just based on ownership and financial dependence; it also exercised control over Cape’s personnel and operations. As alleged, Central Mining “leveraged its expertise and methods in gold mining to improve the performance at Cape mines by seconding its employees to Cape in South Africa” (at Anglo’s, rather than Cape’s, cost). *Id.* ¶ 52. According to the allegations of the Third-Party Complaint, during the years that Cape was shipping asbestos into the United States (including into South Carolina) through NAAC, it was predominately controlled by Central Mining (and later, Charter). *See In re Polyester Staple Antitrust Litig.*, 2008 WL 906331, at *13 (where one entity exercises significant control over the “day to day” operations of another entity, contacts of the subsidiary can be imputed to the parent). As a result, the Court finds it is appropriate to impute Cape’s contacts onto Central Mining to establish personal jurisdiction.

b. Single Business Enterprise.

For the same reasons this Court has personal jurisdiction over Central Mining as an alter ego of Cape, so too does the single business enterprise theory establish jurisdiction. The Third-Party Complaint alleges facts showing that Central Mining (including under Anglo’s ownership), controlled Cape for a period of decades during which it was flooding the U.S. (and South Carolina) market with asbestos, including with the assistance of NAAC, demonstrating that the entities were acting with a “common business purpose.” And the Third-Party Complaint alleges ample abuse, wrongdoing, and injustice in connection with that “common business purpose,” namely the effort

to take advantage of the lucrative U.S. (and South Carolina) market for asbestos while hiding the known dangers of that product and siphoning profits from the United States to foreign affiliates for the purpose of insulating Cape from exposure to American creditors injured by its asbestos. *Pertuis*, 817 S.E.2d at 279–81; Third Party Compl. ¶ 70.

ii. Charter

The Court finds personal jurisdiction over Charter is also present, both as an alter ego of Cape and under the single business enterprise theory. An alter ego claim “requires a showing of (1) total domination and control of one entity by another and (2) inequitable consequences caused thereby.” *Oskin v. Johnson*, 400 S.C. 390, 400, 735 S.E.2d 459, 465 (2012) (citing *Colleton Cnty. Taxpayers Ass’n v. Sch. Dist. of Colleton Cnty.*, 371 S.C. 224, 237, 638 S.E.2d 685, 692 (2006)). The Third-Party Complaint meets these substantive requirements, along with the *Builder Mart* factors.

a. Alter Ego.

The Third-Party Complaint is replete with detailed factual allegations suggesting that Charter, as an instrumentality of the Oppenheimer Third-Party Defendants, dominated Cape. For example, it alleges that, in 1965, the Oppenheimer family merged Central Mining with two other mining companies to create Charter. While Charter had direct and indirect interests in Cape since its founding, in 1969, Charter acquired majority ownership of Cape, thereby gaining control over Cape. Third-Party Compl. ¶ 55. Taken as true, as the Court must at this stage, the Third-Party Complaint alleges the distinctions between Charter and Anglo were superficial, including that the entities shared office space, personnel, and board members—with the Oppenheimers consistently dictating major decisions within the Anglo/De Beers/Charter “Greater Group.” *Id.* ¶¶ 57, 59. Cape was Charter’s primary operating company and principal industrial subsidiary, and, by extension,

Cape and its subsidiaries were part of the Anglo American group of companies that dominated the mining economy in South Africa. *E.g., id.* ¶¶ 55–56, 61–62. Having comprehensively alleged ownership, financial, operational, and decision-making control, the Third-Party Complaint also makes extensive allegations concerning the resulting harm, or “inequitable consequences” produced by Charter’s control over Cape. As with Central Mining, during Cape’s “most bountiful years” of shipping asbestos into the United States (including into South Carolina) through NAAC, without regard for the grave harm it would cause, it was owned and controlled by Central Mining and Charter, both of which were controlled in turn by the Anglo/De Beers Group. *Id.*, ¶¶ 50–65, 70.

b. Single Business Enterprise.

The alleged lack of meaningful separation between Anglo, Cape, Charter, and Central Mining coupled with their coordinated effort to capitalize on the U.S. market for asbestos while avoiding the attendant liabilities associated with mining, marketing, and distributing a product with known health hazards support the conferral of jurisdiction over these entities as a single business enterprise. As alleged in the Third-Party Complaint, Charter was designed to serve as a “corporate cushion” for Anglo that could quickly purge cash to other Oppenheimer-affiliated entities and add a level of separation between Anglo and Cape, in an attempt to insulate Anglo from the liability associated with a profitable asbestos business. *Id.* ¶ 65. The Oppenheimer family’s control of Central Mining, Charter, Cape, and its other enterprises was central to the management of its businesses and the domination of the South African mining economy, and support conferral of jurisdiction as a single business enterprise.³⁶ *Id.* ¶¶ 67–68.

³⁶ Asbestos plaintiffs have previously sought—with some success—to hold Charter and Central Mining liable for Cape’s unethical business practices. *See, e.g., Cameron v. Owens-Corning Fiberglas Corp.*, 296 Ill. App. 3d 978, 989 (1998) (“Plaintiffs have alleged a conspiracy with

iii. ESAB.

As the alleged parent company of and successor in interest to Central Mining and Charter, the Third-Party Complaint alleges sufficient facts demonstrating that jurisdiction over ESAB is likewise proper under both the alter ego and single business enterprise theories. The Third-Party Complaint and the record before the Court ties ESAB to Cape through its subsidiaries, Central Mining and Charter. The Third-Party Complaint alleges that, in the 1980s and 1990s, the Oppenheimer's chose to demote the role of Charter in its portfolio, including re-registering it as a public company (renamed Charter PLC) in 1993. *Id.* ¶ 123. Three years later, Charter sold its

sufficient specificity to provide the circuit court with jurisdiction over Charter.”); *Craig v. Johns-Manville Corp.*, 1987 WL 10191, at *18 (E.D. Pa. Apr. 23, 1987) (predicting that “on the present record, the New Jersey Supreme Court would not hesitate to pierce the ‘diaphanous veil’ between Charter and Cape”), *rev’d*, 843 F.2d 145, 150 (3d Cir. 1988) (on appeal, contradicting the trial judge’s assessment and myopically interpreting Cape’s history to find that “evasion of tort liability has never, in itself, been sufficient basis to disregard corporate separateness” under N.J. law); *Paravati v. Bell Asbestos Mines, Ltd.*, 1986 WL 492, at *1 (E.D. Pa. Dec. 3, 1986) (denying Charter’s motion for partial summary judgment because “the case in its current posture has disputed issues of material fact”); *Parker v. Bell Asbestos Mines, Ltd.*, 607 F. Supp. 1397, 1404 (E.D. Pa. 1985) (“[I]f the plaintiff . . . can prove that Charter controls Cape, and that Cape has deliberately avoided liability to American plaintiffs, it will be fair to ask Charter to stay and defend Cape’s position.”); *Barber v. Pittsburgh Corning Corp.*, 464 A.2d 323, 328–29 (Pa. Super. Ct. 1983) (finding that “the record shows clearly the extent to which [Cape] comprises an operating arm of Charter”). Dismissals of Charter in prior lawsuits in other states are not binding on this Court—and are distinguishable from the facts alleged in this third-party action, which is still at an early stage in the proceeding. *See Culbreth v. Amosa (Pty.) Ltd.*, 898 F.2d 13, 14–15 (3d Cir. 1990) (affirming summary judgment dismissal of alter ego claim under Pennsylvania law on an apparently bare record showing only that Charter became Cape’s majority owner in 1969); *Mohn v. Int’l Vermiculite Co.*, 498 N.E.2d 375, 376–77 (Ill. App. Ct. 1986) (declining to reverse ruling that “Charter was [not] estopped from relitigating its relationship with Cape”). This action is not a “subsequent suit by the same parties when the claims arise out of the same transaction or occurrence that is the subject of the prior suit between those parties.” *Sub-Zero Freezer Co. v. R.J. Clarkson Co.*, 308 S.C. 188, 190–91, 417 S.E.2d 569, 571 (1992). Instead, those cases involve a course of conduct that is not within the same scope of the allegations in the Third-Party Complaint, which are exhaustive in implicating other members of a broader scheme involving Cape. Further, the issues addressed in the Third Circuit and otherwise have never been decided under South Carolina law. The doctrines of res judicata and/or collateral estoppel do not apply.

interest in Cape for approximately £48 million. *Id.* In 2008, Charter PLC became Charter International PLC, and was acquired by Colfax Corporation (“Colfax”) in 2012 at a valuation of \$2.4 billion. *Id.* In 2022, Colfax spun off ESAB. *Id.* ¶ 124. ESAB now is the parent company of both Charter and Central Mining, and as the alleged successor in interest as well, may bear responsibility for them. *Brown*, 128 S.C. 428, 123 S.E. at 98–99.

In addition, as detailed in the Receiver’s Omnibus Opposition to the Personal Jurisdiction Motions, it appears ESAB may conduct material business in the State of South Carolina. Discovery may reveal the extent of that business, as well as other facts regarding ESAB’s relation with Central Mining and Charter that further support holding ESAB liable as a corporate successor. For example, public materials suggest that (i) Charter and Central Mining (as Charter’s subsidiary) are not actively engaged in business, (ii) Charter and Central Mining rely on ESAB for “sufficient financial resources and support” to remain a going concern, including through a letter of financial support provided by ESAB, and (iii) Charter and Central Mining are assessed as a going concern on a year-to-year basis. *See* Strategic Report, Report of the Directors and Audited Financial Statements for the Year Ended 31 December 2021 for Charter Consolidated Limited, at 3, 5, 12, 21 (Oct. 19, 2022); Strategic Report, Report of the Directors and Audited Financial Statements for the Year Ended 31 December 2022 for Charter Consolidated Limited, at 3, 12, 16, 21 (Oct. 24, 2023). Discovery may reveal additional details of these financial arrangements and how and why the historic mining houses of Central Mining and Charter—alleged to be directly responsible for Cape’s business practices and liability-avoidance scheme—are being maintained as going concerns by a Maryland-based welding and cutting business (ESAB).

Because the acts of Charter and Central Mining are alleged to have been carried over to ESAB, ESAB cannot skirt jurisdiction at this time.

V. The Exercise of Specific Jurisdiction Over Each Third-Party Defendant Conforms with the Constitutional Requirements.

As detailed above, the Third-Party Defendants’ contacts with South Carolina—including through their agent, Cape—satisfy South Carolina’s test for the exercise of specific jurisdiction. *See* S.C. Code §§ 36-2-803(4), (8) (contemplating jurisdiction over a person who acts directly or through agent). Specifically, Cape allegedly acted as the agent of the Third-Party Defendants in functioning as “the asbestos-mining leg of an amalgamated mining empire based out of South Africa” that facilitated the movement of asbestos from South African mines to the United States (including into South Carolina) over a period of decades, while concealing its known dangers. Third-Party Compl. ¶¶ 51, 85–86. It further is alleged to have acted as the agent of the Third-Party Defendants in its implementation of a liability-avoidance scheme pursuant to which it accelerated the flow offshore of proceeds from asbestos sales in the United States, minimizing the capital available to compensate South Carolinians hurt or killed by its asbestos, and refusing to accept process or appear in U.S. legal proceedings. *Id.* ¶¶ 91, 93, 97.

The Court finds the exercise of specific jurisdiction is proper because the Third-Party Complaint’s allegations demonstrate (i) the Third-Party Defendants have purposefully availed themselves of the privilege of conduct activities in South Carolina, (ii) the claims at issue arise from those activities, and (iii) the exercise of personal jurisdiction would be constitutionally reasonable. *Charleston Equities*, 2017 WL 10504748, at *2.

First, through their agent, Cape, the Third-Party Defendants have purposefully availed themselves of the benefits and protections of South Carolina’s law, including purposefully targeting the U.S. market for asbestos—as well as for numerous other minerals, including diamonds, in the case of certain Third-Party Defendants—and, as a result, reaping massive profits from the sale of such minerals (including without limitation crocidolite and amosite asbestos) in

that market, including in South Carolina, over a period of decades. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475–76 (1985).

Second, the claims arise out of and relate to those activities—namely, the coordinated effort to mine, market, and sell massive amounts of asbestos (among other minerals) into the United States, including in South Carolina, funnel the resulting profits overseas (thereby minimizing the capital available to compensate South Carolinians hurt or killed by Cape’s asbestos), and then refuse to accept process or appear in U.S. legal proceedings. Through this litigation, the Receiver seeks to identify, preserve, and marshal the assets of Cape and its affiliates, including those that were funneled overseas, to ensure they are available to redress the devastating toll caused by this scheme. *Helicopteros*, 466 U.S. at 414.

Third, exercise of personal jurisdiction over the Third-Party Defendants “would comport with ‘fair play and substantial justice.’” *Burger King*, 471 U.S. at 476 (quoting *Int’l Shoe v. Washington*, 326 U.S. 310, 320 (1945)). In so finding, this Court has weighed “the burden on the defendant, the forum State’s interest in adjudicating the dispute, the Plaintiff’s interest in obtaining convenient and effective relief, the interstate judicial system’s interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies.” *Christian Sci. Bd. of Dirs. of the First Church of Christ, Scientist v. Nolan*, 259 F.3d 209, 217 (4th Cir. 2001) (quoting *Burger King*, 471 U.S. at 477). The Court finds that fair play and substantial justice sharply favor the exercise of personal jurisdiction, especially at this stage of the litigation and in light of the substantial allegations and supporting documentation presented to the Court thus far.³⁷

³⁷ See, e.g., Talley Affidavit ¶ 41 (“Assuming the facts as alleged in the third-party complaint by the Receiver are true (which I take to be true for purposes of this affidavit), they resemble a textbook case of strategic and inefficient asset stripping—one that suggests the costs of [limited

Exercise of such jurisdiction does not offend traditional notions of fair play and substantial justice, because “South Carolina has a substantial interest in protecting its citizens from unfair actions by out of state defendants who use the corporate form as a shield from liability.” *Charleston Equities*, 2017 WL 10504748, at *5. Taking the allegations as true, as the Court must at this stage, the Third-Party Defendants participated in or benefitted from a scheme to shrug off the serious injury and death they knew would result from distributing asbestos in pursuit of even higher profits, to actively conceal or mispresent health risks of asbestos, and to siphon funds out of the United States to benefit foreign affiliates to reduce the proceeds available to individuals hurt or killed by asbestos in South Carolina. *See, e.g., Buxton Affidavit* ¶ 7 (“A dismissal at this stage of pleadings would only embolden domestic and international abuse of our system of corporate jurisprudence in South Carolina, a system ultimately established for the benefit of its citizens and not for use in purposefully harming them.”).

* * * * *

For the reasons set forth herein, the Court **DENIES** the Dissolution Motions in their entirety. Further, for the reasons set forth herein, the Court concludes that its exercise of personal jurisdiction is proper as to each of the remaining Third-Party Defendants and therefore **DENIES** each of the Personal Jurisdiction Motions.

IT IS SO ORDERED.

[JUDGE’S E-SIGNATURE PAGE FOLLOWS]

liability] exceed the benefits of [limited liability] in these circumstances. Such inefficiencies, as shown above, can be efficiently deterred by a credible commitment to relax the [limited liability] shield. Consequently, and on this basis, economic case for disregarding the veil of limited liability among the defendants (or a sizeable number of them) appears strong.”).



Richland Common Pleas

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

Case Number: 2023CP4001759

Type: Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2023-12-06 10:19:46 page 74 of 74

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2023-
Circuit Court Case No. 2023-CP-40-01759

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

v.

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

Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Inc.; SPX Corporation; Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable, LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; and Zurn Industries, LLC, ...	Defendants,
Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas,.....	Third-Party Plaintiff/Respondent,

v.

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

of which

Mohed Altrad and Altrad Investment Authority SAS are the.....	Appellants.

NOTICE OF APPEAL

Please take notice that Mohed Altrad and Altrad Investment Authority SAS appeal the order captioned “Order Denying Certain Third-Party Defendants’ Motions to Dissolve Receivership and Third-Party Defendants’ Motions to Dismiss for Lack of Personal Jurisdiction,” entered on December 6, 2023. This order is immediately appealable pursuant to South Carolina Code § 14-3-330(4) because, among other things, it specifically continues a receivership despite a motion to dissolve the receivership, it modifies the scope of the receivership in numerous ways, and it has the effect of granting a new receivership over a corporate entity that was never involved in the initial motion to create this receivership.

Mr. Altrad and Altrad Investment Authority received written notice of entry of this order on December 6, 2023, making this notice timely. Mr. Altrad and Altrad Investment Authority further state that all necessary transcripts for this appeal have been received from the appropriate court reporter.

Signature Page Attached

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: /s/ M. Todd Carroll

S.C. Bar No. 74000

todd.carroll@wbd-us.com

Kevin A. Hall

S.C. Bar No.

kevin.hall@wbd-us.com

M. Elizabeth O'Neill

S.C. Bar No. 104013

elizabeth.oneill@wbd-us.com

1221 Main Street, Suite 1600

Columbia, SC 29201

(803) 454-6504

Attorneys for Mohed Altrad and Altrad
Investment Authority SAS

December 18, 2023

Other Counsel of Record:

James H. Elliott, Jr.
jelliott@richardsonplowden.com
Cameron D. Berthelsen
cberthelsen@richardsonplowden.com
Richardson Plowden & Robinson, P.A.
235 Magrath Darby Blvd., Ste. 100
Mt. Pleasant, SC 29464
t. 843.805.6550

Mary Rose Alexander
mary.rose.alexander@lw.com
Caitlin Dahl
catilin.dahl@lw.com
Pro Hac Vice
Latham & Watkins LLP
330 North Wabash Ave., Ste. 2800
Chicago, IL 60611
t. 312.876.7700

Michele D. Johnson
michele.johnson@lw.com
Pro Hac Vice
Latham & Watkins LLP
650 Town Center Drive, 20th Floor
Costa Mesa, CA 92626-1925
t. 714.540.1235

Counsel for the AA/DB Non-US Third-Party Defendants

Steven J. Pugh
spugh@richardsonplowden.com
Benjamin P. Carlton
bcarlton@richardsonplowden.com
Richardson Plowden & Robinson, P.A.
1900 Barnwell Street
Columbia, SC 29201
t. 803.771.4400

Counsel for ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC

A. Victor Rawl, Jr.
vrawl@grsm.com
Gordon Rees Scully Manshukhani, LLP
40 Calhoun Street, Suite 350
Charleston, SC 29407
t. 843.714.2501

Counsel for ESAB Corporation; Central Mining and Investment Corp., Ltd.; and Charter Consolidated Ltd.

John T. Lay, Jr.
jlay@gwblawfirm.com
Gray T. Culbreath
gculbreath@gwblawfirm.com
Lindsay A. Joyner
ljoyner@gwblawfirm.com
Laura W. Jordan
ljordan@gwblawfirm.com
Eleanor L. Jones
ejones@gwblawfirm.com
Gallivan, White & Boyd, PA
1201 Main Street, Suite 1200
Columbia, SC 29201
t. 803.779.1833

Jonathan M. Robinson
jon@smithrobinsonlaw.com
Shanon N. Peake
shanonp@smithrobinsonlaw.com
G. Murrell Smith, Jr.
murrell@smithrobinsonlaw.com
2530 Devine Street, Third Floor
Columbia, SC 29205
t. 803.254.5445

Troy S. Brown
troy.brown@morganlawis.com
Dana E. Becker
dana.becker@morganlewis.com
Brady Edwards
brady.edwards@morganlewis.com
Robert W. Jacques
robert.jacques@morganlewis.com
Paul A. Scrudato
paul.scrudato@morganlewis.com
Morgan Lewis & Bockius LLP

1701 Market Street
Philadelphia, PA 19103
t. 215.963.5000

Counsel for the Receiver for Cape PLC

Theile B. McVey (SC Bar No. 16682)
tmcvey@kassellaw.com
John D. Kassel (SC Bar No. 3286)
jkassel@kassellaw.com
Jamie D. Rutkoski (SC Bar No. 103270)
jrutkoski@kassellaw.com
KASSEL MCVEY ATTORNEYS AT LAW
1330 Laurel Street
Post Office Box 1476
Columbia, South Carolina 29202-1476
T: 803-256-4242

Charles William Branham, III
tbranham@dobslegal.com
Kevin W. Paul
kpaul@dobslegal.com
David Christopher Humen
dhumen@dobslegal.com
DEAN OMAR BRANHAM SHIRLEY, LLP
302 N. Market Street, Suite 300
Dallas, TX 75202
T: 214-722-5990
F: 214-722-5991

Attorneys for Plaintiffs

Angela G. Strickland (SC Bar No. 73705)
Angela.strickland@bowmanandbrooke.com
Patrick J. Cleary (SC Bar No. 80808)
Patrick.cleary@bowmanandbrooke.com
DeShawn H. Mitchell (SC Bar No. 101813)
Deshawn.Mitchell@bowmanandbrooke.com
BOWMAN AND BROOKE LLP
1441 Main Street, Suite 1200
Columbia, SC 29201
Tel.: 803-726-7420
Fax: 803-726-7421

*Attorneys for Defendants 3M Company f/k/a Minnesota Mining and Manufacturing Company;
HPC Industrial Services, LLC and Brand Insulation Inc.*

William A. Coates (SC Bar No. 1289)
wac@roecassidy.com
ROE CASSIDY COATES & PRICE, P.A.
Post Office Box 10529
Greenville, South Carolina 29603
Tel.: (864) 349-2600

and

Christian J. Singewald, Esq. (Of Counsel)
SingewaldC@WhiteandWilliams.com
WHITE AND WILLIAMS, LLP
Courthouse Square
600 North King Street, Suite 800
Wilmington, Delaware 19801-3722

Attorneys for Defendant 4520 Corp., Inc., as successor-in-interest to Benjamin F. Shaw Company

M. Elizabeth Jowers (SC Bar No. 68288)
bjowers@maynardnexsen.com
Kelly Jones (SC Bar No. 74732)
kjones@maynardnexsen.com
MAYNARD NEXSEN PRUET PC
205 King Street, Suite 400
Charleston, SC 29401
Tel: (843) 577-9440
Fax: (843) 720-1777

Attorneys for Defendant sued as General Boiler Casing Company, Inc.; and Piedmont Insulation Company, Inc.

Krista M. McGuire (SC Bar No. 72021)
kristamcguire@parkerpoe.com
PARKER POE ADAMS & BERNSTEIN LLP
850 Morrison Drive, Suite 400
Charleston, SC 29403
(843) 727- 2650 (Office)

Attorneys for Defendant Mine Safety Appliances Company, LLC

Jennifer M. Techman SC State Bar No. 70202
JMTechman@EWHlaw.com
Andrew S. Rogers SC State Bar No. 75804
ASRogers@EWHlaw.com
EVERT WEATHERSBY HOUFF

3455 Peachtree Road NE, Suite 1550
Atlanta, GA 30326
Tel: (678) 651-1200

Attorneys for Defendants Paramount Global f/k/a ViacomCBS Inc., General Electric Company; Spirax Sarco, Inc.; Copes Vulcan, Inc.; A.W. Chesterton Company; and Foster Wheeler Energy Corporation

William Early (SC Bar No. 15657)
willearly@piercesloan.com
PIERCE SLOAN KENNEDY & EARLY LLC
The Blake-Grimké House
321 East Bay Street
Post Office Box 22437
Charleston, South Carolina 29413
PH: (843) 722-7733
Fax: (843) 722-7732

Attorneys for Defendants ABB, Inc.; Vistra Intermediate Company LLC; Riley Power, Inc.; Howden North America

Carl E. Pierce, II (SC Bar No. 7946)
carlpierce@piercesloan.com
Benjamin Catlett Smoot, II (SC Bar No. 101372)
bensmoot@piercesloan.com
PIERCE SLOAN KENNEDY & EARLY LLC
The Blake-Grimké House
321 East Bay Street
Post Office Box 22437
Charleston, South Carolina 29413
PH: (843) 722-7733
Fax: (843) 722-7732

Attorneys for Defendants Great Barrier Insulation Co.; CB&I Laurens Inc.; Starr Davis Company of SC; and Starr Davis Company, Inc.

Joseph E. Thoensen (SC Bar #72563)
jthoensen@richardsonplowden.com
R. Wilder Harte (SC Bar # 101228)
wharte@richardsonplowden.com
Megan C. White (SC Bar # 101895)
mwhite@richardsonplowden.com
RICHARDSON PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street (29201)
Post Office Drawer 7788
Columbia, South Carolina 29202

(803) 771-4400

Attorneys for Defendants BW/IP; AECOM Energy & Construction, Inc.; Yeargin Construction Company, Inc.; ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC

Stephanie G. Flynn (SC Bar No. 16653)

sgflynn@FoxRothschild.com

Nicolas J. Cherry (SC Bar No. 102671)

ncherry@FoxRothschild.com

Allyson R. Twilley (SC Bar No. 101884)

atwilley@FoxRothschild.com

FOX ROTHSCILD LLP

2 W. Washington St., Ste. 1100

PO Box 87, Greenville, SC 29602

864-751-7607/FAX 864-751-7800

Attorneys for Defendants Armstrong International, Inc.; Gardner Denver Nash LLC; Viking Pump, Inc.; Joy Global Underground Mining LLC; Rockwell Automation Inc.; and RSCC Wire & Cable LLC

Stephen L. Brown (SC Bar No. 66468)

sbrown@ycrlaw.com

James D. Gandy, III (SC Bar No. 11925)

tgandy@ycrlaw.com

Stephen A. Griffith (SC Bar No.: 103744)

sgriffith@ycrlaw.com

CLEMENT RIVERS, LLP

P.O. Box 993, Charleston, SC 29402

Telephone: (843) 720-5488

Facsimile: (843) 579-1369

Attorneys for Defendants Asbestos Corporation Limited and Atlas Turner, Inc.

George L. Inabinet, Jr., Esq. (SC Bar No. 16575)

bi@maronmarvel.com

Casey L. Austin, Esq. (SC Bar No. 101998)

cla@maronmarvel.com

Kelly L. Near, Esq. (SC Bar No. 75239)

Kln@maronmarvel.com

MARON MARVEL BRADLEY ANDERSON & TARDY LLC

259 Seven Farms, Suite 300

Charleston, SC 29492

PH: (843) 727-0001

Fax: (843) 727-0003

Attorneys for Defendants Consolidated Electrical Distributors

Derrick C. Foard (SC Bar No. 105062)
derrick.foard@elliswinters.com
Ashley K. Brathwaite (SC Bar No. 76952)
ashley.brathwaite@elliswinters.com
ELLIS & WINTERS LLP
P.O. Box 2752
Greensboro, North Carolina 27402
Telephone: (336) 217-4193
Facsimile: (336) 217-4198
Telephone: (919) 865-7000
Facsimile: (919) 865-7010

*Counsel for Defendants Beaty Investments, Inc f/k/a Guy M. Beaty & Co.; Covil Corporation;
and Standard Insulation Company of North Carolina, Inc.*

Amy H. Geddes (SC Bar No. 16960)
AGeddes@maynardnexsen.com
MAYNARD NEXSEN, PC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, SC 29202
Telephone: 803.771.8900

Attorneys for Defendants Bechtel Corporation, Sequoia Ventures, Inc.

Brian M. Barnwell (S.C. Bar # 78249)
bb@rplegalgroup.com
RIKARD & PROTOPAPAS, LLC
2110 N. Beltline Blvd. PO Box 5640
Columbia, SC 29204
Phone: 803.978.6111

Attorneys for the Receiver of Beaty Investments, Inc.

Robert O. Meriwether SC Bar No. 0009828
robert.meriwether@cs-law.com
Telephone: (803) 529-1783
James B. Glenn SC Bar No. 0077731
jase.glenn@cs-law.com
Telephone: (803) 529-1782
COSMICH SIMMONS & BROWN, PLLC
701 Gervais Street, Ste 150, #109
Columbia, SC 29201
sc-asbestos@cs-law.com

Attorneys for Defendants Carboline Company; Cleaver-Brooks, Inc.; Gould Electronics Inc.; Goulds Pumps LLC; Grinnell LLC; ITT LLC; Carrier Corporation; York International Corporation; and Zurn Industries, LLC

Taylor J. Stewart (SC Bar No. 101974)
Taylor.Stewart@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD SMITH LLP
24 Drayton Street Suite 300
Savannah, GA 31401
Tel: (912) 525-4960

and

S. Christopher Collier (GA Bar No. 178307)
Chris.Collier@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD SMITH LLP
600 Peachtree Street, NE Suite 4700
Atlanta, Georgia 30308 Telephone:
(404) 348-8585
Fax: (404) 467-8845

Attorneys for Defendants DeZurik, Inc.; General Cable Industries, Inc., and General Cable Corporation

E. Elaine Shofner (SC Bar No. 100501)
eshofner@hpylaw.com
HAWKINS PARNELL & YOUNG LLP
303 Peachtree Street, NE Suite 4000
Atlanta, Georgia 30308
Telephone: (404) 614-7400
Fax: (404) 614-7500

Attorney for Defendant Eaton Corporation

M. Elizabeth O'Neill (SC Bar No. 104013)
Elizabeth.ONeill@wbd-us.com
WBD.SCAsbestos@wbd-us.com
WOMBLE BOND DICKINSON (US) LLP
One Wells Fargo Center
301 S. College Street, Suite 3500
Charlotte, North Carolina 28202-6037
Ph.: (704) 350-6310

Attorneys for Defendants Flowserve Corporation, f/k/a The Duriron Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; ASCO, L.P.; and Kinney Vacuum Pump Company

J. Michael Montgomery (SC Bar No. 74930)
mmontgomery@robinsongray.com
Rachel M. Hutchens (SC Bar No. 78303)
rhutchens@robinsongray.com
ROBINSON GRAY STEPP & LAFFITTE, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Defendants Flowserve US Inc., solely as successor to Edward Valves, Inc. and Rockwell Manufacturing, Individually, and as successor in interest to Allen Bradley Company LLC

W. David Conner (SC Bar No. 66358)
dconner@hsblawfirm.com
Scott E. Frick (SC Bar No. 68306)
sfrick@hsblawfirm.com
HAYNSWORTH SINKLER BOYD, P.A.
Post Office Box 2048
Greenville, SC 29602
(864) 240-3200 – phone
(864) 240-3300 – fax

Attorneys for Defendants Fluor Enterprises, Inc.; Fluor Daniel Services Corporation; Defendant Fluor Constructors International, Inc., on behalf of itself and the incorrectly named Defendant Fluor Constructors International, f/k/a Fluor Corporation; Daniel International Corporation; FMC Corporation, Sterling Fluid Systems USA LLC; Patterson Pump Company; and Union Carbide Corporation

Andrew G. Melling (S.C. Bar No. 9521)
amelling@burr.com
BURR & FORMAN LLP
P.O. Box 11390
Columbia, SC 29211
(803) 799-9800

Attorneys for Defendant Stafford Insulation Company

Mark H. Wall, Esq.
Mark.Wall@WallTempleton.com
WALL TEMPLETON & HALDRUP, P.A.
145 King Street, Suite 300 (29401)
Post Office Box 1200
Charleston, SC 29402

Tel.: (843) 329-9500
Fax: (843) 329-9501

Attorneys for Defendant Metropolitan Life Insurance Company a/k/a Metlife

Jennifer A. Jordan (SC Bar No. 066222)
jenny.jordan@nelsonmullins.com
Erika Karnaszewski Fedelini (SC Bar No. 101774)
erika.fedelini@nelsonmullins.com
NELSON MULLINS RILEY & SCARBOROUGH LLP
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

and

John S. Slosson (SC Bar No. 69589)
jack.slosson@nelsonmullins.com
301 South College Street / 23rd Floor
Charlotte, NC 28202-6041
(704) 417-3000

Attorneys for Defendant Occidental Chemical Corporation

Matthew D. Patterson (S.C. Bar No. 68316)
matt.patterson@nelsonmullins.com
James H. Burns (S.C. Bar No. 70313)
james.burns@nelsonmullins.com
Michael P. Stover (S.C. Bar No. 104757)
michael.stover@nelsonmullins.com
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

G. Mark Phillips (S.C. Bar No. 7945)
mark.phillips@nelsonmullins.com
NELSON MULLINS RILEY & SCARBOROUGH LLP
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239 (843) 853-5200

Attorneys for Defendants Anchor Darling Valve Company; Carboline Company; Zurn Industries LLC; Hajoca Corporation; Cleaver-Brooks, Inc.; Grinnell LLC; Goulds Pumps LLC; The

William Powell Company; ITT LLC; Valves and Controls USA, Air & Liquid Systems Corporation; Weir Valves & Controls USA, Inc.; and Barretts Minerals Inc.

James G. Kennedy (jameskennedy@piercesloan.com)
PIERCE SLOAN KENNEDY & EARLY LLC
The Blake-Grimké House
321 East Bay Street
Post Office Box 22437
Charleston, South Carolina 29413
PH: (843) 722-7733
Fax: (843) 722-7732

Attorneys for Defendants Flame Refractories Inc. and Davis Mechanical Contractors, Inc.

Stephen M. Kozick, Esq. (skozick@kernodlelaw.com)
KERNODLE COLEMAN
914 Folly Road, Suite G (29412)
P. O. Box 13897
Charleston, SC 29422
Tel.: (843) 795-7800
Fax: (843) 795-3032

Attorneys for Defendants Crane Instrumentation & Sampling, Inc., f/k/a CIRCOR Instrumentation Technologies, Inc., f/k/a Hoke, Inc.

Carmelo B. Sammataro (SSammataro@TurnerPadget.com)
Abigail C. Bray (ABray@TurnerPadget.com)
TURNER PADGET GRAHAM AND LANEY P.A.
Post Office Box 1473
Columbia, SC 29202
Phone: (803) 254-2200
Fax: (803) 799-3957

Attorneys for Defendant PECW Holding Company, f/k/a as Plastics Engineering Company d/b/a PLENCO

Tara C. Sullivan (tara.sullivan@klgates.com)
K&L GATES LLP
134 Meeting Street, Suite 500
Charleston, SC 29401
Telephone: 843.579.5600
Facsimile: 843.579.5601

Attorney for Defendant Redco Corporation f/k/a Crane Co.

David G. Harris II (dharris@goldbergsegalla.com)

Brady Yntema (byntema@goldbergsegall.com)
GOLDBERG SEGALLA LLP
701 Green Valley Road, Suite 310
Greensboro, NC 27408
Telephone: 336.419.4900

And

Kirby D. Shealy III (Kirby.shealy@arlaw.com)
Luke M. Allen (Luke.allen@arlaw.com)
ADAMS AND REESE LLP
1221 Main Street, Suite 1200
Columbia, SC 29201
Telephone: (803) 254-4190
Facsimile: (803) 779-4749

Attorneys for Third-Party Defendant Pennsylvania National Mutual Insurance Company

Jessica W. Laffitte (jlaffitte@gwblawfirm.com)
GALLIVAN, WHITE & BOYD, P.A.
PO Box 7368
Columbia, SC 29202-7368
(803) 779-1833 Ofc

Attorney for Defendant Schneider Electric USA, Inc. f/k/a Square D Company

Louis P. HERNs (louis@milliganlawfirm.com)
MILLIGAN & HERNs, PC
721 Long Point Road, Suite 401
Mt. Pleasant, SC 29464
PH: (843) 971-6750
Fax: (843) 971-6509

Attorney for Defendant A.O. Smith Corporation

Francis J. Gordon (fgordon@mgsattorneys.com)
MILLBERG GORDON STEWART PLLC
1101 Haynes Street, Suite 104
Raleigh, NC 27604
T: 919/ 836.0090
F: 919/ 836.8027

Attorneys for Defendant Canvas CT, LLC f/k/a SPX Cooling Technologies, LLC, f/k/a SPX Cooling Technologies, Inc., f/k/a The Marley Cooling Tower Company

C. Mitchell Brown
mitch.brown@nelsonmullins.com

Matthew D. Patterson
matt.patterson@nelsonmullins.com
James H. Burns (SC Bar No. 70313)
james.burns@nelsonmullins.com
A. Mattison Bogan SC Bar No. 72629
matt.bogan@nelsonmullins.com
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Defendant Wind Up, Ltd. f/k/a Pipe & Boiler Insulation, Inc.; Pfizer, Inc.; Presnell Insulation Co., Inc.;

David M. Burkoff (SC Bar No. 100339)
HUNTER, MACLEAN, EXLEY & DUNN, P.C.
200 East Saint Julian Street
Post Office Box 9848
Savannah, Georgia 31412-0048
Telephone: 912.236.0261
Facsimile: 912.236.4936

Attorney for Defendant AWT Air Company, Inc. f/k/a Research-Cottrell, Inc

PROOF OF SERVICE

I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Appellants Mohed Altrad and Altrad Investment Authority SAS, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

Pleading(s): Notice of Appeal

Parties Served:

John T. Lay, Jr. (jlay@gwblawfirm.com)
Gray T. Culbreath (gculbreath@gwblawfirm.com)
Lindsay A. Joyner (ljoyner@gwblawfirm.com)
Laura W. Jordan (ljordan@gwblawfirm.com)
Eleanor L. Jones (ejones@gwblawfirm.com)
Jonathan M. Robinson (jon@smithrobinsonlaw.com)
Shanon N. Peake (shanonp@smithrobinsonlaw.com)
G. Murrell Smith, Jr. (murrell@smithrobinsonlaw.com)
Troy S. Brown (troy.brown@morganlawis.com)
Dana E. Becker (dana.becker@morganlewis.com)
Brady Edwards (brady.edwards@morganlewis.com)
Robert W. Jacques (robert.jacques@morganlewis.com)
Paul A. Scrudato (paul.scrudato@morganlewis.com)

Counsel for the Receiver for Cape PLC

Theile B. McVey (tmcvey@kassellaw.com)
John D. Kassel (jkassel@kassellaw.com)
Jamie D. Rutkoski (jrutkoski@kassellaw.com)
Charles William Branham, III (tbranham@dobslegal.com)
Kevin W. Paul (kpaul@dobslegal.com)
David Christopher Humen (dhumen@dobslegal.com)

Attorneys for Plaintiffs

By: /s/ M. Todd Carroll

December 18, 2023

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2023-
Circuit Court Case No. 2023-CP-40-01759

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

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Hesterton Company; ABB Inc.; Air & Liquid Systems Corporation; AIW-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited ASCO, L.P.; Atlas Asbestos Co.; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas CT, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Lowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services; Orporation 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,

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

Third-Party
Plaintiff/
Respondent,

v.

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

Third-Party
Defendants,

of which

ESAB Corporation is the

Appellant.

NOTICE OF APPEAL

Please take notice that ESAB Corporation appeal the order captioned “Order Denying Certain Third-Party Defendants’ Motions to Dissolve Receivership and Third-Party Defendants’ Motions to Dismiss for Lack of Personal Jurisdiction,” entered on December 6, 2023. This order is immediately appealable pursuant to South Carolina Code § 14-3-330(4) because, among other things, it specifically continues a receivership despite a motion to dissolve the receivership, it modifies the scope of the receivership in numerous ways, and it has the effect of granting a new receivership over a corporate entity that was never involved in the initial motion to create this receivership.

ESAB Corporation received written notice of entry of this order on December 6, 2023, making this notice timely. ESAB Corporation further states that all necessary transcripts for this appeal have been ordered from the appropriate court reporter. A copy of that correspondence is attached.

Dated: December 19, 2023

GORDON REES SCULLY MANSUKHANI, LLP

BY: /s/ A. Victor Rawl, Jr.
A. Victor Rawl, Jr. (SC 09261)
Email: vrawl@grsm.com
40 Calhoun Street, Suite 350
Charleston, SC 29401
Telephone: 843-714-2501

Counsel for Third-Party Defendant ESAB Corporation

Other Counsel of Record:

James H. Elliott, Jr.
jelliott@richardsonplowden.com
Cameron D. Berthelsen
cberthelsen@richardsonplowden.com
Richardson Plowden & Robinson, P.A.
235 Magrath Darby Blvd., Ste. 100
Mt. Pleasant, SC 29464
t. 843.805.6550

Mary Rose Alexander
mary.rose.alexander@lw.com
Caitlin Dahl
catilin.dahl@lw.com
Pro Hac Vice
Latham & Watkins LLP
330 North Wabash Ave., Ste. 2800
Chicago, IL 60611
t. 312.876.7700

Michele D. Johnson
michele.johnson@lw.com
Pro Hac Vice
Latham & Watkins LLP
650 Town Center Drive, 20th Floor
Costa Mesa, CA 92626-1925
t. 714.540.1235

Counsel for the AA/DB Non-US Third-Party Defendants

Steven J. Pugh
spugh@richardsonplowden.com
Benjamin P. Carlton
bcarlton@richardsonplowden.com
Richardson Plowden & Robinson, P.A.
1900 Barnwell Street
Columbia, SC 29201
t. 803.771.4400

Counsel for ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC

A. Victor Rawl, Jr.
vrawl@grsm.com
Gordon Rees Scully Manshukhani, LLP
40 Calhoun Street, Suite 350
Charleston, SC 29407
t. 843.714.2501

Counsel for Central Mining and Investment Corp., Ltd. and Charter Consolidated Ltd.

John T. Lay, Jr.
jlay@gwblawfirm.com
Gray T. Culbreath
gculbreath@gwblawfirm.com
Lindsay A. Joyner
ljoyner@gwblawfirm.com
Laura W. Jordan
ljordan@gwblawfirm.com
Eleanor L. Jones
ejones@gwblawfirm.com
Gallivan, White & Boyd, PA
1201 Main Street, Suite 1200
Columbia, SC 29201
t. 803.779.1833

Jonathan M. Robinson
jon@smithrobinsonlaw.com
Shanon N. Peake
shanonp@smithrobinsonlaw.com
G. Murrell Smith, Jr.
murrell@smithrobinsonlaw.com
2530 Devine Street, Third Floor
Columbia, SC 29205
t. 803.254.5445

Troy S. Brown
troy.brown@morganlawis.com
Dana E. Becker
dana.becker@morganlewis.com
Brady Edwards
brady.edwards@morganlewis.com
Robert W. Jacques
robert.jacques@morganlewis.com
Paul A. Scrudato
paul.scrudato@morganlewis.com
Morgan Lewis & Bockius LLP
1701 Market Street

Philadelphia, PA 19103
t. 215.963.5000

Counsel for the Receiver for Cape PLC

Theile B. McVey (SC Bar No. 16682)
tmcvey@kassellaw.com
John D. Kassel (SC Bar No. 3286)
jkassel@kassellaw.com
Jamie D. Rutkoski (SC Bar No. 103270)
jrutkoski@kassellaw.com
KASSEL MCVEY ATTORNEYS AT LAW
1330 Laurel Street
Post Office Box 1476
Columbia, South Carolina 29202-1476
T: 803-256-4242

Charles William Branham, III
tbranham@dobslegal.com
Kevin W. Paul
kpaul@dobslegal.com
David Christopher Humen
dhumen@dobslegal.com
DEAN OMAR BRANHAM SHIRLEY, LLP
302 N. Market Street, Suite 300
Dallas, TX 75202
T: 214-722-5990
F: 214-722-5991

Attorneys for Plaintiffs

Angela G. Strickland (SC Bar No. 73705)
Angela.strickland@bowmanandbrooke.com
Patrick J. Cleary (SC Bar No. 80808)
Patrick.cleary@bowmanandbrooke.com
DeShawn H. Mitchell (SC Bar No. 101813)
Deshawn.Mitchell@bowmanandbrooke.com
BOWMAN AND BROOKE LLP
1441 Main Street, Suite 1200
Columbia, SC 29201
Tel.: 803-726-7420
Fax: 803-726-7421

*Attorneys for Defendants 3M Company f/k/a Minnesota Mining and Manufacturing Company;
HPC Industrial Services, LLC and Brand Insulation Inc.*
William A. Coates (SC Bar No. 1289)

wac@roecassidy.com

ROE CASSIDY COATES & PRICE, P.A.
Post Office Box 10529
Greenville, South Carolina 29603
Tel.: (864) 349-2600

and

Christian J. Singewald, Esq. (Of Counsel)

SingewaldC@WhiteandWilliams.com

WHITE AND WILLIAMS, LLP
Courthouse Square
600 North King Street, Suite 800
Wilmington, Delaware 19801-3722

Attorneys for Defendant 4520 Corp., Inc., as successor-in-interest to Benjamin F. Shaw Company

M. Elizabeth Jowers (SC Bar No. 68288)

bjowers@maynardnexsen.com

Kelly Jones (SC Bar No. 74732)

kjones@maynardnexsen.com

MAYNARD NEXSEN PRUET PC
205 King Street, Suite 400
Charleston, SC 29401
Tel: (843) 577-9440
Fax: (843) 720-1777

Attorneys for Defendant sued as General Boiler Casing Company, Inc.; and Piedmont Insulation Company, Inc.

Krista M. McGuire (SC Bar No. 72021)

kristamcguire@parkerpoe.com

PARKER POE ADAMS & BERNSTEIN LLP
850 Morrison Drive, Suite 400
Charleston, SC 29403
(843) 727- 2650 (Office)

Attorneys for Defendant Mine Safety Appliances Company, LLC

Jennifer M. Techman SC State Bar No. 70202

JMTechman@EWHlaw.com

Andrew S. Rogers SC State Bar No. 75804

ASRogers@EWHlaw.com

EVERT WEATHERSBY HOUFF
3455 Peachtree Road NE, Suite 1550

Atlanta, GA 30326
Tel: (678) 651-1200

Attorneys for Defendants Paramount Global f/k/a ViacomCBS Inc., General Electric Company; Spirax Sarco, Inc.; Copes Vulcan, Inc.; A.W. Chesterton Company; and Foster Wheeler Energy Corporation

William Early (SC Bar No. 15657)
willearly@piercesloan.com
PIERCE SLOAN KENNEDY & EARLY LLC
The Blake-Grimké House
321 East Bay Street
Post Office Box 22437
Charleston, South Carolina 29413
PH: (843) 722-7733
Fax: (843) 722-7732

Attorneys for Defendants ABB, Inc.; Vistra Intermediate Company LLC; Riley Power, Inc.; Howden North America

Carl E. Pierce, II (SC Bar No. 7946)
carlpierce@piercesloan.com
Benjamin Catlett Smoot, II (SC Bar No. 101372)
bensmoot@piercesloan.com
PIERCE SLOAN KENNEDY & EARLY LLC
The Blake-Grimké House
321 East Bay Street
Post Office Box 22437
Charleston, South Carolina 29413
PH: (843) 722-7733
Fax: (843) 722-7732

Attorneys for Defendants Great Barrier Insulation Co.; CB&I Laurens Inc.; Starr Davis Company of SC; and Starr Davis Company, Inc.

Joseph E. Thoensen (SC Bar #72563)
jthoensen@richardsonplowden.com
R. Wilder Harte (SC Bar # 101228)
wharte@richardsonplowden.com
Megan C. White (SC Bar # 101895)
mwhite@richardsonplowden.com
RICHARDSON PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street (29201)
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400

Attorneys for Defendants BW/IP; AECOM Energy & Construction, Inc.; Yeargin Construction Company, Inc.; ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC

Stephanie G. Flynn (SC Bar No. 16653)
sgflynn@FoxRothschild.com
 Nicolas J. Cherry (SC Bar No. 102671)
ncherry@FoxRothschild.com
 Allyson R. Twilley (SC Bar No. 101884)
atwilley@FoxRothschild.com
 FOX ROTHSCILD LLP
 2 W. Washington St., Ste. 1100
 PO Box 87, Greenville, SC 29602
 864-751-7607/FAX 864-751-7800

Attorneys for Defendants Armstrong International, Inc.; Gardner Denver Nash LLC; Viking Pump, Inc.; Joy Global Underground Mining LLC; Rockwell Automation Inc.; and RSCC Wire & Cable LLC

Stephen L. Brown (SC Bar No. 66468)
sbrown@ycrlaw.com
 James D. Gandy, III (SC Bar No. 11925)
tgandy@ycrlaw.com
 Stephen A. Griffith (SC Bar No.: 103744)
sgriffith@ycrlaw.com
 CLEMENT RIVERS, LLP
 P.O. Box 993, Charleston, SC 29402
 Telephone: (843) 720-5488
 Facsimile: (843) 579-1369

Attorneys for Defendants Asbestos Corporation Limited and Atlas Turner, Inc.

George L. Inabinet, Jr., Esq. (SC Bar No. 16575)
bi@maronmarvel.com
 Casey L. Austin, Esq. (SC Bar No. 101998)
cla@maronmarvel.com
 Kelly L. Near, Esq. (SC Bar No. 75239)
Kln@maronmarvel.com
 MARON MARVEL BRADLEY ANDERSON & TARDY LLC
 259 Seven Farms, Suite 300
 Charleston, SC 29492
 PH: (843) 727-0001
 Fax: (843) 727-0003

Attorneys for Defendants Consolidated Electrical Distributors

Derrick C. Foard (SC Bar No. 105062)
derrick.foard@elliswinters.com
 Ashley K. Brathwaite (SC Bar No. 76952)
ashley.brathwaite@elliswinters.com
 ELLIS & WINTERS LLP
 P.O. Box 2752
 Greensboro, North Carolina 27402
 Telephone: (336) 217-4193
 Facsimile: (336) 217-4198
 Telephone: (919) 865-7000
 Facsimile: (919) 865-7010

*Counsel for Defendants Beaty Investments, Inc f/k/a Guy M. Beaty & Co.; Covil Corporation;
 and Standard Insulation Company of North Carolina, Inc.*

Amy H. Geddes (SC Bar No. 16960)
AGeddes@maynardnexsen.com
 MAYNARD NEXSEN, PC
 1230 Main Street, Suite 700 (29201)
 Post Office Drawer 2426
 Columbia, SC 29202
 Telephone: 803.771.8900

Attorneys for Defendants Bechtel Corporation, Sequoia Ventures, Inc.

Brian M. Barnwell (S.C. Bar # 78249)
bb@rplegalgroup.com
 RIKARD & PROTOPAPAS, LLC
 2110 N. Beltline Blvd. PO Box 5640
 Columbia, SC 29204
 Phone: 803.978.6111

Attorneys for the Receiver of Beaty Investments, Inc.

Robert O. Meriwether SC Bar No. 0009828
robert.meriwether@cs-law.com
 Telephone: (803) 529-1783
 James B. Glenn SC Bar No. 0077731
jase.glenn@cs-law.com
 Telephone: (803) 529-1782
 COSMICH SIMMONS & BROWN, PLLC
 701 Gervais Street, Ste 150, #109
 Columbia, SC 29201
sc-asbestos@cs-law.com

Attorneys for Defendants Carboline Company; Cleaver-Brooks, Inc.; Gould Electronics Inc.; Goulds Pumps LLC; Grinnell LLC; ITT LLC; Carrier Corporation; York International Corporation; and Zurn Industries, LLC

Taylor J. Stewart (SC Bar No. 101974)
Taylor.Stewart@lewisbrisbois.com
 LEWIS BRISBOIS BISGAARD SMITH LLP
 24 Drayton Street Suite 300
 Savannah, GA 31401
 Tel: (912) 525-4960

and

S. Christopher Collier (GA Bar No. 178307)
Chris.Collier@lewisbrisbois.com
 LEWIS BRISBOIS BISGAARD SMITH LLP
 600 Peachtree Street, NE Suite 4700
 Atlanta, Georgia 30308 Telephone:
 (404) 348-8585
 Fax: (404)467-8845

Attorneys for Defendants DeZurik, Inc.; General Cable Industries, Inc., and General Cable Corporation

E. Elaine Shofner (SC Bar No. 100501)
eshofner@hpylaw.com
 HAWKINS PARNELL & YOUNG LLP
 303 Peachtree Street, NE Suite 4000
 Atlanta, Georgia 30308
 Telephone: (404) 614-7400
 Fax: (404) 614-7500

Attorney for Defendant Eaton Corporation

M. Elizabeth O'Neill (SC Bar No. 104013)
Elizabeth.ONeill@wbd-us.com
WBD.SCAbestos@wbd-us.com
 WOMBLE BOND DICKINSON (US) LLP
 One Wells Fargo Center
 301 S. College Street, Suite 3500
 Charlotte, North Carolina 28202-6037
 Ph.: (704) 350-6310

Attorneys for Defendants Flowserve Corporation, f/k/a The Duriron Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; ASCO, L.P.; and Kinney Vacuum Pump Company

J. Michael Montgomery (SC Bar No. 74930)
mmontgomery@robinsongray.com
Rachel M. Hutchens (SC Bar No. 78303)
rhutchens@robinsongray.com
ROBINSON GRAY STEPP & LAFFITTE, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Defendants Flowserve US Inc., solely as successor to Edward Valves, Inc. and Rockwell Manufacturing, Individually, and as successor in interest to Allen Bradley Company LLC

W. David Conner (SC Bar No. 66358)
dconner@hsblawfirm.com
Scott E. Frick (SC Bar No. 68306)
sfrick@hsblawfirm.com
HAYNSWORTH SINKLER BOYD, P.A.
Post Office Box 2048
Greenville, SC 29602
(864) 240-3200 – phone
(864) 240-3300 – fax

Attorneys for Defendants Fluor Enterprises, Inc.; Fluor Daniel Services Corporation; Defendant Fluor Constructors International, Inc., on behalf of itself and the incorrectly named Defendant Fluor Constructors International, f/k/a Fluor Corporation; Daniel International Corporation; FMC Corporation, Sterling Fluid Systems USA LLC; Patterson Pump Company; and Union Carbide Corporation

Andrew G. Melling (S.C. Bar No. 9521)
amelling@burr.com
BURR & FORMAN LLP
P.O. Box 11390
Columbia, SC 29211
(803) 799-9800

Attorneys for Defendant Stafford Insulation Company

Mark H. Wall, Esq.
Mark.Wall@WallTempleton.com
WALL TEMPLETON & HALDRUP, P.A.
145 King Street, Suite 300 (29401)
Post Office Box 1200
Charleston, SC 29402

Tel.: (843) 329-9500
Fax: (843) 329-9501

Attorneys for Defendant Metropolitan Life Insurance Company a/k/a Metlife

Jennifer A. Jordan (SC Bar No. 066222)
jenny.jordan@nelsonmullins.com
Erika Karnaszewski Fedelini (SC Bar No. 101774)
erika.fedelini@nelsonmullins.com
NELSON MULLINS RILEY & SCARBOROUGH LLP
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

and

John S. Slosson (SC Bar No. 69589)
jack.slosson@nelsonmullins.com
301 South College Street / 23rd Floor
Charlotte, NC 28202-6041
(704) 417-3000

Attorneys for Defendant Occidental Chemical Corporation

Matthew D. Patterson (S.C. Bar No. 68316)
matt.patterson@nelsonmullins.com
James H. Burns (S.C. Bar No. 70313)
james.burns@nelsonmullins.com
Michael P. Stover (S.C. Bar No. 104757)
michael.stover@nelsonmullins.com
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

G. Mark Phillips (S.C. Bar No. 7945)
mark.phillips@nelsonmullins.com
NELSON MULLINS RILEY & SCARBOROUGH LLP
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239 (843) 853-5200

Attorneys for Defendants Anchor Darling Valve Company; Carboline Company; Zurn Industries LLC; Hajoca Corporation; Cleaver-Brooks, Inc.; Grinnell LLC; Goulds Pumps LLC; The

William Powell Company; ITT LLC; Valves and Controls USA, Air & Liquid Systems Corporation; Weir Valves & Controls USA, Inc.; and Barretts Minerals Inc.

James G. Kennedy (jameskennedy@piercesloan.com)
PIERCE SLOAN KENNEDY & EARLY LLC
The Blake-Grimké House
321 East Bay Street
Post Office Box 22437
Charleston, South Carolina 29413
PH: (843) 722-7733
Fax: (843) 722-7732

Attorneys for Defendants Flame Refractories Inc. and Davis Mechanical Contractors, Inc.

Stephen M. Kozick, Esq. (skozaick@kernoddelelaw.com)
KERNODLE COLEMAN
914 Folly Road, Suite G (29412)
P. O. Box 13897
Charleston, SC 29422
Tel.: (843) 795-7800
Fax: (843) 795-3032

Attorneys for Defendants Crane Instrumentation & Sampling, Inc., f/k/a CIRCOR Instrumentation Technologies, Inc., f/k/a Hoke, Inc.

Carmelo B. Sammataro (SSammataro@TurnerPadget.com)
Abigail C. Bray (ABray@TurnerPadget.com)
TURNER PADGET GRAHAM AND LANEY P.A.
Post Office Box 1473
Columbia, SC 29202
Phone: (803) 254-2200
Fax: (803) 799-3957

Attorneys for Defendant PECW Holding Company, f/k/a as Plastics Engineering Company d/b/a PLENCO

Tara C. Sullivan (tara.sullivan@klgates.com)
K&L GATES LLP
134 Meeting Street, Suite 500
Charleston, SC 29401
Telephone: 843.579.5600
Facsimile: 843.579.5601

Attorney for Defendant Redco Corporation f/k/a Crane Co.

David G. Harris II (dharris@goldbergsegalla.com)

Brady Yntema (byntema@goldbergsegall.com)
GOLDBERG SEGALLA LLP
701 Green Valley Road, Suite 310
Greensboro, NC 27408
Telephone: 336.419.4900

And

Kirby D. Shealy III (Kirby.shealy@arlaw.com)
Luke M. Allen (Luke.allen@arlaw.com)
ADAMS AND REESE LLP
1221 Main Street, Suite 1200
Columbia, SC 29201
Telephone: (803) 254-4190
Facsimile: (803) 779-4749

Attorneys for Third-Party Defendant Pennsylvania National Mutual Insurance Company

Jessica W. Laffitte (jlaffitte@gwblawfirm.com)
GALLIVAN, WHITE & BOYD, P.A.
PO Box 7368
Columbia, SC 29202-7368
(803) 779-1833 Ofc

Attorney for Defendant Schneider Electric USA, Inc. f/k/a Square D Company

Louis P. Hems (louis@milliganlawfirm.com)
MILLIGAN & HERNS, PC
721 Long Point Road, Suite 401
Mt. Pleasant, SC 29464
PH: (843) 971-6750
Fax: (843) 971-6509

Attorney for Defendant A.O. Smith Corporation

Francis J. Gordon (fgordon@mgsattorneys.com)
MILLBERG GORDON STEWART PLLC
1101 Haynes Street, Suite 104
Raleigh, NC 27604
T: 919/ 836.0090
F: 919/ 836.8027

Attorneys for Defendant Canvas CT, LLC f/k/a SPX Cooling Technologies, LLC, f/k/a SPX Cooling Technologies, Inc., f/k/a The Marley Cooling Tower Company

C. Mitchell Brown
mitch.brown@nelsonmullins.com

Matthew D. Patterson
matt.patterson@nelsonmullins.com
James H. Burns (SC Bar No. 70313)
james.burns@nelsonmullins.com
A. Mattison Bogan SC Bar No. 72629
matt.bogan@nelsonmullins.com
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Defendant Wind Up, Ltd. f/k/a Pipe & Boiler Insulation, Inc.; Pfizer, Inc.; Presnell Insulation Co., Inc.;

David M. Burkoff (SC Bar No. 100339)
HUNTER, MACLEAN, EXLEY & DUNN, P.C.
200 East Saint Julian Street
Post Office Box 9848
Savannah, Georgia 31412-0048
Telephone: 912.236.0261
Facsimile: 912.236.4936

Attorney for Defendant AWT Air Company, Inc. f/k/a Research-Cottrell, Inc

M. Todd Carroll (SC Bar No. 74000)
M. Elizabeth O'Neill (SC Bar No. 104013)
WOMBLE BOND DICKINSON (US) LLP
1221 Main Street, Suite 1600
Columbia, SC 29201
Telephone: (803) 454-6504
Todd.carroll@wbd-us.com

Attorneys for Defendant Mohed Altrad and Altrad Investment Authority SAS

PROOF OF SERVICE

I, the undersigned of the law offices of GORDON REES SCULLY MANSUKHANI, LLP, attorneys for Appellants ESAB Corporation, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

Pleading(s): Notice of Appeal

Parties Served:

John T. Lay, Jr. (jlay@gwblawfirm.com)
Gray T. Culbreath (gculbreath@gwblawfirm.com)
Lindsay A. Joyner (ljoyner@gwblawfirm.com)
Laura W. Jordan (ljordan@gwblawfirm.com)
Eleanor L. Jones (ejones@gwblawfirm.com)
Jonathan M. Robinson (jon@smithrobinsonlaw.com)
Shanon N. Peake (shanonp@smithrobinsonlaw.com)
G. Murrell Smith, Jr. (murrell@smithrobinsonlaw.com)
Troy S. Brown (troy.brown@morganlawis.com)
Dana E. Becker (dana.becker@morganlewis.com)
Brady Edwards (brady.edwards@morganlewis.com)
Robert W. Jacques (robert.jacques@morganlewis.com)
Paul A. Scrudato (paul.scrudato@morganlewis.com)

Counsel for the Receiver for Cape PLC

Theile B. McVey (tmcvey@kassellaw.com)
John D. Kassel (jkassel@kassellaw.com)
Jamie D. Rutkoski (jrutkoski@kassellaw.com)
Charles William Branham, III (tbranham@dobslegal.com)
Kevin W. Paul (kpaul@dobslegal.com)
David Christopher Humen (dhumen@dobslegal.com)

Attorneys for Plaintiffs

By: /s/ A. Victor Rawl, Jr.

December 19, 2023

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2023-
Circuit Court Case No. 2023-CP-40-01759

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

v.

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

Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Inc.; SPX Corporation; Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable, LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; and Zurn Industries, LLC, ...

Defendants,

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

Third-Party
Plaintiff/
Respondent,

v.

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

Third-Party
Defendants,

of which

Central Mining & Investment Corporation Ltd. is the.....

Appellant.

NOTICE OF APPEAL

Please take notice that Central Mining and Investment Corp. Ltd. appeal the order captioned “Order Denying Certain Third-Party Defendants’ Motions to Dissolve Receivership and Third-Party Defendants’ Motions to Dismiss for Lack of Personal Jurisdiction,” entered on December 6, 2023. This order is immediately appealable pursuant to South Carolina Code § 14-3-330(4) because, among other things, it specifically continues a receivership despite a motion to dissolve the receivership, it modifies the scope of the receivership in numerous ways, and it has the effect of granting a new receivership over a corporate entity that was never involved in the initial motion to create this receivership.

Central Mining and Investment Corp. Ltd. received written notice of entry of this order on December 6, 2023, making this notice timely. Central Mining and Investment Corp. Ltd. further states that all necessary transcripts for this appeal have been ordered from the appropriate court reporter. A copy of that correspondence is attached.

Dated: December 19, 2023

GORDON REES SCULLY MANSUKHANI, LLP

BY: /s/ A. Victor Rawl, Jr.
A. Victor Rawl, Jr. (SC 09261)
Email: vrawl@grsm.com
40 Calhoun Street, Suite 350
Charleston, SC 29401
Telephone: 843-714-2501

*Counsel for Third-Party Defendant
Central Mining and Investment Corp. Ltd.*

Other Counsel of Record:

James H. Elliott, Jr.
jelliott@richardsonplowden.com
Cameron D. Berthelsen
cberthelsen@richardsonplowden.com
Richardson Plowden & Robinson, P.A.
235 Magrath Darby Blvd., Ste. 100
Mt. Pleasant, SC 29464
t. 843.805.6550

Mary Rose Alexander
mary.rose.alexander@lw.com
Caitlin Dahl
catilin.dahl@lw.com
Pro Hac Vice
Latham & Watkins LLP
330 North Wabash Ave., Ste. 2800
Chicago, IL 60611
t. 312.876.7700

Michele D. Johnson
michele.johnson@lw.com
Pro Hac Vice
Latham & Watkins LLP
650 Town Center Drive, 20th Floor
Costa Mesa, CA 92626-1925
t. 714.540.1235

Counsel for the AA/DB Non-US Third-Party Defendants

Steven J. Pugh
spugh@richardsonplowden.com
Benjamin P. Carlton
bcarlton@richardsonplowden.com
Richardson Plowden & Robinson, P.A.
1900 Barnwell Street
Columbia, SC 29201
t. 803.771.4400

Counsel for ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC

A. Victor Rawl, Jr.
vrawl@grsm.com
Gordon Rees Scully Manshukhani, LLP
40 Calhoun Street, Suite 350
Charleston, SC 29407
t. 843.714.2501

Counsel for ESAB Corporation and Charter Consolidated Ltd.

John T. Lay, Jr.
jlay@gwblawfirm.com
Gray T. Culbreath
gculbreath@gwblawfirm.com
Lindsay A. Joyner
ljoyner@gwblawfirm.com
Laura W. Jordan
ljordan@gwblawfirm.com
Eleanor L. Jones
ejones@gwblawfirm.com
Gallivan, White & Boyd, PA
1201 Main Street, Suite 1200
Columbia, SC 29201
t. 803.779.1833

Jonathan M. Robinson
jon@smithrobinsonlaw.com
Shanon N. Peake
shanonp@smithrobinsonlaw.com
G. Murrell Smith, Jr.
murrell@smithrobinsonlaw.com
2530 Devine Street, Third Floor
Columbia, SC 29205
t. 803.254.5445

Troy S. Brown
troy.brown@morganlawis.com
Dana E. Becker
dana.becker@morganlewis.com
Brady Edwards
brady.edwards@morganlewis.com
Robert W. Jacques
robert.jacques@morganlewis.com
Paul A. Scrudato
paul.scrudato@morganlewis.com
Morgan Lewis & Bockius LLP
1701 Market Street

Philadelphia, PA 19103
t. 215.963.5000

Counsel for the Receiver for Cape PLC

Theile B. McVey (SC Bar No. 16682)
tmcvey@kassellaw.com
John D. Kassel (SC Bar No. 3286)
jkassel@kassellaw.com
Jamie D. Rutkoski (SC Bar No. 103270)
jrutkoski@kassellaw.com
KASSEL MCVEY ATTORNEYS AT LAW
1330 Laurel Street
Post Office Box 1476
Columbia, South Carolina 29202-1476
T: 803-256-4242

Charles William Branham, III
tbranham@dobslegal.com
Kevin W. Paul
kpaul@dobslegal.com
David Christopher Humen
dhumen@dobslegal.com
DEAN OMAR BRANHAM SHIRLEY, LLP
302 N. Market Street, Suite 300
Dallas, TX 75202
T: 214-722-5990
F: 214-722-5991

Attorneys for Plaintiffs

Angela G. Strickland (SC Bar No. 73705)
Angela.strickland@bowmanandbrooke.com
Patrick J. Cleary (SC Bar No. 80808)
Patrick.cleary@bowmanandbrooke.com
DeShawn H. Mitchell (SC Bar No. 101813)
Deshawn.Mitchell@bowmanandbrooke.com
BOWMAN AND BROOKE LLP
1441 Main Street, Suite 1200
Columbia, SC 29201
Tel.: 803-726-7420
Fax: 803-726-7421

*Attorneys for Defendants 3M Company f/k/a Minnesota Mining and Manufacturing Company;
HPC Industrial Services, LLC and Brand Insulation Inc.*
William A. Coates (SC Bar No. 1289)

wac@roecassidy.com

ROE CASSIDY COATES & PRICE, P.A.
Post Office Box 10529
Greenville, South Carolina 29603
Tel.: (864) 349-2600

and

Christian J. Singewald, Esq. (Of Counsel)

SingewaldC@WhiteandWilliams.com

WHITE AND WILLIAMS, LLP
Courthouse Square
600 North King Street, Suite 800
Wilmington, Delaware 19801-3722

Attorneys for Defendant 4520 Corp., Inc., as successor-in-interest to Benjamin F. Shaw Company

M. Elizabeth Jowers (SC Bar No. 68288)

bjowers@maynardnexsen.com

Kelly Jones (SC Bar No. 74732)

kjones@maynardnexsen.com

MAYNARD NEXSEN PRUET PC
205 King Street, Suite 400
Charleston, SC 29401
Tel: (843) 577-9440
Fax: (843) 720-1777

Attorneys for Defendant sued as General Boiler Casing Company, Inc.; and Piedmont Insulation Company, Inc.

Krista M. McGuire (SC Bar No. 72021)

kristamcguire@parkerpoe.com

PARKER POE ADAMS & BERNSTEIN LLP
850 Morrison Drive, Suite 400
Charleston, SC 29403
(843) 727- 2650 (Office)

Attorneys for Defendant Mine Safety Appliances Company, LLC

Jennifer M. Techman SC State Bar No. 70202

JMTechman@EWHlaw.com

Andrew S. Rogers SC State Bar No. 75804

ASRogers@EWHlaw.com

EVERT WEATHERSBY HOUFF
3455 Peachtree Road NE, Suite 1550

Atlanta, GA 30326
Tel: (678) 651-1200

Attorneys for Defendants Paramount Global f/k/a ViacomCBS Inc., General Electric Company; Spirax Sarco, Inc.; Copes Vulcan, Inc.; A.W. Chesterton Company; and Foster Wheeler Energy Corporation

William Early (SC Bar No. 15657)
willearly@piercesloan.com
PIERCE SLOAN KENNEDY & EARLY LLC
The Blake-Grimké House
321 East Bay Street
Post Office Box 22437
Charleston, South Carolina 29413
PH: (843) 722-7733
Fax: (843) 722-7732

Attorneys for Defendants ABB, Inc.; Vistra Intermediate Company LLC; Riley Power, Inc.; Howden North America

Carl E. Pierce, II (SC Bar No. 7946)
carlpierce@piercesloan.com
Benjamin Catlett Smoot, II (SC Bar No. 101372)
bensmoot@piercesloan.com
PIERCE SLOAN KENNEDY & EARLY LLC
The Blake-Grimké House
321 East Bay Street
Post Office Box 22437
Charleston, South Carolina 29413
PH: (843) 722-7733
Fax: (843) 722-7732

Attorneys for Defendants Great Barrier Insulation Co.; CB&I Laurens Inc.; Starr Davis Company of SC; and Starr Davis Company, Inc.

Joseph E. Thoensen (SC Bar #72563)
jthoensen@richardsonplowden.com
R. Wilder Harte (SC Bar # 101228)
wharte@richardsonplowden.com
Megan C. White (SC Bar # 101895)
mwhite@richardsonplowden.com
RICHARDSON PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street (29201)
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400

Attorneys for Defendants BW/IP; AECOM Energy & Construction, Inc.; Yeargin Construction Company, Inc.; ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC

Stephanie G. Flynn (SC Bar No. 16653)
sgflynn@FoxRothschild.com
 Nicolas J. Cherry (SC Bar No. 102671)
ncherry@FoxRothschild.com
 Allyson R. Twilley (SC Bar No. 101884)
atwilley@FoxRothschild.com
 FOX ROTHSCCHILD LLP
 2 W. Washington St., Ste. 1100
 PO Box 87, Greenville, SC 29602
 864-751-7607/FAX 864-751-7800

Attorneys for Defendants Armstrong International, Inc.; Gardner Denver Nash LLC; Viking Pump, Inc.; Joy Global Underground Mining LLC; Rockwell Automation Inc.; and RSCC Wire & Cable LLC

Stephen L. Brown (SC Bar No. 66468)
sbrown@ycrlaw.com
 James D. Gandy, III (SC Bar No. 11925)
tgandy@ycrlaw.com
 Stephen A. Griffith (SC Bar No.: 103744)
sgriffith@ycrlaw.com
 CLEMENT RIVERS, LLP
 P.O. Box 993, Charleston, SC 29402
 Telephone: (843) 720-5488
 Facsimile: (843) 579-1369

Attorneys for Defendants Asbestos Corporation Limited and Atlas Turner, Inc.

George L. Inabinet, Jr., Esq. (SC Bar No. 16575)
bi@maronmarvel.com
 Casey L. Austin, Esq. (SC Bar No. 101998)
cla@maronmarvel.com
 Kelly L. Near, Esq. (SC Bar No. 75239)
Kln@maronmarvel.com
 MARON MARVEL BRADLEY ANDERSON & TARDY LLC
 259 Seven Farms, Suite 300
 Charleston, SC 29492
 PH: (843) 727-0001
 Fax: (843) 727-0003

Attorneys for Defendants Consolidated Electrical Distributors

Derrick C. Foard (SC Bar No. 105062)
derrick.foard@elliswinters.com
Ashley K. Brathwaite (SC Bar No. 76952)
ashley.brathwaite@elliswinters.com
ELLIS & WINTERS LLP
P.O. Box 2752
Greensboro, North Carolina 27402
Telephone: (336) 217-4193
Facsimile: (336) 217-4198
Telephone: (919) 865-7000
Facsimile: (919) 865-7010

*Counsel for Defendants Beaty Investments, Inc f/k/a Guy M. Beaty & Co.; Covil Corporation;
and Standard Insulation Company of North Carolina, Inc.*

Amy H. Geddes (SC Bar No. 16960)
AGeddes@maynardnexsen.com
MAYNARD NEXSEN, PC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, SC 29202
Telephone: 803.771.8900

Attorneys for Defendants Bechtel Corporation, Sequoia Ventures, Inc.

Brian M. Barnwell (S.C. Bar # 78249)
bb@rplegalgroup.com
RIKARD & PROTOPAPAS, LLC
2110 N. Beltline Blvd. PO Box 5640
Columbia, SC 29204
Phone: 803.978.6111

Attorneys for the Receiver of Beaty Investments, Inc.

Robert O. Meriwether SC Bar No. 0009828
robert.meriwether@cs-law.com
Telephone: (803) 529-1783
James B. Glenn SC Bar No. 0077731
jase.glenn@cs-law.com
Telephone: (803) 529-1782
COSMICH SIMMONS & BROWN, PLLC
701 Gervais Street, Ste 150, #109
Columbia, SC 29201
sc-asbestos@cs-law.com

Attorneys for Defendants Carboline Company; Cleaver-Brooks, Inc.; Gould Electronics Inc.; Goulds Pumps LLC; Grinnell LLC; ITT LLC; Carrier Corporation; York International Corporation; and Zurn Industries, LLC

Taylor J. Stewart (SC Bar No. 101974)
Taylor.Stewart@lewisbrisbois.com
 LEWIS BRISBOIS BISGAARD SMITH LLP
 24 Drayton Street Suite 300
 Savannah, GA 31401
 Tel: (912) 525-4960

and

S. Christopher Collier (GA Bar No. 178307)
Chris.Collier@lewisbrisbois.com
 LEWIS BRISBOIS BISGAARD SMITH LLP
 600 Peachtree Street, NE Suite 4700
 Atlanta, Georgia 30308 Telephone:
 (404) 348-8585
 Fax: (404)467-8845

Attorneys for Defendants DeZurik, Inc.; General Cable Industries, Inc., and General Cable Corporation

E. Elaine Shofner (SC Bar No. 100501)
eshofner@hpylaw.com
 HAWKINS PARNELL & YOUNG LLP
 303 Peachtree Street, NE Suite 4000
 Atlanta, Georgia 30308
 Telephone: (404) 614-7400
 Fax: (404) 614-7500

Attorney for Defendant Eaton Corporation

M. Elizabeth O'Neill (SC Bar No. 104013)
Elizabeth.ONeill@wbd-us.com
WBD.SCAbestos@wbd-us.com
 WOMBLE BOND DICKINSON (US) LLP
 One Wells Fargo Center
 301 S. College Street, Suite 3500
 Charlotte, North Carolina 28202-6037
 Ph.: (704) 350-6310

Attorneys for Defendants Flowserve Corporation, f/k/a The Duriron Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; ASCO, L.P.; and Kinney Vacuum Pump Company

J. Michael Montgomery (SC Bar No. 74930)
mmontgomery@robinsongray.com
Rachel M. Hutchens (SC Bar No. 78303)
rhutchens@robinsongray.com
ROBINSON GRAY STEPP & LAFFITTE, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Defendants Flowserve US Inc., solely as successor to Edward Valves, Inc. and Rockwell Manufacturing, Individually, and as successor in interest to Allen Bradley Company LLC

W. David Conner (SC Bar No. 66358)
dconner@hsblawfirm.com
Scott E. Frick (SC Bar No. 68306)
sfrick@hsblawfirm.com
HAYNSWORTH SINKLER BOYD, P.A.
Post Office Box 2048
Greenville, SC 29602
(864) 240-3200 – phone
(864) 240-3300 – fax

Attorneys for Defendants Fluor Enterprises, Inc.; Fluor Daniel Services Corporation; Defendant Fluor Constructors International, Inc., on behalf of itself and the incorrectly named Defendant Fluor Constructors International, f/k/a Fluor Corporation; Daniel International Corporation; FMC Corporation, Sterling Fluid Systems USA LLC; Patterson Pump Company; and Union Carbide Corporation

Andrew G. Melling (S.C. Bar No. 9521)
amelling@burr.com
BURR & FORMAN LLP
P.O. Box 11390
Columbia, SC 29211
(803) 799-9800

Attorneys for Defendant Stafford Insulation Company

Mark H. Wall, Esq.
Mark.Wall@WallTempleton.com
WALL TEMPLETON & HALDRUP, P.A.
145 King Street, Suite 300 (29401)
Post Office Box 1200
Charleston, SC 29402

Tel.: (843) 329-9500
Fax: (843) 329-9501

Attorneys for Defendant Metropolitan Life Insurance Company a/k/a Metlife

Jennifer A. Jordan (SC Bar No. 066222)
jenny.jordan@nelsonmullins.com
Erika Karnaszewski Fedelini (SC Bar No. 101774)
erika.fedelini@nelsonmullins.com
NELSON MULLINS RILEY & SCARBOROUGH LLP
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

and

John S. Slosson (SC Bar No. 69589)
jack.slosson@nelsonmullins.com
301 South College Street / 23rd Floor
Charlotte, NC 28202-6041
(704) 417-3000

Attorneys for Defendant Occidental Chemical Corporation

Matthew D. Patterson (S.C. Bar No. 68316)
matt.patterson@nelsonmullins.com
James H. Burns (S.C. Bar No. 70313)
james.burns@nelsonmullins.com
Michael P. Stover (S.C. Bar No. 104757)
michael.stover@nelsonmullins.com
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

G. Mark Phillips (S.C. Bar No. 7945)
mark.phillips@nelsonmullins.com
NELSON MULLINS RILEY & SCARBOROUGH LLP
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239 (843) 853-5200

Attorneys for Defendants Anchor Darling Valve Company; Carboline Company; Zurn Industries LLC; Hajoca Corporation; Cleaver-Brooks, Inc.; Grinnell LLC; Goulds Pumps LLC; The

William Powell Company; ITT LLC; Valves and Controls USA, Air & Liquid Systems Corporation; Weir Valves & Controls USA, Inc.; and Barretts Minerals Inc.

James G. Kennedy (jameskennedy@piercesloan.com)
 PIERCE SLOAN KENNEDY & EARLY LLC
 The Blake-Grimké House
 321 East Bay Street
 Post Office Box 22437
 Charleston, South Carolina 29413
 PH: (843) 722-7733
 Fax: (843) 722-7732

Attorneys for Defendants Flame Refractories Inc. and Davis Mechanical Contractors, Inc.

Stephen M. Kozick, Esq. (skozick@kernoddelelaw.com)
 KERNODLE COLEMAN
 914 Folly Road, Suite G (29412)
 P. O. Box 13897
 Charleston, SC 29422
 Tel.: (843) 795-7800
 Fax: (843) 795-3032

Attorneys for Defendants Crane Instrumentation & Sampling, Inc., f/k/a CIRCOR Instrumentation Technologies, Inc., f/k/a Hoke, Inc.

Carmelo B. Sammataro (SSammataro@TurnerPadget.com)
 Abigail C. Bray (ABray@TurnerPadget.com)
 TURNER PADGET GRAHAM AND LANEY P.A.
 Post Office Box 1473
 Columbia, SC 29202
 Phone: (803) 254-2200
 Fax: (803) 799-3957

Attorneys for Defendant PECW Holding Company, f/k/a as Plastics Engineering Company d/b/a PLENCO

Tara C. Sullivan (tara.sullivan@klgates.com)
 K&L GATES LLP
 134 Meeting Street, Suite 500
 Charleston, SC 29401
 Telephone: 843.579.5600
 Facsimile: 843.579.5601

Attorney for Defendant Redco Corporation f/k/a Crane Co.

David G. Harris II (dharris@goldbergsegalla.com)

Brady Yntema (byntema@goldbergsegall.com)
GOLDBERG SEGALLA LLP
701 Green Valley Road, Suite 310
Greensboro, NC 27408
Telephone: 336.419.4900

And

Kirby D. Shealy III (Kirby.shealy@arlaw.com)
Luke M. Allen (Luke.allen@arlaw.com)
ADAMS AND REESE LLP
1221 Main Street, Suite 1200
Columbia, SC 29201
Telephone: (803) 254-4190
Facsimile: (803) 779-4749

Attorneys for Third-Party Defendant Pennsylvania National Mutual Insurance Company

Jessica W. Laffitte (jlaffitte@gwblawfirm.com)
GALLIVAN, WHITE & BOYD, P.A.
PO Box 7368
Columbia, SC 29202-7368
(803) 779-1833 Ofc

Attorney for Defendant Schneider Electric USA, Inc. f/k/a Square D Company

Louis P. Hems (louis@milliganlawfirm.com)
MILLIGAN & HERNS, PC
721 Long Point Road, Suite 401
Mt. Pleasant, SC 29464
PH: (843) 971-6750
Fax: (843) 971-6509

Attorney for Defendant A.O. Smith Corporation

Francis J. Gordon (fgordon@mgsattorneys.com)
MILLBERG GORDON STEWART PLLC
1101 Haynes Street, Suite 104
Raleigh, NC 27604
T: 919/ 836.0090
F: 919/ 836.8027

Attorneys for Defendant Canvas CT, LLC f/k/a SPX Cooling Technologies, LLC, f/k/a SPX Cooling Technologies, Inc., f/k/a The Marley Cooling Tower Company

C. Mitchell Brown
mitch.brown@nelsonmullins.com

Matthew D. Patterson
matt.patterson@nelsonmullins.com
James H. Burns (SC Bar No. 70313)
james.burns@nelsonmullins.com
A. Mattison Bogan SC Bar No. 72629
matt.bogan@nelsonmullins.com
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Defendant Wind Up, Ltd. f/k/a Pipe & Boiler Insulation, Inc.; Pfizer, Inc.; Presnell Insulation Co., Inc.;

David M. Burkoff (SC Bar No. 100339)
HUNTER, MACLEAN, EXLEY & DUNN, P.C.
200 East Saint Julian Street
Post Office Box 9848
Savannah, Georgia 31412-0048
Telephone: 912.236.0261
Facsimile: 912.236.4936

Attorney for Defendant AWT Air Company, Inc. f/k/a Research-Cottrell, Inc

M. Todd Carroll (SC Bar No. 74000)
M. Elizabeth O'Neill (SC Bar No. 104013)
WOMBLE BOND DICKINSON (US) LLP
1221 Main Street, Suite 1600
Columbia, SC 29201
Telephone: (803) 454-6504
Todd.carroll@wbd-us.com

Attorneys for Defendant Mohed Altrad and Altrad Investment Authority SAS

PROOF OF SERVICE

I, the undersigned of the law offices of GORDON REES SCULLY MANSUKHANI, LLP, attorneys for Appellants Central Mining and Investment Corp. Ltd., do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

Pleading(s): Notice of Appeal

Parties Served:

John T. Lay, Jr. (jlay@gwblawfirm.com)
Gray T. Culbreath (gculbreath@gwblawfirm.com)
Lindsay A. Joyner (ljoyner@gwblawfirm.com)
Laura W. Jordan (ljordan@gwblawfirm.com)
Eleanor L. Jones (ejones@gwblawfirm.com)
Jonathan M. Robinson (jon@smithrobinsonlaw.com)
Shanon N. Peake (shanonp@smithrobinsonlaw.com)
G. Murrell Smith, Jr. (murrell@smithrobinsonlaw.com)
Troy S. Brown (troy.brown@morganlawis.com)
Dana E. Becker (dana.becker@morganlewis.com)
Brady Edwards (brady.edwards@morganlewis.com)
Robert W. Jacques (robert.jacques@morganlewis.com)
Paul A. Scrudato (paul.scrudato@morganlewis.com)

Counsel for the Receiver for Cape PLC

Theile B. McVey (tmcvey@kassellaw.com)
John D. Kassel (jkassel@kassellaw.com)
Jamie D. Rutkoski (jrutkoski@kassellaw.com)
Charles William Branham, III (tbranham@dobslegal.com)
Kevin W. Paul (kpaul@dobslegal.com)
David Christopher Humen (dhumen@dobslegal.com)

Attorneys for Plaintiffs

By: /s/ A. Victor Rawl, Jr.

December 19, 2023

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2023-
Circuit Court Case No. 2023-CP-40-01759

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

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Hesterton Company; ABB Inc.; Air & Liquid Systems Corporation; AIW-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited ASCO, L.P.; Atlas Asbestos Co.; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas CT, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Lowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services; Orporation 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,

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

Third-Party
Plaintiff/
Respondent,

v.

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

Third-Party
Defendants,

of which

Charter Consolidated Ltd. is the

Appellant.

NOTICE OF APPEAL

Please take notice that Charter Consolidated Ltd. appeal the order captioned “Order Denying Certain Third-Party Defendants’ Motions to Dissolve Receivership and Third-Party Defendants’ Motions to Dismiss for Lack of Personal Jurisdiction,” entered on December 6, 2023. This order is immediately appealable pursuant to South Carolina Code § 14-3-330(4) because, among other things, it specifically continues a receivership despite a motion to dissolve the receivership, it modifies the scope of the receivership in numerous ways, and it has the effect of granting a new receivership over a corporate entity that was never involved in the initial motion to create this receivership.

Charter Consolidated Ltd. received written notice of entry of this order on December 6, 2023, making this notice timely. Charter Consolidated Ltd. further states that all necessary transcripts for this appeal have been ordered from the appropriate court reporter. A copy of that correspondence is attached.

Dated: December 19, 2023

GORDON REES SCULLY MANSUKHANI, LLP

BY: /s/ A. Victor Rawl, Jr.
A. Victor Rawl, Jr. (SC 09261)
Email: vrawl@grsm.com
40 Calhoun Street, Suite 350
Charleston, SC 29401
Telephone: 843-714-2501

*Counsel for Third-Party Defendant
Charter Consolidated Ltd.*

Other Counsel of Record:

James H. Elliott, Jr.
jelliott@richardsonplowden.com
Cameron D. Berthelsen
cberthelsen@richardsonplowden.com
Richardson Plowden & Robinson, P.A.
235 Magrath Darby Blvd., Ste. 100
Mt. Pleasant, SC 29464
t. 843.805.6550

Mary Rose Alexander
mary.rose.alexander@lw.com
Caitlin Dahl
catilin.dahl@lw.com
Pro Hac Vice
Latham & Watkins LLP
330 North Wabash Ave., Ste. 2800
Chicago, IL 60611
t. 312.876.7700

Michele D. Johnson
michele.johnson@lw.com
Pro Hac Vice
Latham & Watkins LLP
650 Town Center Drive, 20th Floor
Costa Mesa, CA 92626-1925
t. 714.540.1235

Counsel for the AA/DB Non-US Third-Party Defendants

Steven J. Pugh
spugh@richardsonplowden.com
Benjamin P. Carlton
bcarlton@richardsonplowden.com
Richardson Plowden & Robinson, P.A.
1900 Barnwell Street
Columbia, SC 29201
t. 803.771.4400

Counsel for ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC

A. Victor Rawl, Jr.
vrawl@grsm.com
Gordon Rees Scully Manshukhani, LLP
40 Calhoun Street, Suite 350
Charleston, SC 29407
t. 843.714.2501

Counsel for ESAB Corporation and Central Mining and Investment Corp., Ltd.

John T. Lay, Jr.
jlay@gwblawfirm.com
Gray T. Culbreath
gculbreath@gwblawfirm.com
Lindsay A. Joyner
ljoyner@gwblawfirm.com
Laura W. Jordan
ljordan@gwblawfirm.com
Eleanor L. Jones
ejones@gwblawfirm.com
Gallivan, White & Boyd, PA
1201 Main Street, Suite 1200
Columbia, SC 29201
t. 803.779.1833

Jonathan M. Robinson
jon@smithrobinsonlaw.com
Shanon N. Peake
shanonp@smithrobinsonlaw.com
G. Murrell Smith, Jr.
murrell@smithrobinsonlaw.com
2530 Devine Street, Third Floor
Columbia, SC 29205
t. 803.254.5445

Troy S. Brown
troy.brown@morganlawis.com
Dana E. Becker
dana.becker@morganlewis.com
Brady Edwards
brady.edwards@morganlewis.com
Robert W. Jacques
robert.jacques@morganlewis.com
Paul A. Scrudato
paul.scrudato@morganlewis.com
Morgan Lewis & Bockius LLP
1701 Market Street

Philadelphia, PA 19103
t. 215.963.5000

Counsel for the Receiver for Cape PLC

Theile B. McVey (SC Bar No. 16682)
tmcvey@kassellaw.com
John D. Kassel (SC Bar No. 3286)
jkassel@kassellaw.com
Jamie D. Rutkoski (SC Bar No. 103270)
jrutkoski@kassellaw.com
KASSEL MCVEY ATTORNEYS AT LAW
1330 Laurel Street
Post Office Box 1476
Columbia, South Carolina 29202-1476
T: 803-256-4242

Charles William Branham, III
tbranham@dobslegal.com
Kevin W. Paul
kpaul@dobslegal.com
David Christopher Humen
dhumen@dobslegal.com
DEAN OMAR BRANHAM SHIRLEY, LLP
302 N. Market Street, Suite 300
Dallas, TX 75202
T: 214-722-5990
F: 214-722-5991

Attorneys for Plaintiffs

Angela G. Strickland (SC Bar No. 73705)
Angela.strickland@bowmanandbrooke.com
Patrick J. Cleary (SC Bar No. 80808)
Patrick.cleary@bowmanandbrooke.com
DeShawn H. Mitchell (SC Bar No. 101813)
Deshawn.Mitchell@bowmanandbrooke.com
BOWMAN AND BROOKE LLP
1441 Main Street, Suite 1200
Columbia, SC 29201
Tel.: 803-726-7420
Fax: 803-726-7421

*Attorneys for Defendants 3M Company f/k/a Minnesota Mining and Manufacturing Company;
HPC Industrial Services, LLC and Brand Insulation Inc.*
William A. Coates (SC Bar No. 1289)

wac@roecassidy.com

ROE CASSIDY COATES & PRICE, P.A.
Post Office Box 10529
Greenville, South Carolina 29603
Tel.: (864) 349-2600

and

Christian J. Singewald, Esq. (Of Counsel)

SingewaldC@WhiteandWilliams.com

WHITE AND WILLIAMS, LLP
Courthouse Square
600 North King Street, Suite 800
Wilmington, Delaware 19801-3722

Attorneys for Defendant 4520 Corp., Inc., as successor-in-interest to Benjamin F. Shaw Company

M. Elizabeth Jowers (SC Bar No. 68288)

bjowers@maynardnexsen.com

Kelly Jones (SC Bar No. 74732)

kjones@maynardnexsen.com

MAYNARD NEXSEN PRUET PC
205 King Street, Suite 400
Charleston, SC 29401
Tel: (843) 577-9440
Fax: (843) 720-1777

Attorneys for Defendant sued as General Boiler Casing Company, Inc.; and Piedmont Insulation Company, Inc.

Krista M. McGuire (SC Bar No. 72021)

kristamcguire@parkerpoe.com

PARKER POE ADAMS & BERNSTEIN LLP
850 Morrison Drive, Suite 400
Charleston, SC 29403
(843) 727- 2650 (Office)

Attorneys for Defendant Mine Safety Appliances Company, LLC

Jennifer M. Techman SC State Bar No. 70202

JMTechman@EWHlaw.com

Andrew S. Rogers SC State Bar No. 75804

ASRogers@EWHlaw.com

EVERT WEATHERSBY HOUFF
3455 Peachtree Road NE, Suite 1550

Atlanta, GA 30326
Tel: (678) 651-1200

Attorneys for Defendants Paramount Global f/k/a ViacomCBS Inc., General Electric Company; Spirax Sarco, Inc.; Copes Vulcan, Inc.; A.W. Chesterton Company; and Foster Wheeler Energy Corporation

William Early (SC Bar No. 15657)
willearly@piercesloan.com
PIERCE SLOAN KENNEDY & EARLY LLC
The Blake-Grimké House
321 East Bay Street
Post Office Box 22437
Charleston, South Carolina 29413
PH: (843) 722-7733
Fax: (843) 722-7732

Attorneys for Defendants ABB, Inc.; Vistra Intermediate Company LLC; Riley Power, Inc.; Howden North America

Carl E. Pierce, II (SC Bar No. 7946)
carlpierce@piercesloan.com
Benjamin Catlett Smoot, II (SC Bar No. 101372)
bensmoot@piercesloan.com
PIERCE SLOAN KENNEDY & EARLY LLC
The Blake-Grimké House
321 East Bay Street
Post Office Box 22437
Charleston, South Carolina 29413
PH: (843) 722-7733
Fax: (843) 722-7732

Attorneys for Defendants Great Barrier Insulation Co.; CB&I Laurens Inc.; Starr Davis Company of SC; and Starr Davis Company, Inc.

Joseph E. Thoensen (SC Bar #72563)
jthoensen@richardsonplowden.com
R. Wilder Harte (SC Bar # 101228)
wharte@richardsonplowden.com
Megan C. White (SC Bar # 101895)
mwhite@richardsonplowden.com
RICHARDSON PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street (29201)
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400

Attorneys for Defendants BW/IP; AECOM Energy & Construction, Inc.; Yeargin Construction Company, Inc.; ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC

Stephanie G. Flynn (SC Bar No. 16653)

sgflynn@FoxRothschild.com

Nicolas J. Cherry (SC Bar No. 102671)

ncherry@FoxRothschild.com

Allyson R. Twilley (SC Bar No. 101884)

atwilley@FoxRothschild.com

FOX ROTHSCILD LLP

2 W. Washington St., Ste. 1100

PO Box 87, Greenville, SC 29602

864-751-7607/FAX 864-751-7800

Attorneys for Defendants Armstrong International, Inc.; Gardner Denver Nash LLC; Viking Pump, Inc.; Joy Global Underground Mining LLC; Rockwell Automation Inc.; and RSCC Wire & Cable LLC

Stephen L. Brown (SC Bar No. 66468)

sbrown@ycrlaw.com

James D. Gandy, III (SC Bar No. 11925)

tgandy@ycrlaw.com

Stephen A. Griffith (SC Bar No.: 103744)

sgriffith@ycrlaw.com

CLEMENT RIVERS, LLP

P.O. Box 993, Charleston, SC 29402

Telephone: (843) 720-5488

Facsimile: (843) 579-1369

Attorneys for Defendants Asbestos Corporation Limited and Atlas Turner, Inc.

George L. Inabinet, Jr., Esq. (SC Bar No. 16575)

bi@maronmarvel.com

Casey L. Austin, Esq. (SC Bar No. 101998)

cla@maronmarvel.com

Kelly L. Near, Esq. (SC Bar No. 75239)

Kln@maronmarvel.com

MARON MARVEL BRADLEY ANDERSON & TARDY LLC

259 Seven Farms, Suite 300

Charleston, SC 29492

PH: (843) 727-0001

Fax: (843) 727-0003

Attorneys for Defendants Consolidated Electrical Distributors

Derrick C. Foard (SC Bar No. 105062)
derrick.foard@elliswinters.com
Ashley K. Brathwaite (SC Bar No. 76952)
ashley.brathwaite@elliswinters.com
ELLIS & WINTERS LLP
P.O. Box 2752
Greensboro, North Carolina 27402
Telephone: (336) 217-4193
Facsimile: (336) 217-4198
Telephone: (919) 865-7000
Facsimile: (919) 865-7010

*Counsel for Defendants Beaty Investments, Inc f/k/a Guy M. Beaty & Co.; Covil Corporation;
and Standard Insulation Company of North Carolina, Inc.*

Amy H. Geddes (SC Bar No. 16960)
AGeddes@maynardnexsen.com
MAYNARD NEXSEN, PC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, SC 29202
Telephone: 803.771.8900

Attorneys for Defendants Bechtel Corporation, Sequoia Ventures, Inc.

Brian M. Barnwell (S.C. Bar # 78249)
bb@rplegalgroup.com
RIKARD & PROTOPAPAS, LLC
2110 N. Beltline Blvd. PO Box 5640
Columbia, SC 29204
Phone: 803.978.6111

Attorneys for the Receiver of Beaty Investments, Inc.

Robert O. Meriwether SC Bar No. 0009828
robert.meriwether@cs-law.com
Telephone: (803) 529-1783
James B. Glenn SC Bar No. 0077731
jase.glenn@cs-law.com
Telephone: (803) 529-1782
COSMICH SIMMONS & BROWN, PLLC
701 Gervais Street, Ste 150, #109
Columbia, SC 29201
sc-asbestos@cs-law.com

Attorneys for Defendants Carboline Company; Cleaver-Brooks, Inc.; Gould Electronics Inc.; Goulds Pumps LLC; Grinnell LLC; ITT LLC; Carrier Corporation; York International Corporation; and Zurn Industries, LLC

Taylor J. Stewart (SC Bar No. 101974)
Taylor.Stewart@lewisbrisbois.com
 LEWIS BRISBOIS BISGAARD SMITH LLP
 24 Drayton Street Suite 300
 Savannah, GA 31401
 Tel: (912) 525-4960

and

S. Christopher Collier (GA Bar No. 178307)
Chris.Collier@lewisbrisbois.com
 LEWIS BRISBOIS BISGAARD SMITH LLP
 600 Peachtree Street, NE Suite 4700
 Atlanta, Georgia 30308 Telephone:
 (404) 348-8585
 Fax: (404)467-8845

Attorneys for Defendants DeZurik, Inc.; General Cable Industries, Inc., and General Cable Corporation

E. Elaine Shofner (SC Bar No. 100501)
eshofner@hpylaw.com
 HAWKINS PARNELL & YOUNG LLP
 303 Peachtree Street, NE Suite 4000
 Atlanta, Georgia 30308
 Telephone: (404) 614-7400
 Fax: (404) 614-7500

Attorney for Defendant Eaton Corporation

M. Elizabeth O'Neill (SC Bar No. 104013)
Elizabeth.ONeill@wbd-us.com
WBD.SCAbestos@wbd-us.com
 WOMBLE BOND DICKINSON (US) LLP
 One Wells Fargo Center
 301 S. College Street, Suite 3500
 Charlotte, North Carolina 28202-6037
 Ph.: (704) 350-6310

Attorneys for Defendants Flowserve Corporation, f/k/a The Duriron Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; ASCO, L.P.; and Kinney Vacuum Pump Company

J. Michael Montgomery (SC Bar No. 74930)
mmontgomery@robinsongray.com
Rachel M. Hutchens (SC Bar No. 78303)
rhutchens@robinsongray.com
ROBINSON GRAY STEPP & LAFFITTE, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Defendants Flowserve US Inc., solely as successor to Edward Valves, Inc. and Rockwell Manufacturing, Individually, and as successor in interest to Allen Bradley Company LLC

W. David Conner (SC Bar No. 66358)
dconner@hsblawfirm.com
Scott E. Frick (SC Bar No. 68306)
sfrick@hsblawfirm.com
HAYNSWORTH SINKLER BOYD, P.A.
Post Office Box 2048
Greenville, SC 29602
(864) 240-3200 – phone
(864) 240-3300 – fax

Attorneys for Defendants Fluor Enterprises, Inc.; Fluor Daniel Services Corporation; Defendant Fluor Constructors International, Inc., on behalf of itself and the incorrectly named Defendant Fluor Constructors International, f/k/a Fluor Corporation; Daniel International Corporation; FMC Corporation, Sterling Fluid Systems USA LLC; Patterson Pump Company; and Union Carbide Corporation

Andrew G. Melling (S.C. Bar No. 9521)
amelling@burr.com
BURR & FORMAN LLP
P.O. Box 11390
Columbia, SC 29211
(803) 799-9800

Attorneys for Defendant Stafford Insulation Company

Mark H. Wall, Esq.
Mark.Wall@WallTempleton.com
WALL TEMPLETON & HALDRUP, P.A.
145 King Street, Suite 300 (29401)
Post Office Box 1200
Charleston, SC 29402

Tel.: (843) 329-9500
Fax: (843) 329-9501

Attorneys for Defendant Metropolitan Life Insurance Company a/k/a Metlife

Jennifer A. Jordan (SC Bar No. 066222)
jenny.jordan@nelsonmullins.com
Erika Karnaszewski Fedelini (SC Bar No. 101774)
erika.fedelini@nelsonmullins.com
NELSON MULLINS RILEY & SCARBOROUGH LLP
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

and

John S. Slosson (SC Bar No. 69589)
jack.slosson@nelsonmullins.com
301 South College Street / 23rd Floor
Charlotte, NC 28202-6041
(704) 417-3000

Attorneys for Defendant Occidental Chemical Corporation

Matthew D. Patterson (S.C. Bar No. 68316)
matt.patterson@nelsonmullins.com
James H. Burns (S.C. Bar No. 70313)
james.burns@nelsonmullins.com
Michael P. Stover (S.C. Bar No. 104757)
michael.stover@nelsonmullins.com
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

G. Mark Phillips (S.C. Bar No. 7945)
mark.phillips@nelsonmullins.com
NELSON MULLINS RILEY & SCARBOROUGH LLP
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239 (843) 853-5200

Attorneys for Defendants Anchor Darling Valve Company; Carboline Company; Zurn Industries LLC; Hajoca Corporation; Cleaver-Brooks, Inc.; Grinnell LLC; Goulds Pumps LLC; The

William Powell Company; ITT LLC; Valves and Controls USA, Air & Liquid Systems Corporation; Weir Valves & Controls USA, Inc.; and Barretts Minerals Inc.

James G. Kennedy (jameskennedy@piercesloan.com)

PIERCE SLOAN KENNEDY & EARLY LLC

The Blake-Grimké House

321 East Bay Street

Post Office Box 22437

Charleston, South Carolina 29413

PH: (843) 722-7733

Fax: (843) 722-7732

Attorneys for Defendants Flame Refractories Inc. and Davis Mechanical Contractors, Inc.

Stephen M. Kozick, Esq. (skozick@kernodlelaw.com)

KERNODLE COLEMAN

914 Folly Road, Suite G (29412)

P. O. Box 13897

Charleston, SC 29422

Tel.: (843) 795-7800

Fax: (843) 795-3032

Attorneys for Defendants Crane Instrumentation & Sampling, Inc., f/k/a CIRCOR Instrumentation Technologies, Inc., f/k/a Hoke, Inc.

Carmelo B. Sammataro (SSammataro@TurnerPadget.com)

Abigail C. Bray (ABray@TurnerPadget.com)

TURNER PADGET GRAHAM AND LANEY P.A.

Post Office Box 1473

Columbia, SC 29202

Phone: (803) 254-2200

Fax: (803) 799-3957

Attorneys for Defendant PECW Holding Company, f/k/a as Plastics Engineering Company d/b/a PLENCO

Tara C. Sullivan (tara.sullivan@klgates.com)

K&L GATES LLP

134 Meeting Street, Suite 500

Charleston, SC 29401

Telephone: 843.579.5600

Facsimile: 843.579.5601

Attorney for Defendant Redco Corporation f/k/a Crane Co.

David G. Harris II (dharris@goldbergsegalla.com)

Brady Yntema (byntema@goldbergsegall.com)
GOLDBERG SEGALLA LLP
701 Green Valley Road, Suite 310
Greensboro, NC 27408
Telephone: 336.419.4900

And

Kirby D. Shealy III (Kirby.shealy@arlaw.com)
Luke M. Allen (Luke.allen@arlaw.com)
ADAMS AND REESE LLP
1221 Main Street, Suite 1200
Columbia, SC 29201
Telephone: (803) 254-4190
Facsimile: (803) 779-4749

Attorneys for Third-Party Defendant Pennsylvania National Mutual Insurance Company

Jessica W. Laffitte (jlaffitte@gwblawfirm.com)
GALLIVAN, WHITE & BOYD, P.A.
PO Box 7368
Columbia, SC 29202-7368
(803) 779-1833 Ofc

Attorney for Defendant Schneider Electric USA, Inc. f/k/a Square D Company

Louis P. HERNs (louis@milliganlawfirm.com)
MILLIGAN & HERNs, PC
721 Long Point Road, Suite 401
Mt. Pleasant, SC 29464
PH: (843) 971-6750
Fax: (843) 971-6509

Attorney for Defendant A.O. Smith Corporation

Francis J. Gordon (fgordon@mgsattorneys.com)
MILLBERG GORDON STEWART PLLC
1101 Haynes Street, Suite 104
Raleigh, NC 27604
T: 919/ 836.0090
F: 919/ 836.8027

Attorneys for Defendant Canvas CT, LLC f/k/a SPX Cooling Technologies, LLC, f/k/a SPX Cooling Technologies, Inc., f/k/a The Marley Cooling Tower Company

C. Mitchell Brown
mitch.brown@nelsonmullins.com

Matthew D. Patterson
matt.patterson@nelsonmullins.com
James H. Burns (SC Bar No. 70313)
james.burns@nelsonmullins.com
A. Mattison Bogan SC Bar No. 72629
matt.bogan@nelsonmullins.com
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Defendant Wind Up, Ltd. f/k/a Pipe & Boiler Insulation, Inc.; Pfizer, Inc.; Presnell Insulation Co., Inc.;

David M. Burkoff (SC Bar No. 100339)
HUNTER, MACLEAN, EXLEY & DUNN, P.C.
200 East Saint Julian Street
Post Office Box 9848
Savannah, Georgia 31412-0048
Telephone: 912.236.0261
Facsimile: 912.236.4936

Attorney for Defendant AWT Air Company, Inc. f/k/a Research-Cottrell, Inc

M. Todd Carroll (SC Bar No. 74000)
M. Elizabeth O'Neill (SC Bar No. 104013)
WOMBLE BOND DICKINSON (US) LLP
1221 Main Street, Suite 1600
Columbia, SC 29201
Telephone: (803) 454-6504
Todd.carroll@wbd-us.com

Attorneys for Defendant Mohed Altrad and Altrad Investment Authority SAS

PROOF OF SERVICE

I, the undersigned of the law offices of GORDON REES SCULLY MANSUKHANI, LLP, attorneys for Appellants Charter Consolidated Ltd., do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

Pleading(s): Notice of Appeal

Parties Served:

John T. Lay, Jr. (jlay@gwblawfirm.com)
Gray T. Culbreath (gculbreath@gwblawfirm.com)
Lindsay A. Joyner (ljoyner@gwblawfirm.com)
Laura W. Jordan (ljordan@gwblawfirm.com)
Eleanor L. Jones (ejones@gwblawfirm.com)
Jonathan M. Robinson (jon@smithrobinsonlaw.com)
Shanon N. Peake (shanonp@smithrobinsonlaw.com)
G. Murrell Smith, Jr. (murrell@smithrobinsonlaw.com)
Troy S. Brown (troy.brown@morganlawis.com)
Dana E. Becker (dana.becker@morganlewis.com)
Brady Edwards (brady.edwards@morganlewis.com)
Robert W. Jacques (robert.jacques@morganlewis.com)
Paul A. Scrudato (paul.scrudato@morganlewis.com)

Counsel for the Receiver for Cape PLC

Theile B. McVey (tmcvey@kassellaw.com)
John D. Kassel (jkassel@kassellaw.com)
Jamie D. Rutkoski (jrutkoski@kassellaw.com)
Charles William Branham, III (tbranham@dobslegal.com)
Kevin W. Paul (kpaul@dobslegal.com)
David Christopher Humen (dhumen@dobslegal.com)

Attorneys for Plaintiffs

By: /s/ A. Victor Rawl, Jr.

December 19, 2023

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,	)	
	)	Civil Action No. 2023-CP-40-01759
Plaintiffs,	)	
	)	In Re:
v.	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
3M COMPANY, <i>et al.</i> ,	)	
	)	ANSWER OF MOHED ALTRAD
Defendants.	)	AND ALTRAD INVESTMENT
	)	AUTHORITY SAS TO THIRD-
*****	)	PARTY COMPLAINT
	)	(FILED SUBJECT TO PREVIOUSLY
CAPE PLC, individually and as successor in	)	FILED MOTIONS TO DISMISS,
interest to CAPE ASBESTOS COMPANY	)	PENDING APPEAL, AND POSITION
LIMITED, by and through its duly appointed	)	THAT THIRD-PARTY
Receiver Peter D. Protopapas,	)	DEFENDANTS HAVE NO
	)	OBLIGATION TO PARTICIPATE IN
Third-Party Plaintiff,	)	POST-APPEAL TRIAL COURT
	)	PROCEEDINGS AND THE TRIAL
v.	)	COURT AND RECEIVER HAVE NO
	)	AUTHORITY TO ACT PURSUANT
ANGLO AMERICAN PLCS, <i>et al.</i> ,	)	TO RULES 205 AND 241, SCACR)
	)	
Third-Party Defendants.	)	<i>JURY TRIAL DEMANDED ON ALL</i>
	)	<i>ISSUES SO TRIABLE</i>
	)	

Third-Party Defendants Mohed Altrad (“Mr. Altrad”) and Altrad Investment Authority SAS (“AIA”) (collectively, the “Altrad Defendants”), by and through the undersigned counsel, without waiving but instead specifically preserving their jurisdictional and other objections stated below, hereby answers the Third-Party Complaint (“Third-Party Complaint”) filed by Third-Party Plaintiff Cape PLC by and through its purported Receiver Peter Protopapas (“Third-Party Plaintiff” or “Receiver”) and any and all Cross-Claims asserted previously, or in the future, by any Co-Defendants or Third-Party Defendants, whether having appeared in the case at this time or not,

and states as follows. All allegations of the Third-Party Complaint—inclusive of all paragraphs, subparagraphs, headings, and footnotes—not hereinafter specifically admitted are denied.¹

The Altrad Defendants have filed notices of appeal regarding the Court’s December 6, 2023 Order denying their Motions to Dissolve Receivership and Motion to Dismiss for Lack of Personal Jurisdiction (“Appeal”). Accordingly, the Altrad Defendants submit this Answer without waiving and instead specifically preserving (1) all of their objections and challenges to personal jurisdiction in South Carolina as well as all other grounds for dismissal, as set forth in their motions to dismiss filed on September 1, 2023, and subsequent filings and oral argument in support thereof (collectively, “12(b) Motions”); (2) all of their objections and challenges to the appointment of the Receiver, as set forth in their motions to dissolve the receivership filed on September 1, 2023 and subsequent filings and oral argument in support thereof (collectively, “Motions to Dissolve”); (3) all of their objections and challenges to the Receiver’s Proposed Order on December 4, 2023, including, but not limited to, the counter proposed orders submitted by the Altrad Defendants; (4) all of their objections and challenges to the Court’s December 6, 2023 Order denying Certain Third-Party Defendants’ Motions to Dissolve Receivership and Third-Party Defendants’ Motion to Dismiss for Lack of Personal Jurisdiction; (5) the grounds for Third-Party Defendants’ pending appeal of the Court’s December 6, 2023 Order denying Certain Third-Party Defendants’ Motions to Dissolve Receivership and Third-Party Defendants’ Motion to Dismiss for Lack of Personal Jurisdiction; (6) that the Altrad Defendants have no obligation to participate in post-Appeal trial court proceedings related to the Third-Party Complaint, including no obligation to file the present Answer, and the trial court and Receiver have no authority or jurisdiction to act, pursuant to Rule

¹ By filing this Answer, the Altrad Defendants do not waive their previously filed motions to dismiss and motions to dissolve receivership or any of the arguments raised therein, including that this Court lacks personal jurisdiction over the Altrad Defendants and that all claims against the Altrad Defendants should be dismissed with prejudice.

205, SCACR; (7) that this matter is or should be stayed pursuant to Rule 241, SCACR; and (8) that the Altrad Defendants have no obligation to participate in discovery based on (6) and (7) and their pending motion for protective order and for stay of discovery filed on September 20, 2023.

INTRODUCTORY STATEMENT²

The Introductory Statement of the Third-Party Complaint contains inflammatory rhetoric and legal conclusions to which no response is required under the South Carolina Rules of Civil Procedure. However, due to the nature of the false and potentially defamatory statements contained therein, and without waiving their rights to require Third-Party Plaintiff to adhere to the South Carolina Rules of Civil Procedure with respect to the litigation of this matter, the Altrad Defendants deny the allegations contained therein.

PARTIES

1. The Altrad Defendants, upon information and belief, admit only that the Receiver bringing the Third-Party Complaint maintains a principal place of business in Richland County, South Carolina. All remaining allegations contained in Paragraph 1 of the Third-Party Complaint are denied.

2. The allegations of Paragraph 2 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 2 of the Third-Party Complaint and, therefore, deny the same.

² The Altrad Defendants include the headings as set forth in the original Third-Party Complaint for convenience of the Court. The Altrad Defendants specifically deny that any heading included in the Third-Party Complaint is an accurate or legally appropriate recitation of any fact or rule, and specifically preserve all rights with respect to disputing the same.

3. The allegations of Paragraph 3 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 3 of the Third-Party Complaint and, therefore, deny the same.

4. The allegations of Paragraph 4 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 4 of the Third-Party Complaint and, therefore, deny the same.

5. The allegations of Paragraph 5 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 5 of the Third-Party Complaint and, therefore, deny the same.

6. The allegations of Paragraph 6 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 6 of the Third-Party Complaint and, therefore, deny the same.

7. The allegations of Paragraph 7 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit

or deny the allegations contained in Paragraph 7 of the Third-Party Complaint and, therefore, deny the same.

8. The allegations of Paragraph 8 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 8 of the Third-Party Complaint and, therefore, deny the same.

9. The allegations of Paragraph 9 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 9 of the Third-Party Complaint and, therefore, deny the same.

10. The allegations of Paragraph 10 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 10 of the Third-Party Complaint and, therefore, deny the same.

11. The allegations of Paragraph 11 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 11 of the Third-Party Complaint and, therefore, deny the same.

12. The allegations of Paragraph 12 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 12 of the Third-Party Complaint and, therefore, deny the same.

13. The allegations of Paragraph 13 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 13 of the Third-Party Complaint and, therefore, deny the same.

14. The allegations of Paragraph 14 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 14 of the Third-Party Complaint and, therefore, deny the same.

15. The allegations of Paragraph 15 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 15 of the Third-Party Complaint and, therefore, deny the same.

16. The allegations of Paragraph 16 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit

or deny the allegations contained in Paragraph 16 of the Third-Party Complaint and, therefore, deny the same.

17. The allegations of Paragraph 17 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 17 of the Third-Party Complaint and, therefore, deny the same.

18. The allegations of Paragraph 18 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 18 of the Third-Party Complaint and, therefore, deny the same.

19. The allegations of Paragraph 19 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 19 of the Third-Party Complaint and, therefore, deny the same.

20. The allegations of Paragraph 20 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 20 of the Third-Party Complaint and, therefore, deny the same.

21. The allegations of Paragraph 21 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 21 of the Third-Party Complaint and, therefore, deny the same.

22. The allegations of Paragraph 22 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 22 of the Third-Party Complaint and, therefore, deny the same.

23. The allegations of Paragraph 23 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 23 of the Third-Party Complaint and, therefore, deny the same.

24. The allegations of Paragraph 24 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 24 of the Third-Party Complaint and, therefore, deny the same.

25. The Altrad Defendants admit the allegations of Paragraph 25 of the Third-Party Complaint.

26. The allegations of Paragraph 26 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 26 of the Third-Party Complaint and, therefore, deny the same.

27. The allegations of Paragraph 27 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 27 of the Third-Party Complaint and, therefore, deny the same.

28. The allegations of Paragraph 28 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 28 of the Third-Party Complaint and, therefore, deny the same.

29. With respect to the allegations of Paragraph 29 of the Third-Party Complaint, the Altrad Defendants admit that AIA is a *Societe par action simpliffee* (“SAS”) organized under the laws of France but deny that its principal place of business is Florensac, France.

30. The allegations of Paragraph 30 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 30 of the Third-Party Complaint and, therefore, deny the same.

31. The allegations of Paragraph 31 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 31 of the Third-Party Complaint and, therefore, deny the same.

32. The allegations of Paragraph 32 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 32 of the Third-Party Complaint and, therefore, deny the same.

33. The allegations of Paragraph 33 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 30 of the Third-Party Complaint and, therefore, deny the same.

34. The allegations of Paragraph 34 are not directed at the Altrad Defendants, therefore no response by them is required under the South Carolina Rules of Civil Procedure. To the extent the Court requests a response, the Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 34 of the Third-Party Complaint and, therefore, deny the same.

35. The Altrad Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 35 of the Third-Party Complaint and, therefore, deny the same. To the extent the allegations of Paragraph 35 purport to state legal conclusions, including but not

limited to future amendments to the Third-Party Complaint, the Altrad Defendants deny such allegations.

JURISDICTION

36. Paragraph 36 of the Third-Party Complaint contains legal conclusions to which no response is required. To the extent a response is required, the Altrad Defendants state that Peter D. Protopapas was appointed as Receiver of Third-Party Plaintiff in another case, but that the Court has subsequently modified that appointment to now be over a different entity that was never the subject of a motion to appoint a receiver under South Carolina law. The remaining allegations in Paragraph 36 are denied, and the Altrad Defendants affirmatively aver that the appointment of the Receiver is both factually and legally improper.

37. Paragraph 37 of the Third-Party Complaint contains legal conclusions to which no response is required. To the extent a response is required, the Altrad Defendants deny the allegations in Paragraph 37 as alleged against them. The Altrad Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations as asserted against other Third-Party Defendants and on that basis deny the same.

VENUE

38. Paragraph 38 of the Third-Party Complaint contains legal conclusions to which no response is required. To the extent a response is required, the Altrad Defendants admit only that the referenced order was issued. That order speaks for itself and any allegations inconsistent with the terms of the order are denied. Any remaining allegations in Paragraph 38 are denied.

FACTUAL BACKGROUND

39. The Altrad Defendants deny the allegations contained in Paragraph 39 of the Third-Party Complaint.

40. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 40 of the Third-Party Complaint, and therefore deny the same.

41. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 41 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

42. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 42 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

43. The Altrad Defendants deny the allegations of Paragraph 43 of the Third-Party Complaint to the extent they are directed at the Altrad Defendants, and lack sufficient knowledge

or information to form a belief as to the truth of the allegations in Paragraph 43 of the Third-Party Complaint as to the other Third-Party Defendants, and therefore deny the same.

44. The Altrad Defendants deny the allegations of Paragraph 44 of the Third-Party Complaint to the extent they are directed at the Altrad Defendants, and lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 44 of the Third-Party Complaint as to the other Third-Party Defendants, and therefore deny the same.

“I. Cape Was Established As Part of a South African Mining Empire.”

45. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 45 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver’s characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

46. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 46 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver’s characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of

the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

47. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 47 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

48. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 48 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

49. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 49 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the

Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

50. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 50 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

51. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 51 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of

the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

52. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 52 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

53. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 53 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

54. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 54 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the

Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

55. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 55 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

56. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 56 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of

the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

57. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 57 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

58. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 58 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

59. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 59 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the

Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

60. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 60 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

61. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 61 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of

the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

62. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 62 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

63. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 63 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

64. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 64 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the

Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

65. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 65 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

66. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 66 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of

the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

67. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 67 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

68. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 68 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

69. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 69 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the

Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

“II. Cape Created NAAC to Facilitate Its Asbestos Scheme.”

70. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 70 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

71. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 71 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of

the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

72. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 72 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

73. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 73 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

74. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 74 of the Third-Party Complaint, and therefore deny the same.

75. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 75 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

76. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 76 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

77. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 77 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's

characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

78. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 78 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

79. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 79 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

80. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 80 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

“III. Cape Led Efforts in the U.S. and Internationally to Hide the Risks of Asbestos.”

81. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 81 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

82. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 82 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny

the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

83. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 83 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

84. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 84 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

85. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 85 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

86. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 86 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

87. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 87 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's

characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

88. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 88 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

“IV. Cape Implemented a Strategy to Evade Liability in the United States.”

89. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 89 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

90. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 90 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

91. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 91 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

92. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 92 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's

characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

93. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 93 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

94. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 94 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

95. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 95 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

96. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 96 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

97. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 97 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's

characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

98. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 98 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

99. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 99 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

100. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 100 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

101. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 101 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

102. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 102 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's

characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

103. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 103 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

104. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 104 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

105. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 105 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

“V. The Oppenheimers Implemented a Strategy to Further Evade Responsibility.”

106. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 106 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

107. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 107 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny

the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

108. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 108 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

109. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 109 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

110. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 110 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

111. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 111 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

“VI. In Subsequent Years, There Have Been Changes to Third-Party Defendants.”

112. The Altrad Defendants deny that they are successors in interest or beneficiaries of Cape's alleged liability-avoidance scheme, and further deny that they are co-responsible for Cape's alleged tortious conduct. The Altrad Defendants lack sufficient knowledge or information to form

a belief as to the truth of the remaining allegations in Paragraph 112 of the Third-Party Complaint, and therefore deny the same.

113. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 113 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

114. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 114 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

115. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 115 of the Third-Party Complaint, and therefore deny the same. To the extent that the allegations of Paragraph 115 imply or attempt to create rights for

the Receiver to amend the Third-Party Complaint beyond the rights created under the South Carolina Rules of Civil Procedure, the Altrad Defendants aver that such allegations constitute legal conclusions which need not be admitted or denied. To the extent the Court requests a response, the allegations are denied.

116. The Altrad Defendants deny the allegations in Paragraph 116 of the Third-Party Complaint.

117. The Altrad Defendants deny the allegations in Paragraph 117 of the Third-Party Complaint. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

118. The Altrad Defendants deny the allegations in Paragraph 118 of the Third-Party Complaint. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

119. The Altrad Defendants deny the allegation in Paragraph 119 of the Third-Party Complaint that are directed to the Altrad Defendants. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 119 of the

Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

120. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 120 of the Third-Party Complaint, and therefore deny the same.

121. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 121 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

122. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 122 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

123. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 123 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

124. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 124 of the Third-Party Complaint, and therefore deny the same. To the extent this Paragraph paraphrases, quotes, or references documents cited in the Third-Party Complaint, the Altrad Defendants are without sufficient information to admit or deny the validity or accuracy of these documents. The Altrad Defendants deny the Receiver's characterization of these documents and respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain unfounded opinions of the author and/or others. The Altrad Defendants reserve all objections to the admissibility and/or relevance of these documents.

FIRST CAUSE OF ACTION
UNJUST ENRICHMENT
(Against All Third-Party Defendants)

125. As to Paragraph 125 of the Third-Party Complaint, the Altrad Defendants incorporate and re-allege their answers to Paragraphs 1 through 124 as though fully set forth herein.

126. The Altrad Defendants aver that the allegations of Paragraph 126 of the Third-Party Complaint constitute legal conclusions to which no answer is required. To the extent the Court requires a response, the allegations are denied.

127. The Altrad Defendants deny the allegation in Paragraph 127 of the Third-Party Complaint that are directed to the Altrad Defendants. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 127 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

128. The Altrad Defendants deny the allegation in Paragraph 128 of the Third-Party Complaint that are directed to the Altrad Defendants. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 128 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

129. The Altrad Defendants deny the allegation in Paragraph 129 of the Third-Party Complaint that are directed to the Altrad Defendants. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 129 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

130. The Altrad Defendants deny the allegation in Paragraph 130 of the Third-Party Complaint that are directed to the Altrad Defendants. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 130 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

SECOND CAUSE OF ACTION
CONSTRUCTIVE TRUST
(Against All Third-Party Defendants)

131. As to Paragraph 131 of the Third-Party Complaint, the Altrad Defendants incorporate and re-allege their answers to Paragraphs 1 through 130 as though fully set forth herein.

132. The Altrad Defendants aver that the allegations of Paragraph 132 of the Third-Party Complaint constitute legal conclusions to which no answer is required. To the extent the Court requires a response, the allegations are denied.

133. The Altrad Defendants deny the allegation in Paragraph 133 of the Third-Party Complaint that are directed to the Altrad Defendants. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 133 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

134. The Altrad Defendants deny the allegation in Paragraph 134 of the Third-Party Complaint that are directed to the Altrad Defendants. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 134 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

135. The Altrad Defendants deny the allegation in Paragraph 135 of the Third-Party Complaint that are directed to the Altrad Defendants. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 135 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

136. The Altrad Defendants deny the allegation in Paragraph 136 of the Third-Party Complaint that are directed to the Altrad Defendants. The Altrad Defendants lack sufficient

knowledge or information to form a belief as to the truth of the allegations in Paragraph 136 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

THIRD CAUSE OF ACTION
ALTER EGO AND VEIL-PIERCING LIABILITY
(Against All Third-Party Defendants)

137. As to Paragraph 137 of the Third-Party Complaint, the Altrad Defendants incorporate and re-allege their answers to Paragraphs 1 through 136 as though fully set forth herein.

138. The Altrad Defendants aver that the allegations of Paragraph 138 of the Third-Party Complaint constitute legal conclusions to which no answer is required. To the extent the Court requires a response, the allegations are denied.

139. The Altrad Defendants aver that the allegations of Paragraph 139 of the Third-Party Complaint constitute legal conclusions to which no answer is required. To the extent the Court requires a response, the allegations are denied.

140. The Altrad Defendants deny the allegation in Paragraph 140 of the Third-Party Complaint that are directed to the Altrad Defendants. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 140 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

141. The Altrad Defendants deny the allegation in Paragraph 141 of the Third-Party Complaint that are directed to the Altrad Defendants. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 141 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

FOURTH CAUSE OF ACTION
ACCOUNTING
(Against All Third-Party Defendants)

142. As to Paragraph 142 of the Third-Party Complaint, the Altrad Defendants incorporate and re-allege their answers to Paragraphs 1 through 141 as though fully set forth herein

143. The Altrad Defendants avers that the allegations of Paragraph 143 of the Third-Party Complaint constitute legal conclusions to which no answer is required. To the extent the Court requires a response, the allegations are denied.

144. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 144 of the Third-Party Complaint, and therefore deny the same.

145. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 145 of the Third-Party Complaint, and therefore deny the same.

146. The Altrad Defendants deny the allegation in Paragraph 146 of the Third-Party Complaint that are directed to the Altrad Defendants. The Altrad Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 146 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

PRAYER FOR RELIEF

The Altrad Defendants deny that the Third-Party Plaintiff is entitled to any relief set forth in the Prayer for Relief on page 65 of the Third-Party Complaint (inclusive of all sub-parts) that are directed to the Altrad Defendants. The Altrad Defendants lack sufficient knowledge or information to form a belief as to whether the Third-Party Plaintiff is entitled to any relief set forth

in the Prayer for Relief on page 65 of the Third-Party Complaint that are directed to other Third-Party Defendants, and therefore deny the same.

RESERVATION OF RIGHTS AND GENERAL DENIAL

The Altrad Defendants reserve the right to amend their pleadings in accordance with the South Carolina Rules of Civil Procedure or applicable law and to the extent they learn of new or additional information during discovery or otherwise. Any allegation not specifically admitted above is denied. The Altrad Defendants hereby assert the following defenses in total and/or partial bar of the claims for relief and/or alleged damages sought in the Third-Party Complaint. By including the following defenses, the Altrad Defendants do not assume the burden of proof with respect to any defense for which the Third-Party Plaintiff carries the burden.

DEFENSES

1. This Court lacks personal jurisdiction over the Altrad Defendants pursuant to SCRCP 12(b)(2), for at least the following reasons:

- a. The Court has no general personal jurisdiction over the Altrad Defendants.
- b. The Court has no specific personal jurisdiction over the Altrad Defendants.
- c. The minimal and conclusory allegations pleaded in the Third-Party Complaint that are specific to the Altrad Defendants are insufficient to establish personal jurisdiction under any legal theory.
- d. The Third-Party Complaint does not establish personal jurisdiction over the Altrad Defendants through specific allegations that would support a veil-piercing, alter ego, single business enterprise, “guiding spirit,” or any related theory of personal jurisdiction.

2. The Receiver does not have authority to prosecute this receivership action, and the receivership should be dissolved, for at least the following reasons:

- a. Cape PLC, a Jersey company with registration number 108031, was not lawfully served in the *Park* Lawsuit.
- b. Cape PLC, a Jersey company, was not lawfully served with either the summons and complaint or with the Motion to Appoint Receiver (in violation of South Carolina Code § 15-65-20).
- c. Park's counsel attached no proof of service to his Motion to Appoint Receiver showing lawful service on Cape PLC. In fact, despite the motion representing to the Court that the proof of service was attached as Exhibit A, in fact it was not.
- d. On August 21, 2023, other Third-Party Defendants filed a Motion to Dissolve the Receivership. Their arguments included the lack of proof of service of either the *Park* Complaint or the Motion to Appoint Receiver upon Cape PLC.
- e. On August 28, 2023—more than fifteen months after this Court was told the *Park* matter was “fully resolved”—counsel for Mr. Park filed a “Notice of Filing of Ommitted (sic) Exhibit,” attaching an Affirmation of Andrew Morgan regarding his claimed service of the First Amended Summons—not the First Amended Complaint, just the First Amended Summons—on “Cape PLC”, an entity “that carries Companies House Reference Number 00040203.” However, as stated by Rule 4, SCRCP, “[t]he summons and complaint must be served together.” Because Mr. Morgan avers that he only served the First Amended Summons, and because Mr. Morgan attaches no

exhibit showing that he served both the summons and complaint, the purported service described in Mr. Morgan's Affirmation was ineffective.

- f. The Motion to Appoint Receiver represents that Cape "fail[ed] to respond to the **Second** Amended Summons in this action, properly served pursuant to Article 10 of the Hague Convention on March 8, 2022, *See Exhibit A.*" (emphasis added); Exhibit 2 at 5. The document filed by Mr. Park on August 28, 2023 does not aver to service of a **Second** Amended Summons on March 8, 2022; on the contrary, it avers to service of a **First** Amended Summons on December 14, 2021. At best it indicates service of the **First** Amended Summons on the UK entity with Companies House Reference Number 00040203. *Id.* Moreover, it does not allege that this occurred in March 2022, it alleges that the mailing occurred "[o]n 14 December 2021" and that under "CPR Part 6.26, proceedings sent by First Class Royal Mail post to an address within the jurisdiction are deemed to have been served on "*the second day after it was posted, left with, delivered to or collected by the relevant service provider ...*" Exhibit 1 at 3-4 (emphasis in original). This would make service of that **First** Amended Summons on December 16, 2021.
- g. Thus, the *Park* Motion to Appoint Receiver incorrectly told this Court that a U.K. company named Cape PLC was served with the Second Amended Summons on March 8, 2022, when in fact (1) there is no U.K. company named Cape PLC that is currently in existence, (2) the purported service

was of the First Amended Summons, and (3) the purported service of the First Amended Summons allegedly occurred on December 16, 2021.

- h. As of the date of this filing, there is still no proof of service of the **Second** Amended Summons and Second Amended Complaint on Cape PLC, as required by Rule 4, SCRCP.
- i. Neither the *Park* Motion to Appoint Receiver, nor the *Park* Order Appointing Receiver, made any reference to Cape Intermediate Holdings Limited, which is the current name of the U.K. entity “that carries Companies House Reference Number 00040203,” as Mr. Morgan admits in Paragraph 4 of his Affirmation. Even if there was some evidence that Cape Intermediate Holdings Limited (“CIHL”) had been served with the Motion to Appoint Receiver (there is not), because CIHL was not referenced by name in the *Park* Motion to Appoint Receiver, there was no way for it to have notice that its property was the subject of the Motion to Appoint Receiver, in violation of South Carolina Code § 15-65-20. Further, because CIHL was not referenced by name in the *Park* Order Appointing Receiver, it was ineffective to create a receivership over CIHL, which the public record and Mr. Morgan’s Affirmation clearly show is the current name of U.K. entity number 0040203—the entity originally known as Cape Asbestos Company Limited. Consequently, the *Park* Order Appointing Receiver did not lawfully create a receivership over Cape PLC, the Jersey company, or Cape Intermediate Holdings Limited, the U.K. company.

- j. The Court did not perform any of the steps legally necessary to appoint a receiver over Cape PLC for purposes of the *Park* Lawsuit, including by confirming lawful service of process in the *Park* Lawsuit, entering default against Cape PLC, granting a default judgment against Cape PLC, and entering judgment against Cape PLC purporting to reflect a liquidated sum of damages due to the *Park* plaintiffs based on a sufficient factual showing.
- k. Nor could there ever be an entry of default as to Cape PLC or CIHL because the First Amended Complaint was superseded by the Second Amended Complaint before the deadline to file a responsive pleading expired, and there is no proof of service that either entity was ever served with the Second Amended Complaint, which would have restarted the responsive pleading clock as to that operative pleading. In other words, with respect to Cape PLC and CIHL, there was no default as to the First Amended Complaint because it was superseded before the responsive pleading deadline expired, and there was no default as to the Second Amended Complaint because there is no filed proof of service showing that the Second Amended Complaint was ever served on either entity.
- l. The Order Appointing Receiver in the *Park* Lawsuit was based on additional incorrect representations to this Court, including that: (a) Cape PLC is “dissolved,” (b) Cape PLC has “forfeited its charter,” (c) Cape PLC was lawfully served with the Second Amended Summons in the *Park* Lawsuit, (d) Cape PLC is a U.K. company, and (e) Cape PLC is the successor-in-interest to the Cape Asbestos Company Limited. None of these contentions, which were alleged in the Motion to Appoint Receiver, and which were reflected in the Order

Appointing Receiver, were true, as any reasonably diligent review of the public record would have revealed.

- m. The Jersey company presently known as Cape PLC is **not** the successor-in-interest to the U.K. company Cape Asbestos Company Limited, as any reasonably diligent review of the public record would have revealed. There was no U.K. company known as Cape PLC at the time of the *Park* Motion to Appoint Receiver, and there is no U.K. company known as Cape PLC today. Indeed, Paragraph 4 of the Affirmation of Mr. Morgan admits that U.K. entity number 00040203—the entity originally incorporated in the U.K. as Cape Asbestos Company Limited—now bears the name Cape Intermediate Holdings Limited, not Cape PLC. Yet neither the *Park* Motion to Appoint Receiver, nor the *Park* Order Appointing Receiver, purported to seek or create a receivership over Cape Intermediate Holdings Limited.
- n. The Order Appointing Receiver in the *Park* Litigation is unconstitutional and unlawful because the Court does not have, and made no finding that it has, personal jurisdiction over the purported target of the receivership—Cape PLC.
- o. The Order Appointing Receiver in the *Park* Litigation is unlawful for the additional and independent reason that, as stated by the South Carolina Supreme Court, “an adjudication of a receivership is a harsh and drastic remedy, one to be granted only with great caution.” *Penn Mut. Life Ins. Co. v. Cudd*, 172 S.C. 88, 91, 172 S.E. 787, 788 (1934). Principles of equity did not and do not support the appointment of a receiver over a foreign company incorporated in Jersey (a) that is not dissolved and is a going concern, (b) with no assets in South Carolina,

(c) based on a single purported default, (d) in a lawsuit in which it was not served with process, and (e) without any adjudication or allocation of liability, or entry of default judgment, in the *Park* Litigation where the receivership was created.

- p. There is no justiciable controversy, and the Court has no jurisdiction to issue the advisory opinion sought by the Receiver, because the *Park* Lawsuit was “completely resolved” prior to the filing of the Motion to Appoint Receiver, without any finding of liability as to Cape PLC or CIHL. Thus, Mr. Park lacked standing to even seek the appointment of a receiver, as he was not and is not a judgment creditor of Cape PLC.
- q. There is no justiciable controversy, and the Court has no jurisdiction to issue the advisory opinion sought by the Receiver, because the Motion to Appoint Receiver seeks to advance the plaintiffs’ position in unrelated asbestos cases rather than advance the interests of the clients in the *Park* Lawsuit.
- r. There is no justiciable controversy, and the Court has no jurisdiction to issue the advisory opinion sought by the Receiver, because the Receiver appointed in the *Park* Lawsuit does not and cannot purport to seek relief on behalf of the Park family.
- s. The Receiver, who allegedly stands in the shoes of Cape PLC as its court-appointed representative and must impartially *defend* its interests, does not have standing to pursue claims that *maximize* liability for Cape PLC in an effort to pass along those manufactured liabilities to third parties via derivative alter ego / veil piercing claims.

- t. The Order Appointing Receiver, based on its plain language and pursuant to South Carolina law, is limited to the *Park* Lawsuit and does not lawfully authorize the Receiver to take actions in any other lawsuit, including the present *Tibbs* Lawsuit.
- u. The Order Appointing Receiver, based on its plain language and pursuant to South Carolina law, does not authorize the Receiver to file lawsuits on behalf of a foreign company against other foreign and out-of-state companies, whether in the *Park* Lawsuit or the present *Tibbs* Lawsuit.
- v. The Order Appointing Receiver is unlawful because it purports to give the Receiver “the power and authority fully [sic] administer all assets of Cape,” when S.C. Code § 15-65-10(4) limits a South Carolina receivership “in like cases, of the property within this State of foreign corporations.” The reference to “like cases” regarding foreign corporations is a clear limitation on a receiver’s power only where a South Carolina court has *in rem* jurisdiction. On its face, the statute only allows a South Carolina court to appoint a receiver over the assets of a foreign corporation that are found “within this State.”
- w. The Order Appointing Receiver is unlawful to the extent based on S.C. Code § 15-65-10(4), because public records show that Cape PLC is not dissolved, not insolvent, and not in imminent danger of insolvency. It has not forfeited its corporate rights in its jurisdiction of incorporation, Jersey, and it never had corporate rights to forfeit in South Carolina, including because South Carolina has no personal jurisdiction over Cape PLC. The same is true as to CIHL, which is not dissolved or insolvent and which is an active company in the U.K.

- x. The Order Appointing Receiver is unlawful to the extent based on S.C. Code § 15-65-10(4), because that statute does not allow a South Carolina court to create a receivership over a foreign corporation that does not have any property in the state and has not had any judgment entered against it.
- y. The Order Appointing Receiver is unlawful to the extent based on S.C. Code § 15-65-10(5), because the appointment of a South Carolina receiver over an active Jersey company that was first incorporated in 2011—decades after the alleged events identified as the “fraud warranting appointment of a receiver”—is not consistent with “existing practice” in South Carolina.
- z. The Order Appointing Receiver does not and cannot apply outside the *Park* Lawsuit and does not and cannot authorize the Receiver to assert claims in other lawsuits, including the present *Tibbs* Lawsuit.
- aa. The Receiver does not have authority to pursue claims through the vehicle of a third-party complaint under Rule 14, SCRCP, in the *Tibbs* Lawsuit because that procedural vehicle only allows for derivative liability for claims adjudicated in the primary action, *i.e.* the Tibbs’ underlying asbestos exposure claims against the primary defendants. Only a receiver appointed under S.C. Code §§ 15-65-10(2) or 15-65-10(3) “[a]fter judgment” has authority to pursue such derivative claims. The Receiver in the *Park* Lawsuit was appointed under §§ 15-65-10(4) and 15-65-10(5), so he is ineligible to pursue derivative claims through a third-party complaint filed in a different lawsuit.
- bb. The Order Appointing Receiver was not entered in the *Tibbs* Lawsuit, which violated the due process rights of all third-party defendants in the *Tibbs* Lawsuit

who were stripped of the ability to oppose or appeal that order in a separate lawsuit to which they were not parties.

- cc. Cape PLC, a Jersey company, was not lawfully served in the *Tibbs* Lawsuit. Cape PLC was not lawfully served with the summons and complaint in the *Tibbs* Lawsuit, nor was it lawfully served with any Motion to Appoint Receiver in the *Tibbs* Lawsuit, in violation of S.C. Code § 15-65-20. Footnote 13 of the *Park* Motion to Appoint Receiver claims that “Plaintiffs have placed into the hands of DHL, an international carrier, a copy of this motion and its exhibits, for delivery to the same address at which service was perfected.” However, there is no proof of service in the record to substantiate the alleged service of the Motion to Appoint Receiver on Cape PLC. Further, even assuming the accuracy of Footnote 13, the alleged “address at which service was perfected” was not in Jersey, as reflected in the Affirmation of Mr. Morgan.
- dd. There is no proof of service in the record that CIHL was ever served with any Motion to Appoint Receiver, in the *Park* Lawsuit, in the *Tibbs* Lawsuit, or in any other lawsuit filed in South Carolina, in violation of S.C. Code § 15-65-20. Nor is there even a representation to the Court in the *Park* Motion to Appoint Receiver that CIHL was served with the motion. On the contrary, the motion only claims that “Plaintiffs, concurrently herewith, have provided copies of this motion to Cape PLC.” Since Mr. Park’s own filing admits that CIHL was not served with the Motion to Appoint Receiver, and since the Motion and the Order contain no reference CIHL, no receivership was lawfully created as to that entity.

- ee. The Order Appointing Receiver must be dissolved for purposes of the *Tibbs* Lawsuit because CIHL — the company originally known as Cape Asbestos Company Limited — is not named as a primary defendant by the Tibbs family. Thus, even if this Court had appointed a Receiver over CIHL, that Receiver could not assert Third-Party claims in the *Tibbs* Lawsuit because CIHL is not a primary defendant in the *Tibbs* Lawsuit. A party who is not a primary defendant has no primary liability to pass along to third-party defendants. CIHL in fact has no legal standing to assert any claims in the *Tibbs* Lawsuit.
- ff. The Order Appointing Receiver violates the South Carolina receivership statute, which does not authorize receiverships over foreign companies over which the South Carolina courts have no jurisdiction, does not authorize receiverships over foreign companies with no property in South Carolina, and does not authorize receivers to file lawsuits on behalf of foreign corporations.
- gg. The Order Appointing Receiver is unlawful and violates principles of international comity because it purports to interfere with the pre-existing exclusive jurisdiction of the U.K. courts, which previously exercised jurisdiction over the assets of the entity previously known as Cape Asbestos Company Limited in 2006, as described in the Scheme of Arrangement summarized in Note 32 of Cape PLC's Annual Report 2022, which is available to the public for download from the Jersey companies website.
- hh. The Order Appointing Receiver is unlawful and violates principles of international comity because it purports to interfere with the pre-existing exclusive jurisdiction of the Jersey courts to exercise oversight and management

over the internal affairs of a Jersey company. Similarly, as to CIHL, the U.K. courts have pre-existing exclusive jurisdiction regarding the oversight and management of the internal affairs of a U.K. company.

- ii. The Receiver is acting *ultra vires* in the *Tibbs* Lawsuit, has incurable conflicts of interest, and has violated the express terms of the Order Appointing Receiver because he has not taken “any and all steps necessary to protect the interests of Cape whatever they may be,” but instead is acting to expand the liabilities of Cape through a receivership that is wholly controlled by the same plaintiff’s attorneys asserting claims adverse to Cape.
- jj. The Receiver is acting *ultra vires* in the *Tibbs* Lawsuit, has incurable conflicts of interest, and is incapable of acting as a receiver, because Mr. Protopapas is not “entirely impartial,” but instead is acting as “one of the agents of the plaintiff, actively pressing its claims against the defendant.” *Va.-Carolina Chem. Co. v. Hunter*, 84 S.C. 214, 224, 66 S.E. 177, 180 (1909) (setting aside receivership order). As stated by the South Carolina Supreme Court, “[n]o special fitness or peculiar circumstances are shown which might justify the appointment of one so closely connected with one of the parties in interest.” *Id.* The Supreme Court has warned more than once that appointing “an agent of a creditor of the debtor, who had been placed in receivership,” is improper. *Penn Mut. Life Ins. Co. v. Cudd*, 172 S.C. 88, 92, 172 S.E. 787, 789 (1934). The Third-Party Complaint amply demonstrates that Mr. Protopapas seeks to *impair* Cape PLC’s rights for the benefit of unspecified nonparty asbestos claimants in this and other lawsuits *against* Cape PLC, and whose claims the Receiver has no right to assert.

kk. The Order Appointing Receiver violates *inter alia* the Dormant Commerce Clause, the Foreign Commerce Clause, the Taking Clause, the Due Process Clause, the Excessive Fines Clause, the Equal Protection Clause, and the Supremacy Clause of the U.S. Constitution.

3. The Court lacks subject matter jurisdiction pursuant to SCRCP 12(b)(1), for at least the following reasons:

- a. The Receiver has no standing to bring this action because Cape PLC is not the successor-in-interest to Cape Asbestos Company Limited.
- b. The Receiver has no standing because he was never appointed as the receiver of Cape Intermediate Holdings Limited, which is not a named defendant in the *Tibbs* action, is not named in the motion to appoint the Receiver, and is not named in the order appointing the Receiver.
- c. The Receiver has no standing to bring this action because the *Park* receivership order purporting to appoint him receiver over Cape PLC is unlawful for the reasons explained in the motion to dissolve the receivership.
- d. The Receiver has no standing to assert self-piercing claims seeking to pierce the corporate veil of the entity over which he is a receiver.
- e. The Receiver's purported third-party complaint seeks an unlawful and expansive advisory opinion that cannot be reconciled with the limited scope of third-party practice in South Carolina.

- f. There is no derivative liability that the Receiver could seek to impose through the vehicle of a third-party complaint under SCRCP 14 because CIHL is not a named defendant in the *Tibbs* action.

4. The Receiver fails to state a claim for which relief can be granted pursuant to SCRCP 12(b)(6), for at least the following reasons:

- a. The Receiver fails to allege any facts specific to the Altrad Defendants that would support the elements of any of the claims alleged.
- b. The Receiver alleges in Paragraph 116 of the Third-Party Complaint that AIA, through certain foreign subsidiaries, acquired “Cape” on or around October 9, 2017, which is decades after the alleged wrongdoing occurred.

5. The action should be dismissed or stricken pursuant to SCRCP 12(e) because the Receiver must provide a more definite statement as to the allegations supporting the claims against the Altrad Defendants specifically in order to allow them to formulate a defense.

6. The action should be dismissed or stricken pursuant to SCRCP 14(a) because the Third-Party Complaint does not comply with the requirements for third-party practice in South Carolina.

- 7. The Receiver’s claims are barred by lack of standing.
- 8. The Receiver’s claims are barred by lack of capacity.
- 9. The Receiver’s claims fail because he asserts equitable claims that belong exclusively to the Plaintiffs in the primary action.
- 10. The Receiver fails to allege a ripe and justiciable controversy.
- 11. The Receiver’s claims are barred by the doctrine of laches.
- 12. The Receiver’s claims are barred by statutes of limitation and/or statutes of repose.

13. The Receiver's claims are barred by the doctrines of estoppel and/or waiver.
14. The Receiver's claims are barred by the doctrines of res judicata, collateral estoppel, and/or law of the case.
15. The Receiver's claims are barred because Defendant Cape PLC has no primary liability to Plaintiffs.
16. The Receiver's claims are barred by the doctrine of unclean hands.
17. The Receiver's claims are barred because the costs for which Cape PLC seeks defense, indemnification, or reimbursement are unreasonable, unnecessary, and collusive.
18. The Receiver's claims fail to the extent that any other entity is responsible for Cape PLC's defense and indemnity costs.
19. The Receiver's claims are barred by settlement and release.
20. The Receiver's claims are barred by spoliation.
21. The Receiver's claims are barred by the Receiver's failure to protect the interests of Cape PLC and failure to comply with the terms of the order appointing the Receiver.
22. The Receiver's claims are barred by South Carolina's Door Closing Statute, S.C. Code § 15-5-150.
23. The Receiver's claims are barred because the relevant equitable factors do not support any of the equitable relief sought.
24. The Altrad Defendants rely on and incorporate by reference as if fully recited herein all the defenses or affirmative defenses pleaded by any other Third-Party Defendant in this action.
25. To the extent not already included above, the Altrad Defendants incorporate by reference as if fully recited herein all defenses and arguments presented in any motion filed by the Altrad Defendants or any other Third-Party Defendant.

26. The Altrad Defendants reserve their right to amend this Answer to assert any additional defense, affirmative defense, or counterclaim of which they may become aware subsequent to the filing hereof.

PRAYER FOR RELIEF

The Altrad Defendants respectfully request that the Third-Party Complaint be dismissed in its entirety and with prejudice and that the Altrad Defendants be awarded their reasonable attorneys' fees, costs, and any such other and further relief as the Court deems just and proper.

The Altrad Defendants demand a jury trial on all issues so triable.

Respectfully submitted this 2nd day of January, 2024.

WOMBLE BOND DICKINSON (US) LLP

/s/ M. Elizabeth O'Neill

M. Elizabeth O'Neill (S.C. Bar No. 104013)

One Wells Fargo Center

301 S. College Street, Suite 3500

Charlotte, North Carolina 28202-6037

Ph.: (704) 350-6310

Elizabeth.ONeill@wbd-us.com

WBD.SCASBESTOS@wbd-us.com

Kevin A. Hall (S.C. Bar No. 015063)

M. Todd Carroll (S.C. Bar No. 74000)

1221 Main Street, Suite 1600

Columbia, South Carolina 29201

(803) 454-7710

kevin.hall@wbd-us.com

todd.carroll@wbd-us.com

*Attorneys for Third-Party Defendants Mohed Altrad
and Altrad Investment Authority SAS*

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

John A. Tibbs and Margaret B. Tibbs,

Plaintiffs,

v.

3M Company, *et al.*,

Defendants.

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, *et al.*,

Third-Party Defendants.

Case No. 2023-cp-40-01759

**THIRD-PARTY DEFENDANTS
CHARTER CONSOLIDATED LTD.,
ESAB CORPORATION, AND
CENTRAL MINING AND
INVESTMENT CORPORATION
LTD.'S ANSWER AND AFFIRMATIVE
DEFENSES TO THE THIRD-PARTY
COMPLAINT [FILED SUBJECT TO
PREVIOUSLY FILED MOTIONS TO
DISMISS, PENDING APPEAL]**

Jury Trial Requested

Third-Party Defendant Charter Consolidated Ltd. (“Charter”), ESAB Corporation (“ESAB”), and Central Mining and Investment Corporation Ltd. (“Central Mining”) hereby file their Answer to the Third-Party Complaint (the “Third-Part Complaint”) filed by “Cape plc, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly-appointed Receiver Peter D. Protopapas” (“Receiver”)¹ and any and all Cross-Claims

¹ The Receiver has not been given leave by the Court to intervene into the Tibbs case as a Defendant, and accordingly has no right to file a third-party complaint. Further, Cape plc is incorrectly identified “as successor in interest to Cape Asbestos Company Limited.” The Receiver in fact admits that Cape plc is not “a successor in interest to Cape Asbestos Company Limited” in ¶ 113 of the Third-Party Complaint: “Since the 1970s, Cape Asbestos Company Ltd. has undergone several changes to its organization, including (i) changing its name to Cape Industries

asserted previously, or in the future, by any co-defendants or third-party defendants. Charter, ESAB, and Central Mining are referred to collectively herein as the “Third-Party Defendants.”

Third-Party Defendants have filed notices of appeal regarding the Court’s December 6, 2023 Order denying Certain Third-Party Defendants’ Motions to Dissolve Receivership and Third-Party Defendants’ Motion to Dismiss for Lack of Personal Jurisdiction (“Appeal”). Accordingly, this matter is stayed pursuant to SCRAP 241, and neither the Court nor the Receiver have jurisdiction or authority to act pursuant to SCRAP 205.

Ltd. in 1974 (i.e., removing “Asbestos” from its name, soon after the onset of asbestos products-liability litigation); (ii) re-registering as a public company and changing its name to Cape Industries PLC in 1981; (iii) shortening its name to Cape PLC in 1989; (iv) changing its name to Cape Intermediate Holdings PLC in 2011; and (v) re-registering as a private company to become Cape Intermediate Holdings Ltd. in 2013.” Further, counsel for the Receiver admitted on the record at the hearing on the motions to dissolve the receivership and the motions to dismiss for lack of personal jurisdiction that: “Cape plc is this new company that was created in the Bailiwick of Jersey and not the Cape plc that has existed forever and is now known as Cape Intermediate Holdings Limited. Cape plc, the newly created Cape of 2011, which was essentially a tax entity...has no -- never did any business in the U.S., did not sell asbestos.”

Additionally, the Receiver was appointed over “Cape plc,” which is not a successor in interest to Cape Asbestos Company Limited. However, the Receiver has argued in subsequent filings that he is purporting to act on behalf of the entity presently known as Cape Intermediate Holdings Limited f/k/a Cape Intermediate Holdings plc, which the Receiver plead in ¶ 113 of the Third-Party Complaint is the successor in interest to Cape Asbestos Company Limited. Third-Party Defendants maintain that the Receiver has no authority to act on behalf of Cape Intermediate Holdings Limited.

The Third-Party Complaint defines “Cape” as “Cape PLC is the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) and its subsidiaries and global affiliates (collectively, “Cape”), which was and is a private company organized and existing under the laws of the United Kingdom, with its principal place of business in England.” Third-Party Complaint ¶ 40. As indicated above, the “private company” that is “existing” as Cape PLC is the entity created in 2011, and is not “successor in interest to Cape Industries Ltd.” Nevertheless, Third-Party Defendants will read and refer to any instances of “Cape” in the Third-Party Complaint, and in this Answer, as the United Kingdom entity that was originally known as Cape Asbestos Company Ltd., and is alleged to now be known as Cape Intermediate Holdings Limited. The use of “Cape” and “Cape plc” herein – reflecting the usage of those terms in the Third-Party Complaint – should not be construed as a waiver of any objections, challenges, or defenses to the Third-Party Complaint or to the receivership.

Third-Party Defendants submit this Answer without waiving and instead specifically preserving and incorporating herein (a) all of their objections and challenges to personal jurisdiction in South Carolina as well as all other grounds for dismissal, as set forth in their motions to dismiss filed on September 1, 2023 and subsequent filings and oral argument in support thereof (collectively, “12(b) Motions”); (b) all of their objections and challenges to the appointment of the Receiver, as set forth in their motions to dissolve the receivership filed on October 6, 2023 and subsequent filings and oral argument in support thereof (collectively, “Motions to Dissolve”); (c) all of their objections and challenges to the Receiver’s Proposed Order on December 4, 2023; (d) all of their objections and challenges to the Court’s December 6, 2023 Order denying Certain Third-Party Defendants’ Motions to Dissolve Receivership and Third-Party Defendants’ Motion to Dismiss for Lack of Personal Jurisdiction; (e) the grounds for Third-Party Defendants’ pending appeal of the Court’s December 6, 2023 Order denying Certain Third-Party Defendants’ Motions to Dissolve Receivership and Third-Party Defendants’ Motion to Dismiss for Lack of Personal Jurisdiction; and (f) that this matter is stayed pursuant to SCRAP 241, and that neither the Court nor the Receiver have jurisdiction or authority to act pursuant to SCRAP 205.

Unless expressly admitted herein, the allegations of the Third-Party Complaint are denied.

INTRODUCTORY STATEMENT

To the extent a response is required, Third-Party Defendants deny the allegations in the Introductory Statement of the Third-Party Complaint.

PARTIES

1. In response to Paragraph 1 of the Third-Party Complaint, Third-Party Defendants admit that an order was entered in another matter purportedly appointing Mr. Protopapas as receiver for Cape PLC and admits, upon information and belief, that Mr. Protopapas maintains

his principal place of business in Richland County. Third-Party Defendants deny the remaining allegations in Paragraph 1 of the Third-Party Complaint because the Receiver's appointment is not valid for the reasons set forth in the Motions to Dissolve and the Appeal.

2. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 2 of the Third-Party Complaint and therefore deny same.

3. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 3 of the Third-Party Complaint and therefore deny same.

4. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 4 of the Third-Party Complaint and therefore deny same.

5. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 5 of the Third-Party Complaint and therefore deny same.

6. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 6 of the Third-Party Complaint and therefore deny same.

7. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 7 of the Third-Party Complaint and therefore deny same.

8. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 8 of the Third-Party Complaint and therefore deny same.

9. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 9 of the Third-Party Complaint and therefore deny same.

10. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 10 of the Third-Party Complaint and therefore deny same.

11. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 11 of the Third-Party Complaint and therefore deny same.

12. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 12 of the Third-Party Complaint and therefore deny same.

13. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 13 of the Third-Party Complaint and therefore deny same.

14. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 14 of the Third-Party Complaint and therefore deny same.

15. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 15 of the Third-Party Complaint and therefore deny same.

16. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 16 of the Third-Party Complaint and therefore deny same.

17. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 17 of the Third-Party Complaint and therefore deny same.

18. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 18 of the Third-Party Complaint and therefore deny same.

19. Without waiving and instead specifically preserving all of its objections and challenges to personal jurisdiction in South Carolina as set forth in the 12(b) Motions and the Appeal, Charter admits that it is a corporation organized under the laws of England, United Kingdom, with its principal place of business located in Essex, England, United Kingdom.

20. Without waiving and instead specifically preserving all of its objections and challenges to personal jurisdiction in South Carolina as set forth in the 12(b) Motions and the Appeal, ESAB Corporation admits that it is a corporation organized under the laws of the State of Delaware, with its principal place of business in Montgomery County, Maryland.

21. Without waiving and instead specifically preserving all of its objections and challenges to personal jurisdiction in South Carolina as set forth in the 12(b) Motions and the Appeal, Central Mining admits that it is a corporation organized under the laws of England, United Kingdom, with its principal place of business located in Essex, England, United Kingdom.

22. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 22 of the Third-Party Complaint and therefore deny same.

23. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 23 of the Third-Party Complaint and therefore deny same.

24. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 24 of the Third-Party Complaint and therefore deny same.

25. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 25 of the Third-Party Complaint and therefore deny same.

26. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 26 of the Third-Party Complaint and therefore deny same.

27. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 27 of the Third-Party Complaint and therefore deny same.

28. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 28 of the Third-Party Complaint and therefore deny same.

29. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 29 of the Third-Party Complaint and therefore deny same.

30. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 30 of the Third-Party Complaint and therefore deny same.

31. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 31 of the Third-Party Complaint and therefore deny same.

32. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 32 of the Third-Party Complaint and therefore deny same.

33. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 33 of the Third-Party Complaint and therefore deny same.

34. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 34 of the Third-Party Complaint and therefore deny same.

35. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 35 of the Third-Party Complaint and therefore deny same.

JURISDICTION

36. The allegations in Paragraph 36 of the Third-Party Complaint purport to state conclusions of law to which no response is required. Nevertheless, Third-Party Defendants deny that the Court has jurisdiction over the matters alleged herein and deny that the Receiver's appointment is valid for the reasons set forth in the 12(b) Motions, the Motions to Dissolve, and the Appeal. To the extent a further response is deemed required, Third-Party Defendants deny the remaining allegations in Paragraph 36 of the Third-Party Complaint.

37. The allegations in Paragraph 37 of the Third-Party Complaint purport to state conclusions of law to which no response is required. Nevertheless, Third-Party Defendants deny the allegations in Paragraph 37 as to them and deny that the Court has jurisdiction over them for the reasons set forth in the 12(b) Motions and the Appeal. To the extent a further response is deemed required, Third-Party Defendants deny the remaining allegations in Paragraph 37 of the Third-Party Complaint.

VENUE

38. The allegations in Paragraph 38 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response to Paragraph 38 of the Third-Party Complaint is deemed required, the Third-Party Defendants deny the allegations in Paragraph 38 of the Third-Party Complaint.

FACTUAL BACKGROUND

39. Paragraph 39 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 39 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 39 of the Third-Party Complaint directed at them. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 39 of the Third-Party Complaint that are directed at other third-party defendants in this action and therefore deny same.

40. Paragraph 40 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which

contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 40 of the Third-Party Complaint is deemed required, Third-Party Defendants deny that Cape PLC is the “successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.).” Third-Party Defendants admit, upon information and belief, that Cape PLC is a presently existing private company that was formed in 2011. Third-Party Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 40 of the Third-Party Complaint and therefore deny same.

41. Paragraph 41 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 41 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 41 of the Third-Party Complaint and therefore deny same.

42. Paragraph 42 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the

validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 42 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 42 of the Third-Party Complaint and therefore deny same.

43. Paragraph 43 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 43 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 43 of the Third-Party Complaint directed at them. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 43 of the Third-Party Complaint that are directed at Cape plc or other third-party defendants in this action and therefore deny same.

44. Paragraph 44 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party

Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 44 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 44 of the Third-Party Complaint directed at them. Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 44 of the Third-Party Complaint that are directed at Cape plc or other third-party defendants in this action and therefore deny same.

I. Cape Was Established As Part of a South African Mining Empire.

45. Paragraph 45 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 45 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 45 of the Third-Party Complaint and therefore deny same.

46. Paragraph 46 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 46 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 46 of the Third-Party Complaint and therefore deny same.

47. Paragraph 47 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 47 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 47 of the Third-Party Complaint and therefore deny same.

48. Paragraph 48 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 48 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 48 of the Third-Party Complaint directed at them. Third-Party Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 48 of the Third-Party Complaint and therefore deny same.

49. Paragraph 49 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 49 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 49 of the Third-Party Complaint and therefore deny same.

50. Paragraph 50 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. Additionally, many of the allegations in Paragraph 50 of the Third-Party Complaint constitute legal conclusions to which no response is required. To the extent a further response to Paragraph 50 of the Third-Party Complaint is deemed required,, Central Mining denies that it “controlled” Cape as Central Mining understands that term. Third-Party Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 50 of the Third-Party Complaint and therefore deny same.

51. Paragraph 51 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 51 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient

information to admit or deny the allegations in Paragraph 51 of the Third-Party Complaint and therefore deny same.

52. Paragraph 52 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. Additionally, many of the allegations in Paragraph 52 of the Third-Party Complaint constitute legal conclusions to which no response is required. To the extent a further response to Paragraph 52 of the Third-Party Complaint is deemed required, Central Mining and Charter deny that appropriate corporate formalities and separations were not maintained as between Central Mining, Charter, and the other entities identified in Paragraph 52 of the Third-Party Complaint. Third-Party Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 52 of the Third-Party Complaint and therefore deny same.

53. Paragraph 53 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on

such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 53 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 53 of the Third-Party Complaint and therefore deny same.

54. Paragraph 54 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 54 of the Third-Party Complaint is deemed required, Charter admits that it was formed in approximately 1965. Third-Party Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 54 of the Third-Party Complaint and therefore deny same.

55. Paragraph 55 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the

admissibility and/or relevance of these documents. Additionally, many of the allegations in Paragraph 55 of the Third-Party Complaint constitute legal conclusions to which no response is required. To the extent a further response to Paragraph 55 of the Third-Party Complaint is deemed required, Charter admits that it had certain direct and/or indirect ownership interests in Cape at various times but denies that appropriate corporate formalities and separations were not maintained as between Charter, Cape, and the other entities identified in Paragraph 55 of the Third-Party Complaint. Third-Party Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 55 of the Third-Party Complaint and therefore deny same.

56. Paragraph 56 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. Additionally, many of the allegations in Paragraph 56 of the Third-Party Complaint constitute legal conclusions to which no response is required. To the extent a further response to Paragraph 56 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 56 of the Third-Party Complaint.

57. Paragraph 57 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the

validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. Additionally, many of the allegations in Paragraph 57 of the Third-Party Complaint constitute legal conclusions to which no response is required. To the extent a further response to Paragraph 57 of the Third-Party Complaint is deemed required, Charter admits that it maintained office space at 40 Holborn Viaduct at various times but denies that the corporate separation between Charter, Anglo and the other entities identified in Paragraph 57 of the Third-Party Complaint was superficial. Third-Party Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 57 of the Third-Party Complaint and therefore deny same.

58. Paragraph 58 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 58 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 58 of the Third-Party Complaint.

59. Paragraph 59 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. Additionally, many of the allegations in Paragraph 59 of the Third-Party Complaint constitute legal conclusions to which no response is required. To the extent a further response to Paragraph 59 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 59 of the Third-Party Complaint directed at them. Third-Party Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 59 of the Third-Party Complaint and therefore deny same.

60. Paragraph 60 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. Additionally, many of the allegations in Paragraph 60 of the Third-Party Complaint constitute legal conclusions to which no response is

required. To the extent a further response to Paragraph 60 of the Third-Party Complaint is deemed required, Charter admits that it had certain direct and/or indirect ownership interests in Cape at various times but denies that appropriate corporate formalities and separations were not maintained as between Charter, Cape, and the other entities identified in Paragraph 60 of the Third-Party Complaint. Third-Party Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 60 of the Third-Party Complaint and therefore deny same.

61. Paragraph 61 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 61 of the Third-Party Complaint is deemed required, Charter admits that it had certain direct and/or indirect ownership interests in Cape at various times but denies that appropriate corporate formalities and separations were not maintained as between Charter, Cape, and the other entities identified in Paragraph 61 of the Third-Party Complaint. Third-Party Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 61 of the Third-Party Complaint and therefore deny same.

62. Paragraph 62 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the

validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. Additionally, many of the allegations in Paragraph 62 of the Third-Party Complaint constitute legal conclusions to which no response is required. To the extent a further response to Paragraph 62 of the Third-Party Complaint is deemed required, Charter admits that it had certain direct and/or indirect ownership interests in Cape at various times but denies that appropriate corporate formalities and separations were not maintained as between Charter, Cape, and the other entities identified in Paragraph 62 of the Third-Party Complaint. Third-Party Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 62 of the Third-Party Complaint and therefore deny same.

63. Paragraph 63 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 63 of the Third-Party Complaint is deemed required, Charter admits that it had certain direct and/or indirect ownership interests in Cape at various times but denies that appropriate corporate formalities and separations were not maintained as between Charter, Cape, and the other entities

identified in Paragraph 63 of the Third-Party Complaint. Third-Party Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 63 of the Third-Party Complaint and therefore deny same.

64. Paragraph 64 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. Additionally, many of the allegations in Paragraph 64 of the Third-Party Complaint constitute legal conclusions to which no response is required. To the extent a further response to Paragraph 64 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 64 of the Third-Party Complaint.

65. Paragraph 65 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. Additionally, many of the allegations in

Paragraph 65 of the Third-Party Complaint constitute legal conclusions to which no response is required. To the extent a further response to Paragraph 65 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 65 of the Third-Party Complaint.

66. Paragraph 66 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 66 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 66 of the Third-Party Complaint and therefore deny same.

67. Paragraph 67 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. Additionally, many of the allegations in

Paragraph 67 of the Third-Party Complaint constitute legal conclusions to which no response is required. To the extent a further response to Paragraph 67 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 67 of the Third-Party Complaint directed at them. Third-Party Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 67 of the Third-Party Complaint and therefore deny same.

68. Paragraph 68 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 68 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 68 of the Third-Party Complaint and therefore deny same.

69. Paragraph 69 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on

such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 69 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 69 of the Third-Party Complaint and therefore deny same.

II. Cape Created NAAC to Facilitate Its Asbestos Scheme.

70. Paragraph 70 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 70 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 70 of the Third-Party Complaint and therefore deny same.

71. Paragraph 71 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on

such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 71 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 71 of the Third-Party Complaint and therefore deny same.

72. Paragraph 72 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 72 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 72 of the Third-Party Complaint and therefore deny same.

73. Paragraph 73 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the

admissibility and/or relevance of these documents. To the extent a further response to Paragraph 73 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 73 of the Third-Party Complaint and therefore deny same.

74. Paragraph 74 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 74 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 74 of the Third-Party Complaint and therefore deny same.

75. Paragraph 75 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph

75 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 75 of the Third-Party Complaint and therefore deny same.

76. Paragraph 76 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. Additionally, many of the allegations in Paragraph 76 of the Third-Party Complaint constitute legal conclusions to which no response is required. To the extent a further response to Paragraph 76 of the Third-Party Complaint is deemed required, Third-Party Defendants respectfully refer the Court to the legal decisions cited in Paragraph 76 for their contents, holdings, and subsequent treatment, deny that the Third-Party Complaint accurately characterizes controlling caselaw on this issue, and deny the remaining allegations in Paragraph 76 of the Third-Party Complaint.

77. Paragraph 77 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on

such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 77 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 77 of the Third-Party Complaint and therefore deny same.

78. Paragraph 78 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 78 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 78 of the Third-Party Complaint directed at them. Third-Party Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 78 of the Third-Party Complaint and therefore deny same.

79. Paragraph 79 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on

such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 79 of the Third-Party Complaint is deemed required, Charter denies that appropriate corporate formalities and separations were not maintained between Charter, Cape, and the other entities identified in Paragraph 79 of the Third-Party Complaint. Third-Party Defendants are without sufficient information to admit or deny the remaining allegations in Paragraph 79 of the Third-Party Complaint and therefore deny same.

80. Paragraph 80 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 80 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 80 of the Third-Party Complaint and therefore deny same.

III. Cape Led Efforts in the U.S. and Internationally to Hide the Risks of Asbestos

81. Paragraph 81 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the

Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 81 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 81 of the Third-Party Complaint and therefore deny same.

82. Paragraph 82 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 82 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 82 of the Third-Party Complaint and therefore deny same.

83. Paragraph 83 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which

contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 83 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 83 of the Third-Party Complaint and therefore deny same.

84. Paragraph 84 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 84 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 84 of the Third-Party Complaint and therefore deny same.

85. Paragraph 85 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on

such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 85 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 85 of the Third-Party Complaint and therefore deny same.

86. Paragraph 86 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 86 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 86 of the Third-Party Complaint and therefore deny same.

87. Paragraph 87 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the

admissibility and/or relevance of these documents. To the extent a further response to Paragraph 87 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 87 of the Third-Party Complaint and therefore deny same.

88. Paragraph 88 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 88 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 88 of the Third-Party Complaint and therefore deny same.

IV. Cape Implemented a Strategy to Evade Liability in the United States.

89. Paragraph 89 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the

admissibility and/or relevance of these documents. Additionally, many of the allegations in Paragraph 89 of the Third-Party Complaint constitute legal conclusions to which no response is required. To the extent a further response to Paragraph 89 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations specifically directed to them and are without sufficient information to admit or deny the remaining allegations in Paragraph 89 of the Third-Party Complaint and therefore deny same.

90. Paragraph 90 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 90 of the Third-Party Complaint is deemed required, Third-Party Defendants deny that the allegations in Paragraph 90 specifically directed to them or reflecting any wrongdoing on their part and are without sufficient information to admit or deny the remaining allegations in Paragraph 90 of the Third-Party Complaint and therefore deny same.

91. Paragraph 91 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which

contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 91 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 91 of the Third-Party Complaint and therefore deny same.

92. Paragraph 92 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 92 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 92 of the Third-Party Complaint and therefore deny same.

93. Paragraph 93 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on

such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 93 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 93 specifically directed to them and are without sufficient information to admit or deny the remaining allegations in Paragraph 93 of the Third-Party Complaint and therefore deny same.

94. Paragraph 94 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 94 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 94 of the Third-Party Complaint and therefore deny same.

95. Paragraph 95 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on

such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 95 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 95 specifically directed to them and are without sufficient information to admit or deny the remaining allegations in Paragraph 95 of the Third-Party Complaint and therefore deny same.

96. Paragraph 96 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 96 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 96 of the Third-Party Complaint and therefore deny same.

97. Paragraph 97 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on

such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 97 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 97 of the Third-Party Complaint and therefore deny same.

98. Paragraph 98 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 98 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 98 of the Third-Party Complaint and therefore deny same.

99. Paragraph 99 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the

admissibility and/or relevance of these documents. To the extent a further response to Paragraph 99 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 99 of the Third-Party Complaint and therefore deny same.

100. Paragraph 100 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 100 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 100 of the Third-Party Complaint and therefore deny same.

101. Paragraph 101 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph

101 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 101 of the Third-Party Complaint and therefore deny same.

102. Paragraph 102 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 102 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 102 specifically directed to them and are without sufficient information to admit or deny the remaining allegations in Paragraph 102 of the Third-Party Complaint and therefore deny same.

103. Paragraph 103 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph

103 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 103 specifically directed to them and are without sufficient information to admit or deny the remaining allegations in Paragraph 103 of the Third-Party Complaint and therefore deny same.

104. Paragraph 104 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 104 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 104 of the Third-Party Complaint and therefore deny same.

105. Paragraph 105 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. Additionally, many of the allegations in

Paragraph 105 of the Third-Party Complaint constitute legal conclusions to which no response is required. To the extent a further response to Paragraph 105 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the remaining allegations in Paragraph 105 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 105 of the Third-Party Complaint and therefore deny same.

106. Paragraph 106 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 106 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the remaining allegations in Paragraph 106 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 106 of the Third-Party Complaint and therefore deny same.

107. Paragraph 107 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on

such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 107 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the remaining allegations in Paragraph 107 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 107 of the Third-Party Complaint and therefore deny same.

108. Paragraph 108 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 108 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the remaining allegations in Paragraph 108 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 108 of the Third-Party Complaint and therefore deny same.

109. Paragraph 109 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which

contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 109 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the remaining allegations in Paragraph 109 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 109 of the Third-Party Complaint and therefore deny same.

110. Paragraph 110 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 110 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the remaining allegations in Paragraph 110 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 110 of the Third-Party Complaint and therefore deny same.

111. Paragraph 111 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the

Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 111 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the remaining allegations in Paragraph 111 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 111 of the Third-Party Complaint and therefore deny same.

VI. In Subsequent Years, There Have Been Changes to Third-Party Defendants.

112. Paragraph 112 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. Additionally, Paragraph 112 of the Third-Party Complaint contains a diagram to which no response is required. The allegations in Paragraph 112 of the Third-Party Complaint also constitute legal conclusions to which no response is required. To the extent a further response to Paragraph 112 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations in Paragraph 112 of the Third-Party Complaint.

113. Paragraph 113 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 113 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 113 of the Third-Party Complaint and therefore deny same.

114. Paragraph 114 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 114 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 114 of the Third-Party Complaint and therefore deny same.

115. Paragraph 115 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 115 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 115 of the Third-Party Complaint and therefore deny same.

116. Paragraph 116 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 116 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 116 of the Third-Party Complaint and therefore deny same.

117. Paragraph 117 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 117 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 117 of the Third-Party Complaint and therefore deny same.

118. Paragraph 118 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 118 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 118 of the Third-Party Complaint and therefore deny same.

119. Paragraph 119 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 119 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 119 of the Third-Party Complaint and therefore deny same.

120. Paragraph 120 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 120 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 120 of the Third-Party Complaint and therefore deny same.

121. Paragraph 121 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 121 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 121 of the Third-Party Complaint and therefore deny same.

122. Paragraph 122 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. To the extent a further response to Paragraph 122 of the Third-Party Complaint is deemed required, Third-Party Defendants are without sufficient information to admit or deny the allegations in Paragraph 122 of the Third-Party Complaint and therefore deny same.

123. Paragraph 123 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. Additionally, many of the allegations in Paragraph 123 of the Third-Party Complaint constitute legal conclusions to which no response is required. To the extent a further response to Paragraph 123 of the Third-Party Complaint is deemed required, Third-Party Defendants deny the allegations of Paragraph 123 of the Third-Party Complaint.

124. Paragraph 124 of the Third-Party Complaint is based on, contains extrapolations from, contains purported quotes from and/or references documents cited in the Third-Party Complaint, and Third-Party Defendants are without sufficient information to admit or deny the validity or accuracy of many of these documents. Third-Party Defendants respectfully refer the Court to the documents for an accurate and complete statement of their contents, many of which contain opinions of the author and/or others. To the extent this Paragraph references or is based on such opinions, no response is required. Third-Party Defendants reserve all objections to the admissibility and/or relevance of these documents. Additionally, many of the allegations in Paragraph 124 of the Third-Party Complaint also constitute legal conclusions to which no response is required. To the extent a further response to the allegations of Paragraph 124 is deemed required, Third-Party Defendants admit that Colfax Corporation is no longer the corporate parent of Central

Mining or Charter and that ESAB Corporation became the corporate parent of the separate and distinct corporate entities Central Mining and Charter in 2022. Third-Party Defendants deny the remaining allegations of Paragraph 124 of the Third-Party Complaint.

FIRST CAUSE OF ACTION – UNJUST ENRICHMENT
(Against All Third Party Defendants)

125. Paragraph 125 of the Third-Party Complaint incorporates Paragraphs 1 through 124 in full by reference. Third-Party Defendants incorporate by reference their answers to Paragraphs 1 through 124 as if repeated herein.

126. The allegations in Paragraph 126 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response to Paragraph 126 of the Third-Party Complaint is deemed required, the Third-Party Defendants deny the allegations in Paragraph 126 of the Third-Party Complaint.

127. The allegations in Paragraph 127 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response may be deemed necessary, Third-Party Defendants deny the allegations in Paragraph 127 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 127 of the Third-Party Complaint and therefore deny same.

128. The allegations in Paragraph 128 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response may be deemed necessary, Third-Party Defendants deny the allegations in Paragraph 128 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 128 of the Third-Party Complaint and therefore deny same.

129. The allegations in Paragraph 129 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response may be deemed

necessary, Third-Party Defendants deny the allegations in Paragraph 129 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 129 of the Third-Party Complaint and therefore deny same.

130. The allegations in Paragraph 130 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response may be deemed necessary, Third-Party Defendants deny the allegations in Paragraph 130 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 130 of the Third-Party Complaint and therefore deny same.

SECOND CAUSE OF ACTION – CONSTRUCTIVE TRUST
(Against All Third-Party Defendants)

131. Paragraph 131 of the Third-Party Complaint incorporates Paragraphs 1 through 130 in full by reference. Third-Party Defendants incorporate by reference their answers to Paragraphs 1 through 130 as if repeated herein.

132. The allegations in Paragraph 132 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response to Paragraph 132 of the Third-Party Complaint is deemed required, the Third-Party Defendants deny the allegations in Paragraph 132 of the Third-Party Complaint.

133. The allegations in Paragraph 133 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response may be deemed necessary, Third-Party Defendants deny the allegations in Paragraph 133 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 133 of the Third-Party Complaint and therefore deny same.

134. The allegations in Paragraph 134 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response may be deemed

necessary, Third-Party Defendants deny the allegations in Paragraph 134 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 134 of the Third-Party Complaint and therefore deny same.

135. The allegations in Paragraph 135 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response may be deemed necessary, Third-Party Defendants deny the allegations in Paragraph 135 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 135 of the Third-Party Complaint and therefore deny same.

136. The allegations in Paragraph 136 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response may be deemed necessary, Third-Party Defendants deny the allegations in Paragraph 136 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 136 of the Third-Party Complaint and therefore deny same.

THIRD CAUSE OF ACTION – ALTER EGO AND VEIL-PIERCING LIABILITY
(Against All Third-Party Defendants)

137. Paragraph 137 of the Third-Party Complaint incorporates Paragraphs 1 through 136 in full by reference. Third-Party Defendants incorporate by reference their answers to Paragraphs 1 through 136 as if repeated herein.

138. The allegations in Paragraph 138 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response to Paragraph 138 of the Third-Party Complaint is deemed required, the Third-Party Defendants deny the allegations in Paragraph 138 of the Third-Party Complaint.

139. The allegations in Paragraph 139 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response to Paragraph 139 of

the Third-Party Complaint is deemed required, the Third-Party Defendants deny the allegations in Paragraph 139 of the Third-Party Complaint.

140. The allegations in Paragraph 140 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response may be deemed necessary, Third-Party Defendants deny the allegations in Paragraph 140 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 140 of the Third-Party Complaint and therefore deny same.

141. The allegations in Paragraph 141 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response may be deemed necessary, Third-Party Defendants deny the allegations in Paragraph 141 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 141 of the Third-Party Complaint and therefore deny same.

FOURTH CAUSE OF ACTION – ACCOUNTING
(Against All Third-Party Defendants)

142. Paragraph 142 of the Third-Party Complaint incorporates Paragraphs 1 through 141 in full by reference. Third-Party Defendants incorporate by reference their answers to Paragraphs 1 through 141 as if repeated herein.

143. The allegations in Paragraph 143 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response to Paragraph 143 of the Third-Party Complaint is deemed required, the Third-Party Defendants deny the allegations in Paragraph 143 of the Third-Party Complaint.

144. The allegations in Paragraph 144 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response may be deemed necessary, Third-Party Defendants deny the allegations in Paragraph 144 specifically directed to

them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 144 of the Third-Party Complaint and therefore deny same.

145. The allegations in Paragraph 145 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response may be deemed necessary, Third-Party Defendants deny the allegations in Paragraph 145 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 145 of the Third-Party Complaint and therefore deny same.

146. The allegations in Paragraph 146 of the Third-Party Complaint purport to state conclusions of law to which no response is required. To the extent a response may be deemed necessary, Third-Party Defendants deny the allegations in Paragraph 146 specifically directed to them and are without sufficient information to admit or deny the allegations directed to other parties and entities in Paragraph 146 of the Third-Party Complaint and therefore deny same.

PRAYER FOR RELIEF

Third-Party Defendants deny that the Receiver or Cape plc is entitled to the relief requested against them in the Third-Party Complaint.

AFFIRMATIVE DEFENSES

Without waiving and instead specifically preserving all of their objections and challenges to personal jurisdiction in South Carolina, as set forth in the 12(b) Motions, Motions to Dissolve, all of their objections and challenges to the Receiver's Proposed Order on December 4, 2023, all of their objections and challenges to the Court's December 6, 2023 Order denying Certain Third-Party Defendants' Motions to Dissolve Receivership and Third-Party Defendants' Motion to Dismiss for Lack of Personal Jurisdiction; and the grounds for the Appeal, Third-Party Defendants assert the affirmative defenses set forth below. By pleading these affirmative defenses, Third-Party

Defendants do not intend to alter, and shall not be deemed to have altered, the burden of proof and/or the burden of persuasion that otherwise exists with respect to any issues in this action. All affirmative defenses are pleaded in the alternative and do not constitute an admission of liability or that any party, individually or collectively, is entitled to any relief whatsoever.

FIRST AFFIRMATIVE DEFENSE

The Third-Party Complaint fails to state facts sufficient to constitute a cause of action upon which relief can be granted against Third-Party Defendants.

SECOND AFFIRMATIVE DEFENSE

The Third-Party Complaint fails to plead jurisdiction over Third-Party Defendants, and indeed no such jurisdiction exists.

THIRD AFFIRMATIVE DEFENSE

The Third-Party Complaint does not allege that Third-Party Defendants are or may be liable to the Receiver or Cape plc for all or part of the underlying Plaintiffs' claims, and accordingly this third-party claim is improper and will only serve to complicate the litigation unduly or will prejudice parties in a substantial way. Further, the Receiver is not a defendant in Plaintiffs' underlying claims, and he has not moved to intervene in the underlying case. Therefore, for each of these reasons independently, the action should be dismissed or stricken pursuant to Rule 12(b)(6) and 14(a), SCRCP.

FOURTH AFFIRMATIVE DEFENSE

The appointment of the Receiver is invalid for the reasons set forth in the Motions to Dissolve and the Appeal, and thus the Receiver is without authority or power to bring the Third-Party Complaint on Cape plc's behalf.

FIFTH AFFIRMATIVE DEFENSE

The allegations in the Third-Party Complaint as to any wrongdoing or injury caused by Third-Party Defendants to the plaintiffs in the underlying action are so vague and ambiguous that it is not reasonable to request Third-Party Defendants to frame a responsive pleading.

SIXTH AFFIRMATIVE DEFENSE

The Receiver fails to allege a ripe and justiciable controversy with Third-Party Defendants.

SEVENTH AFFIRMATIVE DEFENSE

The Receiver's claims are barred, in whole or in part, by the doctrine of laches.

EIGHTH AFFIRMATIVE DEFENSE

The Receiver's claims are barred, in whole or in part, by the doctrines of estoppel and/or waiver.

NINTH AFFIRMATIVE DEFENSE

The Receiver's claims are barred, in whole or in part, by the doctrines of res judicata and/or collateral estoppel and/or law of the case.

TENTH AFFIRMATIVE DEFENSE

The Receiver's claims are barred, in whole or in part, to the extent the claims against Third-Party Defendants were not filed within the applicable statute of limitations period or are otherwise time-barred.

ELEVENTH AFFIRMATIVE DEFENSE

The Receiver's claims are barred, in whole or in part, to the extent that it failed to take reasonable measures to mitigate, minimize, or avoid damages.

TWELFTH AFFIRMATIVE DEFENSE

The Receiver's claims are barred, in whole or in part, by the doctrine of unclean hands.

THIRTEENTH AFFIRMATIVE DEFENSE

The Receiver's claims are barred, in whole or in part, to the extent that any of the costs for which Cape plc seeks defense or indemnification are unreasonable or unnecessary.

FOURTEENTH AFFIRMATIVE DEFENSE

The Receiver's claims are barred, in whole or in part, to the extent that they are released by a prior settlement or agreement.

FIFTEENTH AFFIRMATIVE DEFENSE

The Receiver's claims are barred, in whole or in part, to the extent that any other entity is properly responsible for Cape plc's defense and indemnity costs.

SIXTEENTH AFFIRMATIVE DEFENSE

The Receiver's claims are barred by lack of standing. Further, the claims asserted in the Third-Party Complaint are beyond the scope of the Receiver's appointment and/or duties.

SEVENTEENTH AFFIRMATIVE DEFENSE

The Receiver's claims are barred by lack of capacity.

EIGHTEENTH AFFIRMATIVE DEFENSE

The Receiver's claims asserted in the Third-Party Complaint are barred by South Carolina's Door Closing Statute, S.C. Code Ann. § 15-5-150 (2022).

NINETEENTH AFFIRMATIVE DEFENSE

The claims asserted in the Third-Party Complaint are barred, in whole or in part, to the extent that Cape plc and/or Cape were and/or are adequately capitalized and/or have the ability to fund any judgment against them.

TWENTIETH AFFIRMATIVE DEFENSE

The claims asserted in the Third-Party Complaint are barred, in whole or in part, to the extent the Receiver has not identified any judgment creditors and/or to the extent damages/relief are being claimed for future claims.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Third-Party Defendants incorporate herein all affirmative defenses pleaded by any other third-party defendant in this action, to the extent applicable, and also reserve the right to assert any additional affirmative defenses.

WHEREFORE, Third-Party Defendants respectfully request that this Court enter a judgment:

1. Dismissing with prejudice all claims for relief against Third-Party Defendants; and
2. Awarding such other and further relief as may be appropriate.

JURY TRIAL DEMAND

Third-Party Defendants request trial by jury of all issues raised in the Third-Party Complaint.

Dated: January 2, 2024

GORDON REES SCULLY MANSUKHANI, LLP

By: s/A. Victor Rawl, Jr.
 A. Victor Rawl, Jr. (SC 09261)
 Email: vrawl@grsm.com
 40 Calhoun Street, Suite 350
 Charleston, SC 29401
 Telephone: 843-278-5900

*Counsel for Third-Party Defendants
 Charter Consolidated Ltd., ESAB
 Corporation. and Central Mining and
 Investment Corporation Ltd.*

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Feb 22 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2023-001461
Circuit Court Case No. 2023-CP-40-01759

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

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Hesterton Company; ABB Inc.; Air & Liquid Systems Corporation; AIW-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited ASCO, L.P.; Atlas Asbestos Co.; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas CT, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Lowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services; Orporation 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,

of which

Mohed Altrad; Altrad Investment Authority SAS; ArranCo US, LLC; Hawk Bidco US Inc.; Sparrows Offshore, LLC; Angle American PLC; De Beers PLC; De Beers Centenary AG; De Beers Consolidated Mines Proprietary Ltd.; De Beers UK Ltd.; ESAB Corporation; Charter Consolidated Ltd.; and Central Mining & Investment Corporation Ltd. are the Appellants.

INITIAL BRIEF OF THE ALTRAD DEFENDANTS

WOMBLE BOND DICKINSON (US) LLP

M. Todd Carroll
S.C. Bar No. 74000
todd.carroll@wbd-us.com
Kevin A. Hall
S.C. Bar No. 15063
kevin.hall@wbd-us.com
M. Elizabeth O'Neill
S.C. Bar No. 104013
elizabeth.oneill@wbd-us.com
1221 Main Street, Suite 1600
Columbia, SC 29201
(803) 454-6504

*Attorneys for Appellants Mohed Altrad and Altrad
Investment Authority SAS*

February 22, 2024

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INTRODUCTION

This appeal addresses the circuit court’s unlawful expansion of South Carolina’s receivership statute beyond the outer limits imposed by South Carolina law and the United States Constitution. This case represents the latest chapter in the gradual and unlawful creep of the receivership statute in dozens of asbestos cases—starting with receiverships over dissolved South Carolina companies, expanding to dissolved foreign companies, and now purporting to seize total control of active foreign companies with no assets in South Carolina.¹ The receivership in this case must be dissolved because a South Carolina court has no authority to appoint a receiver over an active foreign company with no assets in this State for the purpose of suing other foreign companies and individuals and seizing their foreign assets.

Under the circuit court’s incorrect interpretation of the South Carolina receivership statute, it has universal jurisdiction to appoint receivers with plenary power over active foreign companies located anywhere in the world, without regard to whether those companies have any assets in or connection to South Carolina. The Receiver purports to exercise *in personam* control over the foreign company itself, not just *in rem* control over its (nonexistent) assets located in this State. The Receiver then purports to have a roving license to sue other foreign companies and individuals located anywhere in the world, asserting meritless “alter ego,” “veil piercing,” and other equitable claims, to extract the targets’ *foreign* assets and bring them *into* South Carolina. This is so far beyond the traditional and limited role of state court receiverships—to marshal domestic (*i.e.*, South Carolina) assets to pay domestic creditors (of which there are none here)—that it is unprecedented and alien to the jurisprudence of South Carolina or anywhere else.

¹ Appendix, Table 1: Receivership Appointments from the Asbestos Docket, and Table 2: Foreign Companies Placed in Receivership in the Asbestos Docket.

The circuit court’s limitless interpretation turns South Carolina’s receivership statute on its head, which on its face only allows a receivership over the *domestic* assets of a *defunct* foreign company *that is dissolved, insolvent, or has forfeited its corporate rights*. S.C. Code Ann. § 15-65-10(4). None of the entities in receivership meet these criteria, and none of the foreign individuals or companies sued by the Receiver have any assets in or connection to South Carolina. While the Receiver claims that his takeover of an active foreign company is “in accordance with existing practice,” *id.* § 15-65-10(5), with the exception of the single circuit judge below, no South Carolina court has ever done this before. And for good reason—South Carolina law and the United States Constitution forbid it.

This appeal arises from an order not only refusing to dissolve an unlawful receivership, but instead continuing and modifying the receivership to seemingly create a new receivership appointment over yet another active foreign company with no assets in South Carolina and without any notice of these proceedings. *See id.* § 14-3-330(4) (granting appellate jurisdiction over interlocutory orders “granting, continuing, modifying, or refusing the appointment of a receiver”).

The circuit court originally granted a receivership in the *Park v. Armstrong International Inc.* lawsuit over Cape PLC, an active foreign company incorporated in the Bailiwick of Jersey in 2011. Cape PLC has no assets in South Carolina, no involvement in any of the historical asbestos-related activities that form the basis of the present *Tibbs* lawsuit (or the *Park* lawsuit in which the receivership originated, for that matter), no contacts with this state sufficient to establish personal jurisdiction in South Carolina, and was never served with anything in the *Park* case. But even though both the motion seeking the receivership and the order creating the receivership in the *Park* lawsuit purported to put Cape PLC into receivership, the appealed order in this case purported to modify the receivership to apply to an entirely different, active foreign company—Cape

Intermediate Holdings Limited (“CIHL”)—which was incorporated in the United Kingdom in 1893, and which was never referenced in either the motion or the order creating this receivership in the first place. Like Cape PLC, CIHL has no assets in South Carolina, and South Carolina courts have no personal jurisdiction over it either.

The challenged order raises several issues regarding whether the circuit court’s continuance and modification of this unprecedented receivership is consistent with South Carolina and federal law. It is not, and the order below should be vacated and the purported receivership dissolved.

STATEMENT OF ISSUES

This appeal presents the following issues for the Court’s consideration:

- I. Does the purported receivership—whether over Cape PLC or CIHL, both active foreign companies with no assets in this state—violate substantive requirements in the South Carolina statute governing receiverships?
- II. Does the purported receivership—whether over Cape PLC or CIHL, both active foreign companies with no assets in this state—violate the U.S. Constitution and federal law?
- III. Does the purported receivership—whether over Cape PLC or CIHL, both active foreign companies with no assets in this state—violate procedural requirements in the South Carolina statute governing receiverships?

STATEMENT OF THE CASE

The receivership at issue originated in *Park v. Armstrong International, Inc.*, Case No. 2021-CP-40-02727. There, an asbestos plaintiff named both Cape PLC and CIHL as defendants within a sea of asbestos defendants. (R. p. ____; *Park* Sec. Am. Compl.) Mr. Park alleged that each of these entities is a presently-operating company organized under the laws of the United Kingdom with its principal place of business in England. Publicly available information shows that Mr. Park was incorrect, as Cape PLC is a Jersey company that was created in 2011. (R. p. ____; Jersey Financial Services Commission Registry for Cape PLC.) Regardless, there are no other allegations specific to either of these entities anywhere else in that or any other pleading filed in *Park*.

The circuit court ordered *Park* to begin trial on June 20, 2022. (R. p. ____; Docketing Order at 2 (filed Dec. 1, 2021, in *Park*)). On June 3, 2022, Mr. Park’s counsel reported to the Court that the case was “fully resolved.” (R. p. ____; Email from Ms. McVey to 479 recipients (June 3, 2022)). Other than stipulations of dismissal being filed, the case was over, and no damages or liability were ever attributed to Cape PLC or CIHL. There was no motion for entry of default or default judgment entered against either Cape PLC or CIHL in the *Park* lawsuit.

But nine months later, without a live case or controversy pending, counsel for Mr. Park—whose case was already “fully resolved”—filed a 130-page motion with exhibits to have the Court appoint a receiver over “Cape PLC and its subsidiaries, affiliates, successors, and assigns,” a group that is undefined in the motion. (R. p. ____; Mot. to Appoint Receiver at 1 (filed Mar. 6, 2023, in *Park*)). In its motion to appoint receiver, Mr. Park’s counsel incorrectly stated that Cape PLC was served with the *Park* Second Amended Summons on March 8, 2022 via the Hague Convention, and cited to an Exhibit A that did not exist on the Court’s docket.

On March 17, 2023, the Court granted that motion without a hearing, explaining:

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

(R. p. ____; Order Appointing Cape PLC Receiver at 1 (filed Mar. 17, 2023, in *Park*)).

The appointment order was sweeping and not limited to marshaling South Carolina assets, stating that the Receiver has “the power and authority to fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape whatever they may be.” (*Id.*) The order also purported to give the Receiver power to

“collect all accounts receivable of Respondent and all rents due,” to “endorse and cash all checks and negotiable instruments payable to Respondent,” and even to “sell any real property . . . belonging to Respondents,” all without regard to where these assets are located. (*Id.*) To be sure, the appointment order reads as if it was appointing a custodian to run the daily affairs of Cape PLC, rather than a receiver of its (nonexistent) domestic assets, even though South Carolina law does not allow a court to appoint a custodian over foreign companies. *See* S.C. Code Ann. §§ 33-14-320(a) & (c)(2) (authorizing the circuit court to appoint a custodian to “exercise all of the powers” of domestic corporations only).

Three months later, Mr. Protopapas, in his supposed capacity as the receiver for “Cape PLC,” filed a third-party complaint in *Tibbs v. 3M Company*, Case No. 2023-CP-40-01759. But rather than plead a case whereby Cape PLC attempts to shift derivative liability to a third-party defendant—which is the only permissible use of third-party practice recognized by Rule 14, SCRCPP, and which would make no sense here, as Cape PLC has no predicate liability and has never had any—the Receiver alleged that he is a crusader against dozens of companies that he contends have shielded Cape PLC from having liability, trumpeting that his pleading “begins their reckoning.” (R. p. ____; Third-Party Compl. at “Introductory Statement” (June 30, 2023).) In other words, rather than “protect the interests” of Cape PLC as is his obligation, the Receiver is instead attempting to manufacture liability against Cape PLC and the other named third-party defendants in *Tibbs*.

Faced with claims asserted by a Receiver who had no authority to act under state or federal law, Mr. Altrad and AIA immediately filed a motion to dismiss for lack of personal jurisdiction, and a conditional motion to dissolve the receivership and motion to dismiss under Rules 12 and 14, SCRCPP, both of which were subject to their personal jurisdiction objections. While the Receiver could do nothing to fix the substantive defects in his appointment, his opposition to the motion to dissolve made a series of incorrect or misleading statements in an effort to cover up the procedural defects.

First, when presented with undeniable proof that Cape PLC had never been served with anything in the *Park* case, the Receiver attempted to conflate Cape PLC with CIHL by liberally using the “n/k/a” or “now known as” acronym that appears nowhere in the *Park* pleadings, in the motion to appoint the receiver, or the order appointing the receiver. And the “n/k/a” label is nowhere to be found in *Park* for an obvious reason: Cape PLC is a standalone Jersey entity that was created in 2011. What’s more, even though CIHL was separately named as a defendant in *Park*, it was not mentioned in the motion or the order appointing a receiver over Cape PLC. (R. p. ____.)

Stunningly, despite the admitted separateness of these two entities and the total absence of CIHL from any of the filings that created this receivership, the Receiver argued that the circuit court could swap the name CIHL for Cape PLC and retroactively rewrite the original appointment order from *Park* in this case. He made this argument despite conceding every material point that rebuts it:

1. Cape PLC is not the same entity as CIHL.²
2. Cape PLC—the Jersey entity that is the subject of the receivership order—was never served with any pleading or the motion to appoint the receiver in *Park*.³
3. Neither the motion to appoint nor the order appointing the Receiver in *Park* made any reference whatsoever to CIHL, and never used the n/k/a acronym that the Receiver misleadingly used throughout his opposition to the motion to dissolve.⁴

² (See R. p. ____; Opp. at 3 (conceding that in the *Park* case, Plaintiffs attempted to add Cape Intermediate Holdings Limited “as a defendant, apart from Cape PLC”).)

³ (See R. p. ____; *id.* at 10 (conceding that “there has been no reference to the Jersey entity” in “the underlying *Park* and *Tibbs* Lawsuits, and in this third-party action,” and “the conduct of the 130-year-old Cape entity in England (and not the recently formed holding company in the Bailiwick of Jersey) is at issue”) (emphasis in original).)

⁴ (See R. p. ____; *id.* at 20 n.15 (proposing the Court’s “amendment of the Appointment Order to identify Cape Intermediate Holdings Ltd.,” thus conceding that Cape Intermediate Holdings Limited is not identified at all in the current order).)

4. The *Park* Plaintiffs represented to the Court in June 2022 that the case was “fully resolved,” nine months before the Court purported to appoint a receiver over Cape PLC.⁵
5. Neither Cape PLC nor CIHL ever defaulted, nor was any default judgment entered against either company: not in *Park*, and not in any other case in South Carolina.⁶
6. Cape PLC has no assets in South Carolina.⁷

Despite these concessions, the circuit court denied the motion to dissolve the receivership and modified the original receivership appointment to seemingly include CIHL despite the absence of any notice to that foreign company at all of the Receiver’s arguments or the potential appointment of a receiver over its assets. (R. p. ____; Order (Dec. 6, 2023).) **Standing alone**, this should result in dismissal of the entire Third-Party Complaint, as Mr. Tibbs has not brought any claims against CIHL, meaning that a receiver over CIHL has no possible liability to impute to third-party defendants. Rule 14, SCRCF.

Additionally, the circuit court held that it had personal jurisdiction over the Altrad Defendants (and all of the other third-party defendants) at the Receiver’s request despite the absence of any material allegations against either Mr. Altrad or AIA in the Receiver’s pleadings; despite the fact that neither of the Altrad Defendants have any connection whatsoever to South Carolina; and despite the fact that neither of the Altrad Defendants had anything to do with Cape PLC or CIHL until 2017, long after anything happened that could possibly give rise to any liability to any asbestos plaintiff in South Carolina or anywhere else. (R. p. ____; Order (Dec. 6, 2023).)

The only basis for the circuit court’s personal jurisdiction ruling were alleged connections between Mr. Altrad and AIA, on the one hand, and Cape PLC or CIHL, on the other, which were

⁵ (See R. p. ____; *id.* (conceding the validity of Ms. Park’s counsel’s message to the Court).)

⁶ (See R. p. ____; *id.* at 18 (conceding there is “no entry of a default against Cape PLC or a judgment reflecting a liquidated sum due to the *Park* Plaintiffs”).)

⁷ (See R. p. ____; *id.* at 18–19 (conceding that Cape PLC “lacks assets in South Carolina”).)

grounded in nothing other than a “self-piercing” claim alleged by the Receiver himself. Such a baseless ruling simply cannot pass any type of appellate scrutiny.

The circuit court entered the order on appeal on December 6, 2023. This appeal timely followed on December 18, 2023, and the order should be vacated in full as it runs directly contrary to long-established South Carolina and constitutional law.

SUMMARY OF ARGUMENT

This Court should reverse the order denying the motion to dissolve the receivership because the circuit court’s order is replete with errors. Those errors include:

South Carolina Law Prohibits the Creation of this Receivership. The circuit court had no statutory basis under South Carolina law to continue and modify the receivership over Cape PLC (or CIHL, for that matter). The circuit court disclaimed reliance on South Carolina Code § 15-65-10(4), notwithstanding the fact that both it and the *Park* Plaintiffs expressly relied on the statute in the original *Park* appointment order.

Section (4) is facially inapplicable because neither Cape PLC nor CIHL has any assets in South Carolina; neither is dissolved, insolvent, or in imminent danger of insolvency; and neither’s corporate rights have been forfeited in South Carolina or any other jurisdiction. Section (4) only allows for *in rem* jurisdiction over the *property* of a foreign company located within South Carolina, not *in personam* jurisdiction over all affairs of the foreign company generally.

That leaves only South Carolina Code § 15-65-10(5), which does not authorize the receivership here because the appointment of a receiver over an active foreign company with no assets in South Carolina is not consistent with “existing practice” in South Carolina or anywhere else. The circuit court cannot rely on the “existing practice” provision of Section (5) to obtain a receivership over a foreign company that directly conflicts with Section (4)’s express limitations.

Federal Law Prohibits the Creation of this Receivership. The strict statutory limits on state court receiverships over foreign companies found in South Carolina Code § 15-65-10 has federal constitutional underpinnings. The present purported receivership over Cape PLC or CIHL exceeds those statutory limits and therefore violates federal law.

First, the limitation of the scope of the receivership to the South Carolina property of foreign corporations is compelled by the dormant and foreign Commerce Clauses of the U.S. Constitution, which prohibit state courts from exercising extraterritorial jurisdiction over foreign companies, foreign individuals, and foreign assets located outside of the State.

Second, Section (4) only allows the creation of a receivership over “the property within this State of foreign corporations,” not over the foreign corporation itself. This limitation implicates the circuit court’s personal jurisdiction over the foreign entities targeted by the Receiver. The receivership must be dissolved because the circuit court has no personal jurisdiction over foreign targets of the Receiver’s third-party complaint—Mr. Altrad or AIA.

Finally, allowing a state court to seize control over an active foreign company to assert alter ego and veil piercing claims against other foreign companies and individuals violates the Takings, Due Process, Equal Protection, and Excessive Fines Clauses, both as to the entity in receivership (whether Cape PLC or CIHL) and the third-party defendants targeted by the Receiver.

The Appointment Failed to Give Proper Notice. The receivership also must be dissolved because neither Cape PLC nor CIHL was given proper notice of the application for appointment of the receiver as required by South Carolina Code § 15-65-20. The failure to identify CIHL as the purported receivership target in the motion to appoint the receiver and the order appointing the Receiver is an incurable defect.

STANDARD OF REVIEW

The proper interpretation of a statute is a question of law, which this Court reviews *de novo* and “without any deference to the court below.” *Powell v. Keel*, 433 S.C. 457, 462, 860 S.E.2d 344, 346 (2021).

Likewise, to the extent the Court determines that any aspect of this appeal is subject to the abuse-of-discretion standard of review, a legal error or a factual conclusion lacking evidentiary support amounts to an abuse of discretion. *Abdulla v. S. Bank*, 439 S.C. 391, 400, 887 S.E.2d 138, 143 (Ct. App. 2023).

ARGUMENT

This Court should reverse the appealed order continuing and modifying a receivership over Cape PLC and creating a receivership over CIHL because neither South Carolina nor federal law authorizes the creation of a receivership over an active foreign corporation with no assets in South Carolina. The circuit court’s order is replete with errors of law, and, respectfully, it reflects basic misunderstandings of receiverships and the scope of the circuit court’s limited jurisdiction.

The United States Supreme Court limits the territorial authority of a receiver to the property within the state in which he or she is appointed. *Booth v. Clark*, 58 U.S. 322, 331 (1854). So does the South Carolina Supreme Court. *See Pollock v. B. & L. Ass’n*, 48 S.C. 65, 74, 25 S.E. 977, 980 (1896) (“The power of a receiver only extends to the boundaries of the territorial jurisdiction of the court appointing him.”).

Recognizing this limitation, the General Assembly limited the creation of receiverships over foreign companies to property located within South Carolina. *See* S.C. Code Ann. § 15-65-10(4) (limiting receiverships to “property within this State of foreign corporations”). In other words, the maximum scope of a foreign receivership in South Carolina is *in rem* (over the domestic

assets of the foreign corporation), not *in personam* (over the corporate person of a foreign corporation). The corollary to this limitation is that any action by a receiver is limited to marshaling domestic assets in South Carolina, not suing foreign third parties (on behalf of foreign Cape PLC or foreign CIHL) to bring their foreign assets into this State.

This distinction is critical to assessing this appeal. South Carolina has no statutory vehicle for a circuit court to exercise *in personam* control over the person and affairs of a foreign corporation. Notably, South Carolina Code § 33-14-320 allows for appointment of a custodian, with the power to manage the affairs of an active business, in a judicial proceeding to dissolve a domestic corporation. But that provision applies exclusively to South Carolina corporations because South Carolina corporations, unlike foreign entities, are created by the State and are within the State’s jurisdiction. *See* S.C. Code Ann. § 33-1-400(4) (defining “corporation” for purposes of Chapter 14 of Title 33 as “a corporation for profit, *which is not a foreign corporation*”) (emphasis added).

But a custodian is fundamentally different than a receiver, as this Court has recognized: “A receiver’s duty is to wind up and liquidate the business and affairs of a corporation, while custodians manage the affairs of the corporation.” *Shapemasters Golf Course Builders, Inc. v. Shapemasters, Inc.*, 360 S.C. 473, 479, 602 S.E.2d 83, 86 (Ct. App. 2004). In the limited context of dissolving a domestic corporation, the “court appointing a receiver or custodian has exclusive jurisdiction over the corporation *and all of its property wherever located.*” S.C. Code § 33-14-320(a) (emphasis added).

There is absolutely no authority—statutory or otherwise—for the circuit court to appoint a custodian over an active foreign company. Accordingly, the circuit court here relied on the much more limited receivership provisions of Title 15, but it invoked Section 15-65-10 to effectively

appoint a custodian over Cape PLC (or, subsequently, CIHL) to manage the affairs of an active foreign company. That statute does not allow for *any* form of custodianship over a foreign corporation, and its allowance for a receivership is limited to the assets of a defunct foreign company located within South Carolina. Unlike Section 33-14-320(a), there is no provision of Section 15-65-10 stating that receiverships over a foreign corporation extend to “all of its property wherever located.” The reason why there is no such thing as a custodianship over a foreign corporation and its worldwide assets is simple—it would be unconstitutional. Yet that is exactly what the receivership order on appeal purported to create.

South Carolina Code § 15-65-10 identifies the limited circumstances under which a court can consider appointing a receiver. The original appointment order cited Sections (4) and (5) of this statute when originally appointing Mr. Protopapas as receiver over Cape PLC, but the circuit court below abandoned Section (4) and relied exclusively on Section (5) when modifying the receivership to apply to CIHL. These sections allow a receivership appointment to marshal property within the State of South Carolina in the following limited circumstances:

- (4) When a corporation has been dissolved, is insolvent or in imminent danger of insolvency or has forfeited its corporate rights, and, in like cases, of the property within this State of foreign corporations; and
- (5) In such other cases as are provided by law or may in accordance with the existing practice, except as otherwise provided in this Code.

This situation meets none of these conditions.

As to Section (4), neither Cape PLC nor CIHL is dissolved, neither is insolvent, and neither has any property in South Carolina. Unable to dispute those points, the Receiver previously argued that appointment under Section (4) is proper because Cape PLC or CIHL has “forfeited its corporate rights” based on the unadjudicated allegations of wrongdoing in the Receiver’s own Third-Party Complaint. Not so.

The statutory reference to “forfeiture” is a term of art that refers to a forfeiture action against a domestic corporation resulting in a final forfeiture judgment by a South Carolina court pursuant to established South Carolina law. *See, e.g.*, S.C. Code Ann. § 39-3-20 (authorizing the Attorney General to “begin an action against such *domestic* corporation to forfeit its charter” for certain antitrust violations) (emphasis added). Here, the Receiver argued a nonexistent “forfeiture” over a foreign company, based on the incorrect and unadjudicated allegations in the motion to appoint the Receiver, and citation to Black’s Law Dictionary. A plaintiff cannot simply cite his own unproven allegations of wrongdoing to trigger the “forfeiture” clause of Section (4)—that would make a prejudgment receivership available in every case. Additionally, even assuming that the reference to “forfeiture” in Section (4) can be read to include final forfeiture judgments imposed under the laws of foreign states or nations, the Receiver has identified no such foreign judgment forfeiting the corporate rights of Cape PLC or CIHL in Jersey or the U.K., respectively. There are none.

Even the circuit court recognized the error of the Receiver’s position, as it abandoned any reliance on Section (4) in its order continuing and modifying this receivership. (*See* Order at 23–25 & n.16 (Dec. 6, 2023) (attempting to justify the receivership under Section (5) and conceding that “the Order appointing the Receiver incorrectly described Cape as ‘dissolved,’ even though Cape is still a going concern in the United Kingdom [sic: Bailiwick of Jersey]”).)

Left without Section (4), the circuit court relied exclusively on Section (5) to justify this receivership, finding that appointing a receiver to control all property of an active foreign company was “in accordance with the existing practice.” (*Id.*) There is not one South Carolina case appointing a receiver in circumstances remotely similar to those presented here. Every old case cited by the Receiver or relied on by the circuit court involved receiverships over domestic parties

and property in South Carolina. The circuit court’s now-exclusive reliance on Section (5) to justify extension of the receivership to Cape PLC or CIHL is improper because it interprets Section (5) to allow an *in personam* receivership over an active foreign company that Section (4) expressly forbids.

This contention violates the basic canon of statutory construction that one provision of a statute cannot be interpreted in a manner that renders another meaningless, and it ignores the qualifying clause in Section (5) stating “existing practice” can support the creation of receiverships “except as otherwise provided in this Code.” The circuit court’s misconstruction of Section (5) resulted in a series of legal errors that require reversal and vacating the receivership.

I. The receivership appointment violates the substantive requirements of the South Carolina statute governing receiverships.

A. The receivership appointment is not consistent with any “existing practice.”

The circuit court erred in relying on South Carolina Code § 15-65-10(5) to continue and modify the receivership over Cape PLC or CIHL because the creation of a receivership over an active foreign entity with no assets in South Carolina is not “in accordance with the existing practice” in South Carolina, and reliance on Section (5) to create this receivership renders the limitations of Section (4) a nullity and ignores the “except as otherwise provided in this Code” qualifying language of Section (5). *See State v. Sweat*, 379 S.C. 367, 377, 665 S.E.2d 645, 651 (Ct. App. 2008) (“A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.”).

Section 15-65-10(5) provides that the circuit court may appoint a receiver “[i]n such other cases as are provided by law or may be in accordance with the existing practice, *except as otherwise provided in this Code.*” S.C. Code Ann. § 15-65-10(5) (emphasis added). As explained above, Section (4) prohibits the creation of a receivership over an active foreign company without

any property in South Carolina, so the “except as otherwise” clause prohibits the Receiver and the circuit court from evading those limitations through reliance on Section (5). *See S.C. DOR v. Anonymous Co. A*, 401 S.C. 513, 519, 678 S.E.2d 255, 258 (2009) (agreeing that “[t]here is nothing to indicate an intent that this catch-all phrase was intended to alter the status of any of the specifically listed entities” in the same statute).

Even setting aside the obvious conflict with Section (4), this receivership is not in accordance with “existing practice.” There are no published cases in South Carolina that have affirmed the appointment of a receiver with plenary authority over an active foreign company with no assets in this state. On the other hand, there are cases in which appellate courts reversed such an improper appointment of a receiver. *See, e.g., Boynton v. Consol. Indem. & Ins. Co.*, 180 S.C. 279, 185 S.E. 731, 737 (1936) (reversing the appointment of a receiver over a foreign corporation because “there [wa]s a total failure of any proof that it ha[d] property in this state”).

The circuit court identified no discernible standard for applying Section (5); it simply claimed that a receivership can be created out of whole cloth “to correct injustice” when a “creditor” is being prevented from collecting a debt owed. (R. p. ____; Order at 24 (Dec. 6, 2023).) But neither Cape PLC nor CIHL have any “creditors” in South Carolina. The *Park* Plaintiffs have no judgment against Cape PLC or CIHL (there is not even a motion for entry of default in that case), and they unequivocally advised the circuit court that they had “fully resolved” their case over sixteen months ago without any liability attaching to Cape PLC or CIHL.⁸ (R. p. ____.) And, there are no other judgment creditors against Cape PLC or CIHL anywhere in South Carolina.

⁸ Nor will there ever be any default judgment entered against Cape PLC or CIHL in *Park*, as the circuit court has allowed the Receiver to file a third-party complaint in that case against the Locke Lord law firm, which also has no South Carolina presence or connection. (R. p. ____; Am. Compl. filed by the Receiver for Cape, PLC, in *Park v. Armstrong Int’l Inc.*, Case No. 2021-CP-40-02727 (Aug. 9, 2023).) Locke Lord moved to dismiss that pleading and to dissolve this receivership; the

None of the cases cited by the circuit court support the contention that it is consistent with “existing practice” to give receivers plenary power over a foreign company with no assets in this case and allow the receiver to sue other foreign companies to bring foreign assets to South Carolina. The circuit court cited *Virginia-Carolina Chemical v. Hunter*, 84 S.C. 214, 66 S.E. 177 (1909), and the Alex Murdaugh situation for examples of existing practice. Those cases are not applicable because they involved receiverships over South Carolina parties and property with known South Carolina creditors—and the 21st Century Murdaugh case obviously cannot possibly be considered an “existing practice” for a statute that dates to the 19th Century. This receivership order purporting to seize the foreign assets of an active foreign company without notice and without any South Carolina creditors is unprecedented, and it must be dissolved as being contrary to all South Carolina authority, including the limitations for foreign receiverships expressly created by the General Assembly in South Carolina Code § 15-65-10(4) and incorporated into Section (5).

B. The Receiver is improperly acting as an advocate for the plaintiffs who are responsible for his appointment.

In South Carolina, as elsewhere, “[t]he appointment of a receiver is a drastic remedy, and should be granted only with reluctance and caution.” *Richland Cnty. v. S.C. DOR*, 422 S.C. 292, 313, 811 S.E.2d 758, 769 (2018) (quoting *Midlands Util., Inc. v. S.C. DHEC*, 301 S.C. 224, 228, 391 S.E.2d 535, 538 (1989)). Because receiverships are so highly disfavored—after all, they involve a state court attempting to seize private property and placing it in the hands of a third party—the Supreme Court has commanded that the “refusal of revocation [of a receivership], under changed circumstances, is also drastic.” *Vasiliades v. Vasiliades*, 231 S.C. 366, 376, 98 S.E.2d 810, 815 (1957).

circuit court has not heard that motion. In his pleading there, the Receiver purports to be the Receiver for Cape PLC, without any mention whatsoever of CIHL. (R. p. ____.)

Because a receivership involves the seizure of private property by a third party, the Supreme Court has also been clear that a receiver must be scrupulously neutral and cannot act as an advocate or agent of a plaintiff. In fact, the single case cited by the circuit court involved the appointment of a receiver over the assets of a South Carolina citizen, Mr. Hunter, who owed substantial undisputed debts to multiple persons and engaged in a series of transfers to dodge his creditors (including transferring property to his sister and to his lawyer: then-Senator, future-Governor Blease). *Hunter*, 84 S.C. at 221–23, 66 S.E. at 179–80. And while the Supreme Court agreed that a receiver was proper in that situation—involving a South Carolina defendant, identifiable South Carolina creditors, and South Carolina property, none of which are present here—it remanded the matter for consideration of whether the person who had been appointed should be removed because “he was one of the agents of the plaintiff, actively pressing its claims against the defendant.” *Id.* at 224, 66 S.E. at 180. As the Court held: “The rule is, that the Court ought to appoint a receiver entirely impartial.” *Id.*

Nor is *Hunter* an isolated case. *See, e.g., Penn Mut. Life Ins. Co. v. Cudd*, 172 S.C. 88, 92, 172 S.E. 787, 789 (1934) (warning that appointing “an agent of a creditor of the debtor, who had been placed in receivership,” is improper).

But the appointment here violates this rule of neutrality. The Receiver in the *Tibbs* lawsuit is acting *ultra vires*, has incurable conflicts of interest, and is incapable of acting as a receiver, because Mr. Protopapas is not “entirely impartial,” but instead is acting as “one of the agents of the plaintiff, actively pressing its claims against the defendant.” *Hunter*, 84 S.C. at 224, 66 S.E. at 180. As noted in Table 1 in the Appendix, even though a receivership is supposed to be a rarely-invoked and drastic remedy, this same receiver has already been appointed as a receiver two dozen times in the Asbestos Docket, always at the request of the same plaintiffs’ counsel.

And the Receiver’s advocacy on behalf of the asbestos plaintiffs is not mere speculation or guessing by the Altrad Defendants; it is based on the Receiver’s own actions and the Receiver’s own words.

The Receiver argued below that his goal is to “successfully marshal assets [that] will directly inure to the benefit of the *Park* Plaintiffs,” the very plaintiffs who are responsible for his appointment. (R. p. ____; Receiver’s Mem. in Opp’n to Dissolution at 22.) But the *Park* Plaintiffs have “fully resolved” their case without any judgment against either Cape PLC or CIHL; the *Park* Plaintiffs are not entitled to a dime from either of these foreign entities and never will be, yet the Receiver claims that he will be responsible for “their reckoning” on behalf of asbestos plaintiffs. (R. p. ____; Third-Party Complaint at “Introductory Statement.”)

To ensure no doubt about his role as an advocate for plaintiffs, at the hearing on the motion to dissolve the receivership, the Receiver boasted that he is holding Cape PLC and CIHL “to account for the first time in over 50 years. They haven’t even been in a courtroom in the United States, and here we are because a receiver got appointed.” (R. p. ____; Hr’g Tr. 27:5–8.) He continued: “And they’re being held to account now in this courtroom via the receiver.” (R. p. ____; *id.* 28:16–17.) And he concluded by praising his own ambition on behalf of the asbestos plaintiffs who are responsible for his appointments: “If South Carolina is not going to do it [through the receivership]—not going to do it, who is?” (R. p. ____; Hr’g Tr. 37:24–25.)

Given his stated goal of advocating for asbestos plaintiffs, it is not surprising that the Receiver has entirely abdicated his responsibility to protect Cape PLC’s and CIHL’s interests and demonstrated that he is “so closely connected with one of the parties in interest” that he cannot continue to serve. *Hunter*, 84 S.C. at 224, 66 S.E. at 179–80. In his responsive pleading in *Tibbs*, he has essentially conceded liability as to the entity in receivership by purporting to waive viable

defenses like personal jurisdiction as part of his “day of reckoning” crusade.⁹ After admitting liability without any proof or adjudication that unspecified “Cape” fibers caused injury to any South Carolina resident—including the *Park* Plaintiffs or the *Tibbs* Plaintiffs—he then began pursuing his “reckoning” against the Third-Party Defendants based on liabilities he seeks to manufacture.

The Receiver’s Third-Party Complaint in *Tibbs* attempts to create liability for Cape PLC or CIHL, and then transfer the very liabilities he creates to dozens of third-party defendants. The law specifically prohibits attempts at “self-piercing” like that urged by the Receiver here. *See, e.g., SCE&G v. UGI Utils., Inc.*, Case No. 2:06-cv-2627-CWH, 2012 U.S. Dist. LEXIS 61487, at *169–70 (D.S.C. Apr. 11, 2012) (explaining that as a general matter, “the corporate veil is never pierced for the benefit of the corporation or its stockholders,” and observing that “[s]elf-piercing claims are rare and often rejected out of hand” (quoting 18 Am. Jur. 2d *Corporations* § 46)).

The Receiver’s efforts to generate liability against Cape PLC and CIHL on behalf of asbestos plaintiffs (none of whom have ever received a judgment against either entity) directly defy the circuit court’s original charge that he “protect the interests of Cape whatever they may be.” (R. p. ____; Appointment Order at 1.) That outrageous conduct leads to the unavoidable conclusion that the Receiver cannot lawfully continue to serve. *See generally Cudd*, 172 S.C. at 91–92, 172 S.E.2d at 788–

⁹ Although the Receiver was appointed *prejudgment* to protect the interests of Cape PLC (later switched to CIHL) whatever they may be, he has already purported to answer the *Tibbs* complaint on behalf of Cape PLC and thus waived Cape PLC’s personal jurisdiction objection. *Wellin v. Wellin*, 427 S.C. 15, 24, 828 S.E.2d 767, 772 (Ct. App. 2019). The Receiver also argued in his opposition to the motion to dissolve the Receivership that the circuit court has personal jurisdiction over Cape PLC and CIHL, and he submitted a proposed order to the circuit court (which was signed without alteration) finding personal jurisdiction over the entities he was charged with protecting. (R. pp. ____–____; Order at 35–36 (Dec. 6, 2023).) Not only is this receivership attempting to engage in an unlawful seizure of foreign assets, it is unconscionable to forfeit ironclad, constitutional defenses held by the foreign companies for whom he purports to speak.

89 (reinforcing that only someone “untrammelled in his relations, entirely indifferent between the parties, and absolutely fair and impartial” can serve as a receiver).

C. A receivership cannot be created in perpetuity for all future South Carolina asbestos cases.

Nor is the circuit court correct that the Receiver’s appointment in the *Park* lawsuit is sufficient to deputize him as the Receiver for Cape PLC (or CIHL) for any and all future asbestos lawsuits in which Cape PLC (or CIHL) is named as a party—including the separate *Tibbs* lawsuit. Appointment of a receiver is an exceptional remedy that must be assessed on a case-by-case basis and is contingent on the unique facts and circumstances of a particular case. *See, e.g., Wrenn v. Wrenn*, 228 S.C. 588, 593, 91 S.E.2d 267, 269 (1956) (explaining “the facts of the particular case at hand ought to govern” and no receiver should be appointed “unless the particular circumstances render it advisable”). There is no South Carolina authority holding that an appointment under Section 15-65-10 applies forever and for all cases, without regard to the specific facts of those future and different cases, and neither the Receiver nor the circuit court has identified any.

This Court must reject this perpetual appointment theory because it conflicts with Section 15-65-10 (which calls for a case-by-case analysis), South Carolina precedent (which always reviews the propriety of receivership orders based on the specific facts of the underlying case in which the appointment is made), and because the theory is unconstitutional for the reasons explained below, particularly in the prejudgment context seen here.

II. The receivership appointment violates the United States Constitution and federal law.

A. The receivership must be dissolved because its extraterritorial scope violates the dormant and foreign Commerce Clause.

A South Carolina state court cannot lawfully take assets away from foreign businesses (over which it has no personal jurisdiction) and give them to a South Carolina receiver to “fully

administer.” The South Carolina receivership statute acknowledges this in-state-only limitation on the reach of a receivership. *See* S.C. Code Ann. § 15-65-10(4) (limiting a receiver’s ability to marshal only “the property within this State of foreign corporations”). Such a limitation is rooted in the constitutional requirement that a state law cannot have extraterritorial effect:

The South Carolina Supreme Court has written repeatedly that South Carolina statutes have no extraterritorial effect because the general rule is that no state or nation can, by its laws, directly affect, bind, or operate upon property or persons beyond its territorial jurisdiction.

* * * * *

The principle that state laws may not generally operate extraterritorially is one of constitutional magnitude. One state may not “project its legislation” into another, as the Commerce Clause “precludes the application of a state statute to commerce that takes place wholly outside of the State’s borders, whether or not the commerce has effects within the State.”

Carolina Trucks & Equip., Inc. v. Volvo Trucks of N.A., Inc., 492 F.3d 484, 489–90 (4th Cir. 2007) (cleaned up).

A receiver’s ability to marshal property across state or national lines involves interstate or foreign commerce, as Congress itself has limited when such authority exists and has made such a remedy available only through the federal courts. 28 U.S.C. §§ 754, 3103. The South Carolina Supreme Court has recognized these federal constitutional limits on the scope of a state court receivership: “The power of a receiver only extends to the boundaries of the territorial jurisdiction of the court appointing him.” *Pollock v. Carolina Interstate B. & L. Assn.*, 48 S.C. 65, 25 S.E. 977, 980 (1896) (quoting Gluck & B. Rec. p. 3). “[C]ourts of equity cannot acquire extraterritorial jurisdiction over property by appointing receivers.” *Id.* (quoting 20 Am. & Eng. Enc. Law, 65, 66). “[T]he jurisdiction of a state is restricted to its own territorial limits.” *Ex parte First Penn. Banking & Tr. Co.*, 247 S.C. 506, 508, 148 S.E.2d 373, 374 (1966). “[T]he general rule is that no state or nation can, by its laws, directly affect, bind, or operate upon property or persons beyond its territorial jurisdiction. A statute which purports to have such operation is invalid.” *Id.* “South Carolina rules

of construction provide that statutes must not be read to operate outside the state's borders.” *Carolina Trucks*, 492 F.3d at 489. “The South Carolina Supreme Court has written repeatedly that South Carolina statutes have no extraterritorial effect because the general rule is that no state or nation can, by its laws, directly affect, bind, or operate upon property or persons beyond its territorial jurisdiction.” *Id.* (cleaned up).

In *Pollock*, the South Carolina Supreme Court had to determine whether the North Carolina state court's appointment of a temporary receiver for the defendant association rendered service in this state invalid. The Supreme Court made an extensive review of the territorial power of receivers. It noted that the United States Supreme Court ruled that a receiver has “*no extraterritorial power of official action*; none which the court appointing him can confer, with authority to enable him to go into a foreign jurisdiction to take possession of the debtor's property; none which can give him, upon the principle of comity, a privilege to sue in a foreign court, or another jurisdiction.” *Pollock*, 48 S.C. 65, 25 S.E. at 980 (quoting *Booth*, 58 U.S. at 338.) (emphasis added). The Supreme Court also noted that it had previously “held that an administrator appointed by the courts of Massachusetts had no legal capacity to sue in this state, and that his assignment of the bond and mortgage to a citizen of this state did not give the latter capacity to sue.” *Id.* (citing *Dial v. Gary*, 14 S.C. 573 (1881)). It concluded that “[t]his is supported by reason, and the jurisdiction and the power exercised by courts.” *Id.* The Supreme Court elaborated that a “court deriving its power from the laws of North Carolina cannot confer any greater power than it is given. Having the right to appoint a receiver in their territory alone, such appointee is a creature of the appointing power, and cannot have greater power than his creator.” *Id.* “The stream cannot rise higher than its source.” *Id.*

The principle against extraterritoriality as it relates to the dormant Commerce Clause is derived from the notion that “a State may not regulate commerce occurring wholly outside of its borders.” *Star Sci., Inc. v. Beales*, 278 F.3d 339, 355 (4th Cir. 2002). “Although the language of dormant Commerce Clause jurisprudence most often concerns interstate commerce, essentially the same doctrine applies to international commerce.” *Atl. Mach. & Equip., Inc. v. Tigercat Indus.*, 427 F. Supp. 2d 657, 663–64 (E.D. Va. 2006) (quoting *Antilles Cement Corp. v. Anibal Acevedo Vila*, 408 F.3d 41, 46 (1st Cir. 2005)). “[A] state law that has the ‘practical effect’ of regulating commerce occurring wholly outside that State’s borders is invalid under the Commerce Clause.” *Healy v. Beer Inst.*, 491 U.S. 324, 332 (1989).

The circuit court’s rulings ignore the concept of interstate and international commerce reserved to the federal government, not the states. The circuit court has no authority or jurisdiction outside of South Carolina, yet it construed Section 15-65-10(5) to allow it to put extraterritorial assets into a receivership as punishment for Cape PLC and CIHL “refusing to appear in the United States.” (R. p. ____; Order at 24 (Dec. 6, 2023).) But the circuit court and the Receiver cannot take charge over any property outside of the South Carolina, let alone outside of the United States. The circuit court’s extraterritorial interpretation of Section (5) violates the dormant and foreign Commerce Clause and is an error of constitutional law.

B. A receivership cannot be misused to bypass the Due Process Clause by bring claims against foreign entities and individuals who are beyond the circuit court’s jurisdiction.

Not only are Cape PLC and CIHL beyond the reach of the circuit court’s authority to create a receivership, so too are the Altrad Defendants with respect to the circuit court’s ability to exercise personal jurisdiction over them through the Receiver. Attempting to enforce a South Carolina receivership statute against a foreign person or entity over which the court has no personal

jurisdiction—in order to seize foreign assets—violates the Due Process Clause of the U.S. Constitution. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491–92, 611 S.E.2d 505, 508 (2005). Here, though, the circuit court has wrongly ignored basic Due Process jurisprudence in order to extend the Receiver’s reach extraterritorially. The circuit court incorrectly treats claims by a foreign company against other foreign companies and individuals as “property within this State” without assessing whether it has personal jurisdiction over those foreigners in the first place. S.C. Code Ann. § 15-65-10(4). This is an error of black-letter law.

Importantly, the circuit court did not attempt to find that it had general or specific jurisdiction over either Mr. Altrad or AIA. (R. pp. ____–____; Order at 38–47 (Dec. 6, 2023).) Nor can the circuit court legitimately exercise personal jurisdiction over either.

Neither Mr. Altrad nor AIA is “at home” in South Carolina, as neither has ever had anything to do with this State. *See BNSF Ry. V. Tyrrell*, 581 U.S. 402, 413 (2017) (reiterating that general jurisdiction is only available when a defendant’s operations are so “continuous and systematic” in a forum that it is “at home” in that state).

Nor can specific jurisdiction attach to either. In order to exercise personal jurisdiction—general or specific—“[d]ue process requires that there exist minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Abdulla v. S. Bank*, 439 S.C. 391, 400, 887 S.E.2d 138, 143 (Ct. App. 2023) (quoting *Moosally W.W. Norton & Co.*, 358 S.C. 320, 330, 594 S.E.2d 878, 883 (Ct. App. 2004)). The Receiver bore the burden of proving that Mr. Altrad and AIA are subject to personal jurisdiction before the circuit court. *Moosally*, 358 S.C. at 327, 594 S.E.2d at 882.

The record evidence is unambiguous that no such showing has been made here.

Mr. Altrad. Mr. Altrad is barely mentioned in the Receiver’s Third-Party Complaint. Aside from the caption, the Third-Party Complaint specifically mentions Mr. Altrad only four times, none of which even suggest Mr. Altrad has any connection with South Carolina:

- Once in the opening paragraph listing the Third-Party Defendants;
- Once in Paragraph 25 to acknowledge the fact that Mr. Altrad is ***not*** a resident of the State of South Carolina;
- Once in Paragraph 118 to allege in a single, conclusory sentence that “[t]he Altrad Group—and thus Cape” is “controlled” by Mr. Altrad, based on his status as the “President and Founder” of the “Altrad Group”; and
- Once in the table included as part of Paragraph 119 along with other “Altrad Ownership” entities purportedly comprising a factually inaccurate listing of “Altrad Third-Party Defendants,” as defined by the Receiver himself.

But Mr. Altrad’s Affidavit establishes that he has “no connection to South Carolina whatsoever,” (R. p. ____; Aff. Altrad ¶ 6) because:

- He is a citizen of France and resides in Montpellier, France. (*Id.* ¶ 2.)
- He has never visited South Carolina for any purpose. (*Id.* ¶ 5.)
- He has no assets of any sort in South Carolina. (*Id.* ¶ 7.)
- He has never acquired ownership, possession, or control of any asset or thing of value present within South Carolina. (*Id.* ¶ 13.)
- He has never sought to procure insurance for any person or property, tangible and intangible, in South Carolina. (*Id.* ¶ 14.)
- He has never opened, conducted, engaged in, or carried on a business or business venture in South Carolina. (*Id.* ¶ 16.)
- He had never owed or paid corporate, employment, sales tax, or real property taxes in South Carolina. (*Id.* ¶¶ 19–20.)
- He had never contracted to supply services, goods, or things in South Carolina, and he had never supplied services or delivered goods or things in South Carolina. (*Id.* ¶ 23.)

These facts were uncontroverted below, and they demonstrate that Mr. Altrad is not subject to either general or specific personal jurisdiction in South Carolina: he is not essentially “at home” in this State, and he has not purposely availed himself of the benefits of something within the State of South Carolina to support imposition of personal jurisdiction. The idea that the Receiver could force Mr. Altrad, a foreign citizen, to appear and defend claims simply based on four passing mentions of his name in a 65-page, 145-paragraph third-party complaint offends all legitimate notions of due process.

More specifically, given the absence of any connection between Mr. Altrad and South Carolina, there are not sufficient minimum contacts with South Carolina to render the circuit court’s exercise of personal jurisdiction over Mr. Altrad permissible under the Due Process Clause. Mr. Altrad never had any personal involvement, in any capacity, in the milling, mining, or sale of asbestos anywhere in the world, nor has he ever had any personal involvement in the production, manufacture, or distribution of asbestos or asbestos-containing products for use in any state of the United States, including South Carolina—and there isn’t a single fact, allegation, or finding by the circuit court to the contrary. (R. p. ____; Aff. Altrad ¶¶ 29–30.)

Altrad Investment Authority. So, too, is the Receiver’s pleading devoid of any basis for a South Carolina court to exercise personal jurisdiction over AIA. The Third-Party Complaint acknowledges that AIA is “a corporation organized under the laws of France, with its principal place of business in Florensac, France.” (R. p. ____; Third-Party Complaint ¶ 29.) Other than the caption, the Third-Party Complaint specifically mentions AIA only four times:

- Once in the opening paragraph listing the Third-Party Defendants;
- Once in Paragraph 29 to acknowledge the fact that AIA is *not* a resident of the State of South Carolina;

- Once in Paragraph 116 to allege that a separate subsidiary of AIA “acquired and has since controlled Cape” as of October 9, 2017; and
- Once in the table included as part of Paragraph 119 along with other “Altrad Ownership” entities purportedly comprising a factually inaccurate listing of “Altrad Third-Party Defendants,” as defined by the Receiver.

As further detailed in the Affidavit of Richard M. Alcock, AIA is a non-resident of the State of South Carolina and has no connection to South Carolina in that, among other things:

- On December 23, 2010, AIA was organized under the laws of France (registered number 529222879) as a French SAS (Société par Actions Simplifiée) and has always been organized under the laws of France. (R. p. ____; Aff. Alcock ¶ 3.)
- AIA conducts no operations and does not have, and never has had, its principal place of business in South Carolina. (*Id.* ¶ 4.)
- AIA has never been registered as a foreign company authorized to transact business or otherwise licensed in South Carolina, and AIA has never transacted any business in South Carolina. (*Id.* ¶ 7.)
- AIA has never owned or operated any manufacturing, sales, distribution, or other facilities in South Carolina, and AIA has never had an office or agency in South Carolina. (*Id.* ¶ 10.)
- AIA has never owned, leased, or held an interest in or possession of any real or tangible property within South Carolina and has no offices in South Carolina. (*Id.* ¶ 11.)
- AIA has never had insurance policies that afford coverage of any kind for specific entities located in South Carolina, and AIA has not sought to procure insurance for any person or property, tangible and intangible, in South Carolina. (*Id.* ¶ 17.)
- AIA has never invested any dollars in business operations in South Carolina. (*Id.* ¶ 18.)
- AIA has never contracted to supply services, goods, or things in South Carolina, and AIA has never supplied services or delivered goods or things in South Carolina. (*Id.* ¶ 20.)
- AIA has never marketed or advertised, or engaged in solicitation with respect to, its goods, services, or general business in South Carolina. (*Id.* ¶ 21.)
- AIA has never acquired ownership, possession, or control of any asset or thing of value present within South Carolina. (*Id.* ¶ 29.)

- AIA has never had any subsidiaries incorporated in South Carolina or with their principal place of business in South Carolina. (*Id.* ¶ 30.)
- AIA has never opened, conducted, engaged in, or carried on a business or business venture in South Carolina. (*Id.* ¶ 32.)
- AIA has never produced, manufactured, or distributed goods with the reasonable expectation that those goods are to be used or consumed in South Carolina, and are so used or consumed. (*Id.* ¶ 35.)
- AIA has never milled, mined, or sold asbestos anywhere (and has never done so in South Carolina), and has never produced, manufactured, or distributed asbestos or asbestos-containing products for use in any state, including South Carolina. (*Id.* ¶ 6.)

The Third-Party Complaint contains zero allegations of any connections AIA has with South Carolina. Like the allegations regarding Mr. Altrad, it does not even make any generic or conclusory ones. Like Mr. Altrad, AIA is not subject to either general or specific personal jurisdiction in South Carolina: it is not essentially “at home” in this State, and it has not purposely availed itself of the benefits of something within the State of South Carolina to support imposition of personal jurisdiction. And like Mr. Altrad, a finding of personal jurisdiction cannot be based on four passing mentions of AIA’s name in a 65-page, 145-paragraph Third- Party Complaint.

* * * * *

The absence of personal jurisdiction here should be obvious. But the circuit court shunned the traditional personal jurisdiction “minimum contacts and fundamental fairness” analysis and, instead, relied on three novel “equitable grounds” for personal jurisdiction—an “alter ego” theory, a “single business enterprise” theory, and a “guiding spirit” theory—to force a French individual and a French company to defend themselves in South Carolina.

This was legal error for several reasons. First, there is no authority that would allow the circuit court to exercise personal jurisdiction over disparate defendants based on an “amalgamation” or a “single-business enterprise” theory. The United States Supreme Court has

been clear that “[e]ach defendant’s contact with the forum State must be assessed individually” for purposes of personal jurisdiction. *Calder v. Jones*, 465 U.S. 783, 790 (1984). The circuit court cited several alleged “enterprise” cases, but none of those cases actually applied such a theory to establish personal jurisdiction over numerous defendants; instead, the “theory” was always limited to a merits inquiry about liability, not jurisdiction.¹⁰

Second, the circuit court only attempted use its equitable theories to displace Due Process as a basis for personal jurisdiction over the Altrad Defendants after it first found that Cape PLC (a Jersey company that did not even exist until 2011) was rightly subject to personal jurisdiction in South Carolina. But the only basis for the circuit court’s finding is *the Receiver’s own statements* about how a company other than Cape PLC had a national distribution network of asbestos sales decades ago and decades before either of the Altrad Defendants ever had an ownership interest in Cape PLC. (R. pp. ___, ___–___; Order at 35, 71–73 (Dec. 6, 2023).)

In other words, the circuit court appointed a Receiver over an active foreign company with no property in South Carolina; that Receiver then purported to concede personal jurisdiction within South Carolina on behalf of Cape PLC or CIHL; and the circuit court then used that “concession”

¹⁰ These cases are cited on Pages 32 through 35 of the December 6th Order. *See Las Palmas Assocs. v. Las Palmas Ct. Assocs.*, 235 Cal. App. 3d 1120, 1249–50 (1991) (stating that “under the single-enterprise rule, liability can be found between sister companies,” without addressing personal jurisdiction); *Walbeck v. I’On, Co.*, 439 S.C. 568, 590–94, 889 S.E.2d 537, 548–50 (2023) (similar); *Pertuis v. Front Roe Rests., Inc.*, 423 S.C. 640, 655, 817 S.E.2d 273, 280 (2018) (“formally recogniz[ing] today this single business enterprise theory” of liability without evaluating its applicability to the personal jurisdiction analysis); *Duong v. N. Am. Trans. Servs. LLC*, No. 2:17-cv-01089-DC, 2019 WL 13109647, at *13 (D.S.C. Sept. 25, 2019) (rejecting applicability of the “single business enterprise theory” of personal jurisdiction because “there are no contacts for the court to impute” to each of the individual defendant entities); *DorFman v. Marriott Int’l Hotels, Inc.*, No. 99 CIV 10496(CSH), 2002 WL 143643, at *11 (S.D.N.Y. Jan. 3, 2002) (exercising personal jurisdiction based on an alter-ego finding that there was an “agency relationship” between the two companies); *Ruiz v. Economics Lab., Inc.*, 290 F. Supp. 701, 703 (D.P.R. 1968) (similar).

as an “equitable” end-run around the Due Process Clause’s prohibition on exercising personal jurisdiction over the Altrad Defendants, who had nothing to do with Cape PLC or CIHL until 2017.

That does not comport with any conception of the Due Process Clause, it is an unlawful extension of the Receiver’s authority to reach outside of South Carolina, and it reinforces the impropriety of the Receiver’s performance of his role as an advocate for the asbestos plaintiffs who are responsible for his appointment.

Third, these “equitable” avenues to circumvent the Due Process Clause fail on their merits. In the Third-Party Complaint, the Receiver did not make any effort to establish personal jurisdiction over the Altrad Defendants through a corporate veil-piercing, alter ego, or any related theory. Mr. Altrad argued that a veil-piercing theory cannot establish personal jurisdiction over Mr. Altrad—a French citizen—based merely on his status as a corporate officer and indirect shareholder of AIA—a French company. (R. p. ____; Aff. Altrad ¶ 32.) The Receiver’s one-word allegation that the undefined “Cape” is “controlled” by Mr. Altrad by virtue of his status as a shareholder and corporate officer of AIA is conclusory, and it is also irrelevant to veil piercing or alter ego because Mr. Altrad’s alleged “control” started in 2017—decades after the conduct at issue.

Before 2017, Mr. Altrad had no affiliation or connection with Cape PLC, with CIHL, with any direct or indirect subsidiary of Cape PLC, with any direct or indirect subsidiary of CIHL, or with any predecessor or successor to those entities. (R. p. ____; *id.* ¶ 31.) Cape PLC was a publicly traded company on the London Stock Exchange through 2017, and its shares were owned by the general public. (R. p. ____; *id.* ¶ 34.) In 2017, Altrad UK Limited, a wholly-owned subsidiary of AIA, acquired Cape PLC through a public tender offer to purchase all shares of Cape PLC, except the IDC Scheme Share, which resulted in Cape PLC becoming a wholly-owned subsidiary of

Altrad UK Limited. (R. p. ____; *id.* ¶ 35.) This timing is critical because both the alleged asbestos exposure that is the basis of the *Tibbs* Complaint and the alleged “liability-avoidance scheme” that is the basis of the Third-Party Complaint occurred decades earlier. Thus, Mr. Altrad could not have exerted any “control” over “Cape” during the relevant time period.

Even after 2017, Mr. Altrad never had any direct or indirect influence or control, or sought to directly or indirectly influence or control, any corporate entity, in a manner that prevents that organization from maintaining its independent existence and corporate structure, observing all corporate formalities, having duly appointed and functioning corporate management and executive officers, maintaining separate corporate records, maintaining appropriate corporate controls and accounting for all financial distributions and payments, being adequately capitalized to meet its ongoing operational and financial obligations, and in all ways operating in a manner consistent with its corporate existence as an independent entity—and, again, there isn’t a single allegation to the contrary. (R. p. ____; *id.* ¶ 36.) Because Mr. Altrad has never even been alleged to use the corporate form of any entity for any improper or fraudulent purpose to cause harm to anyone, there is no basis for the Court to exercise personal jurisdiction over him on an alter ego theory or any other legal theory. (R. p. ____; *id.* ¶ 37.) As explained above, the Third-Party Complaint is completely devoid of any factual allegations *specific* to Mr. Altrad that would support the exercise of personal jurisdiction over this French citizen.

The Receiver’s pleadings suffer from the same fatal defects with respect to AIA, as it also makes no effort to establish personal jurisdiction through a corporate veil-piercing, alter ego, or any related theory. The conclusory allegation that AIA “failed to follow corporate formalities” is not enough. Here, the only allegation in the Third-Party Complaint with respect to AIA is that its wholly-owned subsidiary, Altrad UK Limited, acquired the stock of undefined “Cape” in 2017.

(R. p. ____; Third-Party Complaint ¶ 116.) However, the acquisition of Cape’s publicly traded shares by an AIA foreign subsidiary through a public tender offer in 2017 cannot possibly subject AIA, the foreign parent, to the jurisdiction of South Carolina’s courts. The Receiver’s allegation that AIA “acquired and has since controlled Cape” is conclusory, and it is also irrelevant to veil piercing or alter ego because, as with Mr. Altrad individually, AIA’s alleged “control” started in 2017—decades after the conduct at issue.

Like Mr. Altrad himself, before 2017, AIA had no affiliation or connection with Third-Party Plaintiff Cape PLC, CIHL, any direct or indirect subsidiary of Cape PLC, any direct or indirect subsidiary of CIHL, or any predecessor or successor to those entities. (R. p. ____; Aff. Alcock ¶ 39.) Cape PLC was a publicly traded company on the London Stock Exchange through 2017, and its shares were owned by the general public. (*Id.* ¶ 40.) In 2017, Altrad UK Limited, a wholly-owned subsidiary of AIA, acquired Cape PLC through a public tender offer to purchase all shares of Cape PLC, except the IDC Scheme Share, which resulted in Cape PLC becoming a wholly-owned subsidiary of Altrad UK Limited. (*Id.* ¶ 41.) At no time has Cape PLC or any of its direct or indirect subsidiaries been combined with, merged into, or transferred their liabilities to AIA or any of AIA’s other direct or indirect subsidiaries, including in connection with the Cape PLC Acquisition. (*Id.* ¶ 42.) This timing is important because the alleged asbestos exposure that is the basis of the *Tibbs* Complaint, and the alleged “liability-avoidance scheme” that is the basis of the Third-Party Complaint, occurred decades earlier. Thus, AIA could not have exerted any “control” over “Cape” during the relevant time period, so there is no basis for personal jurisdiction over AIA.

Even after 2017, AIA and all of its direct and indirect subsidiaries, including Cape PLC, have maintained their own separate corporate structures, observed corporate formalities, have duly

appointed and functioning corporate management and executive officers, have maintained separate corporate records, have maintained appropriate corporate controls and accounting for all financial distributions and payments, have been adequately capitalized to meet their ongoing operational and financial obligations, if any, and in all ways have operated in a manner consistent with their existence as separate corporate entities. (*Id.* ¶ 43.) Furthermore, AIA and all of its direct and indirect subsidiaries, including Cape PLC, have maintained separate bank accounts from each other, have not commingled assets or funds with each other, have maintained separate books and records from each other, and have maintained appropriate corporate controls and accounting for all financial distributions and payments. (*Id.* ¶ 44.) The Third-Party Complaint is completely devoid of any factual allegations specific to AIA that would support the exercise of jurisdiction over this French company. The sole allegation that AIA's wholly-owned subsidiary acquired the publicly-traded stock of Cape is insufficient to obtain personal jurisdiction over AIA under an alter ego theory or any other.

Finally, the Third-Party Complaint does not establish personal jurisdiction through a corporate veil-piercing, alter ego, or any related theory because AIA has never had any direct or indirect influence or control, or sought to directly or indirectly influence or control, any corporate entity in a manner that prevents that organization from maintaining its independent existence and corporate structure, observing all corporate formalities, having duly appointed and functioning corporate management and executive officers, maintaining separate corporate records, maintaining appropriate corporate controls and accounting for all financial distributions and payments, being adequately capitalized to meet its ongoing operational and financial obligations, and in all ways operating in a manner consistent with its corporate existence as an independent entity. (*Id.* ¶ 46.) Thus, Cape PLC and its direct and indirect subsidiaries are distinct business entities with separate corporate structures, separate corporate formalities, and separate financials from its direct and indirect parent companies, including Altrad UK

Limited and AIA. (*Id.* ¶ 45.) As such, the Court cannot exercise personal jurisdiction over AIA based on a veil piercing or alter ego theory, because AIA and Cape have observed corporate formalities and maintained their separate corporate existence. (*Id.* ¶¶ 43–49.)

The order purporting to find sufficient basis to exercise personal jurisdiction over Mr. Altrad and AIA does not rely on the obviously and admittedly insufficient allegations of the Third-Party Complaint. General jurisdiction as to this French individual and French company is impossible; the circuit court disavowed any reliance on general jurisdiction in a footnote. As to specific jurisdiction, the meager and conclusory allegations described in the Third-Party Complaint are clearly insufficient. The complete absence of jurisdictional facts as to Mr. Altrad or AIA in the Third-Party Complaint leaves as the only basis for imposition of personal jurisdiction the circuit court’s reliance on annual reports of the Altrad Group and various websites that the Receiver cited during motions practice that are not in the Third-Party Complaint. None of these sources establish personal jurisdiction on “equitable grounds” based on facts specific to these two French parties, as none mention South Carolina in any way.¹¹

Amazingly, the order actually purports to predicate the exercise of personal jurisdiction over Mr. Altrad based upon a news report regarding a finding that Mr. Altrad conspired with the World Rugby vice-chairman Bernard Laporte for certain sponsorship rights for Altrad Group regarding the French national rugby team. (R. p. ____; Order at 45 n.27 (Dec. 6, 2023).) To state the obvious, rugby has nothing to do with asbestos, and South Carolina does not have a

¹¹ For instance, a Reuters article relied on by the circuit court does not contain any facts which could support imposition of personal jurisdiction over these non-resident defendants as a matter of law: no references to South Carolina, the word “asbestos” or the names “Cape Asbestos,” “Cape Industrial Holdings Limited,” or Mr. Altrad. (*See* R. p. ____; Order at 39 n.22 (Dec. 6, 2023) (citing <https://www.reuters.com/article/cape-ma-altrad-investment/altrad-investment-to-buy-uk-oil-services-firm-cape-for-332-2-mln-poundsidUSL4N1JY2KG>).)

professional rugby team, rendering the article wholly irrelevant to the question of personal jurisdiction. Nor does there appear any support for exercise of personal jurisdiction in the embedded links to other articles regarding the Altrad Group. (R. p. ____; *id.* at 46.)¹² Notably missing from all links and articles cited by the circuit court: any reference to the State of South Carolina, the words “asbestos,” “Cape,” “Cape Asbestos,” or “Cape Industrial Holdings.” And, in fact, instead of supporting the proposed order’s finding that Mr. Altrad is the “spirit guide” who personally controls all decisions of all of the companies, these links specifically explain that although it is a privately held company, the Altrad Group follows the rules for governance of publicly listed French companies. The website makes clear that Altrad Group is led by multiple people including 11 members of the Board of Directors “who guarantee the objectivity of the proceedings” through a system of governance that “reinforces the power of control and independence of directors.”

The order on appeal finds the Altrad Defendants within the circuit court’s jurisdictional reach, and the Receiver’s claims against them legitimately within South Carolina, not upon facts contained in the record, but upon the Receiver’s interpretation of website content viewed through the prism of his self-appointed quest to bring a “day of reckoning.” The evidence cited as the basis of the order is insufficient as a matter of law to support the exercise of personal jurisdiction over these foreign third-party defendants.

At bottom, by disregarding the actual personal jurisdiction analysis required by the Due Process Clause in favor of “equitably” exercising personal jurisdiction over foreign people and

¹² The links in the circuit court’s order are to generic information regarding the Altrad Group: <https://www.altrad.com/en/our-history.html> and <https://www.altrad.com/en/governance.html#:~:text=It%20is%20headed%20Mohed,humanist%20conception%20of%20the%20company.>

companies based on the Receiver's mischaracterizations, the circuit court wrongly treated the Receiver's third-party claims against foreign defendants as if they were in-state property subject to the court's jurisdiction without regard to the Due Process protections afforded litigants. But none of the personal jurisdiction arguments raised in the appealed order withstand scrutiny. If this Court accepts the circuit court's analysis, then the Receiver will be able to drag any foreign shareholder, officer, parent, subsidiary, or affiliate into a South Carolina court by alleging in conclusory fashion, and without any factual basis at all, that they are all the "guiding spirit" of the entity in receivership, and that they are all part of "a single business enterprise." Merely alleging alter ego and reciting these magic words is not enough to obtain universal jurisdiction over foreign individuals and entities. Due Process demands more, and the circuit court's disregard of constitutional safeguards is legal error.

C. The receivership violates the Takings, Due Process, Equal Protection, and Excessive Fines Clauses of the U.S. Constitution.

"A Receiver is the officer of the Court—as he has been termed, the arm of the Court." *In re Am. Slicing Mach. Co.*, 125 S.C. 214, 217, 118 S.E. 303, 304 (1923). As such, the appointment of a receiver implicates the restrictions on arbitrary state action contained in the U.S. Constitution. In addition to violating the Commerce Clause and Due Process Clauses, allowing the receivership to proceed in these circumstances would contravene the Taking Clause, the Excessive Fines Clause, and the Equal Protection Clause of the U.S. Constitution.

Taken at face value, the appointment order relies on a single non-appearance in the *Park* case—where no default was ever entered, and where lawful service of process on Cape PLC or CIHL is not found anywhere in the record—to give the Receiver control of the affairs of an entire foreign company, dispose of foreign assets, concede liabilities, control the defense of the company in South Carolina for all time, and sue foreign third parties on its behalf, among other things. This

state action implicates the constitutional rights of both the entity in receivership and the targets of that receivership. Because the Receiver pleads that Mr. Altrad and AIA have an indirect ownership interest in Cape PLC (or CIHL), state interference in their property interests is implicated as well.

Particularly in the absence of any civil judgment or criminal conviction, this prejudgment receivership that purports to seize control of an active foreign company and its foreign assets without any predicate adjudication of liability runs afoul of the Takings Clause. *See Branch ex rel. Me. Nat'l Bank v. United States*, 69 F.3d 1571, 1576 (Fed. Cir. 1995) (holding that the legal predicate for creating a receivership “might be challenged on Takings Clause or other constitutional grounds”). “[T]hough the classic taking is a transfer of property to the State or to another private party by eminent domain, the Takings Clause applies to other state actions that achieve the same thing.” *Stop the Beach Renourishment, Inc. v. Fla. Dep’t of Env’tl. Prot.*, 560 U.S. 702, 713 (2010).

As noted in the text of the Fifth Amendment itself, governments may only effect takings that are for “public use.” U.S. Const. amend. V. This means, for example, the government may not transfer private property from one party for the sole purpose of benefitting another private party. *See Kelo v. City of New London*, 545 U.S. 469, 477 (2005) (“the City would no doubt be forbidden from taking petitioners’ land for the purpose of conferring a private benefit on a particular private party”); *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 241 (1984). The public use requirement circumscribes the scope of government power to seize private property: the Government may compel an individual to forfeit his property for the public’s use, but not for the benefit of another private person. *See id.* This receivership violates the Takings Clause because the Receiver (an arm of the state) is purporting to seize control of Cape PLC (or CIHL)—and taking possession of its foreign assets—for the purported purpose of distributing those assets to South Carolina residents

who are not even creditors of either Cape PLC or CIHL. There is no just (or any) compensation for this taking, and the exercise is designed to redistribute assets for the benefit of private persons, not the public at large.

This receivership also violates the Due Process Clause, which states that the Government must provide a person with due process of law when acquiring his property. U.S. Const. amends. V, XIV. To plead a procedural due process claim, a plaintiff must demonstrate he (1) “had a constitutionally cognizable life, liberty, or property interest,” (2) “the deprivation of that interest was caused by some form of state action,” and (3) “the procedures employed were constitutionally inadequate.” *Sansotta v. Town of Nags Head*, 724 F.3d 533, 540 (4th Cir. 2013) (cleaned up). “At bottom, procedural due process requires fair notice of impending state action and an opportunity to be heard.” *Snider Int’l Corp. v. Town of Forest Heights, Md.*, 739 F.3d 140, 146 (4th Cir. 2014).

There was no notice here, much less fair notice. As explained above and reiterated below, Cape PLC was not served with any papers in the *Park* action, and CIHL did not receive statutory notice of the motion to appoint the receiver in *Park* or the seeming modification of the receivership order in *Tibbs*. In addition to the lack of notice, the procedures employed here when creating this prejudgment receivership were constitutionally inadequate—the circuit court purported to seize control of a foreign company without any adjudication, much less a fair adjudication, that the target of the receivership was liable on any ground or to any person. Given the procedural defects in the appointment process—both in the *Park* and *Tibbs* lawsuits—the receivership does not pass constitutional muster.

This prejudgment receivership also violates the Excessive Fines Clause and the Substantive Due Process Clause. “The Excessive Fines Clause of the Eighth Amendment prohibits the government from imposing excessive fines as punishment.” *Korany v. FDA*, 498 F.3d 272, 277

(4th Cir. 2007). Where “a civil sanction ‘can only be explained as serving in part to punish,’ then the fine is subject to the Eighth Amendment.” *United States ex rel. Drakeford v. Tuomey*, 792 F.3d 364, 387 (4th Cir. 2015). In such a case, the fine “will be found constitutionally excessive only if it is ‘grossly disproportional to the gravity of [the] offense.’” *Id.* A civil forfeiture is considered to be a punishment and, thus, constitutes a fine for purposes of an Eighth Amendment proportionality analysis. *United States v. 79,650.00 Seized from Bank of Am. Account Ending in 8247*, 650 F.3d 381, 386 n.8 (4th Cir. 2011).

Relatedly, the Due Process Clause imposes limits on “grossly excessive” monetary penalties that go beyond what is necessary to vindicate the Government’s “legitimate interests in punishment and deterrence.” *Id.* Here, the purported prejudgment seizure of a foreign company and all its foreign assets by a South Carolina court can only be described as an extreme civil sanction and forfeiture. It is clearly disproportionate to the gravity of the offense because it was based upon Cape PLC’s alleged non-appearance in the *Park* lawsuit, without even an entry of default or a default judgment. These constitutional provisions bar a South Carolina court from giving power to a Receiver to take over a foreign company and its assets without any predicate adjudication of liability, and without the personal jurisdiction to do so, and distribute those assets in violation of the property rights of the foreign company and its owners.

Finally, “the Equal Protection Clause forbids a State to discriminate in favor of its own residents solely by burdening ‘the residents of other state members of our federation,’” and the same principle applies to gross discrimination against “foreign corporations.” *Metro. Life Ins. Co. v. Ward*, 470 U.S. 869, 878–79 (1985). The substantive Due Process analysis is virtually the same—that is, whether the challenged law is rationally related to a legitimate state purpose. *Id.* at 875; *Williamson v. Lee Optical of Okla.*, 348 U.S. 483, 487-488 (1955). The abuse of South

Carolina’s receivership statute to seize foreign assets on a prejudgment basis, strip the company of its ability to defend itself, and then redistribute them to an in-state receiver and non-creditor residents lacks the legitimacy required by the law. The order should be vacated accordingly.

III. The receivership appointment violated the procedural requirements of the South Carolina statute governing receiverships.

In addition to being substantively violative of South Carolina receivership law and the United States Constitution, the receivership over CIHL must be dissolved because the motion to appoint the Receiver in the *Park* lawsuit did not reference CIHL, meaning notice of the appointment was not properly provided to CIHL as required by South Carolina Code § 15-65-20.

Both the Receiver and circuit court admit that the active Jersey entity named in the order appointing the receiver—Cape PLC—was not served with any papers in the *Park* action. Cape PLC was not served with the summons and complaint or the motion to appoint the receiver. Indeed, the Receiver confirmed that Cape PLC was “organized under the laws of the Bailiwick of Jersey in 2011,” is an active foreign company that is not insolvent or dissolved, and is a “holding company of the Cape Group.” (R. p. ____.) Yet, the *Park* Second Amended Complaint and the Motion to Appoint Receiver were admittedly **not** served on Cape PLC through its registered agent in Jersey in accordance with the Hague Convention. These facts alone defeat the receivership as to Cape PLC a matter of law and render the initial appointment order a nullity, as notice of both the *Park* lawsuit and the motion to appoint the receiver are mandatory conditions precedent to the effectiveness of the receivership.

That leaves the U.K. entity CIHL. The circuit court recognized that the *Park* complaint named Cape PLC and CIHL as separate defendants. The circuit court further found that the *Park* plaintiffs attempted to separately serve Cape PLC and CIHL at the U.K. address for the registered agent of CIHL (an impossibility). Thus, the Court found that CIHL was properly served with the

First Amended Summons and First Amended Complaint in the *Park* lawsuit because the complaint named CIHL, the summons named CIHL, and the papers were addressed to CIHL and served on the registered agent for CIHL. However, after service of the complaint (which was not even the operative pleading, rendering service ineffective), neither the motion to appoint the Receiver nor the order actually appointing the Receiver referred to CIHL ***at all*** and thus did not give statutory notice to CIHL as required by South Carolina Code § 15-65-20. Nor is there any evidence in the record that CIHL was provided notice of the appealed order substituting CIHL for Cape PLC in the appointment order. This statutory notice requirement is mandatory, and failure to comply voids the appointment.

A. The receivership must be dissolved because CIHL was not provided statutory notice of the motion to appoint the receiver in the *Park* lawsuit as required by South Carolina Code § 15-65-20.

The notice provision for receiverships states as follows:

No receiver of the property of any person or corporation shall be appointed by any court or judge, either in term time or at chambers, ***without notice of the application for such appointment to the party to the action whose property is sought to be put in the hands of a receiver*** and to any party to the action in possession of such property claiming an interest therein under any contract, lease or conveyance thereof from the alleged owner. At least four days' notice of the application must be given, unless the court shall, upon it being made to appear that delay would work injustice, prescribe a shorter time.

S.C. Code Ann. § 15-65-20 (emphasis added).

The appealed order provides that “The Park Plaintiffs provided notice of the appointment by DHL mailing to the same address at which Cape was served” in the U.K. (R. p. ____; Order at 22 (Dec. 6, 2023).) Even assuming this is true—and there is no evidence that it is—it is undisputed that the motion for appointment requested a receivership over Cape PLC, ***not*** CIHL. The name CIHL is found nowhere in the motion to appoint the receiver or the order appointing the receiver.

(R. p. ____.) Thus, there is no evidence in the record that CIHL received notice that *CIHL's assets* were the subject of the original receivership order in the *Park* action, nor is there any evidence in the record that CIHL received any notice that it may be subject to the modified receivership order in the *Tibbs* lawsuit—a case in which CIHL is not even a party.

While the Receiver and the circuit court now use the “n/k/a” acronym to pretend that Cape PLC and CIHL are the same entity (which is obviously not true), there was no possible way CIHL could anticipate that the Receiver would try to morph from being a receiver over Cape PLC in *Park* to a receiver over CIHL in *Tibbs*.

The *Park* plaintiffs named Cape PLC and CIHL as separate defendants, and those two entities were purportedly served separately with a summons. The *Park* plaintiffs treated Cape PLC and CIHL as different entities for purposes of the pleadings and for purposes of their motion to appoint a receiver—because they are separate entities. The circuit court likewise treated Cape PLC and CIHL as different entities for purposes of its original appointment order—because they are separate entities.

Not until the receivership was challenged did the Receiver decide to change his identity from being a receiver for Cape PLC as originally ordered to now being a receiver for CIHL. Inexplicably, the circuit court accepted this identity-fluid position proposed by the Receiver, but there is no way an everchanging-based-on-the-circumstances receivership can possibly comport with the South Carolina Code’s specific requirements for appointing a receiver, the Supreme Court’s repeated warnings that receiverships are drastic and should be avoided, and any notion of Due Process. In short, a receiver cannot choose to identify as a receiver for one company when it suits his desires, but then identify as a receiver for a different company when his desires change.

The only way the circuit court attempted to justify its endorsement of this nebulous receivership was to point to South Carolina’s jurisprudence on “misnomer.” (*See* R. pp. ___, ___; Order at 19, 22–23 (Dec. 6, 2023) (relying on *Griffin v. Capital Cash*, 310 S.C. 288, 423 S.E.2d 143 (Ct. App. 1992), as the basis for allowing the receivership to change without any notice to CIHL).) But that line of authority has nothing to do with this situation.

In *Griffin*, the correct defendant was sued in its “d/b/a” name, a name under which it held itself out to the public as the correct business name. As this Court explained:

It is clear, however, that First Deposit National Bank is authorized to use the name [Capital Cash] and that it actually conducted business under the name. It is also undisputed that it was the only name under which First Deposit National Bank did business with Griffin. Griffin mailed her complaint to Capital Cash by certified mail return receipt requested to the address listed on her monthly billing statements. There is no dispute that Capital Cash received the pleadings.

310 S.C. at 290–91, 423 S.E.2d at 145.

Griffin has nothing to do with the situation here, where the record evidence reveals:

- The *Park* plaintiffs mailed a summons to CIHL. (R. p. ___.)
- The *Park* plaintiffs tried to mail a summons to Cape PLC at the wrong address. (R. p. ___.)
- The *Park* plaintiffs separately identified Cape PLC and CIHL in their pleadings. (R. p. ___.)
- The *Park* plaintiffs identified only Cape PLC as the target of their belated receivership request. (R. p. ___.)
- The circuit court only identified Cape PLC in its order appointing the Receiver in *Park*. (R. p. ___.)
- The Receiver filed a third-party complaint in *Park* in which he purported to be the receiver only for Cape PLC and made no mention of CIHL. (R. p. ___.)
- The *Tibbs* Plaintiffs have not included CIHL in this case. (R. p. ___.)

These facts bear no resemblance to those of *Griffin* or any other “misnomer” case. And perhaps most importantly, the *Park* Plaintiffs themselves have never suggested that they didn’t mean exactly what they said when they sought a receivership appointment over Cape PLC.

Ultimately, South Carolina law only allows a plaintiff to assert “misnomer” when “it appears the corporation could not have been, or it was not, misled.” *Griffin*, 310 S.C. at 292, 423 S.E.2d at 146. There is no possible way such an argument could prevail here; CIHL obviously would have had no idea that the circuit court in *Tibbs* would find that the receivership appointment in *Park* over Cape PLC was truly meant to apply to CIHL despite the absence of CIHL’s name from both the motion for a receiver and the order appointing a receiver in *Park*, despite the fact that the *Park* Plaintiffs have never even hinted that they meant for the appointment to cover CIHL, and despite the fact that CIHL is not even a party in the *Tibbs* case.

Nor is there any authority that supports the circuit court’s conclusion that misnomer can be invoked when a plaintiff sues two separate defendants in his complaint and a different litigant in a different case subsequently contends those two separate defendants are actually one and the same. In this scenario, and unlike the misnomer cases involving a single business operating under a trade name, CIHL would have been misled to its prejudice as to the nature of the receivership appointment. As such, misnomer authority cannot salvage the clear failure to give CIHL proper notice that CIHL’s assets would be the subject of the receivership, as required by South Carolina Code § 15-65-20.

As a last-ditch effort to salvage the receivership, the circuit court cited two misnomer cases in support of its conclusion that the notice is not void under South Carolina Code § 15-65-20 based on the fact that “the paperwork included a ‘formerly known as’ name for the Cape entity.” (R. p. ____; Order at 23 (Dec. 6, 2023).) Both of those cases are easily distinguishable because they

involved corporate defendants who were sued under the known trade names they used to do business with the plaintiff. *See Griffin*, 310 S.C. at 292, 423 S.E.2d at 146 (“Capital Cash was the name First Deposit National Bank used to do business with Griffin.”); *McCall v. IKON*, 363 S.C. 646, 653, 611 S.E.2d 315, 318 (Ct. App. 2005) (“The record unmistakably reveals that IKON Education Services (or IKON Educational Services) was the name IKON used in connection with its computer training courses offered in South Carolina.”).

In contrast, this case involves the amendment of a receivership order where the named entity—Cape PLC—is an active Jersey company, where Cape PLC and CIHL were separately named defendants in *Park*, and where the correct name of the entity implicates the due process and notice rights of multiple categories of stakeholders—the Receiver, the entity in receivership, and the Third-Party Defendants who are defending the matter. The Receiver’s contention that the wrong name in the receivership order did not mislead or prejudice anyone is absurd; given the fact that Cape PLC is an active Jersey entity, the Altrad Defendants did not know until reading the Receiver’s opposition arguments that the Receiver believed he was acting for CIHL. And his actions have certainly belied such a position, as the Receiver continues to make filings purportedly on behalf of Cape PLC in both *Park* and *Tibbs*.

The South Carolina Supreme Court has explained that “when an action is brought against a corporation, the general rule is that where the name is mistaken materially and substantially, or where there is such a variation that a different entity is indicated, the suit cannot be regarded as against the corporation, and it cannot be affected by the proceedings or judgment therein.” *Tunstall v. Lerner Shops, Inc.*, 160 S.C. 557, 563, 159 S.E. 386, 389 (1931). Because Cape PLC is an active Jersey entity that currently exists, and the fact that CIHL was separately named as a defendant and served with a summons in *Park*, the Altrad Defendants (and CIHL) had every reason to believe

that the reference to Cape PLC in the motion to appoint the receiver and the original appointment order referred to the actual Cape PLC in existence today, not anyone else, including CIHL. Because CIHL did not receive the notice required by South Carolina Code § 15-65-20, the order modifying the receivership to replace Cape PLC with CIHL is void as a matter of law and must be vacated.

B. The receivership must be dissolved because the *Park* lawsuit was completely resolved and settled before the motion to appoint the receiver was filed.

Finally, the appointment order from which this entire situation arises is void on its face because the *Park* case was “fully resolved” for several months before the *Park* plaintiffs even moved for the appointment of a receiver over Cape PLC. There is no dispute that the case was “fully resolved”; the Park family’s counsel specifically reported this to the circuit court. (R. p. ____.)

Without an active case, the Park family had no standing to attempt to create a receivership over an active foreign company. It also lacked standing to seek a receiver appointment because they aren’t judgment creditors of Cape PLC (or of CIHL, for that matter). But the Receiver, again purporting to speak for the *Park* Plaintiffs, has argued that the report that the *Park* case was “fully resolved” applied only to the “responding defendants”—a qualification found nowhere in the communication itself, and which is directly contrary to the *Park* Plaintiffs’ use of the term “fully.”

Without a justiciable controversy, and without an actual creditor, the circuit court lacked jurisdiction to appoint a receiver in the first place. Accordingly, this receivership fails from the outset and should be dissolved.

CONCLUSION

This receivership far exceeds the boundaries allowed by law. It runs afoul of every norm of South Carolina receivership law; the United States Constitution; and basic notions of jurisdiction, fairness, and due process.

The Receiver’s continuous shapeshifting behavior further exposes the unlawful nature underlying this situation. Respectfully, this Court should put a stop to this sooner rather than later, as the circuit court and the Receiver continue to ignore clear jurisdictional boundaries, even while this appeal is pending. *See generally* Rule 205, SCACR (vesting the appellate courts with “exclusive jurisdiction” over all matters “affected by the appeal”).

Accordingly, the circuit court’s order continuing and modifying the receivership over Cape PLC or appointing a receiver over CIHL should be vacated, and the Third-Party Complaint should be dismissed.¹³

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: /s/ M. Todd Carroll
S.C. Bar No. 74000
todd.carroll@wbd-us.com
Kevin A. Hall
S.C. Bar No. 15063
kevin.hall@wbd-us.com
M. Elizabeth O’Neill
S.C. Bar No. 104013
elizabeth.oneill@wbd-us.com
1221 Main Street, Suite 1600
Columbia, SC 29201
(803) 454-6504

*Attorneys for Appellants Mohed Altrad and Altrad
Investment Authority SAS*

February 22, 2024

¹³ To the extent not inconsistent with the arguments presented herein, the Altrad Defendants respectfully adopt and incorporate by reference all arguments and issues presented by all of the other third-party defendants/appellants in this matter. Additionally, to ensure no doubt on the point, the Altrad Defendants submit this brief and their appeal without waiving, but instead specifically preserving, all arguments and objections to personal jurisdiction, which are inextricably intertwined with the merits of the receivership for the reasons explained herein.

**APPENDIX: TABLES OF RECEIVERSHIP APPOINTMENTS FROM THE ASBESTOS
DOCKET**

Table 1: Receivership Appointments from the Asbestos Docket

<u>Company Put in Receivership</u>	<u>Moving Counsel</u>	<u>Who is Appointed</u>	<u>Case in Which Appointment is Made</u>
Covil Corp.	Kassel McVey/Dean Omar Branham Shirley	Peter Protopapas	2018-CP-40-04940
Starr Davis Company, Inc.	Kassel McVey/DOBS	Peter Protopapas	2019-CP-40-00076
Starr Davis Company of S.C., Inc.	Kassel McVey/DOBS	Peter Protopapas	2019-CP-40-00076
Southern Insulation, Inc.	Kassel McVey/DOBS	Peter Protopapas	2019-CP-40-00076
Great Barrier Insulation Co.	Kassel McVey/DOBS	Peter Protopapas	2020-CP-40-02692
J&L Insulation, Inc.	Kassel McVey/DOBS	Peter Protopapas	2020-CP-40-01952
Pipe & Boiler Insulation, Inc.	Kassel McVey/DOBS	Peter Protopapas	2020-CP-40-01952
Piedmont Insulation Inc.	Kassel McVey/DOBS	Peter Protopapas	2020-CP-40-004475
Presnell Insulation Co., Inc.	Kassel McVey/DOBS	Peter Protopapas	2020-CP-40-01364
Flame Refractories, Inc.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
General Boiler Casing Co.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
Payne & Keller Co.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
United Construction Co. of Rome	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
Standard Insulation Co.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
Stafford Insulation Co.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
J.R. Deans Co., Inc.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
HEFCO, Inc.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
Davis Mechanical Contractors, Inc.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-03484
Heat & Frost Insulation Co.	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-06190
Whittaker Clark & Daniel, Inc.	Kassel McVey/DOBS	Peter Protopapas	2022-CP-40-01265
Beaty Investments, Inc.	Kassel McVey/DOBS	Peter Protopapas	2022-CP-40-01241
Cape PLC	Kassel McVey/DOBS	Peter Protopapas	2021-CP-40-02727
Atlas Turner Co., Ltd.	Kassel McVey/DOBS	Peter Protopapas	2022-CP-40-03834
Asbestos Co., Ltd.	Kassel McVey/DOBS	Peter Protopapas	2022-CP-40-03834

Table 2: Foreign Companies Placed in Receivership in the Asbestos Docket

<u>Company in Receivership</u>	<u>Where Located</u>	<u>Active/Dissolved</u>
Starr Davis Company, Inc.	North Carolina	Dissolved
Great Barrier Insulation Co.	Florida	Dissolved
J&L Insulation, Inc.	North Carolina	Dissolved
Piedmont Insulation Inc.	North Carolina	Dissolved
Presnell Insulation Co., Inc.	North Carolina	Dissolved
Flame Refractories, Inc.	Florida	Dissolved
General Boiler Casing Co.	North Carolina	Dissolved
Payne & Keller Co.	Texas	Dissolved (an improper circuit court order attempts to undo this dissolution)
United Construction Co. of Rome	North Carolina	Dissolved/merged with Flame Refractories
Standard Insulation Co.	North Carolina	Dissolved
Heat & Frost Insulation Co.	North Carolina	Dissolved
Whittaker Clark & Daniel, Inc.	New Jersey	Active—Bankruptcy Pending
Beaty Investments, Inc.	North Carolina	Dissolved
Cape PLC	International: Jersey	Active
Atlas Turner Co., Ltd.	International: Canada	Active
Asbestos Co., Ltd.	International: Canada	Active

Feb 22 2024

SC Court of Appeals

PROOF OF SERVICE

I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Appellants Altrad Investment Authority SAS and Mohed Altrad, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

Pleading(s): Altrad Defendants' Initial Brief

Parties Served:

John T. Lay, Jr. (jlay@gwblawfirm.com)
Gray T. Culbreath (gculbreath@gwblawfirm.com)
Lindsay A. Joyner (ljoyner@gwblawfirm.com)
Laura W. Jordan (ljordan@gwblawfirm.com)
Eleanor L. Jones (ejones@gwblawfirm.com)
Jonathan M. Robinson (jon@smithrobinsonlaw.com)
Shanon N. Peake (shanonp@smithrobinsonlaw.com)
G. Murrell Smith, Jr. (murrell@smithrobinsonlaw.com)
Troy S. Brown (troy.brown@morganlawis.com)
Dana E. Becker (dana.becker@morganlewis.com)
Brady Edwards (brady.edwards@morganlewis.com)
Robert W. Jacques (robert.jacques@morganlewis.com)
Paul A. Scrudato (paul.scrudato@morganlewis.com)

Counsel for the Receiver for Cape PLC

Theile B. McVey (tmcvey@kassellaw.com)
John D. Kassel (jkassel@kassellaw.com)
Jamie D. Rutkoski (jrutkoski@kassellaw.com)
Charles William Branham, III (tbranham@dobslegal.com)
Kevin W. Paul (kpaul@dobslegal.com)
David Christopher Humen (dhumen@dobslegal.com)

Counsel for Plaintiffs

James H. Elliott, Jr. (jelliott@richardsonplowden.com)
Cameron D. Berthelsen (cberthelsen@richardsonplowden.com)

Counsel for Co-Appellants AA/DB Non-US Third-Party Defendants

Steven J. Pugh (spugh@richardsonplowden.com)
Benjamin P. Carlton (bcarlton@richardsonplowden.com)
Carmen V. Ganjehsani (cganjehsani@richardsonplowden.com)
Ashwin R. Sanzgiri (asanzgiri@richardsonplowden.com)

Counsel for Co-Appellants ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC

A. Victor Rawl, Jr. (vrawl@grsm.com)

Counsel for Co-Appellants ESAB Corporation; Central Mining and Investment Corp., Ltd.; and Charter Consolidated Ltd.

Stephen L. Brown (sbrown@ycrlaw.com)
James D. Gandy, III (tgandy@ycrlaw.com)
Stephen A. Griffith (sgriffith@ycrlaw.com)

Counsel for Asbestos Corporation Limited

By: /s/ M. Todd Carroll

February 22, 2024

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2023-001461
Circuit Court Case No. 2023-CP-40-01759

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 Corporation; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply,

Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Incl; SPX Corporation; Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable, LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; and Zurn Industries, LLC, ...Defendants,

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,

of which

Mohed Altrad; Altrad Investment Authority SAS; ArranCo US, LLC;
Hawk Bidco US Inc.; Sparrows Offshore, LLC; Anglo American PLC;
De Beers PLC; De Beers Centenary AG; De Beers Consolidated Mines
Proprietary Ltd.; De Beers UK Ltd.; ESAB Corporation; Charter
Consolidated Ltd.; and Central Mining & Investment
Corporation Ltd. are the.....Appellants.

**INITIAL BRIEF OF APPELLANTS CHARTER CONSOLIDATED LTD.,
ESAB CORPORATION, AND CENTRAL MINING AND INVESTMENT
CORPORATION LTD.**

GORDON REES SCULLY MANSUKHANI, LLP
A. Victor Rawl, Jr. (SC 09261)
Email: vrawl@grsm.com
677 King Street, Suite 450
Charleston, SC 29403
Telephone: 843-714-2501

*Counsel for Appellants Charter Consolidated Ltd.,
ESAB Corporation, and Central Mining and
Investment Corporation Ltd.*

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I. STATEMENT OF THE ISSUES ON APPEAL

1. Whether the circuit court erred in permitting the receivership to proceed against “Cape PLC n/k/a Cape Intermediate Holdings Limited” when the receivership was appointed in an unrelated case over a different entity, “Cape PLC, individually and as successor in interest to cape asbestos company limited.”

2. Whether the purported receivership over “Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited” should be dissolved when no entity named cape plc was ever served with process in connection with the receivership appointment.

3. Whether the purported receivership over “Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited” should be dissolved when no Cape entity was served with any complaint in connection with the receivership appointment.

4. Whether the purported receivership over “Cape plc, individually and as successor in interest to Cape Asbestos Company Limited” should be dissolved when the requirements of South Carolina Code § 15-65-10(4)-(5) and federal law were not met.

5. Whether specific jurisdiction exists when Appellants did not direct any activity to South Carolina that relates to asbestos or any of the claims asserted by Respondent.

6. Whether the court erred in finding Appellants were the alter ego of Cape or part of a single business enterprise with Cape when Respondent failed to allege, among other things, specific *facts* as between Appellants and Cape that there was (a) any undercapitalization of Cape; (b) a failure to observe corporate formalities; (c) non-payment of dividends; (d) insolvency of Cape at the time of Appellants’ purported relationship with Cape; (e) siphoning of funds by Appellants; (f) non-functioning of Cape’s officers and directors; and (g) any absence of corporate records.

7. Whether the circuit court erred in determining that Respondent’s claims for unjust

enrichment, alter ego/veil-piercing, accounting, and constructive trust arose from the South Carolina contacts imputed to Appellants, i.e. sales of asbestos into South Carolina generally by Cape Intermediate Holdings Ltd.’s subsidiary.

8. Whether the circuit court erred when it found that it had personal jurisdiction over ESAB under a successor liability theory when ESAB did not become the parent of Charter and Central Mining until 2022, more than 25 years after Charter and Central Mining ceased having any interest in Cape and more than 40 years after any of the alleged wrongdoing by Cape occurred.

II. SUMMARY OF ARGUMENT

The Circuit Court committed a series of reversible legal errors.¹ In denying the Motions to Dissolve Respondent’s receivership appointment, the Circuit Court abused its discretion, as its findings lack evidentiary support and are contradicted by the record. Respondent was purportedly appointed the receiver over Cape PLC, an active foreign company formed in 2011, as “successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) . . . and its subsidiaries and global affiliates,” in the *Park* action, a wholly unrelated asbestos action that had been “fully resolved” for months before the receivership appointment. Although the Circuit Court held that the Cape PLC receivership was valid because “Cape” was served in *Park*, failed to timely appear, and received proper notice of the Motion to Appear and the Receivership Order, the underlying facts tell a different story. In opposing the Motions to Dissolve, Respondent revealed that no entity named Cape PLC was ever served in *Park*; failed to demonstrate that Cape Intermediate Holdings Limited (which Respondent now argues is the entity placed in receivership, although it was not named in the Motion to Appoint and is not a defendant in the *Tibbs* Suit) was served with the First

¹ Pursuant to Rule 208(6), SCACR, and to the extent not inconsistent with the arguments presented herein, Appellants adopt and incorporate by reference the initial appeal briefs filed by other third-party defendants/appellants in this matter.

Amended Complaint; and admitted that neither Cape PLC nor Cape Intermediate Holdings Limited was served with the Second Amended Summons even though failure to respond to that pleading was the basis of the Motion to Appoint.

Nor does the evidence support a finding that the statutory receivership requirements are met. The Motion to Appoint, the Dissolution Opposition, and Respondent's proposed order do not set forth the necessary elements of South Carolina Code § 15-65-10(4); no evidence has been provided that a receivership is appropriate under South Carolina Code § 15-65-10(5); and there is no judgment against Cape PLC (or any Cape entity) in the *Park* case or any other case.

Instead of admitting that these defects are fatal to its appointment and that the wrong *Park* defendant may have been placed into receivership, Respondent attempted to obscure the facts under a cloud of rhetoric about "Cape's" alleged misdeeds more than fifty years ago, an argument that naming the wrong *Park* defendant should be excused as misnomer, and a discreet re-definition of Cape – from Cape PLC and its successors, as defined in the Motion to Appoint and the Receivership Order, to "Cape PLC n/k/a Cape Intermediate Holdings Ltd.," as defined in the Dissolution Opposition.

Even in the face of the uncontroverted evidence of these myriad defects as to service, notice, and evolving definitions of Cape PLC, and with no refuting evidence provided by Respondent, the Circuit Court adopted Respondent's proposed order in its entirety. This was an abuse of discretion under South Carolina law. Accordingly, this Court should reverse the Order as to dissolution of the receivership and remand with instructions to grant the Motions to Dissolve because the Order on receivership is not supported by the evidence in the record.

Furthermore, this Court should reverse the Circuit Court's Order on personal jurisdiction and remand with instructions to dismiss with prejudice the Third-Party Complaint as to Appellants

because the Third-Party Complaint fails to allege facts sufficient to support personal jurisdiction over Appellants. Appellants timely challenged the court's personal jurisdiction over them, arguing that the court did not have general or specific jurisdiction based on their nonexistent contacts with South Carolina. Respondent did not assert any facts to support a relationship between Cape PLC and Appellants. Even as to Cape Intermediate Holdings Ltd., Respondent failed to allege facts sufficient to support specific personal jurisdiction over Appellants. The Circuit Court appears to have agreed that no general jurisdiction exists, but incorrectly determined that Respondent met his burden to demonstrate specific jurisdiction under alter ego or single business enterprise theories. Neither the alter ego or single business enterprise theory applies here because there are insufficient *facts* alleged in the Third-Party Complaint demonstrating the requisite dominion and control by Appellants over either Cape PLC or Cape Intermediate Holdings Ltd. Nor could Respondent ever make these allegations as to ESAB, for example, as Respondent acknowledges that ESAB did not become the current corporate parent of Charter and Central Mining until more than twenty-five years after Charter and Central Mining ceased having a legal interest in the company now known as Cape Intermediate Holdings Ltd., and more than forty years after any of the alleged wrongdoing by that company.² Furthermore, Respondent's unconstitutional general, conclusory allegations as to all Third-Party Defendants as a whole should be soundly rejected.

The Third-Party Complaint's failure to allege sufficient facts is hardly surprising given that the issue of whether Charter and Central Mining were the alter egos of Cape was considered on the merits and rejected by the United States Court of Appeals for the Third Circuit more than 30 years ago. In that case, after a full trial specifically on the alter ego issue, the Third Circuit determined, as a matter of law, that Charter and Central Mining were not responsible for Cape's

² See Third-Party Compl., at ¶¶ 123 – 124.

liabilities in personal injury asbestos actions on alter ego or corporate veil-piercing theories because they simply did not exercise sufficient control over Cape. Nevertheless, relying on the same facts as the Third Circuit relied on to reject veil piercing and alter ego, Respondent attempts to use alter ego as a basis for personal jurisdiction here. As demonstrated below, Respondent has not pled sufficient facts to support such a conclusion and cannot overcome the same legal barriers that prevented previous plaintiffs from establishing such alter ego allegations against Charter and Central Mining.

III. STATEMENT OF THE CASE

This matter is before the Court on appeal from an order of the Honorable Jean Toal in the Court of Common Pleas for the Fifth Judicial Circuit, dated December 6, 2023 (the “Order”). Appellants Charter Consolidated Ltd. (“Charter”), ESAB Corporation (“ESAB”), and Central Mining and Investment Corporation Ltd. (“Central Mining” and, collectively, “Appellants”) filed timely notices of appeal on December 19, 2023.

A. The Tibbs And Park Cases.

1. The underlying *Tibbs* Suit.

The underlying case is an asbestos personal injury action. On April 5, 2023, John A. Tibbs and Margaret B. Tibbs (“Plaintiffs”) filed a Complaint against numerous defendants, including Cape PLC (but not Cape Intermediate Holdings Ltd.), in the Court of Common Pleas for the Fifth Judicial Circuit, County of Richland (the “*Tibbs* Suit”).³ Plaintiffs allege that Mr. Tibbs developed lung cancer as a result of his exposure to asbestos during the course of his and his father’s employments with Duke Power Company at various jobsites in South Carolina and North

³ Compl. at ¶ 113, *Tibbs v. 3M Co.*, Case No. 2023-CP-40-01759 (Ct. Com. Pl. Apr. 5, 2023).

Carolina.⁴ Plaintiffs allege that Cape PLC “is liable for damages stemming from its own tortious conduct or the tortious conduct of . . . CAPE INDUSTRIES LTD., CAPE ASBESTOS COMPANY LTD., and its subsidiaries and global affiliates.”⁵

2. The *Park* Case and the Appointment of the Receiver.

On November 17, 2021, plaintiffs in *Park v. Armstrong International, Inc., et al.*, C/A No. 2021-CP-40-02727 in the Court of Common Pleas for the Fifth Judicial Circuit, County of Richland, filed a First Amended Complaint (“*Park* FAC”).⁶ The *Park* FAC added, *inter alia*, two defendants, one existing company named “Cape PLC, individually and as successor-in-interest to Cape Asbestos Company” (“Cape PLC”) and one existing company named “Cape Intermediate Holdings Limited f/k/a Cape Intermediate Holdings PLC, individually and as successor-in-interest to Cape Asbestos Company” (“Cape Intermediate Holdings Limited”).⁷ On December 23, 2021, the *Park* plaintiffs filed a Second Amended Complaint (“*Park* SAC”), which again identified Cape PLC and Cape Intermediate Holdings Limited as two separate defendants.⁸ *Park* was scheduled for trial on June 20, 2022, but on June 3, 2022, counsel for the *Park* plaintiffs reported to the Circuit Court that the case was “fully resolved.”⁹

On March 6, 2023, nine months after *Park* was reported to be “fully resolved” and removed from the trial docket, the *Park* plaintiffs moved to appoint a receiver over defendant Cape PLC.¹⁰

⁴ *Id.* at ¶¶ 106-109.

⁵ *Id.* at ¶ 14 (emphasis added).

⁶ See *Park* FAC, Ex. 4 to Third-Party Defendants Mohed Altrad and Altrad Investment Authority SAS’s Motion to Dissolve the Cape PLC “Receivership” (“Altrad Motion to Dissolve”).

⁷ See *Park* FAC, at p. 1; ¶¶ 15, 26-27.

⁸ See *Park* SAC, Ex. 5 to Altrad Motion to Dissolve, at p. 1; ¶¶ 15, 26-27.

⁹ See Exs. 7 and 8 to Altrad Motion to Dissolve.

¹⁰ See March 6, 2023 Motion to Appoint Receiver (“Motion to Appoint”), Ex. 2 to Altrad Motion to Dissolve, at p. 1.

The Motion to Appoint stated that Cape PLC is the “successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) . . . and its subsidiaries and global affiliates,” to which it referred collectively as “Cape.”¹¹ Cape PLC’s co-defendant in *Park*, Cape Intermediate Holdings Limited, is not included in the definitions of Cape or Cape PLC, nor is it otherwise identified in the Motion to Appoint.¹²

The Motion to Appoint urged the Circuit Court to place Cape PLC into receivership because (a) “Cape” allegedly engaged in a scheme to avoid asbestos liabilities in the United States in the 1970s and (b) did not timely respond to the *Park* Second Amended Summons supposedly served upon it on March 8, 2022.¹³ As to service, the Motion to Appoint cited to an attached “Exhibit A” as purported proof that Cape was served with the operative pleading, but no such exhibit was attached.¹⁴ Importantly, the Motion to Appoint did not allege Cape PLC had been dissolved; forfeited its charter; or was ever qualified to do business in South Carolina (but posited that *if* Cape PLC had been so qualified, it would have subsequently forfeited its corporate rights).¹⁵

On March 17, 2023, the *Park* court entered an order (the “Receivership Order”) appointing Peter Protopapas as receiver (the “Receiver”) for Cape PLC on grounds that were not established in the Motion to Appoint: “because Cape [had been] dissolved and Cape, a foreign corporation, ha[d] forfeited its charter and [had] further failed to answer this case.”¹⁶

¹¹ See Motion to Appoint, at p. 1.

¹² See Motion to Appoint, generally.

¹³ See Motion to Appoint, generally.

¹⁴ See Motion to Appoint, at p. 5.

¹⁵ See Motion to Appoint, generally and at p. 7.

¹⁶ See Receivership Order, Ex. 9 to Altrad Motion to Dissolve, at p. 1. Although the Receivership Order indicates that the Motion to Appoint was made pursuant to S.C. Code § 15-65-10(4)-(5), it appears that the Receiver has since determined that only S.C. Code § 15-65-10(5), applies, as it did not include any references to S.C. Code § 15-65-10(4) in its proposed order as to receivership.

More than five months after entry of the Receivership Order, issues with service on Cape PLC came to light when a “Notice of Filing of Ommitted [sic] Exhibit” (“Notice of Filing”) was filed on the *Park* docket on August 28, 2023.¹⁷ The Notice of Filing purported to be the missing proof of service of the Second Amended Summons and Complaint on Cape PLC on March 9, 2022, as was represented to the Circuit Court as part of the basis for the Motion to Appoint.¹⁸ However, the Notice of Filing revealed via an affirmation from Andrew Geraint Morgan that Cape PLC was *not* served with the Second Amended Summons and Complaint on March 9, 2022.

Instead, Cape PLC’s *Park* co-defendant, Cape Intermediate Holdings Limited, was served with the First Amended Summons on December 14, 2021.¹⁹ There is no indication in the Notice of Filing that Cape PLC (or Cape Intermediate Holdings Limited, for that matter) was served with the First Amended Complaint along with the First Amended Summons.²⁰

Mr. Morgan also purported to effect service of the First Amended Summons (with no reference to the First Amended Complaint) on Cape PLC via delivery to its separate and distinct *Park* co-defendant Cape Intermediate Holdings Limited, which he suggests was sufficient because Cape Intermediate Holdings Limited went by the name Cape PLC twelve years ago (although it has not existed under that name since).²¹

3. The *Park* Receiver files a Third-Party Complaint in the *Tibbs* Suit.

On June 30, 2023, Respondent (who was not a party to the *Tibbs* Suit and made no request to intervene) filed a third-party complaint (the “Third-Party Complaint”) against numerous entities

¹⁷ See Notice of Filing, Ex. 1 to Altrad Motion to Dissolve, generally.

¹⁸ See Notice of Filing, at p. 1.

¹⁹ See Notice of Filing, at p. 1; Notice of Filing, at Ex. A, at ¶¶ 5-6.

²⁰ See Notice of Filing, generally.

²¹ See Notice of Filing, at Ex. A, at ¶¶ 4, 6.

(the “Third-Party Defendants”), including Appellants, alleging that each one is liable to Cape PLC and Respondent for alleged torts beyond the allegations asserted by Plaintiffs in the underlying action—that Third-Party Defendants as a general, wholesale matter “are responsible for the sale and use of asbestos or asbestos-containing products throughout the United States . . . which caused or materially contributed to thousands of deaths from mesothelioma or other asbestos-related disease, and billions of dollars of past, present, and calculable future damages. . . . The funds that they or their predecessors in interest have wrongfully diverted should have remained available to bodily-injury claimants in the United States . . . providing additional resources to meet Cape’s obligations to the tens of thousands of individuals harmed.”²²

The Third-Party Complaint asserts four causes of action that are unrelated to the allegations asserted by Plaintiffs: unjust enrichment, constructive trust, alter ego and veil-piercing liability, and accounting.²³ The Third-Party Complaint, based on acts wholly unrelated to the Plaintiffs in the *Tibbs* Suit (or to Cape PLC) that allegedly occurred outside of this country by and between foreign corporations, seeks the following relief:

- “The proper and appropriate remedy under the circumstances here is for the Court to exercise its equitable power and authority to require . . . each . . . Third-Party Defendant[] to return funds that have been wrongfully diverted from meeting obligations and responsibilities in the United States, in an amount to be proven at trial”;²⁴
- “[T]he proper and appropriate remedy under the circumstances here is for the Court to declare that the Third-Party Defendants are alter egos of Third-Party Plaintiff and thereby liable to Third-Party Plaintiff and/or the Receiver for Asbestos Suits”;²⁵ and

²² Third-Party Compl., at Intro. Stat. and ¶ 134.

²³ *Id.* at ¶¶ 125-146.

²⁴ *Id.* at ¶ 130.

²⁵ *Id.* at ¶ 141.

- “[A] full accounting of each of the Third-Party Defendants.”²⁶

B. Appellants Move To Dismiss The Third-Party Complaint And Dissolve The Receivership.

On September 1, 2023, Appellants filed three separate Motions to Dismiss the Third-Party Complaint and requested an order granting dismissal, pursuant to Rule 12(b)(2), SCRCF, of all counts, claims, and causes of action asserted in the Third-Party Complaint filed by Respondent on the grounds that the Court lacks personal jurisdiction over Appellants; an order granting dismissal of the Third-Party Complaint on other grounds; and an order staying discovery as to Appellants pending resolution of their motions to dismiss (“Appellants’ Motions to Dismiss”).²⁷ Appellants’ Motions to Dismiss also joined in, incorporated, and adopted as if fully set forth therein all other motions to dismiss, including any memorandum in support, replies, or responses filed or to be filed by all other Third-Party Defendants in the *Tibbs* Suit (collectively with the Appellants’ Motions to Dismiss, the “Motions to Dismiss”).²⁸

On October 6, 2023, Appellants moved to dissolve the Cape PLC receivership (“Appellants’ Motions to Dissolve”)²⁹ on a multitude of grounds, including but not limited to:

- The Receivership Order was filed on March 17, 2023, in *Park*, and was procured by “Keith Park, individually and as the Personal Representative of the Estate of Isabella Park” (“Moving Party”) nine months after the trial date and after that matter was reported to be “fully resolved.”
- Moving Party in the Motion to Appoint does not allege that he is a judgment

²⁶ *Id.* at ¶ 145.

²⁷ Appellants’ Motions to Dismiss filed on September 1, 2023, are comprised of ESAB’s Motion to Dismiss the Third-Party Complaint, Charter’s Motion to Dismiss the Third-Party Complaint, and Central Mining’s Motion to Dismiss the Third-Party Complaint.

²⁸ *See, e.g.*, Charter’s Motion to Dismiss, at p. 6.

²⁹ Appellants’ Motions to Dissolve filed on October 6, 2023, are comprised of ESAB’s Motion for Protective Order and to Dissolve Receivership, Charter’s Motion for Protective Order and to Dissolve Receivership, and Central Mining’s Motion for Protective Order and to Dissolve Receivership.

creditor or any other type of creditor of Cape PLC, nor does the Motion to Appoint identify any creditors of Cape PLC.

- The Receivership Order purports to appoint the Receiver “because Cape PLC as the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) (‘Cape Asbestos’) and its subsidiaries and global affiliates (collectively, ‘Cape’ or the ‘Company’) have dissolved and Cape, a foreign corporation, has forfeited its charter and has further failed to answer in this case.” Each of these facts was asserted in the Motion to Appoint and are demonstrably incorrect. Cape PLC, a Jersey company formed in 2011, has not dissolved or forfeited its charter and is not the “successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.).” There was no evidence submitted in *Park* (in the record) showing that Cape PLC (or any Cape entity) was properly served with the operative Summons, Second Amended Complaint, or Motion to Appoint.
- There was no evidence submitted in *Park* demonstrating that notice of the Motion to Appoint was provided to Cape PLC, alleged Cape PLC affiliates, or to Third-Party Defendants as required by S.C. Code Ann. §§ 15-65-20 and 15-65-30. Likewise, there is no evidence that the Receivership Order was provided to Cape PLC, alleged Cape PLC affiliates, or to certain Third-Party Defendants as required by S.C. Code Ann. §§ 15-65-20 and 15-65-30. Appellants were not provided with notice of the Motion to Appoint prior to the entry of the Receivership Order.
- Neither the Motion to Appoint nor the Receivership Order identify any specific “property within this State” or even generally the existence of any “property within this State” of Cape PLC, alleged Cape PLC affiliates, or to any Third-Party Defendants as required by S.C. Code Ann. § 15-65-10(4).
- The Receivership Order violates basic tenets of due process and constitutional law because it purports to give a South Carolina receiver authority over property that is not located in and has no relationship to South Carolina and because no impacted parties were given prior notice of the Motion to Appoint. The Motion to Appoint neither identified the property sought to be placed in the hands of a receiver nor provided any evidence regarding the value of the property so sought to be placed in the hands of a receiver. The Receivership Order does not include “a clause fixing the value of the property” sought to be placed in the hands of a receiver as required by S.C. Code Ann. § 15-65-60.³⁰
- Respondent seeks not to protect the interests of the company over which he has purportedly been given authority, but to generate liability for that company and obtain an impermissible advisory opinion on alter ego and veil piercing liability

³⁰ S.C. Code Ann. § 15-65-60 (“Whenever the court or judge before whom such application [to appoint receiver] is made shall appoint a receiver before final judgment in the cause there shall be inserted in the order of appointment a clause fixing the value of the property for which the bond may be given, as prescribed in Section 15-65-50.”).

against the Third-Party Defendants when no asbestos exposure liability against any Cape entity has been adjudicated in any South Carolina court.³¹

Appellants' Motions to Dissolve also joined in, incorporated, and adopted as if fully set forth therein all other motions to dissolve the Cape PLC receivership, including briefs, replies, or responses filed or to be filed by all other Third-Party Defendants in the *Tibbs* Suit to the extent such arguments were not adverse to the Appellants (collectively with the Appellants' Motions to Dissolve, the "Motions to Dissolve").³²

On October 18, 2023, Respondent filed his Omnibus Opposition to Third-Party Defendants' Motions to Dismiss for Lack of Personal Jurisdiction (the "Jurisdiction Opposition"); Omnibus Opposition to Certain Third-Party Defendants' Motions to Dismiss Under Rules 12(b)(1) and 12(b)(6) and, Alternatively, For More Definite Statement and to Strike or Sever Under Rules 12(e) and 14 (the "12(b) Opposition"); and Omnibus Opposition to Motions to Dissolve by Responding Altrad Third-Party Defendants and Charter Third-Party Defendants (the "Dissolution Opposition"). Although both the First and Second Amended Complaints in *Park* identify Cape PLC and Cape Intermediate Holdings Limited as two separate defendants, the Dissolution Opposition attempts to conflate the two presently existing independent entities for the first time by referring to Cape PLC as "Cape PLC n/k/a Cape Intermediate Holdings Ltd.,"³³ a name that never appears in any *Park* complaint, the Motion to Appoint, or the Receivership Order.

C. The Hearing On Certain Third-Party Defendants' Motions.

The Court held a hearing on October 25, 2023, which ultimately only addressed certain of the Third-Party Defendants' various motions (the "October 25 Hearing"). Almost the entirety of

³¹ See Appellants' Motions to Dissolve, at pp. 2-5.

³² See Appellants' Motions to Dissolve, at p. 2.

³³ See, e.g., Dissolution Opposition, at p. 9.

the October 25 Hearing was devoted to arguments on the Motions to Dissolve and the Motions to Dismiss for Lack of Personal Jurisdiction.³⁴

At the hearing, Respondent continued using the new moniker of “Cape PLC n/k/a Cape Intermediate Holdings Ltd.” that was coined in the Dissolution Opposition,³⁵ and argued that “a reasonably intelligent person [should] understand” that the appointment of a receiver over *Park* defendant Cape PLC was actually the appointment of a receiver of *Park* defendant Cape Intermediate Holdings Ltd.³⁶ Respondent argued that South Carolina Code § 15-65-10(5) creates a virtually unfettered ability to place an entity in receivership “so that justice can prevail,”³⁷ even if: (1) none of the statutory receivership requirements have been met; (2) the operative pleading was never served on the entity placed in receivership; (3) the wrong entity was named in the Motion to Appoint and/or the correct entity was named but never served; (4) the Motion to Appoint contained significant factual misstatements about service and failed to attach proof of such service; and (5) the Receivership Order was granted on the grounds that the entity in question was dissolved and forfeited its charter (which was never asserted in the Motion to Appoint and is untrue).

At the conclusion of the October 25 Hearing, the Circuit Court raised concerns about personal jurisdiction over certain entities, making specific mention of ESAB and using it as an example, that were only formed well after the events described in the Third-Party Complaint:

The contention is made that this complaint doesn’t say X – like ESAB, for example – is a successor-in-interest to Cape plc and benefited from this successor-in-interest so that it is now responsible for things that occurred before it was founded because it’s a successor. And if the tie is not made there – this is the allegation in this complaint. Some even go further than that to say the tie can

³⁴ See generally Oct. 25 Hrg. Tr.

³⁵ See, e.g., Oct. 25 Hrg. Tr., at 29:1-2, 40:14-15, 42:8-10, and 63:21-23.

³⁶ See, e.g., Oct. 25 Hrg. Tr., at 31:5-25.

³⁷ See Oct. 25 Hrg. Tr., at 37:1-2.

never be made because this entity didn't even exist at that time, so how could it be a successor-in-interest? But at least if it's going to be a successor-in-interest in such a way that it assumes responsibilities of the interest to which it is a successor, that has to specifically be alleged is the contention. What do you say to that? Because it's certainly not done in this complaint. The complaint is much more general than that and simply says what you just said, that they are successors-in-interest, period, end of conversation.³⁸

The Circuit Court directed Respondent and Third-Party Defendants to submit proposed orders resolving the Motions to Dissolve and the Motions to Dismiss for Personal Jurisdiction.³⁹ Respondent submitted his proposed order on November 8, 2023, and a revised proposed order at 1:44 p.m. on December 4, 2023, and Appellants submitted their proposed orders later that day.

D. The Appeal.

On December 6, 2023, only 2 days after Appellants submitted their proposed orders, the Circuit Court entered the Order denying the Motions to Dissolve and Motions to Dismiss for Lack of Personal Jurisdiction. The Order adopts the proposed order submitted by Respondent nearly in its entirety and incorporates none of the suggested language or rulings provided by Appellants or any other Third-Party Defendants.

Among other things, the Order adopted Respondent's unsupported conflation of Cape PLC and Cape Intermediate Holdings Limited.⁴⁰ Additionally, the Order changed the definition of Cape from that used in the Motion to Appoint and the Receivership Order ("Cape PLC as the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) . . . and its subsidiaries and global affiliates,"⁴¹ to Cape Intermediate Holdings Limited, even though that entity was never

³⁸ See Oct. 25 Hrg Tr., at 114:1-21.

³⁹ See Oct. 25 Hrg. Tr., at 129:22-130:25.

⁴⁰ See, e.g., Order, at p. 16 (referring to "Cape PLC, n/k/a Cape Intermediate Holdings Ltd.").

⁴¹ See Receivership Order, at p. 1 (emphasis added).

named or even referenced in the Motion to Appoint or the Receivership Order.⁴²

Employing this new definition of Cape (as Cape Intermediate Holdings Limited instead of Cape PLC), the Order denied the Motions to Dissolve and held, *inter alia*, as follows:

- “Cape” was properly served with the First Amended Summons and Complaint in *Park*.⁴³
- Service on Cape Intermediate Holdings Limited was appropriate because it, like Cape PLC, had been named in *Park* as a successor in interest to Cape Asbestos Company Limited, and the name “Cape PLC” was only included on the service package “perhaps out of an abundance of caution.”⁴⁴ “To the extent it was an error for the service paperwork to include the “formerly known as” name of the entity [i.e., Cape PLC, the *Park* defendant over which receivership was sought and which the Motion to Appoint said was served] . . . misnomer does not render service of process ineffective.”⁴⁵
- Cape PLC received proper notice of the appointment of a receiver.⁴⁶
- Receivers are appointed in the asbestos docket “where the Court is concerned that the party at issue may move assets and avoid litigation,” and thus the Circuit Court is authorized to do so under South Carolina Code § 15-65-10(5) where it sees fit, even if there has been no default, entry of judgment, or satisfaction of other receivership prerequisites.⁴⁷

The Order went on to hold that the Circuit Court had specific jurisdiction over Appellants based on alter ego and single business enterprise theories.⁴⁸

On December 19, 2023, Appellants filed notices of appeal regarding the Court’s Order (the

⁴² See Order, at p. 3 (emphasis added) (“The amended complaint added Cape Intermediate Holdings Limited (f/k/a Cape Intermediate Holdings PLC) (together with all predecessors in interest, ‘Cape.’)”).

⁴³ See Order, at p. 15.

⁴⁴ See Order, at pp. 18-19.

⁴⁵ See Order, at p. 19.

⁴⁶ See Order, at pp. 22-23 (“The *Park* Plaintiffs provided notice of the appointment by DHL to the same address as which Cape [defined as Cape Intermediate Holdings Limited] was served, with the Motion to Appointment identifying Cape PLC. . . . The Court further rejects any argument the Receivership is void because the paperwork included a “formerly known as” name for the Cape entity . . . [because] any such misnomer does not void the notice...”).

⁴⁷ See Order, at p. 24.

⁴⁸ See Order, at pp. 65 – 71.

“Appeal”), which stated that the December 6, 2023 Order was immediately appealable because, among other things, “it specifically continues a receivership despite a motion to dissolve the receivership, it modifies the scope of the receivership in numerous ways, and it has the effect of granting a new receivership over a corporate entity that was never involved in the initial motion to create this receivership.” Appellants notified the Circuit Court and all parties of the pendency of the appeal by filing three Notices of Notice of Appeal on the same day.

IV. STATEMENT OF FACTS

A. Corporate History Of Cape And Charter.

Cape Industries, P.L.C. (now Cape Intermediate Holdings Limited)⁴⁹ was an industrial holding company incorporated in 1893.⁵⁰ Through its wholly owned subsidiaries, Cape primarily “engaged in mining, industrial contracting, manufacturing of auto parts (friction materials) and building supplies including insulation. [And, u]ntil 1979 it mined and sold asbestos fiber from South Africa through such subsidiaries.”⁵¹ In 1979, Cape sold all of its asbestos mining and marketing subsidiaries to an unrelated company.⁵² According to Respondent, in 1989, Cape Industries, P.L.C. shortened its name to Cape PLC before again changing its name in 2011 to Cape Intermediate Holdings PLC. The company then re-registered as a private company to become

⁴⁹ Respondent and the Circuit Court have defined Cape different ways at various times. When citing to or referring to a filing or submission by either Respondent or the Circuit Court, Appellants have attempted to use the term as used by Respondent or the Court therein.

⁵⁰ See Third-Party Compl., at ¶ 45; *Craig v. Johns-Manville Corp.*, 1987 WL 10191, at *2 (E.D. Pa. Apr. 23, 1987), rev'd sub nom. *Craig v. Lake Asbestos of Quebec, Ltd.*, 843 F.2d 145 (3d Cir. 1988). Cape was re-registered as a public company and changed its name from Cape Industries Ltd. f/k/a Cape Asbestos Company Ltd. to Cape Industries P.L.C. in 1981. See Third-Party Compl., at ¶ 113.

⁵¹ *Craig*, 1987 WL 10191, at *2; see also Third-Party Compl., at ¶ 102.

⁵² See Third-Party Compl., at ¶ 102; *Craig*, 1987 WL 10191, at *3; *Craig*, 843 F.2d at 147.

Cape Intermediate Holdings Ltd. in 2013.⁵³

Charter is a holding company that incorporated in 1964 as a mining finance company.⁵⁴ In 1965, Charter became public “through a share exchange between the British South Africa Co., Central Mining and Investment Corp. Ltd. and Consolidated Mines Selection Ltd.” As part of that share exchange, Charter acquired a 16.8% interest in Cape Asbestos Company, which gradually increased to Charter holding all of Cape Asbestos Company’s preferred stock and 62.5% of its common stock by May 1969.⁵⁵ In 1996, Charter sold all of its remaining interest in the entity previously known as Cape Asbestos.⁵⁶

Charter has also undergone several name changes prior to being sold to Colfax Corporation (“Colfax”) in 2012. For example, in 1993, Charter re-registered as a public company and became Charter PLC.⁵⁷ In 2008, a holding company called Charter International PLC took over Charter PLC.⁵⁸ Colfax then subsequently spun off Charter as a subsidiary of ESAB in spring 2022. Today, ESAB is a publicly traded, world-class manufacturing technology company and remains Charter’s corporate parent, as well as the parent of Charter’s subsidiary Central Mining.⁵⁹

B. Historic Litigation Over Charter’s and Central Mining’s Liability For Cape’s Torts.

In the mid-1980s, plaintiffs across the country began naming Charter and Central Mining as defendants in asbestos litigation, alleging that Charter and Central Mining were liable for Cape’s

⁵³ See Third-Party Compl., at ¶ 113.

⁵⁴ See *Craig*, 1987 WL 10191, at *2.

⁵⁵ See *Craig*, 1987 WL 10191, at *2; Third-Party Compl., at ¶¶ 54-55.

⁵⁶ See Third-Party Compl., at ¶ 123.

⁵⁷ See Third-Party Compl., at ¶ 123.

⁵⁸ *Id.*

⁵⁹ See ESAB Corporation, *The History of ESAB Corporation.*, <https://esabcorporation.com/our-story/history/> (last visited Aug. 8, 2023).

torts under an alter ego or corporate veil-piercing theory.⁶⁰ “Between 1985 and 1987, the issue was tried in several matters, each of which was resolved in [Charter’s and Central Mining’s] favour either at trial or on appeal.”⁶¹

For example, in 1986, the District Court for the Eastern District of Pennsylvania presided over a two-day trial on the sole issue of whether Charter was liable under New Jersey law for Cape’s torts under an alter ego or corporate veil-piercing theory.⁶² The trial included live and deposition testimony from numerous witnesses. The trial judge initially concluded that Charter was the alter ego of Cape and held Charter responsible for a portion of plaintiff’s damages.⁶³ On appeal, however, the Third Circuit, exercising plenary review, reversed and remanded “for entry of judgment in favor of Charter.”⁶⁴ It held that Charter’s “involvement in Cape’s financial and managerial affairs fail[ed] to rise to the high standard of domination necessary to pierce the corporate veil.”⁶⁵ Importantly, the Third Circuit found, as a matter of law, that “there is no evidence that Charter’s intrusion into Cape’s affairs is even ‘constant’ or day-to-day.” The Third Circuit also found it particularly significant that Charter and Cape “each maintained separate books, records, bank accounts, offices and staff; each consulted their own financial advisors, accountants and stockbrokers.”⁶⁶ Although the court found that Charter had the “power to control” Cape,

⁶⁰ See sec.gov/Archives/edgar/data/1420800/000114420411070464/v242942_defm14a.html.

⁶¹ *Id.*

⁶² See *Craig*, 1987 WL 10191; *Craig*, 843 F.2d 145. The Court included the following entities in its definition of Charter: “Charter Consolidated Investments, P.L.C., Central Mining Finance, Ltd., Charter Consolidated Services, Ltd., British South Africa Company and Consolidated Mines Selection.” *Id.* at *1.

⁶³ *Id.* at *18.

⁶⁴ *Craig*, 843 F.2d at 152.

⁶⁵ *Id.*

⁶⁶ *Id.* at *152.

“potential control is not enough.”⁶⁷

The very next year, the Eastern District of Pennsylvania again considered the issue of whether Charter and Central Mining were the alter egos of Cape, this time under both New Jersey and Pennsylvania law, in dozens of asbestos cases pending in the Eastern District of Pennsylvania.⁶⁸ Relying on the Third Circuit’s decision in *Craig*, and rejecting plaintiffs’ arguments that there was “new” evidence not considered by the Third Circuit, this Court again held that Charter was not liable under an alter ego or piercing the corporate veil theory for Cape’s asbestos torts. The Eastern District of Pennsylvania further pointed out that many other courts had considered the exact same issue and resolved it the exact same way.⁶⁹

C. Appellants Lack Jurisdictional Ties To South Carolina.

The Third-Party Complaint also alleges there is jurisdiction over each of the Appellants pursuant to South Carolina’s long-arm statute.⁷⁰ Appellants, however, are not subject to jurisdiction in this Court. For example, ESAB is organized under the laws of Delaware, with its

⁶⁷ *Id.* (citing *Scalise v. Beech Aircraft Corp.*, 276 F. Supp. 58, 62 (E.D. Pa. 1967) (“although stock ownership and identity of officers and directors naturally subject the subsidiary to a measure of control, the issue . . . is how such control is exercised”).

⁶⁸ See *In re Charter Defendants’ Motion for Summary Judgment in all Cases Pending in the Eastern District of Pennsylvania in Which They are Parties*, Misc. No. 86-0457, 1989 U.S. Dist. LEXIS 15591 (E.D. Pa. May 18, 1989). In these cases, the Charter defendants, including Charter Consolidated P.L.C., Charter Consolidated Investments Limited, Charter Consolidated Services Limited, Central Mining Finance Limited, The Consolidated Mines Selection Company Limited, and the British South Africa Company, were named as both defendants and third-party defendants. *Id.* at *1.

⁶⁹ See *id.* at *5-*6 (citing *Bednar v. Carey Canada, Inc.*, No. 88-3707 (D.N.J. Feb. 7, 1989); *Lee/McDaniels v. Carey Canada, Inc.*, Nos. 83-1412, 83-1413 (D.N.J. Dec. 1, 1988); *McCracken v. Lac D’Amiante du Quebec, Ltee.*, No. 84-0128 (E.D. Pa. Sept. 9, 1988); *Kessinger v. Grefco, Inc.*, No. 85-3092 (C.D. Ill. May 2, 1986); *Newhouse/Sparta v. Lac D’Amiante du Quebec, Ltee.*, Nos. 83-2932, 83-2933 (D.N.J. July 19, 1988); *Simmons v. AC&S, Inc.*, No. 84-1170 (W.D. Ark. June 4, 1985); *In re Asbestos Litig. Venued in Middlesex Cty.: Manville Plantworker Cases Only*, No. L-37243-79 (N.J. Super Ct. Law Div. July 10, 1987)).

⁷⁰ See Third-Party Compl., at ¶¶ 37, 140.

principal place of business in Maryland.⁷¹ Central Mining and Charter are organized under the laws of the United Kingdom with their principal place of business in Essex.⁷²

Appellants have no assets in South Carolina.⁷³ They do not own, lease, or have any interest whatsoever in any real property in South Carolina; nor does they maintain any bank accounts in South Carolina.⁷⁴ Moreover, Appellants currently do not, and have not historically, mined, milled, or sold asbestos in South Carolina.⁷⁵ Appellants also currently do not, and have not historically, produced, manufactured, or distributed asbestos or asbestos-containing products for use in South Carolina.⁷⁶ Neither Cape PLC nor Cape Intermediate Holdings are subsidiaries of Appellants.⁷⁷ Furthermore, Respondent does not allege any connection between Cape PLC and Appellants.

V. ARGUMENT

The Order should be reversed because the Circuit Court's denial of the Motions to Dissolve is not supported by South Carolina or federal law or the evidence in the record. The Order should further be reversed and the Third-Party Complaint dismissed as to Appellants pursuant to Rule (12)(b)(2) of the South Carolina Rules of Civil Procedure for the reasons set forth herein.

A. The Circuit Court Erred In Denying The Motions To Dissolve.

There is no evidentiary support to conclude that the appointment of Respondent was valid.

⁷¹ Affidavit of Rita J. Herring in Support of ESAB's Motion to Dismiss the Third-Party Complaint ("Herring ESAB Aff."), at ¶ 5.

⁷² Affidavit of Rita J. Herring in Support of Charter's Motion to Dismiss the Third-Party Complaint ("Herring Charter Aff."), at ¶ 5; Affidavit of Rita J. Herring in Support of Central Mining's Motion to Dismiss the Third-Party Complaint ("Herring Central Mining Aff."), at ¶ 5.

⁷³ See Herring Charter Aff., at ¶ 6; Herring Central Mining Aff., at ¶ 6; Herring ESAB Aff., at ¶ 6.

⁷⁴ See, e.g., Herring Charter Aff., at ¶¶ 7-8; Herring Central Mining Aff., at ¶¶ 7-8.

⁷⁵ See Herring Charter Aff., at ¶ 9; Herring Central Mining Aff., at ¶ 9; Herring ESAB Aff., at ¶ 9.

⁷⁶ See, e.g., Herring Central Mining Aff., at ¶ 10; Herring ESAB Aff., at ¶ 10.

⁷⁷ See Herring Charter Aff., at ¶ 4; Herring Central Mining Aff., at ¶ 4; Herring ESAB Aff., at ¶ 4.

To the contrary, the record demonstrates that the appointment of Respondent was fraught with defects every step of the way, including:

- The Motion to Appoint was not made until months after *Park* resolved, without entry of any judgments or identification of any creditors;
- The Motion to Appoint was directed at a *Park* defendant named Cape PLC, and therefore the Receivership Order appointed Respondent over *Park* defendant Cape PLC. Now, however, Respondent argues that receivership was not appointed over the only known entity currently named Cape PLC (an entity in the Bailiwick of Jersey), but rather a different *Park* defendant named Cape Intermediate Holdings Limited that was not identified in the Motion to Appoint or the Receivership Order;
- The Motion to Appoint was based on Cape PLC's alleged failure to answer after being served with the Second Amended Summons on March 8, 2022 (as purportedly demonstrated by a missing Exhibit A) but the record reveals that;
 - No entity currently named Cape PLC was ever served with any pleadings in *Park*;
 - The *Park* Second Amended Summons was never served on Cape Intermediate Holdings Limited (let alone the Second Amended Complaint); and
 - Although Respondent claims the First Amended Complaint was served on Cape Intermediate Holdings Limited, no proof of that service has ever been provided to the Court, in connection with the Motion to Appoint or otherwise;
- Notice of the Motion to Appoint and the Receivership Order was never provided to the only known entity currently named Cape PLC;
- The Motion to Appoint does not satisfy any of the statutory grounds for receivership under South Carolina Code § 15-65-10; and
- The Receivership Order was granted on the grounds that Cape PLC was dissolved and had forfeited its charter (neither of which were demonstrated in the Motion to Appoint) and had failed to answer in *Park* (even though no proof of service of the operative complaint on Cape PLC had been provided to the Circuit Court).

Respondent has failed to provide any evidence refuting these defects.

1. Standard of review.

“[T]he appointment of a receiver is within the discretion of the circuit [court].”⁷⁸ However, “[t]he appointment of a receiver is a drastic remedy, and should be granted only with reluctance and caution.”⁷⁹ “[A] receiver will not be appointed during the progress of a cause, unless there is the strongest reason to believe that the plaintiff is entitled to the relief demanded in his complaint, and there is danger that the property will be materially injured before the case can be determined.”⁸⁰ Matters within the circuit court’s discretion are subject to reversal for abuse of discretion, and abuse of discretion occurs when the circuit court’s decision is controlled by an error of law or lacks evidentiary support.⁸¹

2. The record contains ample undisputed evidence of procedural defects in the appointment.

As described more fully above, the receivership appointment was rife with serious errors, ranging from Respondent’s inability to prove that either Cape PLC or Cape Intermediate Holdings were served with the *Park* pleadings to Respondent’s *de facto* admission that the receivership was appointed over the wrong entity. Rather than provide evidence refuting these defects when raised in the Motions to Dismiss, the Dissolution Opposition admitted that mistakes were made but suggested they should be overlooked, including but not limited to the following:

Defect	Respondent’s Response
The Receivership Order was not filed in <i>Park</i> until nine months after the trial date and after <i>Park</i> was reported to be “fully resolved.” See Appellants’ Motions to Dissolve, at pp. 2-3.	Admits that counsel for the <i>Park</i> plaintiffs reported <i>Park</i> as fully resolved in a June 3, 2022 email to the circuit court but argues this was intended to reference only defendants who had appeared and were scheduled for trial (although

⁷⁸ See *Richland Cnty. v. S.C. Dep’t of Revenue*, 422 S.C. 292, 313, 811 S.E.2d 758, 769 (2018) (first alteration in original) (quoting *Midlands Util., Inc. v. S.C. Dep’t of Health & Envtl. Control*, 301 S.C. 224, 228, 391 S.E.2d 535, 538 (1989)).

⁷⁹ See *id.* (quoting *Midlands Util., Inc.*, 301 S.C. at 228, 391 S.E.2d at 538).

⁸⁰ See *id.* (quoting *Pelzer v. Hughes*, 27 S.C. 408, 416, 3 S.E. 781, 785 (1887)).

⁸¹ See *Burke v. Republic Parking Sys., Inc.*, 421 S.C. 553, 558, 808 S.E.2d 626, 628 (Ct. App. 2017).

	the email is silent on these “exclusions”). See Dissolution Opposition, at p. 4.
No default or judgment was ever entered against any Cape entity in <i>Park</i> . See Appellants’ Motions to Dissolve, at p. 3.	No need to enter a default or a judgment against Cape in order to appoint a receiver. See Dissolution Opposition, at p. 18.
The only entity currently named Cape PLC is an entity formed in 2011 in the Bailiwick of Jersey that has neither dissolved nor forfeited its charter and is not the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.). See Appellants’ Motion to Dissolve, at p. 3.	Argues that <i>Park</i> plaintiffs made a mistake and that the receivership was not intended to be sought over the present entity named Cape PLC, but rather an entity that ceased existing under that name 12 years prior to the Motion to Appoint. See Dissolution Opposition, at p. 3. Admits that Cape PLC is not the name of the successor in interest to Cape Asbestos Holdings Limited. See Dissolution Opposition, at p. 3. Admits that Cape PLC is an entity in the Bailiwick of Jersey and not the entity over which receivership was intended to be sought. See Dissolution Opposition, at pp. 9, 10, 11, 19. Argues that “[i]t does not matter” that receivership was sought for the wrong <i>Park</i> defendant and that this should be deemed a simple matter of misnomer as opposed to placing the wrong entity into receivership. See Dissolution Opposition, at p. 19.
The existing entity named Cape PLC was not served in this action. See Appellants’ Motions to Dissolve, at p. 3.	Argues that “service” of the First Amended Summons on Cape PLC at Cape Intermediate Holdings Limited’s registered address in the United Kingdom is sufficient because Cape Intermediate Holdings Limited went by that name 12 years ago, and Cape PLC and Cape Intermediate Holdings Limited are alleged to be successors in interest to the same entity. See Dissolution Opposition, at p. 19.
Although the Motion to Appoint is premised on Cape PLC’s failure to timely respond to the Second Amended Summons in <i>Park</i> , which the Motion to Appoint represents was served on Cape PLC on March 8, 2022, no Cape entity was properly served with the <i>Park</i> Second Amended Summons or Second	Admits the Second Amended Summons and Complaint was never served on any Cape entity, on March 8, 2022 or otherwise. See Dissolution Opposition, at p. 4. Argues that there was no need to serve the Second Amended Summons and Complaint

Amended Complaint at any time. See Appellants' Motion to Dissolve, at p. 3.	because this would “exalt technical form over substance” and the First Amended Complaint had already been “served” on Cape PLC at Cape Intermediate Holdings Limited’s registered address in the United Kingdom. See Dissolution Opposition, at pp. 13-15.
There was no evidence submitted in <i>Park</i> demonstrating that notice of the Motion to Appoint was provided to Cape PLC, alleged Cape PLC affiliates or to Third-Party Defendants as required by S.C. Code Ann. §§ 15-65-20 and 15-65-30. See Appellants' Motions to Dissolve, at pp. 3-4.	Argues that “notice” of the Motion to Appoint mailed to Cape PLC at Cape Intermediate Holdings Limited’s registered address in the United Kingdom is sufficient because Cape Intermediate Holdings Limited went by that name 12 years ago, and Cape PLC and Cape Intermediate Holdings Limited are alleged to be successors in interest to the same entity. See Dissolution Opposition, at pp. 3, 5.

Each of these deficiencies is sufficient on its own to warrant dissolution, but among the most serious is the appointment of receivership over the wrong entity. The Motion to Appoint and the Receivership Order are crystal clear: the receivership was sought and appointed over *Park* defendant Cape PLC. Nonetheless, at Respondent’s urging, the Circuit Court in effect swapped *Park* defendant Cape PLC out of receivership and swapped *Park* defendant Cape Intermediate Holdings Limited into receivership without giving the latter an opportunity to defend itself against this extraordinary remedy, all on the basis of the doctrine of misnomer – the application of which is not supported by the evidence in this case.

More specifically, misnomer may be invoked when “it later appears that the true name of a corporation is different from the name under which it was sued” but “every intelligent person understands who is meant.”⁸² Notably, *Griffin* and other South Carolina cases do not suggest misnomer permits a court to impute relief granted against an existing defendant to a different existing defendant without a separate application for relief. Instead, misnomer typically arises

⁸² See *Griffin v. Capital Cash*, 310 S.C. 288, 292, 423 S.E.2d 143, 146 (1992).

when a plaintiff sues a business under its trade name as opposed to its official corporate name or when there was a slight error in the name in the pleadings.⁸³ Misnomer only applies if a misnamed party is “name[d]... in such terms that every intelligent person understands who is meant.”⁸⁴

Here, Respondent insisted it was obvious that by “Cape PLC,” the *Park* plaintiffs intended to refer to *Park* defendant Cape Intermediate Holdings Limited and not *Park* defendant Cape PLC, even though Cape Intermediate Holdings Limited was also a named defendant in *Park* and Cape Intermediate Holdings’ name never appears in the Motion to Appoint, the Receivership Order, or the definition of “Cape” in those documents. The evidence considered by the Circuit Court shows that this is anything but obvious.

Rather, the record demonstrates that the *Park* plaintiffs did *not* think Cape PLC was the same entity as Cape Intermediate Holdings Limited. Unlike *Griffin*, in which the plaintiff inadvertently sued a single defendant under the name by which the plaintiff knew it by instead of its corporate name but was referring to the same defendant throughout, the *Park* plaintiffs named Cape PLC and Cape Intermediate Holdings Limited as two separate defendants – twice (once in the First Amended Complaint and once in the Second Amended Complaint). Using the standard set forth in *Griffin*, “every intelligent person” would understand this to mean that the *Park* plaintiffs meant to bring two separate defendants into court, one named Cape PLC and one named Cape

⁸³ See, e.g., *Griffin*, 310 S.C. at 423 S.E.2d at 146 (defendant named First Deposit National Bank conducted business with plaintiff under the name Capital Cash, so plaintiff’s naming of defendant as Capital Cash instead of First Deposition National Bank in the complaint was excused); *McCall v. IKON*, 363 S.C. 646, 611 S.E.2d 315 (2005) (service of process on corporation under its trade name under which plaintiff did business with it instead of its corporate name was valid); *Tri-County Ice and Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 399 S.E.2d 779 (1990) (permitting amendment of default judgment to substitute corporation’s name for its trade name); *Burns v. Crawford Metal Corporation*, 2022 WL 18635158 (D.S.C. October 13, 2022) (finding misnomer where defendant was misidentified as Crawford Steel Corporation instead of Crawford Metal Corporation).

⁸⁴ See *Griffin*, 310 S.C. at 292, 423 S.E.2d at 146.

Intermediate Holdings Limited. The *Park* plaintiffs had both “Cape” defendants at their disposal when they filed the Motion to Appoint, and they chose Cape PLC, not Cape Intermediate Holdings Limited. If anything was obvious, it was that the *Park* plaintiffs made an affirmative decision to pursue receivership against Cape PLC and not Cape Intermediate Holdings Limited.

Accordingly, the Circuit Court abused its discretion when it permitted the *de facto* substitution of Cape Intermediate Holdings Limited into the extraordinary remedy of receivership pursuant to the doctrine of misnomer.

Even setting aside the confusion as to *who* should have been served, Respondent has never provided proof that *any* Cape entity was served with the First Amended Complaint in this case (and admits that no Cape entity was ever served with the Second Amended Complaint). Respondent’s only “proof” of service on Cape PLC is Mr. Morgan’s affirmation indicating that he purported to serve Cape PLC with the First Amended Summons (but not the First Amended Complaint) by sending it to Cape International Holdings Limited’s business address, which the record reflects is not the business address of Jersey-based Cape PLC. As “evidence” that the First Amended Complaint was included in Mr. Morgan’s service package to Cape PLC, the Dissolution Opposition offers a photo of a sealed envelope addressed to Cape Intermediate Holdings Limited (but not Cape PLC) being inserted into a mailbox, coupled with an assertion by Respondent that the envelope’s unseen contents included the First Amended Complaint:



A photograph of a sealed envelope coupled with an unsworn representation by Respondent that it contained the First Amended Complaint is not evidence of service of that pleading, on Cape PLC or anyone else.⁸⁵ Certainly, Respondent does not suggest that he assembled the envelope, saw its contents, or handled service (nor could he have, as this “service” predated his appointment by more than a year). Therefore, he has no personal knowledge to support his assertions on this point. The only person with personal knowledge of what was included in the service package was Mr. Morgan; the *Park* plaintiffs or Respondent could have obtained an affirmation from him indicating that he included the First Amended Complaint in the service package, but tellingly, they did not. The only “proof” of service of that pleading are Respondent’s self-serving statements justifying the legitimacy of his appointment, which would not constitute proof of service in any court.

Thus, even if delivering the First Amended Complaint to Cape Intermediate Holdings Limited’s business address could have effected service in *Park* (which it could not), there is no evidence that this ever actually occurred. Thus, the Circuit Court abused its discretion in finding that “the evidence of records [sic] shows the proper Cape entity was served with process of both the summons and complaint in the *Park* lawsuit, forming the foundation for this Court to exercise jurisdiction over Cape and institute the Receivership.”⁸⁶

3. The evidence demonstrates that the appointment does not satisfy statutory requirements.

Even setting aside the issues of “misnomer” and service (each of which render the receivership defective without further inquiry), the receivership must still be dissolved because the

⁸⁵ See Dissolution Opposition, at p. 12.

⁸⁶ See Order, at p. 22; *see also* Order, at p. 4 (“In December 2021, the *Park* Plaintiffs served the named Cape entities”); at p. 20 (“the...record evidence reveals *both* the summons and the complaint documents were served on Cape”).

appointment does not satisfy the requirements of the South Carolina receivership statute.

The Order indicates that receivership is based on South Carolina Code § 15-65-10(5), which authorizes appointment of a receiver over a corporation if certain conditions are met:

A receiver may be appointed by a judge of the circuit court, either in or out of court:

* * *

(5) In such other cases as are provided by law or may be in accordance with the existing practice, except as otherwise provided in this Code.

See S.C. Code § 15-65-10(5).

Here, the Order held that the drastic remedy of receivership was warranted under South Carolina Code § 15-65-10(5) because “Cape” engaged in an alleged liability avoidance scheme that ended nearly 50 years before the *Park* action was filed. However, there was no evidence before the Circuit Court that any entity currently named Cape PLC ever engaged in such conduct. To the contrary, Respondent vehemently argued in the court below that “current” Cape PLC has nothing to do with this action or the allegations therein.⁸⁷ Furthermore, the law—and existing practices of the State of South Carolina—do not provide for seeking receivership over one defendant, but then insisting “everyone knew” they intended to request receivership over a different defendant.

Moreover, the appointment of a prejudgment receivership that seizes control of a foreign company without any predicate adjudication of liability (and without appropriate notice) violates the Takings Clause, the Due Process Clause, the Excessive Fines Clause, the Substantive Due

⁸⁷ See, e.g., Dissolution Opposition, at p. 10 (stating that Cape PLC in the Bailiwick of Jersey, the only current Cape PLC, is not at issue); at p. 11 (insisting that references to Cape PLC do not refer to “the recently formed Bailiwick of Jersey entity” by that name); at p. 25 (“no filing has ever referenced the Jersey-formed Cape holding company,” i.e., Cape PLC).

Process Clause, and the Equal Protection Clause.⁸⁸

B. The Circuit Court Erred In Finding Personal Jurisdiction Over Appellants Exists.

The Circuit Court erred when it denied Appellants' Motions to Dismiss for Lack of Personal Jurisdiction because Respondent did not alleged facts, as opposed to conclusory allegations, that are sufficient to support jurisdiction over Appellants in the State of South Carolina. To determine whether personal jurisdiction exists over a non-domiciliary corporation such as Appellants, courts engage in a two-pronged analysis: (1) a plaintiff must demonstrate that granting jurisdiction under the statute would not violate the Fourteenth Amendment of the United States Constitution;⁸⁹ and (2) a plaintiff must show that defendant's conduct falls within South Carolina's long-arm statute, S.C. Code Ann. § 36-2-803. Both prongs must be satisfied for jurisdiction to exist. Here, Respondent failed to establish either.

1. Standard of review.

The decision of the trial court denying a motion to dismiss for lack of personal jurisdiction cannot be affirmed if it is unsupported by the evidence or influenced by an error of law.⁹⁰ Errors of law are reviewed *de novo*.⁹¹

When a party challenges a trial court's jurisdiction over it, the plaintiff bears the burden of establishing that personal jurisdiction exists.⁹² "The question of personal jurisdiction over a

⁸⁸ Appellants join in and incorporate by reference the other third-party defendants/appellants' arguments regarding this issue, including, but not limited to, the arguments made in the Initial Brief of Appellants Mohed Altrad and Altrad Investment Authority SAS.

⁸⁹ See *Moosally v. W. W. Norton & Co.*, 594 S.E.2d 878, 886 (S.C. Ct. App. 2004); *Abdulla v. S. Bank*, 439 S.C. 391, 400, 887 S.E.2d 138, 143 (Ct. App. 2023).

⁹⁰ *Cockrell v. Hillerich & Bradsby Co.*, 611 S.E.2d 505, 508 (S.C. 2005); *Hidria, USA, Inc. v. Delo*, 415 S.C. 533, 539, 783 S.E.2d 839, 842 (Ct. App. 2016).

⁹¹ See, e.g., *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 363, 798 S.E.2d 555, 558 (2017) (de novo standard applies to questions of law).

⁹² *Moosally*, 594 S.E.2d at 882.

nonresident defendant is one which must be resolved upon the facts of each particular case.”⁹³ “At the pretrial stage, the burden of proving personal jurisdiction over a nonresident defendant is met by a prima facie showing of jurisdiction either in the complaint or in affidavits.”⁹⁴ Subject matter jurisdiction is a court’s “power to hear and determine cases of the general class to which the proceedings in question belong.”⁹⁵ When a nonresident defendant attacks the allegations of a complaint based on jurisdiction, however, the plaintiff bears the burden of proving subject-matter jurisdiction.⁹⁶ A court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction.⁹⁷

2. Appellants are not subject to specific jurisdiction in South Carolina through their own contacts, or lack thereof, with South Carolina.

South Carolina lacks specific personal jurisdiction over Appellants because the claims in the Third-Party Complaint do not arise out of or relate to conduct by Appellants in South Carolina.⁹⁸ A court may exercise personal jurisdiction over a corporation as to a cause of action arising from a defendant’s contacts with the state pursuant to the long-arm statute.⁹⁹ “South Carolina’s long-arm statute, which includes the power to exercise personal jurisdiction over causes of action arising from tortious injuries in South Carolina, has been construed to extend to the outer limits of the due process clause.”¹⁰⁰ “Because South Carolina treats its long-arm statute as

⁹³ *Cockrell*, 611 S.E.2d at 508.

⁹⁴ *Id.*

⁹⁵ *Simmons v. Simmons*, 634 S.E.2d 1, 3 (S.C. Ct. App. 2006).

⁹⁶ *Elridge v. City of Greenwood*, 503 S.E.2d 191, 197 (S.C. Ct. App. 1998).

⁹⁷ *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 655 S.E.2d 476, 478 (2007).

⁹⁸ Respondent did not allege, nor did the Circuit Court find, general jurisdiction over Appellants. Accordingly, Appellants’ Brief solely addresses specific jurisdiction.

⁹⁹ S.C. Code § 36-2-803(1).

¹⁰⁰ *Cockrell*, 611 S.E.2d at 508.

coextensive with the due process clause, the sole question [with respect to specific personal jurisdiction] becomes whether the exercise of personal jurisdiction would violate due process.”¹⁰¹ And that inquiry, in turn, asks whether “[t]he plaintiff’s claims . . . arise out of or relate to the defendant’s contacts with the forum.”¹⁰²

a. *ESAB’s contacts with South Carolina are insufficient to establish specific jurisdiction.*

Here, nothing in the Third-Party Complaint plausibly suggests the claims asserted against ESAB arise out of or relate to conduct by ESAB anywhere, let alone in South Carolina. In fact, there are no allegations whatsoever in the Complaint about any conduct by ESAB. The only two paragraphs that even mention ESAB describe ESAB’s citizenship¹⁰³ and state that, in 2022, ESAB became the parent company of Charter and Central Mining.¹⁰⁴

For the first time in Respondent’s Jurisdiction Opposition, Respondent argued in a footnote that ESAB is subject to specific jurisdiction because it is a “world leader in welding and cutting equipment and consumables, with dozens of dealers and repair centers selling ESAB products through South Carolina.”¹⁰⁵ The Circuit Court then relied on Respondent’s argument to find that “ESAB may conduct material business in the State of South Carolina.” The Circuit Court, however, ignores that specific jurisdiction requires that the causes of action must “arise out of or

¹⁰¹ *Id.*

¹⁰² *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1025 (2021) (internal quotations omitted); *see also* S.C. Code Ann. § 36-2-803(2) (permitting a court to exercise personal jurisdiction over a defendant “only [with respect to] a cause of action *arising* from [the defendant’s] acts” in or directed to South Carolina) (emphasis added).

¹⁰³ *See* Third-Party Compl., at ¶ 20.

¹⁰⁴ *Id.*, at ¶ 124.

¹⁰⁵ Jurisdiction Opposition, at p. 33.

relate to” ESAB’s contacts with South Carolina.¹⁰⁶ Under no interpretation of the Third-Party Complaint (or the Tibbs Suit) do any claims by any party arise out of or relate to sales by ESAB of welding and cutting equipment in South Carolina. Rather, the claims asserted against ESAB arise out of or relate to conduct by Cape Asbestos Company occurring decades ago. Cape, however, is and always has been an entirely separate and distinct corporate entity from ESAB and is not a subsidiary of ESAB¹⁰⁷—in fact, Respondent takes great pains to describe in his Jurisdiction Opposition that, at all relevant times as to ESAB, Cape Asbestos Company (now known as Cape Intermediate Holdings) was owned and controlled by Third-Party Defendants completely unrelated to ESAB.¹⁰⁸ Furthermore, Respondent makes no allegations that ESAB ever owned or controlled Cape PLC.

Moreover, ESAB does not currently, and has not historically, mined, milled, sold, or supplied asbestos in South Carolina.¹⁰⁹ Likewise, ESAB does not currently, and has not historically, produced, manufactured, or distributed asbestos or asbestos-containing products for use in South Carolina.¹¹⁰ Finally, ESAB has no assets in South Carolina, including no interest in real property in South Carolina, so that cannot provide a basis for the exercise of specific personal jurisdiction in this forum.¹¹¹ Under these circumstances, the unsupported allegations in the Third-Party Complaint that each of the Third-Party Defendants is subject to this Court’s jurisdiction under the state’s long-arm statute is simply insufficient to establish specific personal jurisdiction.

¹⁰⁶ See *Ford Motor Co.*, 141 S. Ct. at 1025.

¹⁰⁷ Herring ESAB Aff., at ¶ 4.

¹⁰⁸ See Jurisdiction Opposition, at p. 22–26.

¹⁰⁹ *Id.* at ¶ 9.

¹¹⁰ *Id.* at ¶ 10.

¹¹¹ *Id.* at ¶ 7.

- b. *Charter's contacts with South Carolina are insufficient to establish specific jurisdiction.*

Similarly, nothing in the Third-Party Complaint plausibly suggests the claims asserted against Charter arise out of or relate to conduct by Charter anywhere, let alone in South Carolina. Rather, the claims asserted against Charter arise out of or relate to conduct by Cape Asbestos Company. Cape, however, is and always has been an entirely separate and distinct corporate entity from Charter and is not a subsidiary of Charter.¹¹² Moreover, Charter does not currently, and has not historically, mined, milled, sold, or supplied asbestos in South Carolina.¹¹³ Likewise, Charter does not currently, and has not historically, produced, manufactured, or distributed asbestos or asbestos-containing products for use in South Carolina.¹¹⁴ Finally, Charter has no assets in South Carolina, including no interest in real property in South Carolina, so that cannot provide a basis for the exercise of specific personal jurisdiction in this forum.¹¹⁵ Under these circumstances, the unsupported allegations in the Third-Party Complaint that each of the Third-Party Defendants is subject to this Court's jurisdiction under the state's long-arm statute is simply insufficient to establish specific personal jurisdiction over Charter.

- c. *Central Mining's contacts with South Carolina are insufficient to establish specific jurisdiction.*

Additionally, nothing in the Third-Party Complaint plausibly suggests the claims asserted against Central Mining arise out of or relate to conduct by Central Mining anywhere, let alone in South Carolina. Rather, the claims asserted against Central Mining arise out of or relate to conduct by Cape. Cape, however, is and always has been an entirely separate and distinct corporate entity

¹¹² Herring Charter Aff., at ¶ 4.

¹¹³ *Id.* at ¶ 9.

¹¹⁴ *Id.* at ¶ 10.

¹¹⁵ *Id.* at ¶ 7.

from Central Mining and is not a subsidiary of Central Mining.¹¹⁶ Moreover, Central Mining does not currently, and has not historically, mined, milled, sold, or supplied asbestos in South Carolina.¹¹⁷ Likewise, Central Mining does not currently, and has not historically, produced, manufactured, or distributed asbestos or asbestos-containing products for use in South Carolina.¹¹⁸ Finally, Central Mining has no assets in South Carolina, including no interest in real property in South Carolina, so that cannot provide a basis for the exercise of specific personal jurisdiction in this forum.¹¹⁹ Under these circumstances, the unsupported allegations in the Third-Party Complaint that each of the Third-Party Defendants is subject to this Court's jurisdiction under the state's long-arm statute is simply insufficient to establish specific personal jurisdiction over Central Mining.

3. The Circuit Court erred in holding Respondent's conclusory allegations sufficiently demonstrated the necessary domination and control to establish personal jurisdiction over Appellants under an alter ego or single business enterprise theory.

The Circuit Court incorrectly applied the alter ego and single business enterprise theories to find personal jurisdiction over Appellants.¹²⁰ In South Carolina, to hold a party responsible

¹¹⁶ Herring Central Mining Aff., at ¶ 4.

¹¹⁷ *Id.* at ¶ 9.

¹¹⁸ *Id.* at ¶ 10.

¹¹⁹ *Id.* at ¶ 7.

¹²⁰ Although Respondent also argued personal jurisdiction was appropriate under piercing the corporate veil standard, which has a similar test as an alter ego theory, the Circuit Court ultimately found that personal jurisdiction was appropriate over Appellants under an alter ego test. *See, e.g.,* Order, at p. 67; *see also Sturkie v. Sifly*, 280 S.C. 453, 456–57, 313 S.E.2d 316, 318 (Ct. App. 1984) (In order to pierce the corporate veil, courts employ a two-prong test, looking first at an eight-factor analysis to determine if corporate formalities were sufficiently observed and then second on the element of injustice or unfairness; eight factors are: “(1) whether the corporation was grossly undercapitalized; (2) failure to observe corporate formalities; (3) non-payment of dividends; (4) insolvency of the debtor corporation at the time; (5) siphoning of funds of the corporation by the dominant stockholder; (6) non-functioning of other officers or directors; (7)

under an alter ego theory, a plaintiff must show both “(1) total domination and control of one entity by another and (2) inequitable consequences caused thereby.”¹²¹ A mere parent-subsidary relationship, like all other stockholder relationships, necessarily involves interaction and elements of oversight and control. This fact alone has never provided a sufficient basis to impose the extraordinary remedy of veil-piercing. Instead, the level of control must be such that the “subservient entity manifests no separate interest of its own and functions solely to achieve the goals of the dominant entity.”¹²²

Similar to an alter ego theory, a single business enterprise theory also requires that a plaintiff appropriately allege that defendants had dominion and control such that the entities acted as unified operations (the primary difference being that a single business enterprise theory can encompass “sister” organizations, not just parent/subsidiaries like alter ego and veil piercing).¹²³

Respondent has the burden of demonstrating alter ego and the presumption is that corporations are separate.¹²⁴ “South Carolina courts have consistently recognized that it is difficult to plead that one entity is the alter ego of another.”¹²⁵ Although no single factor is determinative in an alter ego or single business enterprise theory, courts generally examine factors such as

absence of corporate records; and (8) the fact that the corporation was merely a façade for the operations of the dominant stockholder” (the “*Sturkie* Factors”).

¹²¹ *Oskin v. Johnson*, 400 S.C. 390, 400, 735 S.E.2d 459, 465 (2012).

¹²² *Id.*; *Colleton Cnty. Taxpayers Ass’n v. Sch. Dist. of Colleton Cnty.*, 371 S.C. 224, 237, 638 S.E.2d 685, 692 (2006).

¹²³ See *Pertuis v. Front Roe Rests., Inc.*, 817 S.E.2d 273, 273 (2018) (citations omitted) (“We formally recognize today this single business enterprise theory, and in doing so, we acknowledge that corporations are often formed for the purpose of shielding shareholders from individual liability; there is nothing remotely nefarious in doing that.”).

¹²⁴ *Sturkie*, 280 S.C. at 457, 313 S.E.2d at 318 (“The party seeking to have the corporate entity disregarded has the burden of proving the doctrine should be applied.”).

¹²⁵ *Fancy That! Bistro & Catering, LLC v. Sentinel Ins. Co.*, 2021 WL 4804974, at *4 (D.S.C. Oct. 14, 2021).

overlapping officers and directors, the parent’s capacity to influence major business decisions, whether separate books or records are maintained, whether an integrated sales system exists between the entities, whether the entities present a common marketing image, and whether the entities have formal separate structures but maintain unified operations.¹²⁶ Merely owning stock,¹²⁷ having an overlap in operations,¹²⁸ or having common officers and/or directors are insufficient.¹²⁹ The absence of evidence that the defendant failed to observe corporate formalities is, alone, fatal to an alter ego argument.¹³⁰ Moreover, alter-ego theory “‘does not apply in the absence of fraud or misuse of control by the dominant entity which results in some injustice.’”¹³¹

Importantly, for both the alter ego and single business enterprise theories, Respondent must meet the above standards at each level of the corporate ladder and must *separately* establish that each defendant was part of a single business enterprise with or was the alter ego over the entity that the South Carolina courts have personal jurisdiction over. Instead of trying to meet this requirement, Respondent improperly attempted to group plead in order to establish personal

¹²⁶ See *In re Polyester Staple Antitrust Litig.*, 2008 WL 906331, at *13–14, *16 (W.D.N.C. Apr. 1, 2008) (finding exercise of personal jurisdiction over parent company proper where “the management personnel within [the subsidiaries] regularly sought approval from [the parent company] on matters beyond strategy and general business policy”).

¹²⁷ *Yarborough & Co. v. Schoolfield Furniture Indus., Inc.*, 275 S.C. 151, 153–54, 268 S.E.2d 42, 44 (1980) (“the mere acquisition and control of a domestic subsidiary’s capital stock does not subject the foreign parent to the jurisdiction of that State’s courts.”).

¹²⁸ See, e.g., *Builder Mart of Am., Inc. v. First Union Corp.*, 349 S.C. 500, 512, 563 S.E.2d 352, 358 (2002) (“unified marketing and advertising and holding out to the public as a single entity, without more, [is] insufficient to confer jurisdiction.”).

¹²⁹ *Yarborough & Co.*, 275 S.C. at 153–54, 268 S.E.2d at 44; *Jones ex rel. Jones v. Enter. Leasing Co.-Se.*, 383 S.C. 259, 267, 678 S.E.2d 819, 823–24 (Ct. App. 2009).

¹³⁰ *J.R. v. Walgreens Boots All., Inc.*, 470 F. Supp. 3d 534, 549 (D.S.C. 2020).

¹³¹ *Oskin*, 400 S.C. at 408, 735 S.E.2d at 465 (quoting *Colleton Cnty. Taxpayers*, 371 S.C. at 237, 638 S.E.2d at 692); see also *Baker v. Equitable Leasing Corp.*, 275 S.C. 359, 367–68, 271 S.E.2d 596, 600 (1980) (holding that the alter-ego theory should be used only when retaining separate “personalities would promote fraud, wrong, or injustice or contravene public policy”).

jurisdiction over Appellants. It is “plainly unconstitutional,” however, to group defending parties together to meet this burden in establishing personal jurisdiction.¹³² Accordingly, Respondent must independently establish that there was the requisite domination and control for the Court to find each of the following: (1) Cape Asbestos Company was the alter ego of or part of a single business enterprise with North American Asbestos Corporation (“NAAC”); (2) Cape Asbestos Company’s direct parent was the alter ego of or part of a single business enterprise with Cape;¹³³ (3) Central Mining and Charter were the alter egos of or part of a single business enterprise with Cape Asbestos Company’s direct parent company; and (4) ESAB is the alter ego of or part of a single business enterprise with Central Mining and Charter. Respondent wholly fails to meet his burden and, in most cases, does not even attempt to do so.

Even Respondent’s futile attempts to impute NAAC’s South Carolina contacts to Appellants by arguing a direct relationship between Cape and Appellants does not (and could not) allege sufficient facts related to Appellants’ control over Cape. Instead, most of the Third-Party Complaint and the Order focuses on facts about other entities’ control over each other, which is wholly irrelevant to the analysis of whether Central Mining and Charter exercised sufficient control over Cape and whether ESAB exercised sufficient control over Cape (an entity that it had

¹³² See *Rush v. Savchuk*, 444 U.S. 320, 331-32 (1980).

¹³³ Both Respondent and the Circuit Court wholly ignore this step and fail to even mention that neither Central Mining or Charter had a direct ownership interest in Cape Asbestos Company and that, instead, intermediary companies held the ownership interest. See, e.g., Third-Party Compl., at ¶ 48 (indicating that Central Mining took over the business interests of Wernher, Beit & Co., which held interests in Cape Asbestos); Charter Consolidated Ltd. Report and Accounts for Year Ended 31 March 1975, Ex. 59 to Jurisdiction Opposition, at p. 36 (indicating that Charter did not directly own an interest in Cape and, instead, only owned Cape through “subsidiaries”); Charter Consolidated Ltd. Annual Report and Accounts 1966, Ex. 4 to Jurisdiction Opposition, at p. 32-33 (not listing any Cape entity as a direct subsidiary to Charter). The Court can reverse the Circuit Court’s decision on personal jurisdiction solely based on the Third-Party Complaint’s complete lack of any allegations whatsoever regarding *any* factors for alter ego or single business enterprise theories at this critical level of the corporate ladder.

no connection to at all), Central Mining, and Charter.¹³⁴ Conclusory allegations that Appellants controlled Cape because, for example, they were the majority owners of Cape and had common directors or employees (or were acting as a “corporate buffer” with another entity) are woefully insufficient.¹³⁵ First, it is well settled law in South Carolina that majority ownership and common officers or directors, standing alone, simply do not “support the conclusion the subsidiary is its parent’s alter ego or agent for the transaction of its business.”¹³⁶ Second, even if Charter and Central Mining controlled Cape (they did not for the reasons discussed further below), the Third-Party Complaint does not even attempt to allege sufficient facts to pierce the corporate veil between ESAB and Charter/Central Mining.

Even under a single business enterprise theory, the Third-Party Complaint still fails to allege facts sufficient to establish specific jurisdiction over Appellants. The allegations related to control over Cape are wholly inadequate, especially as to ESAB who could not have acted through any “unified operations” with Cape because Cape was owned and controlled by unrelated Third-Party Defendants by the time ESAB acquired Charter and Central Mining.

a. *Charter is not subject to specific jurisdiction through an alter ego or single business enterprise theory.*

The Circuit Court erred when it determined that it has specific jurisdiction over Charter based on Cape’s (through NAAC’s) purported jurisdictional contacts in South Carolina through an alter ego or single business enterprise theory.¹³⁷ Even taking the allegations alleged in the Third-

¹³⁴ See, e.g., Third-Party Compl., at ¶¶ 57–59; Jurisdiction Opposition, at p. 32-33.

¹³⁵ See, e.g., Third-Party Compl., at ¶¶ 140–141; Jurisdiction Opposition, at p. 32-33.

¹³⁶ *Yarborough & Co.*, 275 S.C. at 153–54, 268 S.E.2d at 44.

¹³⁷ See *ScanSource, Inc. v. Mitel Networks Corp.*, 2011 WL 2550719, at *4 (D.S.C. June 24, 2011) (dismissing claims for lack of personal jurisdiction on alter ego and veil piercing theories as plaintiff “failed to support its allegation that [parent company’s] subsidiaries are merely facades for [its] operations”).

Party Complaint as true, as a matter of law, Charter’s actions do not rise to the level of domination and control required to hold it responsible as an alter ego of Cape or as part of a single business enterprise with Cape.¹³⁸

The Third-Party Complaint does not include facts *specific* to how Charter controlled Cape and certainly does not allege facts sufficient to even remotely demonstrate that Charter had “total domination and control” over Cape such that Cape “manifest[ed] no separate interest of its own.”¹³⁹ Although the Third-Party Complaint contains some allegations of control and domination between Charter and various entities¹⁴⁰ and the Order asserts without any citation or support that the Third-Party Complaint “comprehensively alleged ownership, financial, operational, and decision-making control” by Charter over Cape,¹⁴¹ there are almost no allegations of control specifically between Charter and Cape. In fact, the *only* specific allegations as to control between Charter and Cape are that: (1) Charter was the majority owner of Cape starting in 1969;¹⁴² (2) Charter “second[ed] and compensate[ed] key personnel for Cape’s management”;¹⁴³ (3) Charter used its “influence” in South Africa to allow Cape to profit from mining and exporting asbestos;¹⁴⁴

¹³⁸ See, e.g., *In re Joseph Walker & Co., Inc.*, 522 B.R. 165, 193 (Bankr. D.S.C. 2014) (refusing to find alter ego liability where company “maintained separate bank accounts, obtained credit lines based solely upon its own assets and liabilities, obtained and possessed its own federal tax identification number and accordingly paid taxes when they became due” and employed separate legal counsel and accounting firms).

¹³⁹ *Oskin*, 400 S.C. at 400, 735 S.E.2d at 465; *Colleton Cnty. Taxpayers*, 371 S.C. at 237, 638 S.E.2d a 692.

¹⁴⁰ For example, the Order relies on Charter’s and Anglo’s purported “shared office space, personnel, and board members”; however, any shared services between Charter and Anglo cannot in any way demonstrate Charter’s total domination and control over Cape. See Order, at p. 67.

¹⁴¹ Order, at p. 68.

¹⁴² See Third-Party Compl., at ¶ 55.

¹⁴³ See Third-Party Compl., at ¶ 61.

¹⁴⁴ *Id.* at ¶ 61.

and (4) Cape’s chairman was also a director for Charter.¹⁴⁵ These allegations are hardly a comprehensive statement of Charter’s “ownership, financial, operational, and decision-making control” over Cape and are wholly insufficient as a matter of law.¹⁴⁶

Having an overlap in interests and paying for certain personnel, however, does not rise to the level of Charter having “constant” or day to day control over Cape required to pierce the corporate veil. This is especially true given that South Carolina courts have repeatedly held that “[c]ommon officers and/or directors and public identification of one corporation as the other’s subsidiary do not, without more, support the conclusion the subsidiary is its parent’s alter ego or agent for the transaction of its business.”¹⁴⁷ Furthermore, the generic and conclusory allegations, such as a “failure to follow corporate formalities” and “domination and control . . . over Cape’s . . . executive personnel and board of directors,”¹⁴⁸ are insufficient as a matter of law.¹⁴⁹

The Third-Party Complaint’s lack of specific factual allegations related to Charter’s

¹⁴⁵ *Id.* at ¶ 78.

¹⁴⁶ *Yarborough & Co.*, 275 S.C. at 153–54, 268 S.E.2d at 44; *Jones ex rel. Jones*, 383 S.C. at 267, 678 S.E.2d at 823–24.

¹⁴⁷ *Yarborough & Co.*, 275 S.C. at 153–54, 268 S.E.2d at 44; *Jones ex rel. Jones*, 383 S.C. at 267, 678 S.E.2d at 823–24.

¹⁴⁸ See Third-Party Compl., at ¶ 140.

¹⁴⁹ See *David v. McCleod Regional Med. Ctr.*, 626 S.E.2d 1, 3 (S.C. 2006) (requiring more than “generic allegations and conjecture” to sustain malpractice claim; *Paradis v. Charleston Cty. Sch. Dist.*, 819 S.E.2d 147, 153 (S.C. Ct. App. 2018) (confirming that code pleading is required in South Carolina and that code pleading is not as “lenient” as federal notice pleading); see also J. F. Flanagan, S.C. Civ. P. § 8.B. (“[T]he pleader must describe each element of the cause of action in terms of the facts of the case.”); *Mincey v. World Savings Bank FSB*, 614 F. Supp. 2d 610 (D.S.C. 2008) (rejecting plaintiffs’ attempt to allege veil-piercing or alter ego based on conclusory allegations with no specific facts); *Pro Slab, Inc. v. Argos USA Corp.*, 2018 WL 6985008, at *5 (D.S.C. June 28, 2018), *reconsideration granted on other grounds*, 2018 WL 6985010 (D.S.C. Dec. 3, 2018) (granting defendants’ motions to dismiss where the “amended complaint contains no factual allegations to support [the] legal conclusion” that certain affiliated corporate entities were alter egos of one another).

purported control over Cape is hardly surprising given the previous decisions by the District Court for the Eastern District of Pennsylvania and the Third Circuit decades ago finding that Charter and Central Mining were *not* alter egos of Cape.¹⁵⁰ Indeed, in *Craig*, the Third Circuit reversed a district court decision, made after a two-day trial on the merits, and found as a matter of law that Central Mining and Charter did not exercise a great enough degree of domination over Cape to hold them responsible for Cape's asbestos liability.¹⁵¹ In *In re Charter Defendants*, the Eastern District of Pennsylvania granted summary judgment and dismissed with prejudice all claims asserted against Central Mining and Charter in every asbestos action pending in the Eastern District of Pennsylvania on the basis that the Court was bound by the Third Circuit's *Craig* decision finding that Charter and Central Mining were not alter egos of Cape.¹⁵²

Respondent is now asserting personal jurisdiction against Charter (and Central Mining) based on the exact same alter ego issue and grounded in the very same facts that the *Craig* and *In re Charter Defendants* courts analyzed to reject the alter ego theory. A comparison between the facts and legal issues decided in *Craig* and *In re Charter Defendants* with the facts and legal questions asserted here shows the clear duplication between the arguments. For example, the Third-Party Complaint includes allegations regarding Central Mining's and Charter's majority position on Cape's board of directors to suggest purported dominance or control;¹⁵³ however, the Third Circuit found that fact unpersuasive.¹⁵⁴ Likewise, the Third-Party Complaint includes

¹⁵⁰ See, e.g., *Craig*, 843 F.2d at 152; *In re Charter Defs.*, 1989 U.S. Dist. LEXIS 15591; *Culbreth v. Amosa Ltd.*, 898 F.2d 13 (3d Cir. 1990); *Simmons*, No. 84-1170.

¹⁵¹ *Craig*, 843 F.2d at 152.

¹⁵² *In re Charter Defendants*, 1989 U.S. Dist. LEXIS 15591, at *1-3.

¹⁵³ See Third-Party Compl., at ¶ 50.

¹⁵⁴ See *Craig*, 843 F.2d at 151 ("It is to be expected that a corporation seeking to acquire majority ownership of another will seek to achieve control.").

allegations regarding Central Mining’s and Charter’s “seconding employees to Cape,”¹⁵⁵ but the Third Circuit found that fact similarly unpersuasive.¹⁵⁶ The Third-Party Complaint offers nothing new that the Eastern District of Pennsylvania and the Third Circuit did not already consider and reject as a basis for finding that Central Mining and Charter were the alter ego of Cape—nor could Respondent offer any “new” relevant facts as to Charter’s or Central Mining’s control over Cape because Cape sold its asbestos business more than seven years before the trial in *Craig*.¹⁵⁷

The Third Circuit found that there was “no evidence” that “Charter’s intrusion into Cape’s affairs [was] even constant or day-to-day. Moreover, and significantly, the district court found that ‘[t]he two corporate groups each maintained separate books, records, bank accounts, offices and staff; each consulted their own financial advisors, accountants and stockbrokers.’”¹⁵⁸ The Eastern District of Pennsylvania agreed with and applied the Third Circuit’s decision that there was “no evidence that would satisfy the control element of the corporate veil ‘piercing’ test to conclude that Charter controlled Cape.”¹⁵⁹

Given that Respondent does not allege—because he cannot do so—sufficient facts to show Charter dominated and controlled Cape such that the Court should pierce the corporate veil (under either an alter ego or single business enterprise theory), the Court should reverse the Circuit Court’s denial of Charter’s Motion to Dismiss for Personal Jurisdiction and remand with instructions to dismiss Charter with prejudice.

¹⁵⁵ Third-Party Compl., at ¶ 52; *see also id.*, at ¶ 59 (“The Oppenheimers consistently sat on Charter’s board of directors after its founding.”).

¹⁵⁶ *See Craig*, 843 F.2d at 151 (deciding issue in Charter’s favor despite “presence of three Charter nominees on Cape’s Board”).

¹⁵⁷ *See* Third-Party Compl., at ¶ 102.

¹⁵⁸ *Craig*, 843 F.2d at 152.

¹⁵⁹ *In re Charter Defendants*, 1989 U.S. Dist. LEXIS 15591, at *8.

- b. *Central Mining is not subject to specific jurisdiction through an alter ego or single business enterprise theory.*

The Circuit Court erred when it determined that it has specific jurisdiction over Central Mining based on Cape's (through NAAC's) purported jurisdictional contacts in South Carolina through an alter ego or single business enterprise theory.¹⁶⁰ Even taking the allegations alleged in the Third-Party Complaint as true, as a matter of law, Central Mining's actions do not rise to the level of domination and control required to hold it responsible as an alter ego of Cape or as part of a single business enterprise with Cape.¹⁶¹

The Third-Party Complaint does not include facts *specific* to how Central Mining controlled Cape and certainly does not allege facts sufficient to even remotely demonstrate that Central Mining had "total domination and control" over Cape such that Cape "manifest[ed] no separate interest of its own."¹⁶² Although the Third-Party Complaint contains some allegations of control and domination between Central Mining and various entities, there are almost no allegations of control specifically between Central Mining and Cape. In fact, the *only* specific allegations as to control between Central Mining and Cape are that: (1) Central Mining was initially organized to take over the assets and business interests of a third-party organization that held "interests" in Cape Asbestos;¹⁶³ (2) Central Mining was a major shareholder in Cape in the mid-1900s;¹⁶⁴ (3) Central Mining "second[ed] employees to Cape";¹⁶⁵ (4) by 1949, Central Mining

¹⁶⁰ See *ScanSource, Inc.*, 2011 WL 2550719, at *4.

¹⁶¹ See, e.g., *In re Joseph Walker*, 522 B.R. at 193.

¹⁶² *Oskin*, 400 S.C. at 400, 735 S.E.2d at 465; *Colleton Cnty. Taxpayers*, 371 S.C. at 237, 638 S.E.2d a 692.

¹⁶³ Third-Party Compl., at ¶ 48.

¹⁶⁴ *Id.*, at ¶ 50.

¹⁶⁵ *Id.*, at ¶ 50.

had a majority on the board of directors of Cape;¹⁶⁶ and (5) Central Mining used its expertise to “improve” Cape’s performance.¹⁶⁷ These allegations are insufficient as a matter of law.¹⁶⁸

Having an overlap in interests and paying for certain personnel, however, does not rise to the level of Central Mining having “constant” or day to day control over Cape required to pierce the corporate veil under either an alter ego or single business enterprise theory. This is especially true given that South Carolina courts have repeatedly held that “[c]ommon officers and/or directors and public identification of one corporation as the other’s subsidiary do not, without more, support the conclusion the subsidiary is its parent’s alter ego or agent for the transaction of its business.”¹⁶⁹ Moreover, the Third-Party Complaint’s generic conclusory allegations, such as a “failure to follow corporate formalities” and “domination and control . . . over Cape’s . . . executive personnel and board of directors,”¹⁷⁰ are insufficient as a matter of law.¹⁷¹

Furthermore, given the previous decisions by the Third Circuit and the District Court for the Eastern District of Pennsylvania finding that Central Mining was *not* an alter ego of Cape, discussed in Section V(B)(3)(a) *supra*, the Third-Party Complaint’s lack of specific factual allegations related to Central Mining’s purported control over Cape is expected.¹⁷² Respondent does not allege—because he cannot do so—sufficient facts to show Central Mining dominated and

¹⁶⁶ *Id.*, at ¶ 50.

¹⁶⁷ *Id.*, at ¶ 52.

¹⁶⁸ *Yarborough & Co.*, 275 S.C. at 153–54, 268 S.E.2d at 44; *Jones ex rel. Jones*, 383 S.C. at 267, 678 S.E.2d at 823–24.

¹⁶⁹ *Yarborough & Co.*, 275 S.C. at 153–54, 268 S.E.2d at 44; *Jones ex rel. Jones*, 383 S.C. at 267, 678 S.E.2d at 823–24.

¹⁷⁰ See Third-Party Compl., at ¶ 140.

¹⁷¹ See Note 149, *supra*.

¹⁷² See, e.g., *Craig*, 843 F.2d at 152; *In re Charter Defs.*, 1989 U.S. Dist. LEXIS 15591; *Culbreth*, 898 F.2d 13; *Simmons*, No. 84-1170.

controlled Cape such that the Court should pierce the corporate veil (under either an alter ego or single business enterprise theory). The Court should, therefore, reverse the Circuit Court's denial of Central Mining's Motion to Dismiss for Personal Jurisdiction and remand with instructions to dismiss Central Mining with prejudice.

c. *ESAB is not subject to specific jurisdiction through an alter ego or single business enterprise theory.*

The Circuit Court erred when it determined that it has specific jurisdiction over ESAB based on Cape's (through NAAC's) purported jurisdictional contacts in South Carolina through an alter ego or single business enterprise theory.¹⁷³ For ESAB, Respondent must not only have established that NAAC's contacts with South Carolina should be imputed to Cape, and then subsequently be imputed to Charter and Central Mining, but Respondent must also establish that ESAB sufficiently dominated and controlled Charter and Central Mining to then impute those contacts onto ESAB. Yet, the Third-Party Complaint fails to contain a single allegation related to ESAB's control over Charter and Central Mining and, instead, relies solely on the parent-subsidary relationship. Even taking the bare-bone allegations as to ESAB alleged in the Third-Party Complaint as true, as a matter of law, ESAB's actions cannot rise to the level of domination and control required to hold them responsible as alter egos of Cape or as part of a single business enterprise with Cape.

The Third-Party Complaint does not include facts specific to how ESAB controlled Cape (nor could it do so) and certainly does not allege facts sufficient to even remotely demonstrate that ESAB had "total domination and control" over Cape such that Cape "manifest[ed] no separate

¹⁷³ See *ScanSource, Inc.*, 2011 WL 2550719, at *4.

interest of its own.”¹⁷⁴ The sole connection alleged between ESAB and Cape is through its independent subsidiaries Charter and Central Mining. Yet, even if the Court were to find that Charter or Central Mining were the alter ego of Cape—it should not—none of that has any bearing on whether ESAB is the alter ego of Cape. The Third-Party Complaint does not allege a single fact that connects ESAB and Cape other than that, decades after Charter no longer held any interest in Cape, Charter and Central Mining were purchased by another entity that was then spun off into ESAB.¹⁷⁵ The Third-Party Complaint and the Order are devoid of any allegations or discussions of the factors related to ESAB’s relationship with Charter and Central Mining, and fails to allege whatsoever that, since 2022, ESAB failed to follow corporate formalities with respect to Charter and Central Mining.

Although the Third-Party Complaint contains some allegations of control and domination between various entities, there are absolutely no allegations of control specifically between ESAB and Cape, or between ESAB and Central Mining/Charter. Nor could there be any such allegations of control by ESAB over Cape as Respondent acknowledges Cape was sold by Charter in 1996, decades before Charter was spun off to ESAB in 2022.¹⁷⁶ Furthermore, as discussed above, the relatively few allegations Respondent made with respect to either Charter or Central Mining’s purported “total domination and control” over Cape are woefully insufficient as a matter of law.¹⁷⁷

Given that Respondent does not allege—because he cannot do so—sufficient facts to show ESAB dominated and controlled Cape, Central Mining, and Charter such that the Court should

¹⁷⁴ *Oskin*, 400 S.C. at 400, 735 S.E.2d at 465; *Colleton Cnty. Taxpayers*, 371 S.C. at 237, 638 S.E.2d at 692.

¹⁷⁵ See Third-Party Compl., at ¶ 124.

¹⁷⁶ See Third-Party Compl., at ¶¶ 123–124.

¹⁷⁷ See Sections V(B)(3)(a) and V(B)(3)(b), *supra*.

pierce the corporate veil (under either an alter ego or single business enterprise theory), the Court should reverse the Circuit Court’s denial of ESAB’s Motion to Dismiss for Personal Jurisdiction and remand with instructions to dismiss ESAB with prejudice.¹⁷⁸

4. The Circuit Court erred in finding that Cape’s purported contacts with South Carolina, even if imputed to Appellants, are sufficient to establish personal jurisdiction.

Even if this Court finds that Appellants are the alter ego of Cape or are part of a single business enterprise with Cape—it should not—that only means that Cape’s purported jurisdictional contacts with South Carolina are imputed to Appellants. It does not automatically mean that jurisdiction over Appellants attaches.¹⁷⁹ Here, the Circuit Court incorrectly found that Cape’s purported contacts with South Carolina, even if imputed to Appellants, are sufficient to establish specific jurisdiction over Appellants. Yet, the only contact with South Carolina that the Third-Party Complaint mentions is that Cape’s subsidiary, NAAC, sold asbestos in the United States, including in South Carolina.¹⁸⁰ Importantly, however, the claims asserted against ESAB do not arise out of any asbestos sold in South Carolina (nor does the Third-Party Complaint make such an assertion). For that matter, there are not even any allegations in Plaintiffs’ Complaint or the Third-Party Complaint that Tibbs was exposed to amosite asbestos sold or mined by Cape.¹⁸¹

Although specific jurisdiction can certainly be established by an entity’s contacts with South Carolina, the critical distinction between general and specific jurisdiction is that, for specific

¹⁷⁸ See, e.g., *In re Joseph Walker*, 522 B.R. at 193.

¹⁷⁹ See *Duong v. N. Am. Transportation Servs. LLC*, 2019 WL 13109647, at *13 (D.S.C. Sept. 25, 2019) (holding that, even if the single business enterprise theory applied, plaintiff failed to allege jurisdictional facts necessary to establish personal jurisdiction).

¹⁸⁰ See, e.g., Third-Party Compl., at ¶¶ 73–76; Jurisdiction Opposition, at p. 20-21.

¹⁸¹ See generally Third-Party Compl.

jurisdiction, the claims must actually arise from the contacts with the state.¹⁸² The Third-Party Complaint asserts four causes of action: unjust enrichment, constructive trust, alter ego or piercing the corporate veil liability, and accounting. None of these claims arise out of Cape's purported sales of asbestos to any particular entity or person in South Carolina (or even arise from the use of asbestos in South Carolina) and, instead, arise out of purported conduct in South Africa, the United Kingdom, and other places outside of South Carolina. Unless the claims actually arise from Cape's contacts in South Carolina, the mere fact that Cape's jurisdictional contacts (or, in reality, NAAC's jurisdictional contacts) may be imputed to ESAB (they should not) is insufficient for this Court to assert personal jurisdiction over ESAB.¹⁸³

5. The Circuit Court erred in finding that it had personal jurisdiction over ESAB under a successor liability theory.

As a last-minute Hail Mary, Respondent belatedly argued that South Carolina has jurisdiction over ESAB because it has successor liability to Charter and Central Mining. South Carolina law is clear, however, that there must be more than a generic assertion of successor liability for an entity to actually be deemed a successor.¹⁸⁴ Neither the Third-Party Complaint nor the Order demonstrate ESAB somehow assumed the responsibilities of Charter, Central Mining,

¹⁸² See *Coggeshall*, 376 S.C. 12, 655 S.E.2d 476.

¹⁸³ See *Outpost Cap. Mgmt., LLC v. Prioleau*, 2017 WL 5514513, at *7 (D.S.C. Nov. 16, 2017) (finding that even an entities' contacts could be imputed to defendant through an alter ego theory, the court still did not have specific jurisdiction over defendant because the claims against defendant did not arise from the entities' contacts with South Carolina).

¹⁸⁴ See *Nationwide Mut. Ins. Co. v. Eagle Window & Door, Inc.*, 424 S.C. 256, 263, 818 S.E.2d 447, 451 (2018) ("Ordinarily, in the absence of a statute, a successor or purchasing corporation is not liable for the debts of a predecessor or seller unless: (1) there was an agreement to assume such debts; (2) the circumstances surrounding the transaction amount to a consolidation or merger of the two corporations; (3) the successor company was a mere continuation of the predecessor; or (4) the transaction was entered into fraudulently for the purpose of wrongfully defeating creditors' claims.").

or Cape, through any of the methods that would allow successor liability under South Carolina law (for example, by way of an agreement assuming liability for Charter, Central Mining, or Cape).¹⁸⁵

In fact, the Third-Party Complaint fails to allege any facts as to how or why ESAB is the successor to Charter and Central Mining such that ESAB assumed the responsibilities of Charter and Central Mining.¹⁸⁶ The Third-Party Complaint contains no allegations that there are any agreements wherein ESAB assumed responsibilities for Charter or Central Mining (nor does Respondent even attempt an explanation for how ESAB would have assumed successor liability to Charter and Central Mining). Additionally, the Third-Party Complaint fails to allege that ESAB merged with Charter or Central Mining, that ESAB was a “mere continuation” of Charter or Central Mining, or that the spin-off where ESAB became the parent of Central Mining and Charter was “entered into fraudulently for the purpose of wrongfully defeating creditors’ claims.”¹⁸⁷

Although Respondent argues that certain entities are playing an active and current role in avoiding Cape’s asbestos liabilities (and therefore successor liability attaches), Respondent does not make these same allegations as to ESAB. The only allegations, provided mere hours before Appellants were set to oppose Respondent’s proposed order on the Motions to Dismiss, related to

¹⁸⁵ See *Nationwide Mut. Ins. Co.*, 424 S.C. at 263, 818 S.E.2d at 451; *Brown v. American Ry. Express Co.*, 128 S.C. 428, 123 S.E. 97 (1924); see also Oct. 25 Hrg. Tr., at 115:5-15 (“[I]s its successor 50 years later going to be held responsible for what happened 50 years ago . . . when there’s no relationship financially or assetwise between the two entities. This is simply a entity created long thereafter with no agreements alleged that – or relationships that allege that they assume the responsibilities of the entity they succeeded or even how that succession works. That’s what’s gotten me troubled about this thing.”). Furthermore, Respondent’s attempt to manufacture successor liability, months after briefing was complete, through the introduction of new evidence mere hours before Appellants were required to respond to Respondent’s Proposed Order, which was wholly incorporated by the Circuit Court mere days later, is improper and should be rejected.

¹⁸⁶ See, e.g., *Nationwide Mut. Ins. Co.*, 424 S.C. at 269, 818 S.E.2d at 454 (acknowledging that South Carolina “corporate law generally favors the free transfer of assets and disfavors successor liability” and that the standard for successor liability is strict).

¹⁸⁷ *Id.*, at 263.

ESAB’s successor liability is that ESAB has provided a “letter of financial support” to Charter and Central Mining, which are not actively engaged in business but are still considered going concerns.¹⁸⁸ These allegations are insufficient, as a matter of law, to meet the strict standard for finding successor liability. Furthermore, the Third-Party Complaint fails to allege any factual hook that ESAB, an entity that did not become the parent of Central Mining and Charter until 2022, was *created* with the acceptance of liability for Charter’s and Central Mining’s alleged former conduct. Accordingly, the Circuit Court improperly found that successor liability attached to establish personal jurisdiction over ESAB.

VI. CONCLUSION

For the reasons stated above, the Court should reverse the Circuit Court’s denial of the Motions to Dissolve and Motions to Dismiss for Lack of Personal Jurisdiction and remand the claims to the Circuit Court with direction to enter an order to dissolve the Receivership and dismiss the Third-Party Complaint as to Appellants.

Dated: February 22, 2024

GORDON REES SCULLY MANSUKHANI, LLP

BY: /s/ A. Victor Rawl, Jr.
A. Victor Rawl, Jr. (SC 09261)
Email: vrawl@grsm.com
677 King Street, Suite 450
Charleston, SC 29403
Telephone: 843-714-2501

*Counsel for Appellants Charter
Consolidated Ltd., ESAB Corporation,
and Central Mining and Investment
Corporation Ltd*

¹⁸⁸ See Order, at p. 70.

Feb 22 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2023-001461
Circuit Court Case No. 2023-CP-40-01759

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 Corporation; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety

Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Inc.; SPX Corporation; Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable, LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; and Zurn Industries, LLC, ...

Defendants,

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

Third-Party
Plaintiff/
Respondent,

v.

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

Third-Party
Defendants,

of which

Charter Consolidated Ltd.; and Central Mining & Investment Corporation Ltd. are the

Appellants.

PROOF OF SERVICE

I, the undersigned of the law offices of GORDON REES SCULLY MANSUKHANI, LLP, attorneys for Appellants ESAB Corporation, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

Pleading(s): Initial Brief of Appellants ESAB Corporation; Charter Consolidated Ltd.; and Central Mining & Investment Corporation Ltd.

Parties Served:

John T. Lay, Jr. (jlay@gwblawfirm.com)
Gray T. Culbreath (gculbreath@gwblawfirm.com)
Lindsay A. Joyner (ljoyner@gwblawfirm.com)
Laura W. Jordan (ljordan@gwblawfirm.com)
Eleanor L. Jones (ejones@gwblawfirm.com)
Jonathan M. Robinson (jon@smithrobinsonlaw.com)
Shanon N. Peake (shanonp@smithrobinsonlaw.com)
G. Murrell Smith, Jr. (murrell@smithrobinsonlaw.com)
Troy S. Brown (troy.brown@morganlawis.com)
Dana E. Becker (dana.becker@morganlewis.com)
Brady Edwards (brady.edwards@morganlewis.com)
Robert W. Jacques (robert.jacques@morganlewis.com)
Paul A. Scrudato (paul.scrudato@morganlewis.com)

Counsel for the Receiver for Cape PLC

Theile B. McVey (tmcvey@kassellaw.com)
John D. Kassel (jkassel@kassellaw.com)
Jamie D. Rutkoski (jrutkoski@kassellaw.com)
Charles William Branham, III (tbranham@dobslegal.com)
Kevin W. Paul (kpaul@dobslegal.com)
David Christopher Humen (dhumen@dobslegal.com)

Counsel for Plaintiffs

James H. Elliott, Jr. (jelliott@richardsonplowden.com)
Cameron D. Berthelsen (cberthelsen@richardsonplowden.com)

Counsel for Co-Appellants AA/DB Non-US Third-Party Defendants

Steven J. Pugh (spugh@richardsonplowden.com)
Benjamin P. Carlton (bcarlton@richardsonplowden.com)
Carmen V. Ganjehsani (cganjehsani@richardsonplowden.com)
Ashwin R. Sanzgiri (asanzgiri@richardsonplowden.com)

Counsel for Co-Appellants ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC

M. Todd Carroll (todd.carroll@wbd-us.com)
Kevin A. Hall (kevin.hall@wbd-us.com)
M. Elizabeth O'Neill (elizabeth.oneill@wbd-us.com)

Counsel for Co-Appellants Mohed Altrad and Altrad Investment Authority SAS

Stephen L. Brown (sbrown@ycrlaw.com)
James D. Gandy, III (tgandy@ycrlaw.com)
Stephen A. Griffith (sgriffith@ycrlaw.com)

Counsel for Asbestos Corporation Limited

By: /s/ A. Victor Rawl, Jr.