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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 VI)

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

of which

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

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Civil Action No. 2023-CP-40-01759

Appellate Case Nos.
2023-002006
2023-002007
2023-002008
2023-002009
2023-002010
2023-002011

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,

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 S.A.S., 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.

MOTION TO DISMISS INTERLOCUTORY APPEALS

Pursuant to Rule 240 of the South Carolina Rules of Appellate Procedure, Peter D. Protopapas, in his capacity as the court-appointed Receiver for Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, n/k/a Cape Intermediate Holdings Ltd. (the "Receiver") respectfully requests this Court dismiss the December 18, 2023 Notices of Appeal (the "December 2023 Notices") filed by Appellants in the above-captioned cases.[1]

The December 2023 Notices all seek premature, interlocutory review of a circuit court order entered on December 6, 2023, titled "Order Denying Certain Third-Party Defendants' Motions to Dissolve Receivership and Third-Party Defendants' Motions to Dismiss for Lack of Personal Jurisdiction," which rejected appellants' personal jurisdiction arguments for dismissal and their requests to dissolve the Cape Receivership (the "December 6 Interlocutory Order"). South Carolina law is clear—and has been clear for many years—that such orders are not immediately appealable.

Indeed, both the South Carolina Supreme Court and this Court have recently *and decisively* dismissed as premature similarly-situated, interlocutory appeals which too sought immediate

[1] Appellants and their corresponding case numbers are as follows:

- Mohed Altrad and Altrad Investment Authority S.A.S. (Appellate Case No. 2003-002006);
- Arranco US LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC (Appellate Case No. 2003-002007);
- Anglo American PLC, De Beers PLC, De Beers Consolidated Mines Proprietary Ltd., De Beers UK Ltd., and De Beers Centenary AG (Appellate Case No. 2003-002008);
- ESAB Corporation (Appellate Case No. 2003-002009);
- Charter Consolidated Ltd. (Appellate Case No. 2003-002010); and
- Central Mining & Investment Corporation Ltd. (Appellate Case No. 2003-002022).

review of orders rejecting personal jurisdiction arguments and orders declining to dissolve a receivership. *See* Packet of Orders attached hereto as **Exhibit A**, issued in *Childers v. Davis Mechanical Contractors*, *et al.* No. 2024-000005 (S.C. Sup. Ct. Order dated March 27, 2024)(dismissing, in an order signed by all five justices, as not immediately appealable an order denying appellants' request to dissolve a receivership); *Welch v. Advance Auto Parts, et al.,* No. 2024-000337 (Ct. App. Order dated April 12, 2024)(dismissing as not immediately appealable an order denying appellants' motions to dissolve a receivership and to dismiss, including on personal jurisdiction grounds, and an order denying appellants' motions for protection from discovery); *Mitchell v. 3M Company, ABB Inc., et al.,* No. 2024-000341 (Ct. App. Order dated April 12, 2024)(same); *Link v. 3M Company, 4520 Corp., Inc., et al.,* No. 2024-000342 (Ct. App. Order dated April 12, 2024)(rejecting appellants' contention that the circuit court's order permitting the receiver to continue his duties during the pendency of the appeal is immediately appealable and dismissing the appeal). The outcome should be no different in this case, and Appellants should not be permitted to continue to clog our courts with meritless appeals like this one. Dismissal is warranted.[2]

(Signature page follows)

[2] The Receiver also requests that while this Court considers this motion, it hold in abeyance all other briefing and submission deadlines.

Respectfully Submitted,

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April 16, 2024

EXHIBIT A

The South Carolina Court of Appeals

Michael David Link and Sandra Strickland Link,
Plaintiffs,

v.

3M Company, 4520 Corp., Inc., ABB Inc., Amentum Environment & Energy, Inc., Armstrong International, Inc., Bahnson, Inc., Beaty Investments, Inc., Bechtel Corporation, The Bonitz Company, Brenntag North America, Inc., Brenntag Speacialties, LLC, Carboline Company, Carrier Corporation, Celanese Corporation, CNA Holdings, LLC, Cooper Crouse-Hinds, LLC, Covil Corporation, Daniel International Corporation, Davis Mechanical Contractors, Inc., Eaton Corporation, Ellington Insulation Company, Inc., Emerson Electric Co., Ericsson Inc., Fisher Controls International, LLC, Flowserve Corporation, Flowserve US, Inc., Fluor Constructors International, Fluor Constructors International, Inc., Fluor Daniel Services Corporation, Fluor Enterprises, Inc., General Cable Corporation, General Cable Industries, Inc., General Electric Company, Gould Electronics, Inc., Goulds Pumps, Incorporated, Graybar Electric Company, Inc., Great Barrier Insulation Co., Grinnell, LLC, Heat & Frost Insulation Company, Inc., Henry Pratt Company, LLC, Howden North America, Inc., ITT, LLC, J & L Insulation, Inc., K-Mac Services, Inc., Kohler Co., Metropolitan Life Insurance Company, Michelin Corporation, Michelin North America, Inc., Milliken & Company, Occidental Chemical Corporation, The Okonite Company, Inc., Paramount Global, PECW Holding Company, Plastics Engineering Company, Presnell Insulation Co., Inc., Prysmian Cables and Systems USA, LLC, Raytheon Technologies Corporation, Redco Corporation, Riley Power Inc., Rockwell Automation, Inc., R.T. Vanderbilt Holding Company, Inc., Rust Engineering & Construction, Inc.,

Rust International, Inc., Saint-Gobain Abrasives, Inc., Schneider Electric USA, Inc., Sequoia Ventures, Inc., Siemens Industry, Inc., Southern Insulation, Inc., Spence Engineering Company, Inc., Spirax Sarco, Inc., SPX Cooling Technologies, LLC, Standard Insulation Company of N.C., Inc., Starr Davis Company, Inc., Starr Davis Company of S.C., Inc., Thermo Electric Company, Inc., Union Carbide Corporation, Vanderbilt Minerals, LLC, Viking Pump, Inc., Vistra Intermediate Company, LLC, Whittaker, Clark & Daniels, Inc., The William Powell Company, Wind Up, Ltd., York International Corporation, Zurn Industries, LLC, Defendants,

AND

Heather Donaghy, as Personal Representative of the Estate of Shirley Smiley Potter, Deceased, Plaintiffs,

v.

3M Company, 4520 Corp., Inc., ABB Inc., Amentum Environment & Energy, Inc., Armstrong International, Inc., Bahnson, Inc., Beaty Investments, Inc., Bechtel Corporation, The Bonitz Company, Brenntag North America, Inc., Brenntag Speacialties, LLC, Carboline Company, Carrier Corporation, Celanese Corporation, CNA Holdings, LLC, Cooper Crouse-Hinds, LLC, Covil Corporation, Daniel International Corporation, Davis Mechanical Contractors, Inc., Eaton Corporation, Ellington Insulation Company, Inc., Emerson Electric Co., Ericsson Inc., Fisher Controls International, LLC, Flowserve Corporation, Flowserve US, Inc., Fluor Constructors International, Fluor Constructors International, Inc., Fluor Daniel Services Corporation, Fluor Enterprises, Inc., General Cable Corporation, General Cable Industries, Inc., General Electric Company, Gould Electronics, Inc., Goulds Pumps, Incorporated, Graybar Electric Company, Inc., Great Barrier Insulation Co., Grinnell, LLC, Heat & Frost Insulation Company, Inc., Henry Pratt Company, LLC,

Howden North America, Inc., ITT, LLC, J & L Insulation, Inc., K-Mac Services, Inc., Kohler Co., Metropolitan Life Insurance Company, Michelin Corporation, Michelin North America, Inc., Milliken & Company, Occidental Chemical Corporation, The Okonite Company, Inc., Paramount Global, PECW Holding Company, Plastics Engineering Company, Presnell Insulation Co., Inc., Prysmian Cables and Systems USA, LLC, Raytheon Technologies Corporation, Redco Corporation, Riley Power Inc., Rockwell Automation, Inc., R.T. Vanderbilt Holding Company, Inc., Rust Engineering & Construction, Inc., Rust International, Inc., Saint-Gobain Abrasives, Inc., Schneider Electric USA, Inc., Sequoia Ventures, Inc., Siemens Industry, Inc., Southern Insulation, Inc., Spence Engineering Company, Inc., Spirax Sarco, Inc., SPX Cooling Technologies, LLC, Standard Insulation Company of N.C., Inc., Starr Davis Company, Inc., Starr Davis Company of S.C., Inc., Thermo Electric Company, Inc., Union Carbide Corporation, Vanderbilt Minerals, LLC, Viking Pump, Inc., Vistra Intermediate Company, LLC, Whittaker, Clark & Daniels, Inc., The William Powell Company, Wind Up, Ltd., York International Corporation, Zurn Industries, LLC, Defendants, AND Heather Donaghy v. 4520 Corp., Inc.

Appellate Case No. 2024-000342

ORDER

This consolidated appeal arises out of a circuit court order dated February 23, 2024, denying the receiver's motion to terminate representation of Appellants' counsel of choice and directing Appellants' counsel to cooperate with the receiver. Appellants engaged the legal services of Clement Rivers, LLP. Appellants assert they were deprived of utilizing their choice of counsel, although the order on appeal denied the receiver's motion to terminate Appellants' representation by Clement Rivers. The denial of a motion to terminate representation is not

immediately appealable. *See EnerSys Delaware, Inc. v. Hopkins*, 401 S.C. 615, 619, 738 S.E.2d 478, 480 (2013) ("[A]n order denying a motion to disqualify an attorney is not immediately appealable."). Contrary to Appellants' assertions, the order on appeal is distinguishable from that in *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d, 707 (2005). In *Hagood*, the supreme court found "an order granting a motion to disqualify a party's preferred attorney *must* be immediately appealed or any later objection in a subsequent appeal [would] be waived." *Id.* at 198, 607 S.E.2d at 710. The action taken by the circuit court in this appeal is more akin to the order appealed in *Hopkins*, wherein the circuit court denied the motion to disqualify counsel. *See Hopkins*, 401 S.C. at 616, 619, 738 S.E.2d at 479, 480. Thus, this order is not immediately appealable.

Appellants also argue the order on appeal is immediately appealable pursuant to section 14-3-330(4) of the South Carolina Code (2017). Specifically, Appellants contend the circuit court's order impermissibly permits the receiver to continue his duties during the pendency of the appeal. This order is also not immediately appealable. *See Childers v. Davis Mech. Contractors, Inc.* (S.C. Sup. Ct. Order dated Mar. 27, 2024) (dismissing as not immediately appealable an order denying appellants' request to dissolve a receivership).

Based on the foregoing, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

H. Bruce Williams, C.J.
FOR THE COURT

Columbia, South Carolina

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Jonathan M. Robinson, Esquire

The South Carolina Court of Appeals

Donna B. Welch, individually and as Personal Representative of the Estate of Melvin G. Welch, deceased, Respondent,

v.

Advance Auto Parts, Inc., American Honda Motor Co., Inc., Atlas Asbestos Co, Atlas Turner, Inc. as successor to Atlas Asbestos Co, a foreign company, Bahnson, Inc., Covil Corporation, Daniel International Corporation, Davis Mechanical Contractors, Inc., Ellington Insulation Company, Inc., Fluor Constructors International f/k/a Fluor Corporation, Fluor Constructors International, Inc., Fluor Daniel Services Corporation, Fluor Enterprises, Inc., General Parts, Inc. individually and as successor-in-interest to Carquest Corporation; Goodrich Corporation f/k/a The B. F. Goodrich Company, The Goodyear Tire & Rubber Company, Graybar Electric Company, Inc., Honeywell International, Inc. individually and as successor-in-interest to Allied Signal, Inc., as successor to Bendix Corporation, Morse Tec LLC f/k/a Borgwarner Morse Tec LLC, and successor-by-merger to Borg-Warner Corporation, Occidental Chemical Corporation as successor to Durez Corporation; O'reilly Automotive Stores, Inc., Paramount Global f/k/a Viacomcbs Inc., f/k/a CBS Corporation, a Delaware corporation f/k/a Viacom, Inc., successor-by-merger to CBS Corporation, a Pennsylvania corporation, f/k/a Westinghouse Electric Corporation, Pneumo Abex LLC successor-in-interest to Abex Corporation, Redco Corporation f/k/a Crane Co., Reinz Wisconsin Gasket LLC f/k/a and/or successor to Reinz Wisconsin Gasket Co. and Wisconsin Gasket Manufacturing Co., a wholly owned subsidiary of Dco LLC, Rust Engineering & Construction, Inc., Rust International Inc., Southern Insulation, Inc., Spirax Sarco, Inc., Union Carbide Corporation, Westrock MWV, LLC individually and as successor-in-interest to

Westvaco, ZF Active Safety US Inc. f/k/a Kelsey-Hayes Company, Defendants,

of which Atlas Turner, Inc., The Continental Insurance Company, Certain Underwriters at Lloyd's London, and Certain London Market Companies are the Appellants,

and

Donna B. Welch, individually and Personal Representative of the Estate of Melvin G. Welch, deceased,

and

Peter D. Protopapas, Duly Appointed Received for Atlas Turner, Inc., are Respondents.

Appellate Case No. 2024-000337

ORDER

This appeal arises out of an order of the circuit court denying Appellants' motions to dismiss and to dissolve the receivership, as well as an order denying Appellants' motions for protection from discovery. These orders are not immediately appealable. *See Huntley v. Young*, 319 S.C. 559, 560, 462 S.E.2d 860, 861 (1995) (holding the denial of a motion to dismiss under Rule 12(b)(6), SCRCP, is generally not immediately appealable); *Flavor-Inn, Inc. v. NCNB Nat. Bank of S.C.*, 309 S.C. 508, 513–14, 424 S.E.2d 534, 537 (Ct. App. 1992) ("Ordinarily, a trial court's denial of a motion to strike is not immediately appealable."); *Deskins v. Boltin*, 319 S.C. 356, 461 S.E.2d 395 (1995) (holding the denial of a motion to dismiss based on a lack of subject matter jurisdiction is not immediately appealable); *Mid-State Distrib., Inc. v. Century Imp., Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993) (holding the denial of a motion to dismiss based on a lack of personal jurisdiction is not immediately appealable); *Childers v. Davis Mech. Contractors, Inc.* (S.C. Sup. Ct. Order dated Mar. 27, 2024) (dismissing as not immediately appealable an order denying appellants' request to dissolve a

receivership); *Grosshuesch v. Cramer*, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008) ("[D]iscovery orders, in general, are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statute, involve the merits of the action or affect a substantial right."); *Davis v. Parkview Apartments*, 409 S.C. 266, 280, 762 S.E.2d 535, 543 (2014) ("[T]o challenge the specific rulings of the discovery orders, the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding."); *Hamm v. S.C. Pub. Serv. Comm'n*, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994) (holding discovery orders are interlocutory and not immediately appealable).

Appellant Continental Insurance Company filed a motion to enforce this court's exclusive jurisdiction over this matter. Respondents did not file a return. The motion is denied.

For the foregoing reasons, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

_____, C.J.
FOR THE COURT

Columbia, South Carolina

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The South Carolina Court of Appeals

Ted Everette Mitchell, individually and as Executor of the Estate of Patsy Ann Mitchell, Plaintiff,

v.

3M Company, ABB Inc.; Advance Auto Parts, Inc.; Air & Liquid Systems Corporation; Alfa Laval, Inc.; Amentum Environment & Energy, Inc.; Ametek, Inc.; Anchor/Darling Valve Company; A.O. Smith Corporation; Armstrong International, Inc.; Asbestos Corporation Limited; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Beaty Investments, Inc.; Bechtel Investments, Inc.; The Bonitz Company; BW/IP Inc.; Cameron International Corporation; Cape PLC; Carrier Corporation; Carver Pump Company; Champlain Cable Corporation; Cleaver-Brooks, Inc.; Clyde Union Inc.; Covil Corporation; Crane Co.; Crane Instrument & Sampling, Inc.; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Detroit Stoker Company, LLC; Ellington Insulation Company, Inc.; Erico International Corporation; Fisher Controls International, LLC; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Flour Daniel Services Corporation; Fluor Enterprises, Inc.; FMC Corporation; Ford Motor Company; Foster Wheeler Energy Corporation; Gardner Denver, Inc.; General Electric Company; General Parts, Inc.; Genuine Parts Company; The Goodyear Tire & Rubber Company; The Gorman-Rupp Company; Goulds Pumps, Incorporated; Graphic Packaging International, LLC; Great Barrier Insulation Co.; Grinnell LLC; Hercules LLC; Honeywell International, Inc.; IMO Industries Inc.; Industrial Holdings Corporation; International Paper Company; ITT LLC; J.&L. Insulation, Inc.; Metropolitan Life Insurance Company; Morse Tec LLC; Moyno, Inc.; NIBCO Inc.; Paramount Global; Pennsylvania Transformer Technology, Inc.; Presnell Insulation Co.,

Inc.; Redco Corporation; Rust Engineering & Construction, Inc.; Rust International Inc.; Saint-Gobain Abrasives, Inc.; Schneider Electric Systems USA, Inc.; Sequoia Ventures Inc.; Service Products, Inc.; The Sherwin-Williams Company; Southern Insulation, Inc.; Spirax Sarco, Inc.; SPX Corporation; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; 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; Zurn Industries, LLC, Defendants,

Asbestos Corporation Limited, by and through its duly appointed Receiver, Peter D. Protopapas, Third Party Plaintiff/Respondent,

v.

Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America; The Continental Insurance Company; Federal Insurance Company; Travelers Casualty and Surety Company f/k/a Aetna Life & Casualty Co., Third Party Defendants,

of which Travelers Casualty and Surety Company f/k/a Aetna Life and Casualty Co., and The Continental Insurance Company are the Appellants.

Appellate Case No. 2024-000341

ORDER

This appeal arises out of an order of the circuit court denying Appellants' motions to dismiss and to dissolve the receivership, as well as an order denying Appellants'

motions for protection from discovery. These orders are not immediately appealable. *See Huntley v. Young*, 319 S.C. 559, 560, 462 S.E.2d 860, 861 (1995) (holding the denial of a motion to dismiss under Rule 12(b)(6), SCRCP, is generally not immediately appealable); *Flavor-Inn, Inc. v. NCNB Nat. Bank of S.C.*, 309 S.C. 508, 513–14, 424 S.E.2d 534, 537 (Ct. App. 1992) ("Ordinarily, a trial court's denial of a motion to strike is not immediately appealable."); *Deskins v. Boltin*, 319 S.C. 356, 461 S.E.2d 395 (1995) (holding the denial of a motion to dismiss based on a lack of subject matter jurisdiction is not immediately appealable); *Mid-State Distrib., Inc. v. Century Imp., Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993) (holding the denial of a motion to dismiss based on a lack of personal jurisdiction is not immediately appealable); *Childers v. Davis Mech. Contractors, Inc.* (S.C. Sup. Ct. Order dated Mar. 27, 2024) (dismissing as not immediately appealable an order denying appellants' request to dissolve a receivership); *Grosshuesch v. Cramer*, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008) ("[D]iscovery orders, in general, are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statute, involve the merits of the action or affect a substantial right."); *Davis v. Parkview Apartments*, 409 S.C. 266, 280, 762 S.E.2d 535, 543 (2014) ("[T]o challenge the specific rulings of the discovery orders, the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding."); *Hamm v. S.C. Pub. Serv. Comm'n*, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994) (holding discovery orders are interlocutory and not immediately appealable).

Appellant Continental Insurance Company filed a motion to enforce this court's exclusive jurisdiction over this matter. Respondents did not file a return. The motion is denied.

For the foregoing reasons, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

H. Bruce Williams, C.J.
FOR THE COURT

Columbia, South Carolina

cc:

FILED
Apr 12 2024

Matthew Todd Carroll, Esquire
Mary Elizabeth O'Neill, Esquire
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Harry Lee, Esquire
A. Victor Rawl, Jr., Esquire

The Supreme Court of South Carolina

Lenora Childers, Individually and as Personal Representative of the Estate of Lewis C. Childers, Plaintiff,

v.

Davis Mechanical Contractors, Inc.; Flame Refractories, Inc.; General Boiler Casing Company, Inc.; HEFCO, Inc.; J.R. Deans Company, Inc.; Payne & Keller Company; SFB, Incorporated; Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Systra Engineering, Inc.; United Construction Co. of Rome, Inc.; Wind Up, Ltd., Individually and as Successor-in-Interest to Pipe & Boiler Insulation, Inc. f/k/a Carolina Industrial Insulating Co.; Defendants.

Flame Refractories, Inc.; United Construction Co. of Rome, Inc.; Wind Up, Ltd., Individually and as Successor-in-Interest to Pipe & Boiler Insulation, Inc. f/k/a Carolina Industrial Insulating Co.; and Payne & Keller Company, By and Through Their Duly Appointed Receiver, Peter D. Protopapas, Third-Party Plaintiffs,

v.

Zurich American Insurance Company (Individually and as Successor to Northern Insurance Company of New York, Maryland All American General Insurance Company, and Maryland Casualty Company); Allstate Insurance Company; John Tighe; Sean Antony Beatty; Dennis William Cahill; Catherine Ann Carlino; Andre Lefebvre; David Dean Shumway; Gil Chandler; Michael Davenport; Linda Young Pettigrew; Gwyn Wallace Fuller; Daniel Robert Keddie; Julie Ann Fortune; Michael John Crall; James Francis Meehan; Larry Gene Simmons; Arrowpoint Group, Inc.; Arrowpoint Capital

Corp.; Admiral Insurance Company; Continental Insurance Company, Individually and as Successor in interest to Harbor Insurance Company; Hartford Accident and Indemnity Company; Travelers Casualty & Surety Company f/k/a Aetna Casualty & Surety Company; National Union Fire Insurance Company of Pittsburgh, PA; Medmarc Casualty Insurance Company, Individually and as Successor in Interest to Dependable Insurance Company, Inc.; Berkshire Hathaway Specialty Insurance Company f/k/a Stonewall Insurance Company, Individually and as Successor in interest to Stonewall Surplus Lines Insurance Company; Lexington Insurance Company; First State Insurance Company; Certain Underwriters at Lloyd's of London and Various London Market Companies; South Carolina Property and Casualty Insurance Guaranty Association; R.L. Jarrett (Underwriting) Agency, Inc.; U.S. Risk, LLC; Rexel USA, Inc.; and Compass Risk Services, LLC, Third-Party Defendants,

Of which, Payne & Keller Company, By and Through Their Duly Appointed Receiver, Peter D. Protopapas, is the Respondent,

and

AIG Property Casualty Company, formerly known as Birmingham Fire Insurance Company; Lexington Insurance Company; National Union Fire Insurance Company of Pittsburgh, PA; Berkshire Hathaway Specialty Insurance Company f/k/a Stonewall Insurance Company, Individually and as Successor in interest to Stonewall Surplus Lines Insurance Company; and Continental Insurance Company, Individually and as Successor in interest to Harbor Insurance Company;

and

Travelers Casualty and Surety Company, f/k/a the Aetna

Casualty and Surety Company, are Appellants.

Appellate Case No. 2024-000005

ORDER

Appellant AIG Property Casualty Company (AIG) has filed a motion for certification of Appellate Case No. 2023-000727 pursuant to Rule 204(b), SCACR. Appellant Travelers Casualty and Surety Company has filed a motion joining AIG's motion for certification.

We grant the motion for certification and motion for joinder, dispense with further briefing, vacate the court of appeals denial of sanctions, and dismiss the appeal because the underlying circuit court order at issue is not immediately appealable.

_____ C.J.

_____ J.

_____ J.

_____ J.

_____ J.

Columbia, South Carolina
March 27, 2024

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The Honorable Jenny Abbott Kitchings

RECEIVED
Apr 16 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
In the Court of Common Pleas
For the Fifth Judicial Circuit

The Honorable Jean H. Toal,
Acting Circuit Court Judge

Case No. 2023-CP-40-01759

Appellate Case Nos.
2023-002006
2023-002007
2023-002008
2023-002009
2023-002010
2023-002011

John A. Tibbs v. Asbestos Corporation Limited, et al

PROOF OF SERVICE

I, Lindsay A. Joyner., of Gallivan White and Boyd, PA, *Attorney for Respondent Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas,* hereby certify that the **MOTION TO DISMISS INTERLOCUTORY APPEALS** was served on all other parties to this appeal on April 16, 2024, via email to their following counsel of record:

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The South Carolina Court of Appeals

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; Zurn Industries, LLC, Defendants,

and

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

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa LTD., 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, and The Sparrows Group, LLC, Third-Party Defendants,

Of which Mohed Altrad and Altrad Investment Authority S.A.S. are the Appellants.

Appellate Case No. 2023-002006

ORDER

This appeal arises out of an order of the circuit court issued December 6, 2023, which denies the appellants' motion to dissolve the receivership and motion to dismiss for lack of personal jurisdiction. The appellants, Altrad Investment Authority S.A.S. and Mohed Altrad, filed a notice of appeal naming Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas, as the respondent.

The respondent filed a motion to dismiss, and the appellants filed a return. After careful consideration of the submissions from all parties, the motion to dismiss is granted. *See Mid-State Distrib., Inc. v. Century Imp., Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993) (holding the denial of a motion to dismiss based on a lack of personal jurisdiction is not immediately appealable); *Childers v. Davis Mech. Contractors, Inc.* (S.C. Sup. Ct. Order dated Mar. 27, 2024) (dismissing as not immediately appealable an order denying appellants' request to dissolve a receivership). The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

H. Bruce Williams, C.J.
FOR THE COURT

Columbia, South Carolina

FILED
May 09 2024

cc:
Matthew Todd Carroll, Esquire
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Laura Watkins Jordan, Esquire
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Jonathan M. Robinson, Esquire

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, individually and as successor in interest to ANGLO AMERICAN CORPORATION OF SOUTH AFRICA LTD., *et al.* Third-Party Defendants.	C/A No. 2023-CP-40-01759 In Re: Asbestos Personal Injury Litigation Coordinated Docket **MOTION TO COMPEL PRODUCTION OF RECEIVER CORPORATE DOCUMENTS**

Pursuant to the South Carolina Rules of Civil Procedure and this Court's Order appointing a Receiver for Cape PLC, Third-Party Plaintiff Peter D. Protopapas, as duly appointed receiver for Cape PLC, individually and as successor in interest to Cape Asbestos Company Ltd. (the "Receiver"), by and through his undersigned counsel, respectfully files this Discovery Motion to Require Counsel to Produce Promised Documents ("the Motion").

A. Oppenheimer Third-Party Defendants' Counsel at Herbert Smith Have Custody of Cape Documents.

In this case, the Third-Party Defendants known as the "Oppenheimer Third-Party Defendants"[1] are represented by Mr. Scott Balber of the international law firm of Herbert Smith Freehills ("Herbert Smith").

On September 13, 2024, Mr. Balber, on behalf of his clients the Oppenheimer Third-Party Defendants, filed a Motion to Compel Discovery Responses from the Receiver, seeking all of the Receiver's Cape-related documents. In short, Mr. Balber wanted the Receiver to use the powers of his appointment order to obtain Cape documents, wherever they might be found. Mr. Balber further stated to the Court that he wanted the Receiver to produce "documents from Cape," even quoting from the Receivership Order with respect to his request for Cape documents. Exhibt 1, September 24, 2024 Hearing Transcript . at 41–42.

At the hearing on this motion, Mr. Balber represented to the Court regarding this gathering of Cape documents:

> "I'd like to commit to do more and to find a way forward mutually so that we can all get through discovery and get to the merits." *Id*. at 35.

Mr. Balber further stated,

> "All we want is the same thing. **We want this receiver to obtain the documents of the entity in its receivership**, Cape, and provide the documents to us that are relevant." *Id.* at 44.

[1] Anglo American PLC (individually and as successor in interest to Anglo American Corporation of South Africa Ltd.), De Beers PLC, De Beers UK Ltd., De Beers Centenary AG, and De Beers Consolidated Mines Proprietary Ltd. (jointly, the "Oppenheimer Third-Party Defendants").

> "I'd be pleased with an order from Your Honor directing us and the receiver to collaborate to try to obtain the documents from Cape. I think we'd all benefit. I'd be happy to be part of that. . . . We think the receiver should be in the best position to obtain those documents. And if not, we should be doing it in tandem." *Id.* at 46.

Unbeknownst to the Receiver, and as elucidated from communications following that hearing, Mr. Balber's law firm, Herbert Smith, appears to maintain a significant collection of the documents responsive to Mr. Balber's Motion to Compel.

The Receiver's investigation has revealed that Mr. Balber's law firm, Herbert Smith, represented Cape at least between 1988 and 2001—as evidenced by Cape's annual reports. *See* Exhibit 2, Extract of Receiver's Trial Exh 671 (Cape 1988 Annual Report); Exhibit 3, Extract of Receiver's Trial Exh 745 (Cape 1996 Annual Report); Exhibit 4, Extract of Cape_Receiver_00198188 (Cape 2001 Annual Report).

Relying on Mr. Balber's offer of cooperation in gathering these documents, on September 30, 2024, the Receiver requested the documents in Herbert Smith's possession related to its representation of Cape. *See* Exhibit 5. The Receiver sent a follow-up letter on October 22, 2024. *See* Exhibit 6. Herbert Smith first responded on October 30, 2024, and noted that it was working with its London office regarding how it could appropriately respond to the Receiver's request. *See* Exhibit 7.

Herbert Smith next communicated on November 8, 2024, stating that it would not comply with the Receiver's request for documents. *See* Exhibit 8. Specifically, Herbert Smith asserted "at this stage we are not satisfied that the Receiver has the authority to require production of material held by this firm on behalf of our former client." *Id.* Further, Herbert Smith contended that it had "not received consent from Cape plc to the transfer of any materials to the Receiver." *Id.*

The responses received to Receiver's requests are completely contrary to the Oppenheimer Third-Party Defendants' representations to this Court. Specifically, on September 13, 2024, the Oppenheimer Third-Party Defendants filed a Motion to Compel Discovery Responses from the Receiver, seeking all of the Receiver's Cape-related documents. These, of course, include the Herbert Smith files – if Herbert Smith would simply produce them to the Receiver and to the Oppenheimer Third-Party Defendants.

B. The Receiver is Entitled to Cape Documents from Herbert Smith and the Oppenheimer Third-Party Defendants.

As recognized by Herbert Smith, the authority granted by this Court enables the Receiver to obtain assets, including historical Cape documents, to which Cape is entitled. *See* Appointment Order (granting the Receiver the "power and authority 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"). The Appointment Order also gives the Receiver authority to "obtain from any financial institution, bank, credit union, savings and loan or title company, credit bureau or any third party, any financial records belonging to or pertaining to the Defendants (including Cape)." *Id.*

Cape Annual Reports and Herbert Smith's own communications show that Herbert Smith is or was in possession of documents to which the Receiver is entitled, and that Mr. Balber and Herbert Smith committed to fully participating in obtaining these documents for use in this case. As Mr. Balber stated at the September 24, 2024 hearing, "we want this Receiver to obtain the documents of the entity in its receivership, Cape, and provide the documents to us that are relevant . . . [b]ecause I think we all want to know . . . what Cape's documents say about this liability avoidance scheme." Exhibit 1 at 44:18–25.

The Receiver requests that the Court compel the production of any and all Cape documents in Herbert Smith's possession.

CONCLUSION

For these reasons, the Receiver respectfully requests that this Court require the production of all Cape-related documents from Herbert Smith and provide all other relief to which the Receiver may be justly entitled.

Respectfully submitted,

November 18, 2024

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EXHIBIT 1

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	FOR THE FIFTH JUDICIAL CIRCUIT
- - -	
JOHN A. TIBBS AND MARGARET B. TIBBS,	
Plaintiffs,	
vs.	Case No. 2023-CP-40-01759
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,	
vs.	
ANGLO AMERICAN PLC,	

(CAPTION CONTINUED ON PAGE 2)

HEARING BEFORE: CHIEF JUSTICE JEAN TOAL

DATE TAKEN: Tuesday, September 24, 2024

TIME BEGAN: 9:26 a.m.

TIME ENDED: 11:30 a.m.

LOCATION: Richland County Judicial Center
1701 Main Street
Courtroom 2A
Columbia, South Carolina

REPORTED BY: Cynthia First, RPR, CRR
EveryWord, Inc.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

On that basis, and because of that finding, based on the pleadings and the other information that's been presented to me in previous hearings on this very issue, we move forward. And as you say, y'all are here. That wasn't always the case, but I am very appreciative of the sanity that has prevailed in more recent times, I think much by the relationship between you and Mr. Elliott, and I appreciate that.

But it means that we don't have to plow that ground right now.

MR. BALBER: Understood. I was simply replying to Mr. Lay's opening statement.

THE COURT: Understood.

MR. BALBER: And let me now talk about what we're here for, if I can, which is discovery.

THE COURT: Thank you.

MR. BALBER: Thank you, Judge. So Mr. Lay asked the question, what have we done. I'd like to give you a sense of that, and I'd like to commit to do more and to find a way forward mutually so that we can all get through discovery and get to the merits.

that, that he's relying on third-party, publicly available sources.

THE COURT: Well, I think he's going to be relying ultimately on what he gets from y'all. Like all plaintiffs' cases, they begin with a general group of information that gets more granular as discovery is made. I don't think there's any sin in that either way.

MR. BALBER: I'm not suggesting any sin at all. If that is the case, I just want to know it so I don't continue knocking on the door and have nobody answer.

THE COURT: I understand.

MR. BALBER: So if we have nothing other than what's publicly available, no aspersions being cast. I just want to know it so that we can move forward.

The next document, Your Honor, is documents from Cape. My understanding is Cape continues to be an operating entity somewhere in the U.K. They assumedly have documents. And I noted, Your Honor, that in your receivership order appointing Mr. Protopapas, you gave him the power, among others, to, quote -- and I know most judges hate to have

their orders read back to them, so I apologize in advance.

THE COURT: That's all right.

MR. BALBER: Thank you, Judge.

You gave them the power to "obtain from any financial institution, bank, credit union, savings and loan, or title company, credit bureau, or any other third party any financial records, and to take all action necessary to gain access to all storage facilities, safety deposit boxes, real property and leased premises wherein any property Respondent may be situated, and to review and obtain copies of all documents related to same."

THE COURT: I may say to you that that is a very -- a receivership is formed for one reason and one reason only, and that is to marshal the assets of the receiver corporation. Corporations get put into receivership most commonly because they're defunct or out of business in some fashion, unable to respond. And for many of them in these toxic tort situations, their assets are their insurance policies.

Here we've got a whole nother group of

recompense to even its shareholders, and move forward with the sale of the business in that regard. That's common in receiverships.

So I want you to understand that that's not some provision in my order that's unique to this situation. It's very common in this state.

MR. BALBER: Understood, Judge.

And my point was exactly that -- not to be presumptuous, but I suspect in the receivership scenario you just described, you and your partners obtained access to the insurance company's documents, right, as part of the exercise and used those documents for the purpose of marshaling assets, identifying and paying creditors, et cetera.

That's all we want here. All we want is the same thing. We want this receiver to obtain the documents of the entity in its receivership, Cape, and provide the documents to us that are relevant. Because I think we all want to know, I suspect -- I know I do. I suspect Mr. Lay does and my guess is Your Honor would -- know what does Cape's documents say about this liability avoidance scheme. Who do

to an order -- I'm going to do what you tell me to do regardless, but I'd be pleased with an order from Your Honor directing us and the receiver to collaborate to try to obtain the documents from Cape. I think we'd all benefit. I'd be happy to be a part of that.

THE COURT: Well, but, you know, what you're doing is putting some limits on that. You're saying "of Cape." Your clients are more than Cape.

MR. BALBER: Well, my clients aren't Cape at all. At least I don't think so. I'm not even addressing that.

I'm talking about what we want to get from this Cape entity for which the receiver -- there is a living, breathing entity in the United Kingdom.

THE COURT: I understand.

MR. BALBER: Right. We want their documents.

THE COURT: Right.

MR. BALBER: We think the receiver should be in the best position to obtain those documents. And if not, we should be doing it in tandem.

EXHIBIT 2

Cape Industries

S

Annual Report 1988

DIRECTORATE AND ADMINISTRATION

Directors

†Jeffrey William Herbert, Chairman

*John Patrick Farrell, Joint managing director

†Anthony Evelyn Hepper

*Thomas Morrison McKain, Joint managing director

†Alan Michael Millwood, OBE

*Allan Watson Petrie, Finance

Richard Keith Arthur Wakeling

**executive*

†audit committee

Secretary and registered office
John Leslie Sparkes, FCA
Cape House, Exchange Road,
Watford WD1 7EG

Auditors
Peat Marwick McLintock
1 Puddle Dock, Blackfriars,
London EC4V 3PD

Bankers
National Westminster Bank PLC
Orchard House Branch,
466 Oxford Street, London W1A 3BP

Registrars
Hill Samuel Registrars Limited
6 Greencoat Place,
London SW1P 1PL

Solicitors
Davies Arnold & Cooper
12 Bridewell Place,
London EC4V 6AD

Herbert Smith
Watling House, 35 Cannon Street,
London EC4M 5SD

Stockbrokers
Williams de Broe Hill Chaplin & Co. Limited.
P O Box 515, Pinners Hall,
Austin Friars, London EC2P 2HS

Jeffrey Herbert (age 45) was elected Chairman in July 1985 having joined the board in April of that year. He is an executive director of Charter Consolidated P.L.C. He has formerly held positions of Managing Director within the automotive industry and the General Electric Company P.L.C.

John Farrell (age 55) has 29 years experience within the group. He was appointed to the board in 1979 and became Joint Managing Director in 1985. He is responsible for the Industrial Services Division.

Tony Hepper (age 65) a non-executive director was appointed to the board in 1968. He is currently Chairman of Lamont & Partners PLC.

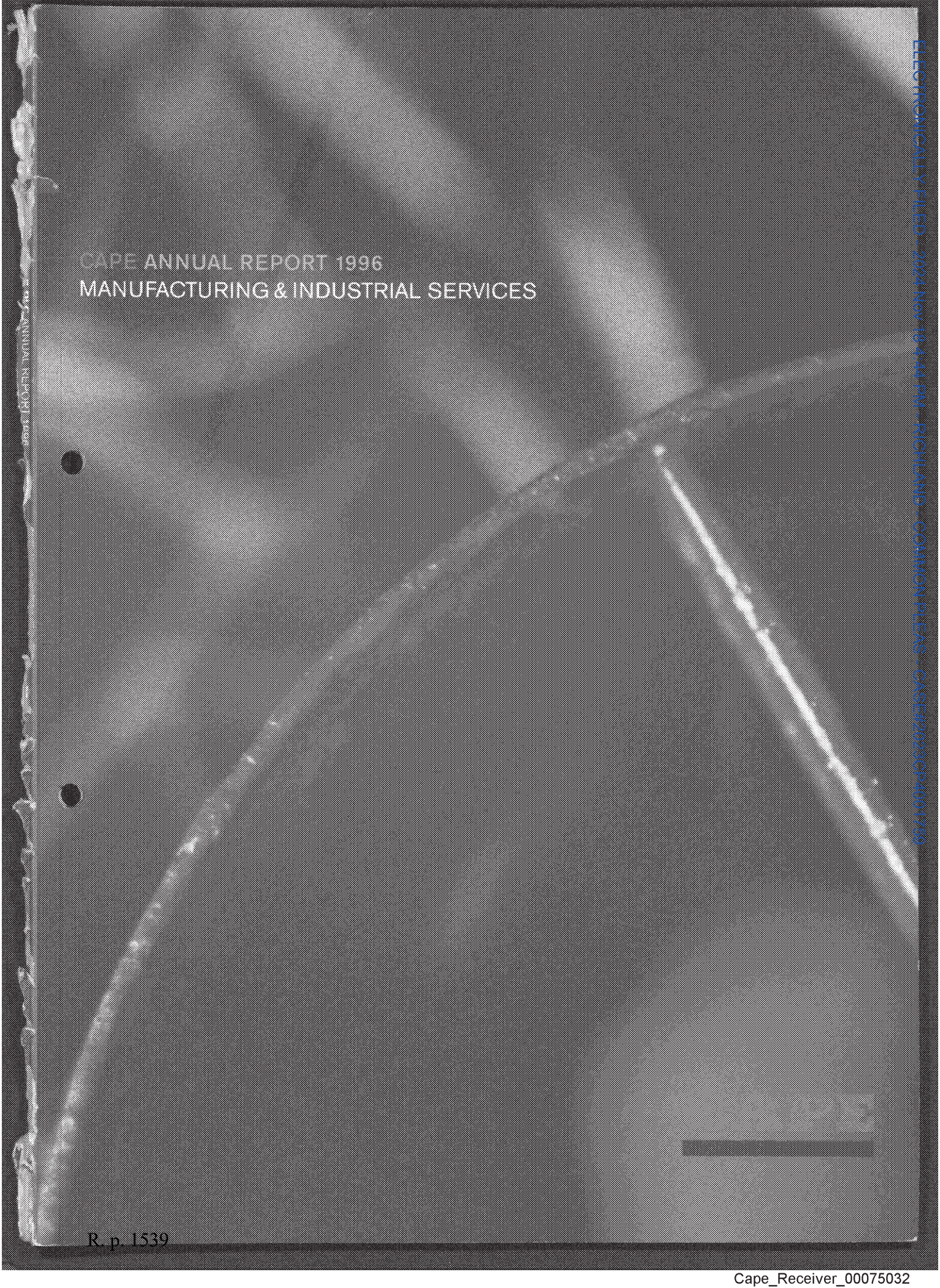
Tom McKain (age 60) joined the group in 1971. He was appointed to the board in 1981 and became Joint Managing Director in 1985. He is responsible for the Building Products Division.

Michael Millwood (age 59) a non-executive director was appointed to the board in January 1986. He is a non-executive director of John Laing PLC having spent his career in the contracting industry.

Allan Petrie (age 47) joined the company as Financial Director in June 1986 having previously been Group Company Secretary of Hollandsche Beton Groepe (UK) Limited.

Richard Wakeling (age 41) a non-executive director joined the board in February 1987. He is Finance Director of Charter Consolidated P.L.C. He was formerly a director of John Brown PLC.

EXHIBIT 3



CONTENTS

DIRECTORATE AND ADMINISTRATION

DIRECTORS
M R F Langdon *Chairman* *†‡
C B Dowling *Chief Executive*
P I Cartwright *Finance Director*
Sir Michael Gyllis *MP* *†‡+
A M Millwood *OBE* *†‡+
S S O'Connor †‡+

** Supervisory committee*
† Audit committee
‡ Remuneration committee
+ Non executive

SECRETARY & REGISTERED OFFICE
M G Pitt-Payne *FCA*
Iver Lane
Uxbridge
Middlesex UB8 2JQ

AUDITORS
Coopers & Lybrand
Harman House
1 George Street
Uxbridge UB8 1QQ

BANKERS
National Westminster Bank PLC
30 North Audley Street
London W1Y 2HP

SOLICITORS
Davies Arnold Cooper
6-8 Bouverie Street
London EC4A 8DD

Herbert Smith
Exchange House
Primrose Street
London EC2A 2HS

REGISTRARS
Independent Registrars Group
Bourne House
34 Beckenham Road
Beckenham
Kent BR3 4TU

STOCKBROKERS
Dresdner Kleinwort Benson
20 Fenchurch Street
London EC3P 3DP

Case PLC is a company registered in England and Wales
Registration Number 40202

CHAIRMAN'S STATEMENT THE NEW MANAGEMENT TEAM ARE NOW TARGETING INVESTMENT IN THE TWO CORE DIVISIONS, MANUFACTURING AND INDUSTRIAL SERVICES.

1996 has been a year of significant change for Cape PLC following the decision by Charter plc to dispose of its majority shareholding in the company. On 18th July 1996 Rutland Trust PLC ("Rutland") acquired 25% of the ordinary share capital of Cape PLC and the balance of the shares held by Charter were placed with institutional investors.

Cape is now an independent company listed on the London Stock Exchange with Rutland as its largest shareholder. In conjunction with my appointment as Chairman of Cape, my colleagues Christopher Dowling and Paul Cartwright have been seconded from Rutland to become Chief Executive and Finance Director respectively. As a new central team we are responsible for implementing the proposals for the restructuring of Cape's businesses that were referred to in the circular which was sent to shareholders in June 1996. Your company has appointed a Supervisory Committee within the main Board which comprises myself, as Chairman, and two non-executive directors, Sir Michael Grylls and Michael Millwood, OBE. The Supervisory Committee is responsible for approving all major strategic and financial issues.

The declared strategy is to restructure Cape's operations to enable the group to pursue its core markets more effectively thereby enhancing shareholder value over the medium term. In my Interim Statement for the half year ended 30th June 1996 I explained that several important initiatives to reshape the group had already been taken. In November 1996 we announced that the first phase of the restructuring was complete with the sale or closure of certain non-core or loss making businesses.

The industrial services businesses in France and Germany had been loss making for some time and Cape was not a significant force in these markets. Consequently both Hessisches Isolierwerk GmbH, based in Borken, Germany, and SOCAP, based in St. Quentin, France were sold for nominal consideration in September and October 1996 respectively. Cape Entsorgungstechnik GmbH, also based in Borken, has been wound down and will cease trading in due course. In addition, the future of the industrial services' operation in Norway, Cape AS, has been under review throughout the second half of 1996. Accordingly, the decision was taken to withdraw from this loss-making business in December 1996, and it was bought recently by the incumbent management for a nominal consideration. The architectural businesses, which are involved in the manufacture of mineral and plaster ceilings and external claddings, were loss making and facing particularly difficult market conditions in continental Europe. For this reason, these businesses were sold to management for £1.1 million in cash with Cape retaining cash balances of £2.4 million and collecting net debtors of £0.25 million.

The disposals and closures referred to above, including trading losses incurred to the date of sale or closure of these businesses, have been carried out within the non-operating exceptional provision of £17.4 million which was made at 30th June 1996 to meet the costs of the restructuring programme.

Cape is now organised into two clearly focused divisions operating as independent businesses. First, the Manufacturing division produces building and insulation products, principally using Cape's expertise in calcium silicate technology, which are sold through Cape's marketing operations in the UK, continental Europe and the Far East. Second, the Industrial Services division provides insulation, scaffolding and related services on major oil, gas and industrial sites around the world.

In the second half of 1996 the new central management team completed a full review of the asbestos claims situation at Cape with the assistance of the group's legal advisors. In addition, we have initiated the computerisation of our claims management systems to provide a full historical database and to enable claims to be handled more effectively.

In the light of the claims experience during the first half of 1996, we became concerned that the level of provisions booked in prior years was insufficient to cover the unsettled claims relating to those years. The Board therefore decided to make an exceptional provision in the group's interim results of £2.5 million to cover this exposure. A further charge of £2.4 million has been

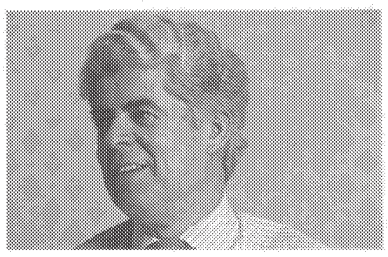
made for new claims arising during the year ended 31st December 1996 and, whilst your Board is actively seeking ways to mitigate the costs of asbestos claims, it is not anticipated that the level of claims experienced in 1996 will reduce in the short term.

Turnover from continuing operations for the year ended 31st December 1996 was £222.7 million compared with £213.7 million last year. This produced an operating profit before exceptional items of £11.1 million from continuing businesses compared with £12.3 million last year. The operating profit from continuing operations was £7.2 million for the second half of 1996 which reflects in part the normal phasing of profits from the Industrial Services businesses but also an improved second half performance in the Manufacturing business. After taking into account certain exceptional items within our ongoing businesses, and the costs of the restructuring programme referred to above, the loss before taxation was £13.2 million compared with a profit before taxation of £11.5 million last year. Earnings per share on continuing operations before exceptional items were 13.5p compared with 14.4p last year. Net assets were down from £62.5 million at 31st December 1995 to £48.8 million at 31st December 1996, principally due to the write down in carrying values of the businesses disposed of or closed. The cash cost during the year relating to the group restructuring was £2.7 million and net debt at 31st December 1996 was £3.1 million (1995: £0.8 million). Gearing was 6% at the year end.

In line with the policy as indicated at the time of the 1996 interim results, the Board is recommending that the final dividend is cut from 8p in 1995 to 3p. The final dividend will be paid on 16th May 1997 to shareholders on the register at the close of business on 1st April 1997, bringing the total dividend for the year to 6p (1995: 11p). The Board believes that this is the appropriate dividend policy, as it reflects the new circumstances of the group and provides scope for further investment in Cape's core businesses.

With the first phase of the restructuring completed, the new management team are now targeting investment in the two core divisions, Manufacturing and Industrial Services. Having suffered a period of rationalisation and reorganisation, I remain confident that both divisions now have significant opportunity for growth.

I would like to thank Jeffrey Herbert, the previous Chairman, and his Board colleagues from Charter plc for the opportunity to take Cape, as an independent listed company, on to a new phase of its development. In addition, I would like to record the Board's appreciation of the services of Michael Farebrother and Keith Jackson for having successfully guided Cape through the difficult years of the recent recession. In particular, I would also like to thank all the Cape management and employees for their hard work and support throughout a most challenging year. I am confident that there is a successful future in store for the two clearly defined divisions which now comprise the group.



MRF LANGDON
Chairman 12th March 1997

EXHIBIT 4

40203

CAPE

Cape PLC annual report and accounts 2001

Directors and Advisers

P Sellars
Chairman (1,3,4,5)

I D Maclellan
Chief Executive (4)

I R Widdowson
Finance Director

P R Ainley
Managing Director
Cape Industrial Services

S S O'Connor (1,2,3,4,5)
J A Pool (1,2,3,4,5)

1 Non-Executive
2 Audit Committee
3 Remuneration Committee
4 Supervisory Committee
5 Nomination Committee

Secretary and Registered Office
S H Smith
Iver Lane, Uxbridge
Middlesex UB8 2JQ

Auditors
PricewaterhouseCoopers
Harman House,
1 George Street
Uxbridge UB8 1QQ

Solicitors
Davies Arnold Cooper
6-8 Bouverie Street
London EC4Y 8DD

Herbert Smith
Exchange House,
Primrose Street
London EC2A 2HS

Bankers
National Westminster Bank PLC
30 North Audley Street
London W1A 4UQ

Barclays Bank PLC
PO Box 544
54 Lombard Street
London EC3V 9EX

Registrars
Capita IRG PLC
Bourne House
34 Beckenham Road
Beckenham
Kent BR3 4TU

Stockbrokers
Rowan Dartington & Co Ltd
Colston Tower
Colston Street
Bristol BS1 4RD

Cape PLC is a company registered in England and Wales. Registered number 40203.

EXHIBIT 5

SMITH ROBINSON
Forward thinking. Results driven.

COLUMBIA
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Columbia, SC 29205
P: 803.254.5445
F: 803.254.5007

SUMTER
126 N. Main Street
Sumter, SC 29150
P: 803.778.2471
F: 803.778.1643

CAMDEN
935 Broad Street
Camden, SC 29020
P: 803.432.1992
F: 803.432.0784

Reply To: Columbia

September 30, 2024

HERBERT SMITH FREEHILLS
NEW YORK LLP
Scott S. Balber (Pro Hac Vice)
200 Park Avenue, 16th Floor
New York, New York 10166
Via Email Only: scott.balber@hsf.com

Re: ***CAPE PLC, individually and as successor in interest to CAPE ASBESTOS COMPANY LIMITED, by and through its duly appointed Receiver Peter D. Protopapas v. ANGLO AMERICAN PLC, individually and as successor in interest to ANGLO AMERICAN CORPORATION OF SOUTH AFRICA LTD., et al***
C/A No. 2023-CP-40-01759

Dear Mr. Balber

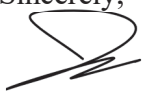
It was a pleasure meeting you last week at the hearing and I look forward to working with you on this matter. As you know, the Court has appointed my client, Peter D. Protopapas, as Receiver for Cape PLC as the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) During the hearing, there was much discussion about the relationship between Cape, PLC (the Petitioner in the English case presently seeking to enjoin the South Carolina court appointed Receiver, Mr. Protopapas) and the clients you represent in the above action, Anglo American PLC, De Beers PLC, De Beers Centenary AG, De Beers UK Ltd., and De Beers Consolidated Mines Proprietary Ltd. ("Anglo Defendants"). As indicated in court, there has been a great deal written on the relationship between Cape PLC and the Third-Party Defendants named in this case. One such collection of work is "Asbestos and Cape: A Tale of Three Stakeholders" written by Peter Gartside, former Cape Managing Director of its overseas industrial services businesses. Like many Directors of the Third-Party Defendants, Mr. Gartside also served as Director of other companies in Cape the network of entities such as: Cape Overseas Limited, Cape Industrial Services Group Limited, Cape Perlite Systems Limited, Altrad Services Limited, Cape East (Uk) Limited, Cape East Limited, Cape Industrial Services Europe Limited, and Cape Contracts International Limited.
https://find-and-update.company-information.service.gov.uk/officers/zZMTnWU-72u1KZRo4aq7RNTyduE/appointments .

There was also much discussion at the hearing regarding efforts by the Receiver to obtain and produce Cape PLC documents in discovery. We were encouraged to hear you acknowledge the

broad powers invested in the Receiver relating to the discovery of documents and your intent to work collectively with the Receiver to find the documents. To that end, in addition to representing the Anglo Defendants, we have learned that your law firm, Herbert Smith, also represented Cape PLC (f/k/a Cape Asbestos Company Ltd.) over several years, as reflected by Cape's annual reports. See Extract of Receiver's Trial Exh 671 (Cape 1988 Annual Report- page 2 of this document it reflects the Solicitors for Cape as being "Herbert Smith" firm out of London), Extract of Receiver's Trial Exh 745 (1996 Annual Report of Cape - page 2 of this document reflects the solicitors for Cape as being Herbert Smith firm out of London), Extract of Receivers Trial Exh 747 (2000 Annual Report of Cape which also shows its solicitors as being Herbert Smith firm out of London). I am also attaching an article which may assist you in locating your documents relating to Cape's relationship with ALTRAD. See 2017 Article reflecting Herbert Smith as counsel for Altrad. "Alex Kay, Kristen Roberts, Nick May, Charles Steward, Elliot Beard and Nick Rutter of Herbert Smith Freehills Paris LLP acted as legal advisors to Altrad." (https://www.marketscreener.com/quote/stock/PRUDENTIAL-PLC-9590193/news/Altrad-Investment-Authority-S-A-S-completed-the-acquisition-of-Cape-plc-from-a-consortium-of-seller-34955679/).

Please immediately produce Herbert Smith's Cape files to the Receiver. We hope this information is helpful in your search for documents as we move forward in this collective process

Sincerely,



Jonathan M. Robinson

Cc: James H. Elliott, Jr., Esquire (jelliott@richardsonplowden.com)

EXHIBIT 6

PETER D. PROTOPAPAS, RECEIVER
2110 N. Beltline Blvd. Columbia, SC 29204 – 803.978.6111 – pdp@rplegalgroup.com

October 22, 2024

VIA EMAIL & VIA US MAIL

Justin D'Agostino
Global Chief Executive Officer
Herbert Smith Freehills, LLP
23rd Floor Gloucester Tower
15 Queen's Road Central
Hong Kong
Justin.DAgostino@hsf.com

Scott S. Balber
Managing Partner, New York
Herbert Smith Freehills New York, LLP
200 Park Avenue, 16th Floor
New York, New York 10166
Scott.Balber@hsf.com

Re: Request for Herbert Smith Client Files for Cape, PLC

Counsel:

I am the court-appointed receiver for Cape, PLC. I write to follow-up on the attached correspondence wherein my counsel requested Herbert Smith to produce to me copies of its client files related to its prior representation of Cape. To date, we have not received any response. Given the timing of this upcoming trial, I respectfully request that you produce these materials to me immediately. If your firm does not plan to produce these client materials to me, I would appreciate your letting me know that, too. Either way, I would request a response by October 28, 2024.

I look forward to hearing from you soon.

Sincerely,

s/ Peter D. Protopapas

Peter D. Protopapas, Receiver

EXHIBIT 7

HERBERT SMITH FREEHILLS

Jonathan M. Robinson
Smith Robinson
3200 Devine Street
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jon.robinson@smithrobinsonlaw.com

Herbert Smith Freehills New York LLP
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New York, NY 10166
USA
T +1 917 542 7600
F +1 917 542 7601
D +1 917 542 7809
E john.odonnell@hsf.com
www.herbertsmithfreehills.com

Date
October 30 2024

By email

Re: ***Cape plc v. Anglo American plc, et al.*****, Civil Action No. 2023-CP-40-01759**

Dear Mr. Robinson:

I write in response to your letter of September 30, 2024, sent on behalf of Peter Protopapas as receiver for Cape plc (the "Receiver"), and the Receiver's letter of October 22, 2024, requesting production of documents that you allege are in the possession of my law firm.

I have been referred your letters as the risk manager of my firm's New York office. I am actively working with colleagues in London regarding your request and how my firm can appropriately respond to you in accordance with its professional obligations.

Herbert Smith Freehills New York LLP submits this letter on its own behalf and not on behalf of the Anglo American-De Beers Defendants. This letter is not intended to waive, and specifically reserves, all defenses, including but not limited to the defense of lack of personal jurisdiction.

Sincerely,

/s/ John O'Donnell

John O'Donnell

cc: Scott S. Balber (scott.balber@hsf.com)
James H. Elliott (jelliott@richardsonplowden.com)

EXHIBIT 8

HERBERT SMITH FREEHILLS

Jonathan M. Robinson
Smith Robinson
3200 Devine Street
Columbia, South Carolina 29205
803-254-5445
jon.robinson@smithrobinsonlaw.com

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USA
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F +1 917 542 7601
D +1 917 542 7809
E john.odonnell@hsf.com
www.herbertsmithfreehills.com
www.herbertsmithfreehills.com

Date
08 November 2024

By email

Re: *Cape plc v. Anglo American plc, et al.*, Civil Action No. 2023-CP-40-01759

Dear Mr. Robinson:

I write on behalf of Herbert Smith Freehills New York LLP and the member firms of the international legal practice known as Herbert Smith Freehills located in London, Paris, Brussels, Hong Kong, Singapore, and Bangkok. This letter serves to follow-up on my earlier correspondence dated October 30, 2024, concerning your letter of September 30, 2024, sent on behalf of Peter Protopapas as receiver for Cape plc (the "Receiver"), and the Receiver's letter of October 22, 2024, requesting production of documents that you allege are in the possession of our law firm as a result of past representations of Cape plc, as the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) (collectively "Cape plc").

We have considered your request as a request by a former client for documents within our files to which a former client would be entitled. Our global firm and the member firms which may hold any Cape plc files are regulated by, among others, the Solicitors Regulation Authority of England and Wales and are subject to its ethical rules. Paragraph 6.3 of the Code of Conduct for Solicitors, RELs and RFLS and of the Code of Conduct for Firms (collectively the "Code") requires that we "keep the affairs of current and former clients confidential unless disclosure is required or permitted by law or the client consents." As I am sure you understand, the requirement of client confidentiality is a bedrock principle of law and one to which we must scrupulously adhere. For the reasons below, at this stage we are not satisfied that the Receiver has authority to require production of material held by this firm on behalf of our former client.

We understand that the Receiver claims he has authority to act for Cape plc pursuant to a receivership order dated March 16, 2023, originally entered in *Park v. Armstrong International Inc., et al.* Civil Action No. 2021-CP-40-02727 in the Court of Common Pleas for the Fifth Judicial Circuit in South Carolina. However, we also understand that Cape plc and Cape Intermediate Holdings Limited have filed suit in the High Court of England and Wales against the Receiver seeking a

declaration from the High Court finding that the receivership order has no legal effect over Cape plc and that Mr. Protopapas has and had no power or authority to act as a receiver in relation to Cape plc and Cape Intermediate Holdings Limited. *See Cape Intermediate Holdings Limited and Cape plc v. Peter D. Protopapas*, BL-2024-001337 (The High Court of Justice – The Business & Property Courts of England & Wales). We understand that the matter has been set for a final hearing on the merits commencing November 11, 2024. Given the pendency of litigation concerning the Receiver's authority, we cannot transfer any materials from any Cape plc files to the Receiver as there is substantial doubt as to whether the Receiver has the power under the laws of England and Wales to request client documents from our files.

We have also not received consent from Cape plc to the transfer of any materials to the Receiver. It follows we cannot transfer any materials from any Cape plc files to the Receiver due to our ethical obligations pursuant to paragraph 6.3 of the Code.

Finally, we note that you reference a comment by one of our New York partners, Scott Balber, at a hearing on September 24, 2024 in the pending litigation in South Carolina, which you assert constitutes a representation to the Court that our firm was willing to assist in obtaining the requested material. We have reviewed the transcript of the hearing and disagree that Mr. Balber's general comments about working with the Receiver to obtain Cape plc documents somehow translates into a specific agreement to provide confidential materials held within attorney files. *Cape plc v. Anglo American plc, et al.*, Civil Action No. 2023-CP-40-01759, Hearing Tr. dated Sept. 24, 2024, 46:1-6. Moreover, in any event, any request by a client or former client for a transfer of materials from our firm's files requires internal review and consideration by the firm before it can be approved.

Herbert Smith Freehills and all of its affiliated firms reserves all rights and remedies, including among other things, all jurisdictional defenses.

Sincerely,

/s/ John O'Donnell

John O'Donnell

CC: Scott S. Balber (scott.balber@hsf.com)
James H. Elliott (jelliott@richardsonplowden.com)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
JOHN A. TIBBS and MARGARET B. TIBBS,

Plaintiffs,

v.

3M COMPANY *et al.*,

Defendants.

****

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

Third-Party Plaintiff,

v.

ANGLO AMERICAN PLC, individually and as successor in interest to ANGLO AMERICAN CORPORATION OF SOUTH AFRICA LTD.; DE BEERS PLC, individually and as successor in interest to DE BEERS S.A., et al.,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

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

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

TABLE OF CONTENTS

THE RECEIVER'S MOTION FOR SUMMARY JUDGMENT AGAINST THE CHARTER AND ALTRAD THIRD-PARTY DEFENDANTS

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Third-Party Plaintiff Peter D. Protopapas, as duly appointed receiver for Cape PLC, individually and as successor in interest to Cape Asbestos Company Ltd., n/k/a Cape Intermediate Holdings Ltd. (the "Receiver" or "Receivership"), by and through undersigned counsel, hereby moves this Court for an Order granting summary judgment in his favor with respect to successor liability and/or alter ego/veil piercing liability against (i) Charter Consolidated Ltd. ("Charter"), and ESAB Corporation ("ESAB"; together with Charter, the "Charter Third-Party Defendants"), and (ii) Mohed Altrad and Altrad Investment Authority S.A.S. ("AIA"; together with Mr. Altrad, the "Altrad Third-Party Defendants").[1]

I. INTRODUCTION

In 1977, Cape, the leading supplier of amosite asbestos to the United States found itself at a crossroads. Cape's international sale of asbestos made it the profit center of Charter, its parent within the broader network of interconnected companies with overlapping leadership, ownership, and holdings that formed the Oppenheimer Group System. But entering into settlement discussions

[1] Eleven entities within the Altrad Group, along with Mohed Altrad, its founder and President, were named as Third-Party Defendants. Seven of those 12 defendants failed to respond to the Third-Party Complaint: Altrad UK Ltd.; Cape Industrial Services Ltd., n/k/a Altrad Services Ltd. (since June 1, 2021); Cape Holdco Ltd.; Cape Industrial Services Group Ltd.; Cape UK Holdings Newco Ltd.; Sparrows Offshore Group Ltd.; and The Sparrows Group LLC. As a result, on December 6, 2024, the Court entered default against those seven non-responding Altrad entities, several of which—including Altrad UK Ltd.—have the same registered address of Cape Intermediate Holdings Ltd. (*i.e.*, the current name of the Cape Asbestos Company Ltd.) in England at 6-7 Lyncastle Way Barleycastle Lane, Appleton, Warrington. *See generally* Order Entering Default (December 6, 2023).

its first-ever asbestos-related product liability lawsuit in Tyler, Texas that summer, the threat of becoming embroiled in U.S. litigation loomed:

> We here, having heard more disturbing information recently about the value of Texas awards are rapidly coming to the conclusion that Cape and Cape Fibres should take a risk on the UK enforceability and withdraw, as in practice we cannot foresee any court or government here enforcing a judgment which would have enormous financial and employment repercussions, when we really cannot be said to have a moral responsibility and are simply victims of the US product liability cult.
>
> An urgent meeting is obviously essential as clearly you cannot indefinitely continue my instructions of taking no further steps in the proceedings. Suggest 21st and 22nd July in London.[2]

Cape did not face the decision of how to respond to this looming risk alone. It was a subsidiary in a much larger Group System controlled by the Oppenheimer family. Designed to dominate the mining industry, the Oppenheimer Group System employed a system of top-to-bottom control to manage what was, by that time, over 1,000 companies under the Anglo American Corporation of South Africa, Ltd. ("Anglo American") umbrella. While the Oppenheimers and their close allies ran the companies as one, the Group System afforded them the flexibility of walling off liabilities and evading responsibilities or authorities at critical moments such as this.

Given the Group System's *modus operandi*, Cape's predictable reaction to the looming risk of U.S. liability for the known harms of its asbestos was to (i) strip its wholly owned U.S. subsidiary, North American Asbestos Company ("NAAC"), of assets and shutter it; (ii) ostensibly flee the jurisdiction; and (iii) establish a new Lichtenstein corporation (still part of the Oppenheimer Group System) to mask Cape's identity in the United States so that it could continue to profit from asbestos sales to the U.S. market. Because of the Group System protections, these

[2] Ex. 1, Cape General Counsel A. Penna telex to Lord Bissell in Chicago, July 4, 1977, Cape_Receiver_00133865.

decisions were effective. Cape and Charter have evaded their U.S. liabilities for the devasting harm caused to U.S. claimants exposed to Cape's asbestos for more than four decades.

Even now, decades later, Cape and Charter, along with their new owners—in Cape's case, AIA and Mohed Altrad, its founder, President, and majority owner, and in Charter's case, ESAB—continue to refuse to answer for the harm they caused in the United States. Through baseless legal challenges to this Court's appointment of the Receiver, to serial improper appeals of this Court's discovery orders, to an outright refusal to participate in the discovery process, the Charter and Altrad Third-Party Defendants persist in the scheme of litigation avoidance.

Even with the Charter and Altrad Third-Party Defendants' continued obstructionism, the evidence adduced by the Receiver is damning. It is also completely unrebutted, and further supported by the adverse inferences drawn by this Court as a result of their discovery misconduct. For the reasons set forth below, there is no genuine issue of material fact that could prevent summary judgment in the Receiver's favor with respect to his equitable claim of alter ego and veil-piercing liability.

II. RELEVANT BACKGROUND

A. Cape Is Responsible for NAAC's Fraud on the U.S. Market.

The story of Charter, Cape, and NAAC's conscious—and coordinated—decision to protect Cape from U.S. liability related to the sale of tens of thousands of tons of raw asbestos fiber into the U.S. market is not just about three companies. It is a story of a highly efficient and integrated operation that originated in the South African mining industry, spread internationally, made huge profits by suppressing the known health risks associated with asbestos, and successfully avoided the attendant U.S.-based liabilities for the harm caused by their operation.

Nobody questions the identity of the wizards behind the curtain: Ernest and Harry Oppenheimer. NAAC, Cape, and Charter are not separate. The Oppenheimers and their super-

executive committee controlled all of these companies. The evidence of top-to-bottom control is abundant—and completely unrebutted by the Charter and Altrad Third-Party Defendants—and extends to both daily activities and critical decisions. Indeed, there is no more compelling evidence of control and dominion than the directive Charter gave Cape that its profits were not Cape's to control. The Oppenheimer control over Charter and Cape here aligns fully with the analysis of the South African Group System submitted to this Court by Dr. Steven Press. Dr. Press's report outlines the hallmarks of the Group System control, perfected by the Oppenheimer family and clearly documented in the relationship between Charter and Cape.

Charter and Cape's use of the Group System to cover up their knowledge of the hazards associated with asbestos, as detailed in Dr. Barry Castleman's report and corroborated in NAAC's and Cape's historical documents, is a scheme for which Charter's and Cape's successors, Altrad and ESAB, should be held liable.

This story is most clearly told through NAAC due to NAAC's participation in the U.S. litigation system, as compared to Charter and Cape, which maneuvered to minimize their participation in that system. But the Group System permeated the relationships among Charter, Cape, and NAAC—all one and the same—and makes each company equally responsible for the bad acts of the group. These companies must be held responsible for their conscious choices to send tens of thousands of pounds of raw asbestos fibers into the U.S. market and strategically avoid those liabilities through complex corporate maneuvering. They cannot be permitted to continue to profit on their scheme.

B. The Oppenheimer Family Built an Empire Based on Group Control.

To dominate the South African commodity mining industry, the Oppenheimer family perfected the South African Group System. "Although the full picture of these corporate relationships remains murky, it is generally acknowledged that the Oppenheimers' reach extends

to some six hundred corporations involved in everything from diamonds and gold to insurance and investment houses. The details of cross-ownership have never been fully revealed, but evidence indicates that ultimate control over all the companies remains firmly in the hands of E. Oppenheimer & Sons, a privately held family concern. For all practical purposes, then, the entire conglomerate functions under the direction and at the will of the Oppenheimers."[3]

This system, in which the Oppenheimer family could create an empire with only limited investments in hundreds of companies, is best described in the family's own words. Ernest Oppenheimer, the original Oppenheimer family patriarch explained, "it has been shown that the mining companies individually and the industry as a whole have benefited to an enormous extent through the presence of strong parent companies. The advantages of the [Group] system are manifold, the financing of the individual mining enterprises is facilitated thereby, the parent company provides the link between the various producing companies and promotes co-operation on matters of common interest, and, perhaps most important, by engaging a staff of highly skilled experts, is able to give valuable technical assistance."[4]

Harry Oppenheimer, Ernest's son, who controlled the family empire for decades after his father, further explained that "[t]he control of the parent company in each group over its associated concerns is normally fully effective."[5] "The controlling corporation undertakes the administration of all the companies in the group, provides centralized secretarial services, attends to the share

[3] Ex. 2, Debora L. Spar, THE COOPERATIVE EDGE: THE INTERNAL POLITICS OF INTERNATIONAL CARTELS 76 (1994).

[4] Ex. 3, T.E. Gregory, SIR ERNEST OPPENHEIMER AND THE ECONOMIC DEVELOPMENT OF SOUTH AFRICA 98 (1962).

[5] Ex. 4, Union's Group Mining System, H.F. Oppenheimer, The Mining and Industrial Magazine of Southern Africa, Vol. 44, No. 9 (Sept. 1954), at Cape_Receiver_00215701-6.

transfer work and maintains a central buying department to ensure that the buying for all the group companies is conducted by experts."[6]

The Oppenheimer family's perfection of the Group System led to nearly unparalleled financial results. In its issue dated July 1, 1989, *The Economist* wrote: "By any measure, the Oppenheimers are the Rockefellers, Morgans and Gettys of South African all rolled into one. Anglo American, the holding company which the family created and still guides, is vast. It is at the center of the world's largest mining group, producing a fifth of the non-communist world's gold. Anglo also has a firm grip on the platinum market and towers over the South African economy with interests in industry, farming and finance. De Beers, its sister company, controls the world diamond market."[7]

C. The Operating Principles of the Group System: Minimum Investment, Maximum Control.

The Oppenheimer Group System's dominance was predicated on the theory of "minimum investment, maximum control."[8] The Group System relied on three pillars: (i) minimum investment—harness outside investment to spread risk, (ii) maximum control—run all companies as a single unit with top-to-bottom control, and (iii) illusion of separateness to limit liability and risk.

Minimum Investment. The Group System did not require full ownership of subsidiary entities—or even a controlling share. Dr. Steven Press, an expert on the Oppenheimer empire,

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[6] *Id.*

[7] Ex. 5, *The Oppenheimer Empire: South Africa's Family Affair*, THE ECONOMIST, July 1, 1989, 73-75.

[8] Ex. 6, Anglo American Corp., FORBES, June 15, 1973, 49, at Cape_Receiver_00215757; Ex. 7, A.J. Limebeer, "The Group System of Administration in the Gold Mining Industry," *Optima*, vol. 1, no. 1 (1951), 26-30.

describes the Oppenheimer Group System as a complicated web of perhaps hundreds of companies that "was typically not detectable in majority stock shareholdings."[9] Indeed, in an "off-the-cuff" portion of an interview in 1969, Harry Oppenheimer addressed "taking control" of "big enterprises," stating "[w]hen I say 'control,' I don't necessarily mean 51 per cent."[10] Instead, the Oppenheimer family owned a portion of each company in the web, but relied on outside investors to supply additional capital and, perhaps most importantly, to spread the risk.

Dr. Press's account of the founding of Anglo American Corporation of South Africa, Limited ("Anglo American"), a Third-Party Defendant that is not the focus of this Motion, best describes this investment strategy. As he explains, early in the company's history, Ernest Oppenheimer relied on an Anglo American investor to help guide Anglo American's purchase of a crucial diamond asset: "Late in the course of World War I, Ernest Oppenheimer received insider information concerning the fate of diamonds in German Southwest Africa—a German colony that South Africa had occupied after defeating German colonial forces here. A South African state official and former treasury secretary, H.C. Hull, who had been a participant in Anglo American's founding, indicated to Oppenheimer that the German rights holders in Southwest Africa were willing to sell their diamond claims."[11] Oppenheimer was able to purchase the diamond rights because of his American investors in Anglo American.[12] The Oppenheimers' focus on investment

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[9] Ex. 8, Expert Report of Steven Press, Nov. 8, 2024 ("Press Report") at 12.

[10] Ex. 8, Press Report at 83 (citing Ex. 9 "I'm not keen on power," *Anglo: Supplement to the Financial Mail*, July 4, 1969, at Cape_Receiver_00215719-24).

[11] Ex. 8, Press Report at 42.

[12] Indeed, according to Press, in 1935, William Westrup, an Anglo American director, described the goal of attracting U.S. investors: "Mr. Honnold [cofounder of Anglo along with Ernest Oppenheimer] was a resident of the United States and was in close touch with various financial houses there. In consideration of his efforts to obtain American capital and introduce the Corporation's shares in America, Mr. Honnold was made a permanent director […] *his remuneration was granted in effect on American capital*." *Id.* at 40, *citing* W. Westrup to Receiver

from the outside allowed them to leverage significantly more capital and capitalize on the social networks of those investors for additional investment and insider knowledge of new opportunities to build the empire.

Maximum Control. The Oppenheimers used certain hallmarks of control to dominate the companies within the group. It allowed the Group entities to function as a single unit, no matter how much the empire expanded. As Dr. Press describes, these hallmarks include the deployment of "super-directors to the boards of individual Group companies,"[13] maintaining "a culture of subservience among directors in individual companies within the Group," "dominat[ing] financing arrangements made by, and for, individual companies within the Group," and "siphon[ing] off profits and dividends from individual companies and moved them to entities at the head of the Group, which used this revenue stream to pay dividends to shareholders in the Group parent's holding companies."[14]

The following table of interconnected board memberships across NAAC, Cape, Charter, and Charter's parent, Anglo American, illustrates how Harry Oppenheimer deployed (and re-deployed) individuals across Oppenheimer Group companies to assert top-to-bottom control over them:

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of Revenue in Johannesburg, William L. Honnold Papers Collection (H.MSS.0381, Box 42, Folder 32. Honnold himself attested to the "strength" and importance of these American connections. *Id.* at fn. 105, *citing* Letter from Honnold to E. Oppenheimer, Aug. 17, 1943, William L. Honnold Papers Collection (H.MSS.0381, Box 42, Folder 32) (emphasis added).

[13] Ex. 8, Press Report at 12.

[14] *Id.*

1976	Anglo American	De Beers	Charter	Minorco	Cape	NAAC
Chairman	Harry F. Oppenheimer	Harry F. Oppenheimer	Sidney Spiro	W.D. Wilson	R.H. Dent	C.G. Morgan
Deputy Chairman	Sir Keith Acutt	N/A	Sir Philip Oppenheimer	Sidney Spiro	L.G. Stopford-Sackville	Max E. Meyer
	W.D. Wilson					
Directors	Sidney Spiro	Sidney Spiro	W.D. Wilson	Z.J. de Beer	Sidney Spiro	Robert Brook
	William Graham Boustred	Sir Keith Acutt	Murray Hoffmeyr	G.A. Carey Smith	Geoffrey Higham	R.H. Dent (former)
	Z.J. De Beer	E.T.S. Brown	G.A. Carey-Smith	Murray Hoffmeyr	F.P. Parkes	Geoffrey Higham (former)
	J.N. Clarke	E.M. Charles	J.N. Clarke	F.S. Benning	B.B. Stevenson	R. Gaze (former)
	Murray Hoffmeyr	P.J.L. Crokaert	F.S. Berning	H.R. Fraser	M.W. Stevenson	
	D.A. Etheredge	E.G.J. Dawe	J.E.H. Collins	G.C. Fletcher	R. Gaze	
	G.C. Fletcher	M.H. de Kock	R.H. Dent	N.K. Kinkead-Weekes	R.A.W. Caine	
	H.R. Fraser	H.B. Dyer	H.R. Fraser	Sir Philip Oppenheimer	M.A.F. Newton	
	C.J.L. Griffith	G.C. Fletcher	J.O. Hambro	Harry R. Oppenheimer	J.G. Mackcurtan	
	N.K. Kinkead-Weekes	A.S. Hall	N.K. Kinkead-Weekes	J.G. Richardson	W.R. Doughty	
	G. Langton	L.G. Murray	Harry F. Oppenheimer	B.W. Pain	A.E. Hepper	
	D.G. Nicholson	Sir Philip Oppenheimer	J.G. Richardson	Gavin Relly	J.R. Sim	
	Nicky Oppenheimer	A.E. Oppenheimer	J. Ogilvie Thomson	L.G. Stopford-Sackville	J.G. Richardson	
	Sir Philip Oppenheimer	B.W. Pain	B.W. Pain	J. Ogilvie Thompson	G.A. Carey-Smith	
	B.W. Pain	J. Ogilvie Thompson	Gavin Relly	Gordon H. Waddell	H.R. Fraser	
	Gavin Relly	A. Wilson	M.W. Thomas	E.P. Gush		
	F.S. Berning		L.G. Stopford-Sackville	Sir H. Tucker		
	L.G. Stopford-Sackville		P.C.D. Burnell	Sir J.E. Pearman		
	LJ. Oilvie Thompson			F.M.F. Ellis		
	Gordon H. Waddell					
	E.P. Grush					
	A. Wilson (Alternate)					
	M.W. Stephenson (Alternate)					
	G.A. Carey-Smith (Alternate)					

Dr. Press describes this as "a visual depiction of board membership for certain 'Group' companies in 1976: Anglo American, De Beers, Charter Consolidated, Minorco (see later in this report), Cape Industries, and NAAC. Names marked in red on this chart are repeat directors within the Anglo American / De Beers Group. In a few cases, such as that of J.E.H. Collins, 'repeat' directors are marked red because of additional board memberships within the Group that are not depicted in the chart."[15] Harry Oppenheimer's trusted advisors were the engine of his Group System; they allowed him to run what appeared to be a web of entities as a single unit.

The Illusion of Separateness. This tenet of the Group System refers to maintaining separate corporate entities to create a mechanism to wall off potential risk, and to create a fluid structure to evade government investigation both in South Africa and elsewhere.

[15] *Id.* at 48.

Initially, these separations played an important role in maintaining a strong relationship with the South African government.[16] But it became clear that the illusion of separateness was critical in the United States, where antitrust laws threatened the Oppenheimers' De Beers diamond cartel. As Dr. Press recounts, "Around 1943, the US government believed that Anglo American[]was involved in an amalgamated enterprise with De Beers: the running of a global diamond cartel."[17]

Once W.L. Honnold, a trusted U.S. Oppenheimer advisor responsible for engaging American capital to build Anglo American, became aware that the U.S. government was intercepting his communications with Ernest Oppenheimer, "[t]here was a stark shift in Anglo American's documented corporate behavior . . . ."[18] Another Oppenheimer entity, Rand Selection, "received some of Anglo Group's diamond business without any real transaction taking place."[19] Rand Selection formed a new company under its control, Industrial Distributors Limited; as Ernest Oppenheimer reported to Anglo American's board, this new company would be the conduit for all industrial diamonds to be sold, separately from the sale of gem diamonds.[20] A new company was being created by Oppenheimer, and an old "alter ego" partially repurposed, with the effect of shielding one part of the amalgamated business enterprise (industrial diamonds) from another, and further obscuring the amalgamation of the business enterprise itself. Anglo American retained

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[16] *Id.* at 45 ("Partly, the nominal separation of Anglo American and De Beers was maintained because Oppenheimer, Anglo American, and De Beers were seen as 'English' concerns in a South Africa where Afrikaner nationalism was a potent force, and where the threat of antimonopoly action by the state was quite real in the 1930s and 1940s. To have combined all the Oppenheimer businesses formally into one unit would have brought unwanted attention.").

[17] *Id.* at 49.

[18] *Id.*

[19] *Id.* at 49-50.

[20] *Id.* at 50.

control, however, because of its "group system."[21] The Oppenheimer empire was able to continue its diamond sales—and effectively evade detection—because of its façade of separateness.

The appearance of separation, though highly effective, was a pure fiction. Harry Oppenheimer and his closest advisors used it as a façade for walling off liability and government investigation. This Group System model of control created by the Oppenheimers governed the relationships among Anglo, Charter, Cape, and NAAC: while separate on paper, they operated as a single unit.

D. Charter Controlled Cape.

As Cape's parent in the Group system, Charter controlled Cape's overall decision making on all issues, including over anything related to Cape's dividend. Francis Howard, a Charter employee who sat on Cape's board,[22] explained that Charter, not Cape, set the Cape dividend: "the directors of Cape, who were in the employment of Charter, would discuss within Charter with its executive committee that recommendation. There was no involvement of Cape personnel."[23] This testimony is consistent with documented Charter Executive Board meeting minutes. For example, the minutes dated October 28, 1969 included the following entry: "It was agreed that in the future Cape dividend recommendations would be discussed with Charter before being presented to the board."[24] Even Richard Dent, the one-time Cape chairman who attempted unsuccessfully to

[21] *Id.* (noting that his reference to "alter ego" as found in historical document: "Rand Selection," *Financial Mail*, Feb. 25, 1972).

[22] Howard agreed that he was on the Cape board only because he was a Charter employee; his board membership would cease if he retired from Charter. *See* Ex. 10, Deposition of F. Howard, Nov. 13, 1980, at Cape_Receiver_00100173.

[23] *Id.* at Cape_Receiver_00100270.

[24] *Id.* at Cape_Receiver_00100266-7.

distance the company from Charter's control, agreed that Charter discussed and decided the Cape dividend before the issue was discussed at Cape board meetings.[25]

To set its subsidiary's dividend, Charter's financial department was responsible for reviewing subsidiary financial reporting, performing internal calculations, and recommending a dividend. The Charter financial department issued a memorandum to the Charter representatives on the Cape board to explain the rationale behind the dividend and to establish the dividend amount. An example dated October 25, 1971, just one day before a Cape board meeting, opens as follows: "This short note comments on the papers for the Cape Board Meeting to be held on 26th October. Charter is represented on the Board by Mr. S. Spiro, Mr. L.G. Stopford Sackville and Mr. J.G. Richardson."[26] The memo summarizes Cape's financials, including an analysis of the projected pre-tax profits compared to recent years.[27] Based on the analysis, the financial team recommended a 7.5% dividend, noting that Charter's portion "would amount to £196,000," the payment of which in December 1971 "should not present any problems."[28]

Charter's dominance over Cape also extended to secondments, another hallmark of group system control. As Dr. Press explains in one example of many, "Geoffrey A. Higham, as of 1967, was a director of Cape Asbestos – two years after Higham started with Cape Asbestos in 1965.

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[25] Ex. 11, Deposition of R. Dent, Apr. 7, 1981, at Cape_Receiver_00098922 ("I would not like to say that there was no occasion on which we did not discuss dividend possibilities with the Charter directors ahead of a Cape board meeting, but the operative decision was taken at an open meeting of the [C]ape board with all directors present.").

[26] Ex. 12, Memorandum, "The Cape Asbestos Company Limited," Oct. 25, 1971, at Cape_Receiver_00002569-70.

[27] *Id.* ("When it is borne in mind that Ordinary Dividends were not reduced in 1970 despite the 15% fall in earnings there seems little reason for thinking that there is any prospect of the 1971 distributions being increased because we are forecasting a return to profits close to the 1969 level.").

[28] *Id.*

Higham received payment for this work through Cape Building Products Limited, not Cape Asbestos. Later, after Higham became Chairman of Cape Industries PLC (the renamed Cape Asbestos), Higham received payment for his work from Charter Consolidated Services."[29]

Charter also relied on key executives to dominate Cape's board during crucial moments—another hallmark of group system control. By way of example, Stephen Pollen, an Oppenheimer insider, dominated the Cape board at significant moments in the company's history. Charter Executive Committee meeting minutes dated April 25, 1967 address Cape Asbestos, stating that "[Pollen] has suggested that an executive committee of the board should be appointed. Mr. R. Dent has agreed with this proposal and confirmed that [Pollen] should be appointed to the committee on its formation."[30]

Similarly, when the Charter executive committee determined in a November 13, 1972 meeting that tighter control of the "local management of subsidiaries" was warranted, meeting minutes indicated that "[i]t was therefore agreed that the subsidiaries would be retained directly, that an executive director of Charter would take over as chairman for Mr. Dent, who would remain a director; that local management should be strengthened; that greater financial control should be exercised by Charter." [31]

Consistent with the Group System, Charter's control over Cape was absolute in meaningful moments throughout Cape's history.[32] Indeed, several courts have found that Charter "controlled"

[29] Ex. 8, Press Report at 93.

[30] Ex. 13, Charter Consolidated Limited Executive Committee Minute No. 51/67, Apr. 25, 1967, at Cape_Receiver_00002539.

[31] Ex. 14, Charter Consolidated Limited Executive Committee Minute No. 124/72, Nov. 13, 1972, Cape_Receiver_00002554.

[32] Ex. 8, Press Report at 8.

Cape. *See Craig v. Johns Manville*, No. 82-0321, 1987 WL 10191 (E.D. Pa. Apr. 23, 1987), at *1 (list of other courts finding Charter controlled Cape). That conclusion also accords with this Court's adverse inferences as to Charter.[33]

E. Cape Controlled NAAC in Its Scheme to Maximize Sales from a Deadly Product and Siphon Proceeds Out of the United States to Protect Against the Reach of U.S. Creditors.

Just as Charter controlled Cape, Cape in turn controlled its U.S. subsidiary, NAAC. In contrast to Cape's sprawling South African operation, with thousands of mine workers employed at the asbestos mines, NAAC was small. NAAC's president described the company as a "one-man" operation, which consisted of "myself and four girls."[34] This small footprint protected Cape from exposure to U.S. tax liabilities and, more importantly, allowed for a quick collapse of the company's U.S. presence to escape looming tort liability.

From the beginning, Cape worked to ensure the appearance of separateness between it and NAAC, both for tax purposes and liability avoidance.[35] Behind this façade, Cape fully and

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[33] *See* Order Granting Cape Receiver's Motion for Sanctions, May 23, 2024 ¶¶ 20, 22 ("Charter[]owned, dominated, and controlled Cape and its subsidiaries, including NAAC, between 1965 and 1996, including with respect to their financing and capitalization."; "Charter[]and Central Mining seconded employees and other officials to work for Cape, or otherwise financed and spent resources for Cape, including operational, marketing, research and development, and lobbying activities.").

[34] Ex. 15, Deposition of C. Morgan, May 20, 1975, at Cape_Receiver_00095787-90; *see also* Ex. 16, Answers to Plaintiff's Request for Production, Nov. 24, 1982, at Cape_Receiver_00127971-72 (describing NAAC's lean staffing); Ex. 17, Letter to J. Morris, Dec. 3, 1975, at Cape_Receiver_00127267 ("Despite the volume of sales and profits of NAAC, our operation is a very small one, with only a total of 5 employees").

[35] *See* Ex. 18, Deposition of M. Meyer, Mar. 24, 1981, at Cape_Receiver_00098400-1 ("I came to the firm and I was a new partner at the time, but I was involved in tax work. One of the things involved in connection with [NAAC] was, since it was to be the wholly-owned subsidiary of an English company, a tax question and to be sure that tax questions were considered and be sure that it wasn't done in a wrong manner, make sure that [NAAC] was independent and that Cape wasn't doing business in this country.").

carefully controlled every facet of NAAC through its U.K. staff, including Ronald Dent, Richard Gaze, and Tony Penna. When day-to-day decisions required on-the-ground monitoring and decision making, Cape relied on its Chicago team of lawyers at Lord Bissell, led by Max Meyer. This U.K. and Lord Bissell team made every necessary decision for NAAC—from the content of its by-laws[36] to the makeup of its board,[37] the content of board meeting minutes,[38] the

[36] Ex. 19, Letter from M. Meyer to R. Cryor, Jan. 19, 1954, at Cape_Receiver_00133477-8 (responding to Dent's detailed inquiries into whether certain potential by-laws would be permissible under U.S. law).

[37] *See* Ex. 20, Letter from R. Dent to R. Cryor, Apr. 13, 1959, at Cape_Receiver_00133219-20 ("I have discussed this with Mr. Newton and we both feel that the best method would be to approach Lord, Bissell & Brook and to ask them whether they would be kind enough to nominate one or the other in accordance with their own wishes. Mr. Newton, I think, would like to write to John Lord himself asking him to do this, and subject to your reply he will do so accordingly."). Dent also rejected Cryor's suggestion as to an additional board member suggestion, Harper Boyd); *see also* Ex. 21, Letter from R. Dent to R. Cryor, Dec. 17, 1953, at Cape_Receiver_00231839-40 (Dent noting that he believed that the corporate secretary should be "a member of the firm of Lord, Bissell & Kadyk or the Accountants.").

[38] Cape sought tight control over the content of the NAAC board meeting minutes—requiring not only detailed financial information, but strict adherence to a form for the minutes themselves. Ex. 21, Cape_Receiver_00231839-40.

determination of its commission,[39] the process by which it was paid for its work,[40] the strategic

[39] *See* Ex. 22, Management Report to the Nov. 29, 1955 NAAC Board of Directors Meeting, Cape_Receiver_00232090-8 ("early in September, it became apparent that NAAC could not in the future expect to enjoy the same freedom in establishing profit margins on Amosite as in the past. Effective January 1, 1956, NAAC will have 2-1/2 per cent commission on all sales of fiber to established customers and 5 per cent on sales to new users. NAAC may not, under the terms of new agreement now in negotiation with the Mines, resell Amosite or Blue asbestos at prices and profit margins of its own choosing. Rather, we will be required to operate on a fixed price list established by the Mines"); *see also* Ex. 23, Letter from R. Gaze to R. Cryor, June 6, 1969, at Cape_Receiver_00134097 ("I feel that in any event I should emphasize that while the overall profit of N.A.A.C. is an important consideration, the actual movement of large tonnages of fibres must have priority."); Ex. 24, Letter from R. Cryor to R. Gaze, July 8, 1969, at Cape_Receiver_00134093-4 ("Whatever the financial arrangements between the Mines and NAAC that you may plan for the future, I hope you will keep in mind that we have an increasing burden here in the cost of doing business, in increased services, and the administration of these services. . . . Naturally, I accept your decision in this matter and we can revert to the 2.5% basis whenever you wish to have it become effective, although, as you point out, it is a source of some disappointment and concern to me.").

[40] *See* Ex. 25, Deposition of J. Holtze, Nov. 7, 1980, at Cape_Receiver_00097895-6 (Cape Asbestos Fibers paid NAAC commissions on a monthly basis that was "based on sales – on fiber shipped during a given month.").

practice of underinsurance,[41] the setting of dividends,[42] and the salaries of its employees.[43]

Cape's control over NAAC infiltrated every aspect of the company's operations. Charles Morgan, who joined NAAC in 1970 as company vice president, and served as president from 1975 until the company's closure in 1978, described Cape's Richard Gaze and Lord Bissell's Max

[41] Officially, Cape had a company-wide policy to purchase insurance "at minimum cost consistent with adequate cover." Ex. 26, Memo, Oct. 10, 1975, at Cape_Receiver_00127206-8. But in reality, NAAC felt "pressure from [its] Home Office in London [that] forced [it] to seek lower rates" and choose carriers and policy terms based solely on short-term cost. *See* Ex. 27, Letter from NAAC to J. Kirk of Talbot Bird & Co. (Nov. 17, 1959), at Cape_Receiver_00231434-5; *see also* Ex. 28, Letter from Meyer to Gaze, June 29, 1977, at Cape_Receiver_00244712-3 (Having explained two quoted options for new coverage, Meyer noted, "[o]bviously the premiums involved would have exceeded the net income of the corporation in some years and would gradually have eaten up the net worth that has accumulated."[41] Having failed at an attempted to ask NAAC's prior year insurer to insure NAAC for one more year, Meyer noted, "we appear to be at the end of the rope at the present time.").

[42] *See, e.g.,* Ex. 29, Letter from R. Dent to C. Morgan dated Apr. 8, 1974, at Cape_Receiver_00133126 ("In view of the situation in the U.K., and having regard to the cash balances in N.A.A.C., we must ask you this year to increase the dividend to the sum of $120,000."); Ex. 30, Letter from R. Dent to C. Morgan, May 1, 1974, at Cape_Receiver_00133958 (stating "I would be grateful if the dividend requested [of $120,000] could be declared. There is no need for it to be paid immediately and it could be remitted in instalments, or in full at any time between now and the end of December 1974," even "if it involves an overdraft in NAAC," and dismissing Meyer's "argument" that "solely because of a dividend which is some $60,000 - $80,000 in excess of the normal, that there should need to be a bank loan 'more or less permanently on the books' amounting to $50,000 - $100,000."); Ex. 31, Letter from Gaze to Morgan, Apr. 15, 1975, Cape_Receiver_00133528 ("So far as the dividend is concerned, we should expect this to be not less than two thirds of the after tax profit, and a dividend of $150,000 is expected in 1975. The question of payment of the dividend should be delayed in this instance, until November.").

[43] While Cape controlled all NAAC employee salaries, the story of Cape's decision to reduce NAAC's West Coast agent, Jim Polizzi's, retainer amount best illustrates this facet of control. In a letter to Meyer, dated November 16, 1972, Dent wrote, "We have agreed that this should be reduced from the present $10,000 per annum to $5,000 per annum, to take effect from 1st January next year." Ex. 32, Letter from R. Gaze to M. Meyer, Nov. 16, 1972, at Cape_Receiver_00240205. Not only did Dent make the decision, but he also was the one to meet with Polizzi and inform him of the change. Dent noted, "I pointed out, of course, that this resulted from our need to keep down expenses in the United States and in the light of our reduced activity on the West Coast." *Id.* Dent asked Meyer to inform Morgan of this change: "I hope that you will be satisfied with the outcome of this discussion and if so, I should be grateful if you would inform Gerry and make the appropriate arrangements." *Id.*

Meyer in the context of their interview of him for a position at NAAC. Morgan described Max Meyer's many roles at NAAC, stating "[w]ell, he actually held three positions, I suppose I should say. He was a Director, he was the Acting President of North American Asbestos, and he was also legal counsel for North American Asbestos."[44]

Morgan described his second interviewer, Dr. Richard Gaze, as in charge of NAAC: "Well, it was my understanding that Dr. Gaze was on the Board of Directors, and he was, I guess, theoretically, in charge of this North American Asbestos organization, and he would be the gentleman that would probably say, 'Yes' or 'No' after I talked to him."[45] Morgan's impression of Gaze persisted after he began working for NAAC, with Gaze having the final say "[a]s far as the distribution of fibers."[46] The clearest evidence of Gaze's control over NAAC, though, was his role in NAAC after he resigned from the company's board. He held no office in NAAC, but continued to communicate with Morgan through written correspondence, telex, telephone, and visits.[47] Even after resigning, Gaze effectively still ran NAAC:

> Q. It would be fair to say – wouldn't it, Mr. Morgan – even after Gaze resigned from the Board of Directors you considered him your superior as it related to the discharge of your duties at North American Asbestos Corporation, isn't that correct?
> A. Yes.
> Q. He, in fact, ran the company, didn't he?
> A. It would appear he did.[48]

Cape's control over NAAC was sweeping and absolute.

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[44] Ex. 33, Deposition of C. Morgan, Oct. 31, 1980, at Cape_Receiver_00096079-81.

[45] *Id.* at Cape_Receiver_00096219.

[46] Ex. 15, Deposition of C. Morgan, May 20, 1975, at at Cape_Receiver_00095835.

[47] Ex. 34, Testimony of C. Morgan, Sept. 18, 1986, at Cape_Receiver_00133416-7.

[48] *Id.* at Cape_Receiver_00133417-8.

1. Cape Knew of the Hazards of Asbestos, but Suppressed—and Acted Contrary to—that Knowledge.

Throughout the era of the Oppenheimer Group System expansion, top executives were aware of the devastating health hazards associated with asbestos exposure. Indeed, over time they were met with stricter and more careful scrutiny in the U.K., where asbestos regulations first developed. Cape nevertheless did nothing to protect workers in South Africa or consumers in the United States – it only accelerated South African mining and U.S. sales.

a. Cape Had Every Reason to Be on the Leading Edge of Asbestos Hazard Knowledge.

In 1953, Cape's amosite asbestos mine achieved an output of 50,000 tons and employed 5,000 African workers.[49] Cape's South African mines produced 95 percent of the amosite and 60 percent of the crocidolite in South Africa.[50] In addition to its mining operations, Cape had five factories in England, and others in France, Italy, and South Africa. By 1974, Cape's subsidiaries sold its asbestos in the United States, Germany, Belgium, India, Sweden, and New Zealand.[51] There is no question that Cape's operations were sprawling.

There is also no question that Cape was aware of the hazards associated with breathing asbestos dust by the early 1930s. Dr. Barry Castleman, a chemical engineer and researcher specializing in health issues, has spent the last several decades working with public interest groups on the control of asbestos and chemical hazards. His research into Cape indicates that when the U.K. Factory Inspectorate "moved to develop regulations for the asbestos industry following the issuance of the first survey of the prevalence of asbestosis in asbestos factory workers, government

[49] Ex. 35, Expert Report Barry Castleman, Nov. 8, 2024 ("Castleman Report") at 3.

[50] *Id.* (citing Ex. 36, Cape_Receiver_00133187).

[51] *Id.*

engineers met with representatives of the three largest UK asbestos companies, including Cape."[52] The U.K. Asbestos Industry Regulations took effect in 1933.[53]

Cape's participation in these discussions with the government came at the same time as health officials and the popular press reported on employees of the Cape Barking plant in East London who were suffering and dying from asbestosis and lung cancer at rates well above general population levels.[54] Cape had the technical know-how to understand the medical literature, with doctors and other medical advisers on staff.[55]

Through NAAC, Cape nevertheless continued mining and selling amosite and crocidolite asbestos to an ever-expanding client list in the United States and elsewhere well into the late 1970s.[56]

b. Cape Had Every Reason to Cover Up the Knowledge of Asbestos Hazards.

Information demonstrating the hazards associated with asbestos threatened Cape's survival. While "Cape returned a dividend to its shareholders in excess of twenty per cent per annum in each year from 1950 to 1965, its "most bountiful years were the two decades until 1976," *i.e.*, the period after medical research "had established conclusively the dangers of exposure to

[52] *Id.* at 1.

[53] *Id.*

[54] *Id.*

[55] *Id.* at 3 (noting "Dr. Wyers, who worked for Cape until his death in 1956, published a report of his findings in 115 fatal cases. He noted that an excess mortality from cancer of the lung and pleura in cases of asbestosis had been reported by the UK Factory Inspectorate (13.2%, compared with 1.32% in silicotics) and that German authors had written about asbestos causing pulmonary cancer, too. In his series, 17 out of 115 (14.8%) died from cancers of the lung and pleura (Ex. 37, Asbestosis, *Postgrad. Med. J.* Dec. 1949 [Cape_Receiver_00193212-9]). The rate of pulmonary cancer at autopsy in the general population was about 1%.").

[56] *See* Ex. 38, NAAC Customer Lists, Cape_Receiver_00138265-82.

crocidolite and amosite."[57] Facing the ever-expanding body of medical research demonstrating the dangers of the products it sold, Cape determined the best path forward was an extensive cover-up both in South Africa and in the United States. This was carefully executed primarily by two Cape insiders: Dr. Walter Smither and Dr. Richard Gaze.

(i) Dr. Walter Smither's cover-up of the Pneumoconiosis Research Unit ("PRU") Investigation.

Dr. Walter Smither was Cape's senior medical officer beginning in the 1950s. He attended almost every major international conference regarding the health hazards of asbestos between 1960 and 1972,[58] gaining state of the art knowledge on asbestos and its associated health risks. As a result of this knowledge, he was the ideal candidate to travel to South Africa on behalf of Cape in June 1962. Just two months earlier, the South African PRU published a field study of the North Western Cape and at Penge in the Transvaal, which detailed the rates of asbestosis and cancer among asbestos mine workers in the area. The report made the following statement "based on proven fact": "an alarmingly high number of cases with mesothelioma of the pleura have been discovered among people who live or who have lived in the North Western Cape area, and that there is evidence to suggest that this condition is associated with exposure to asbestos dust inhalation which need not be industrial."[59]

Dr. Smither visited Prieska—the site of one of Cape's asbestos mines—where he described "the conditions around and about the mill are not good," and "it was obvious that quite a cloud of

[57] Ex. 39, Jock McCulloch, *Women Mining Asbestos in South Africa, 1893-1980*, 29 J. S. AFR. STUD. 2 (Jun. 2003), at Cape_Receiver_00248445.

[58] Ex. 40, Attendance at Conferences Etc. (1959-1972), at Cape_Receiver_00133479.

[59] Ex. 41, Pneumoconiosis Research Unit, Report on the Progress of the Mesothelioma Survey, Apr. 30, 1962, at Cape_Receiver_00248466.

dust was being produced and blown away by a fairly strong wind toward the town."[60] After local doctors advised Smither they had 10 active mesothelioma patients, Smither insisted that those patients be moved to Johannesburg at Cape's cost.[61] According to Smither, "[t]he advantage from the standpoint of the company is that these cases will be treated as a group, will be removed from the area of conflict, if one may call it that, and taken some hundreds of miles away."[62]

As Dr. Castleman explains, "Smither was concerned that discovery or documentation of so many cases in the Prieska hospital could further establish the lethality of crocidolite. The removal of the 10 Prieska patients was contrary to their best interests. They would endure a painful and frightening trip, be removed from their families who could not afford to go to Johannesburg, and there was no treatment for mesothelioma."[63]

Dr. Smither ultimately recommended that Cape ***suspend*** its support of the PRU Surveys: "My recommendation would be that the company should not support any future wide-ranging survey of the industry with a view to discovering either asbestosis or mesothelioma. The reason for this is that the company is well aware of the problem and has already some idea of its extent."[64] Following this recommendation, the PRU conducted no further asbestos surveys.

(ii) Dr. Richard Gaze's cover-up of the harm caused by amosite asbestos.

Dr. Richard Gaze, an employee of Cape beginning in 1943, served as Cape's Chief Scientist, and was an executive director of Cape beginning in 1961. He also served on NAAC's

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[60] Ex. 42, Visit to South Africa by W.J. Smither, Aug. 1962 ("Smither Report"), at Cape_Receiver_00248283.

[61] Ex. 35, Castleman Report at 5.

[62] *Id.*

[63] *Id.*

[64] Ex. 42, Smither Report at Cape_Receiver_00248286.

board of directors, and was spokesperson for the Asbestosis Research Council, which eventually purported to collaborate with "the Environmental Services Laboratory of Cape Industries Limited," set up by Cape in 1970, on monitoring techniques for asbestos dust.

As Cape's Chief Scientist, Gaze was responsible for educating customers on Cape's products. When Dr. Irving Selikoff produced a landmark 1964 study warning "that all the construction trades that worked alongside the insulators shared their risk, even the supervising architect," Gaze worked to distinguish Cape's asbestos fibers from that which already was identified as causative of disease and death. [65]

By March 1966, Gaze formulated Cape's response to valid concerns generated by Selikoff's report, which he characterized as a "scare":

> whether or not one accepts all of the clinical and statistical evidence concerning mesothelioma and its association with asbestos, it is a fact that not one authenticated case of mesothelioma has been associated with exposure to amosite anywhere in the world.[66]

In August 1966, the foregoing articulation became the company line to be used by Cape's salespeople.[67]

There was one problem with Gaze's statement: it was false, and he knew it. Gaze had spent seven years working at the Cape Barking plant in East London along with the then-plant manager, Anthony Mendelle, who described Gaze as a "very close" colleague. At a 1984 trial in Pennsylvania, Mr. Mendelle testified that in his time at the factory between 1956 and 1968,

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[65] Ex. 35, Castleman Report at 7.

[66] Ex. 43, Letter from R. Gaze to R. Cryor, Mar. 22, 1966, at Cape_Receiver_00134022-3 (emphasis in original).

[67] *See* Ex. 44, Confidential Memo, Aug. 19, 1966, at Cape_Receiver_00134000 ("The same careful research, to which I have referred, has so far revealed not one case of mesothelioma associated with exposure to amosite asbestos.").

Barking factory workers who worked in the amosite department were diagnosed with mesothelioma:

> Q. Mr. Mendelle, with respect to the Caposite department, where I think you testified amosite was used exclusively, were there any mesothelioma cases that came out of that department?
>
> A. Yes, many.[68]

Cape knew amosite asbestos caused mesothelioma. This and other concerns related to asbestos hazards ultimately led to Cape closing the Barking plant in 1968.[69]

2. Charter, Cape, and NAAC Perpetrated a Fraud on the U.S. Market.

Cape knew that asbestos was harmful decades before it established NAAC in the United States in 1953. That knowledge only deepened after it established NAAC; even as it experienced record sales of amosite and crocidolite fiber in the United States, Cape grew increasingly aware that people working at and living nearby its South African mines were developing and dying from mesothelioma, and that workers in the amosite-only portions of its Barking plant in East London were dying of mesothelioma and other asbestos-related diseases. Despite its longstanding understanding of the serious health hazards associated with asbestos, including mesothelioma and death, Cape suppressed this information, rejected initial consideration of a warning label, lobbied government agencies to accept less onerous standards, and made misleading public statements

[68] Ex. 45, Trial Testimony of A. Mendelle, Nov. 13, 1984, at Cape_Receiver_00116253.

[69] *Id.* at Cape_Receiver_00116235-6 ("Q. Mr. Mendelle, you said you closed the Barking plant in 1968; is that correct? A. Yes. Q. Do you know the reasons for that plant being closed? A. Yes Q. Did you close it or did you have orders to close it? A. I made recommendations to close it. Q. Why was the recommendation made? A. Because of the high incidence of asbestosis and death in the factory.").

minimizing the risk of asbestos.[70] And it continued to sell its products to the U.S. market through its agent, NAAC.

It was only after Cape risked exposure to U.S. litigation that it considered leaving the U.S. market. Even when it closed NAAC's doors, though, Cape could not resist the opportunity to sell asbestos to U.S. companies. To avoid tort liability, Cape created a new sales company with a Liechtenstein parent company.

a. Cape Engaged in a Purposeful Scheme to Insulate Itself from Liability While Continuing to Take Advantage of the U.S. Market.

Following the federal Fifth Circuit's landmark 1973 decision in *Borel v. Fibreboard Paper Products Corp.*, 493 F.2d 1076, the threat of litigation was looming in the United States. The threat was made more real the following year, when Cape was sued by William Morris and more than 400 other asbestos workers in what became known as the Tyler, Texas Action.[71]

This U.S. litigation precipitated a flurry of communications between Cape and NAAC regarding the future of NAAC and a concerted effort to insulate Cape from liability:

June 20, 1975: "it is possible that we may wish to do something to change the identity of NAAC in order to avoid exposing the company unnecessarily. At the same time, I am determined to do everything possible to maintain a successful selling operation in the United States."[72]

[70] *See* Ex. 46, Haroon Siddique, UK Asbestos Maker Withheld Information on Material's Risks, Court Papers Show (Mar. 20, 2022), https://www.theguardian.com/uk-news/2022/mar/20/uk-asbestos-maker-withheld-information-on-material-risks-court-papers-show#:~:text=%E2%80%9CThey%20clearly%20show%20that%20Cape,father%2C%20have%20lost%20their%20lives.

[71] Ex. 47, David Burnham, *Asbestos Workers' Illness—and Their Suit—May Change Health Standards*, N.Y. Times (Dec. 20, 1977), at Cape_Receiver_00248287-93.

[72] Ex. 48, Letter from Gaze to Morgan, June 20, 1975, at Cape_Receiver_00133112 ("thought I should send this to your home address so as to avoid unnecessary speculation in the office.").

June 25, 1975: "we feel that it may be advisable to change the identity of NAAC in an attempt to limit its and Cape's exposure to future U.S. litigation."[73]

July 4, 1975: to avoid future Cape liability for NAAC, Gaze and Higham resigned from the NAAC board: "Tony [Penna] has recommended that it would be as well for Mr. Higham and me to resign from these and other boards which could conceivably be involved in future actions. You will understand that the reason for this is to dissociate the Parent Company as fully as possible from the operating companies and that it does not imply any change whatever in the method of operation or the present responsibilities of individuals concerned, including yourself."[74]

July 15, 1975: Tony Penna sends Gaze and Higham's resignation letters to Max Meyer, noting "we feel that it would be a sensible precaution against Cape involvement in any future proceedings for Mr. Higham and Dr. Gaze to resign from the N.A.A.C. Board."[75]

October 3, 1975: Max Meyer writes a detailed strategy letter to Tony Penna, opening with, "The objective under consideration is an attempt to limit NAAC's and Cape's exposure to future United States litigation," and going on to discuss the potential liquidation of and replacement for NAAC.[76]

Indeed, in connection with that personal injury action, Cape and NAAC ultimately entered into a $1 million settlement in litigation, with NAAC contributing $100,000 toward settlement.[77] But rather than take responsibility for their tortious conduct, the Tyler, Texas litigation prompted Cape

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[73] Ex. 49, Letter from A. Penna to M. Meyer, June 25, 1975, at Cape_Receiver_00133116-7 (observing that if Cape Canada were to replace NAAC, "we would probably change the name and ensure that shareholding was held through another *seemingly unconnected subsidiary* such as Amosa."). Ultimately, Cape elected not to use Cape Canada but did use a "seemingly unconnected subsidiary" in Lichtenstein called Associated Mines Company to escape detection and exposure, *see infra*.

[74] Ex. 50, Letter from R. Gaze to C. Morgan, July 4, 1975, at Cape_Receiver_00133328.

[75] Ex. 51, Letter from A. Penna to M. Meyer, July 15, 1975, Cape_Receiver_00133347.

[76] Ex. 52, Letter from M. Meyer to A. Penna, Oct. 3, 1975, at Cape_Receiver_00133925-30.

[77] *See* Ex. 52, Deposition of M. Meyer, Mar. 24, 1981, at Cape_Receiver_00098328. In addition to the $100,000 from NAAC, Cape contributed $1,000,000, and NAAC's insurers contributed $4,000,000. *See* Ex. 53, Deposition of A. Penna, Mar. 14, 1988, at Cape_Receiver_00132204. Cape admitted that some insurance was still available and that it was in the best interest of Cape companies, other than NAAC, to not respond to new litigation. *See* Ex. 54, Cape_Receiver_00127912; Ex. 55, Cape_Receiver_00127885.

to liquidate NAAC, create a new, disguised U.S. company to continue its U.S. operations, and openly refuse to participate in future U.S. litigation.[78] A single tort case against Cape was enough to begin the process of extracting Cape from the U.S. market.

NAAC was liquidated effective January 31, 1978.[79] Existing commercial debts were paid, with any remaining assets transferred upstream to NAAC's direct parent company at the time, Cape Industries Overseas Ltd.—a U.K. entity wholly owned by Cape Industries Ltd., formed in 1975 to create the ***appearance*** of separation.[80] As part of its overall scheme, and in light of Cape's funneling of cash from NAAC to overseas entities over many years, NAAC's assets at liquidation were minimal, especially when compared to the total wealth of Cape and the broader Oppenheimer empire.[81] NAAC's liquidation was central to Cape's liability-avoidance strategy, based on legal

[78] Ex. 56, Dec. 23, 1975 Correspondence from S. Milwid to A. Penna, Dec. 23, 1975, at Cape_Receiver_00127259-61. A memorandum laid out that "a new corporate arrangement is being made concerning entities which will sell asbestos to purchases in the Western Hemisphere" and that the purpose of doing so is to eliminate or reduce as much as much exposure as possible. *See* Ex. 57, Memo from M. Meyer to A. Sarabia, Jan. 23, 1978, at Cape_Receiver_00133618-20.

[79] *See, e.g.* Ex. 58, Letter from J. Holtze to J. Sparkes, Apr. 19, 1978, at Cape_Receiver_00134134 (April 1978 letter noting liquidation and requesting, "for safety's sake," that Cape officials stop sending accounting memoranda to former NAAC officials).

[80] *See* Ex. 59, Memo from M. Grear to M. Meyer, Dec. 30, 1980, at Cape_Receiver_00127960-62 (noting conveyance of assets); Ex. 58, Letter from J. Holtze to M. House, Oct. 7, 1975, at Cape_Receiver 00127204 (noting new entity).

[81] *See, e.g.,* Ex. 54, Letter from A. Penna to M. Meyer, Mar. 23, 1979, at Cape_Receiver_ 00127912 (Cape counsel writing in 1979 with respect to whether the remaining assets in the NAAC liquidating trust should be written off, soon after its creation); *see also* Ex. 60, Letter from S. Milwid to A. Penna, Mar. 7, 1979, at Cape_Receiver_00127909 (1979 correspondence noting that NAAC's auditor "agree[d] that the potential loss of all NAAC's outstanding assets is not material in the Cape Group context" (capitalization altered)); Ex. 61, Letter from S. Milwid to C. Morgan, May 24, 1978, at Cape_Receiver_00127882 (1978 correspondence noting judgment non-enforceability and "[auditor] advice to [Cape] that the loss of NAAC's outstanding assets is not material in the Cape Group context").

advice that no British or South African court would enforce a judgment against a Cape entity if it never appeared again in the United States.[82]

At the same time, the Oppenheimer entities, fixated on maximizing profits,[83] schemed to continue selling Cape asbestos—and many other Charter products[84]—in the United States.[85] Their scheme, which included establishing a Lichtenstein invoicing company, allowed the

[82] *See, e.g.*, Ex. 56, Letter from S. Milwid to A. Penna, Dec. 23, 1975, at Cape_Receiver_00127259-61 (1975 legal letter advising Cape on default-judgment risk); Ex. 55, Memo, S. Milwid to A. Penna, May 24, 1978, at Cape_Receiver_00127885 (1978 memorandum agreeing that it would be in the "best interests of Cape companies other than NAAC" to make "no response" to litigation); Ex. 62, Memo, S. Milwid to E. Burkholder, Nov. 28, 1984, at Cape_Receiver_00128026-8 (summarizing 1984 deposition testimony regarding litigation strategy).

[83] The decision to liquidate NAAC occurred notwithstanding consistent years of record profits from Cape's sale of asbestos fiber in the United States. *See, e.g.* Ex. 63, Charter, Annual Report (1976), at Cape_Receiver_00075720, Cape_Receiver_00075751-52 (reporting £10.2 million of operating profit "in spite of difficult trading conditions, with the "greatest increase" in improved profit "arising in the mining division, which raised total tonnage both mined and sold," even despite "substantial price increases"); Ex. 064, Charter, Annual Report (1977), at Cape_Receiver_00075769, -75773 (reporting another "record year" from Cape with pre-tax profit of £14.2 million, with the "mining division again perform[ing] exceptionally well").

[84] Ex. 065, J. Clarke Deposition, Apr. 21, 1983, at Cape_Receiver_00100736-7.

[85] *See* Ex. 53, Testimony of A. Penna, Mar. 14, 1988, at Cape_Receiver_00132232 (discussing Cape board meeting minutes from November 1, 1977, Penna testified, "It is clearly indicated in [paragraph] 9 that there was to be a reorganization of the selling arrangements following from the liquidation of NAAC.").

Oppenheimers to continue to profit from the lucrative U.S. market while hiding themselves from future U.S. asbestos plaintiffs.[86] In short, it was profits over people.[87]

Cape even disguised its scheme from NAAC's then-president, Charles Morgan. He testified that he was not made aware of the decision to close NAAC until the decision had been made: "I remember it well, I don't remember the exact date, but I remember it well. I think it was in late October of 1977. I was called down to Lord, Bissell & Brook and a Dr. Gaze, who was visiting, took me into a private room and gave me the big news. It was my very first indication. . . . He said that they had elected to discontinue distributing asbestos in this market and that they were liquidating [NAAC]."[88] When Dr. Gaze told Morgan that his employment was being terminated, Gaze was not in any executive position, nor was he a member of the board of directors of NAAC.[89] The news similarly came to Joan Holtze, NAAC's corporate secretary, "as an utter and absolute shock out of the blue."[90]

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[86] Due to the rising threat of civil litigation against Cape for its tortious and fraudulent conduct in hurting U.S. citizens, in 1975, Cape and its lawyers had to do "something to change the identity of NAAC" in order to avoid exposing [Cape Industries]." Ex. 48, Letter from R. Gaze to C. Morgan, June 20, 1975, at Cape_Receiver_00133112. *See also* Ex. 53, Testimony of A. Penna, Mar. 14, 1988, at Cape_Receiver_00132249 ("Q. With respect, what Cape wanted was to have the benefits of a presence in the United States of America without it being recognized, and hence the camouflage? A. That is an inference you could make if you chose to make it. . . . Q. What would be the would-be enquirer one was trying to disguise it from? A. The Would-be enquirer could potentially be plaintiffs in future U.S. asbestos litigations.").

[87] Indeed, NAAC could have purchased additional insurance—it had the resources—but doing so was viewed as too expensive. *See* Ex. 132, Minutes of Annual Meeting of Directors of North American Asbestos Corporation, Apr. 28, 1977, at Cape_Receiver_00133883; *see also* Ex. 53, Excerpts of Testimony of A. Penna, Mar. 14, 1988, at Cape_Receiver_00132233 ("As the shareholder in NAAC, Cape certainly did not want to be putting more and more money into NAAC to fight legal claims if the insurers were not handling them, and bearing in mind NAAC's revenues which were not large.").

[88] Ex. 66, Deposition of C. Morgan, Feb. 20, 1981, at Cape_Receiver_00095966.

[89] Ex. 33, Deposition of C. Morgan, Oct. 31, 1980, at Cape_Receiver_00096088.

[90] Ex. 25, Deposition of J. Holtze, Nov. 7, 1980, at Cape_Receiver_00097943.

Anthony Penna, in-house counsel for Cape with other senior roles in the Oppenheimer-related companies, orchestrated the plan to have Morgan open a new company—Continental Products Corporation ("CPC")—to perform the same facilitation services for Cape that NAAC had previously performed, with only "a difference in form."[91] It was plug and play, pure and simple.

CPC's offices were in the same building as NAAC had previously had its offices: "North American Asbestos was on the 29th floor and Continental Products Corporation took a lease on the 12th floor."[92] All of the NAAC filing cabinets that had been on the 29th floor had moved to the 12th floor, and all of the NAAC employees—Joan Holtze, Jean Canzoneri, and Sue Purrington—moved with Charles Morgan to CPC.[93] CPC also took over the NAAC employees' pension plan.[94] Joan Holtze testified that she sat at the same physical desk at CPC as she had when she worked for NAAC.[95]

Even before NAAC closed, Morgan reached out to customers to let them know of the formation of CPC, thereby ensuring a seamless sales transition between the companies.[96] To ensure

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[91] Ex. 53, Testimony of A. Penna, Mar. 14, 1988, at Cape_Receiver_00132247 ("It was a difference in form; and, as I have said, the Morgan company, new company, CPC, did carry on very much the same role that NAAC had carried on in trading terms."); *id.* at Cape_Receiver_00132236 ("Our mining companies wished to continue selling asbestos in the United States, yes. . . . There needed to be an organization which could liaise with the customers."), *id.* at Cape_Receiver_00132247 ("Certainly, Howard Tanner, the Sales Director of the South African mining companies was extremely keen to ensure that sales to America, that is there could be some continuation of sales to American customers.").

[92] Ex. 66, Excerpts of Deposition of C. Morgan, Feb. 20, 1981, at Cape_Receiver_00095991.

[93] *Id.* at Cape_Receiver_00095992-3.

[94] *Id.* at Cape_Receiver_00096066.

[95] Ex. 67, Deposition of J. Holtze, Apr. 12, 1979, at Cape_Receiver_00097838-9.

[96] Ex. 66, Deposition of C. Morgan, Feb. 20, 1981, at Cape_Receiver_00096022. ("I advised them that North American Asbestos was being liquidated, it was no longer to be in the position to supply them with fiber, I had made a connection where I thought I could supply them with fiber, I would

the success of the new venture, Morgan testified that CPC received a $12,000 check "[c]are from North American Asbestos" to start the company.[97] Once Morgan agreed to establish CPC, Cape's lawyers at Lord Bissell drew up the incorporation documents.[98] Rather than establishing a direct connection between the newly formed CPC and a Cape-named company, Penna spearheaded the creation of a Liechtenstein company, Associated Minerals Corporation ("AMC"), a seemingly unrelated entity, which was in truth an Oppenheimer subsidiary. As Penna described, "everyone was concerned whether they were mining companies or Cape Industries or any company that was a party to these sales should not by its actions put either the mining companies or Cape at risk."[99] "The Lichtenstein company was a separately constituted company but it certainly had no direct employees of its own. . . . It was primarily an invoicing company."[100] Cape's fingerprints were all over the deal. Confronted with evidence, Penna was forced to admit, "Yes, it seems to be contemplated that Cape Asbestos Fibres would subscribe the initial capital."[101]

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like their consideration very much."); Ex. 66, Deposition of C. Morgan, Feb. 20, 1981, at Cape_Receiver_00096003, Cape_Receiver_00096063-4 ("Q. When Tony Penna contacted you on behalf of the Lichtenstein corporation you knew, did you not, in fact he was actually contacting you on behalf of Cape Asbestos? A. No, Sir, I did not know that."); *id.* at Cape_Receiver_00096064 ("Q. Do you know who owns the Lichtenstein corporation? A. No, Sir. Q. Has anyone ever suggested to you that Cape Asbestos has some ownership in the Lichtenstein corporation, Associated Minerals Corp.? A. Definitely not. Q. has anyone ever suggested to you that any of the principals of Cape Asbestos had some interest in that Liechtenstein corporation? A. No, Sir.").

[97] Ex. 66, Deposition of C. Morgan, Feb. 20, 1981, at Cape_Receiver_000 96000.

[98] *Id.* Cape_Receiver_000 95988 ("Q. Who drew the Articles of Incorporation? A. Mr. Max Meyer. At least I asked him to do this work for me. Who actually did the work I couldn't say.").

[99] Ex. 53, Excerpts of Testimony of A. Penna, Mar. 14, 1988, at Cape_Receiver_00132246.

[100] *Id.* at Cape_Receiver_00132239-40.

[101] *Id.*

While Cape averred that Morgan was well aware of the connection to Cape,[102] in reality, the true scheme was on a need-to-know basis, and Morgan did not need to know anything. He was simply Cape's U.S. puppet. Morgan testified that Tony Penna "said he was the attorney representing Associated Minerals Corporation."[103] Morgan testified that he did not know that Penna was contacting him on behalf of Cape.[104] He did not know who owned AMC, and no one had suggested to him that there was a relationship between Cape and it.[105] In this way, Cape escaped liability, but continued selling asbestos fibers to virtually the same contact list using a shell game and companies in Liechtenstein and South Africa to conceal any connection between it and the United States.

b. Charter Participated in the Fraud.

Cape, of course, did not act in a vacuum. It was part of the Oppenheimer Group System and was the profit generating center of Charter. Charter relied on Cape for dividends and service fees, the payment of which were premised on Cape making a profit. Importantly, Charter was a

[102] *Id.* at Cape_Receiver_ 00132215 ("Q. And also the reason why you did not wish the new arrangements [related to Cape's involvement in setting up CPC] to become publicly known? A. Yes, I did. I think that it probably omitted one additional reason – that certainly Mr. Morgan in his new entity would not have wanted it to be disclosed that he was dealing with a company that was still related to Cape.").

[103] Ex. 66, Deposition of C. Morgan, Feb. 20, 1981, at Cape_Receiver_00096003.

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

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

holding company which conducted virtually all of its business through subsidiaries like Cape, and the Charter made money through dividends and the like from such investments.[106]

Cape's board, whose membership included Charter employees, was made aware of the progress of the Tyler, Texas litigation against Cape, and of Cape's decisions related to its continued sale of asbestos in the United States. Geoffrey Higham, who served as both a Cape board member and a Charter employee (as well as a Cape employee and a NAAC board member at various points), testified at deposition that he was aware plans were being made to continue to sell asbestos in North America as soon as NAAC closed: "I mean clearly I would have known generally that it was being done and it was clearly necessary that it should be done."[107] He further testified, "I think all of this is entirely consistent with Cape's position that it did not feel liable for damage to people in the United States caused by asbestos, which it had supplied through subsidiaries, but felt that employers here should be picking up that tab. Equally, I think Cape felt that the supply of asbestos was not of itself an iniquitous thing to do since, if handled properly, it is not dangerous."[108]

At another deposition ten years later, Higham testified as follows: "[w]e didn't like the rules, we didn't think that it was a reasonable burden to place upon a supplier of material that he should control how the material was used. We thought, we still think, I feel very strongly that it was a totally ridiculous way of proceeding and so, we withdraw. We say, fine, we don't like the rules, we don't like that playing field so we won't have any more to do there."[109]

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[106] Ex. 68, Deposition of G. Higham, Oct. 17, 1986, at Cape_Receiver_00096909.

[107] *Id.* at Cape_Receiver_00096935.

[108] *Id.* at Cape_Receiver_00096936.

[109] Ex. 68, Deposition of G. Higham, Oct. 24, 1996, at Cape_Receiver_00097120. This testimony was consistent across Cape's board of directors. *See, e.g.*, Ex. 10, Deposition of F. Howard, Nov. 13, 1980, at Cape_Receiver_00100178-9 ("I think it was something along the lines that there were cases against the company which would eventually exhaust its funds and, therefore, there was no further purpose in continuing the company's operations."); Ex. 69, Deposition of A. Hepper, Oct.

Indeed, Charter reported on Cape's liability avoidance scheme in its 1982 Annual Report:

> Cape has received legal advice that default judgments, in certain of which plaintiffs have been granted damages totalling approximately US$57 million, and any other judgments obtained in the United States in such actions against Cape group companies will not be enforceable in the United Kingdom. The directors believe, in light of legal advice received, that the outcome of all the actions against Cape and Charter and the obligations retained by Cape are unlikely to have any material effect on Charter's financial position, and accordingly no provision for them has been made.[110]

c. Cape Pivots to Asbestos Abatement.

In 1982, Cape purported to cease all manufacturing of asbestos products.[111] Cape then made the incredible about-face into "[a]sbestos management and removal," leveraging its history of dominance in asbestos manufacturing and distribution.[112] It later evolved into a scaffolding company primarily for the oil and gas industry.[113]

F. Altrad and ESAB Acquire Cape and Charter, Respectively.

Although neither individually was present for the initial decision to perpetrate the liability avoidance scheme that has worked a fraud on the U.S. market, both Altrad and ESAB benefitted

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6, 1986, at Cape_Receiver_00095547 ("I don't think the company were in a – the company felt that they were not responsible for other people's employees. They were responsible for employees in the United Kingdom and they were adopting a responsible attitude in that regard. They were not in a position financially to withstand claims the size that were being mounted in the United States.").

[110] Ex. 70, Charter, Annual Report (1982), Cape_Receiver_00076050.

[111] Ex. 71, Cape_Receiver_00244898-9, *Cape Website: Our History* (May 17, 2013), *available at* https://web.archive.org/web/20130517130040/http:/www.capeplc.com/about-cape/our-history.aspx (last visited Nov. 8, 2024).

[112] Ex. 72, Cape_Receiver_00244891-2, *Cape Website: Our Services, Insulation* (Oct. 20, 2012), *available at* https://web.archive.org/web/20121020173812/http://www.capeplc.com/services-and-markets/our-services/insulation.aspx (last visited Nov. 8, 2024).

[113] Ex. 71, Cape_Receiver_00244898-9, *Cape Website: Our History* (May 17, 2013), *available at* https://web.archive.org/web/20130517130040/http:/www.capeplc.com/about-cape/our-history.aspx (last visited Nov. 8, 2024).

from and bear responsibility for that decision—as well as for the litigation avoidance scheme that they actively continue today, including in this action.

1. *The Altrad Owners Acquired 100% of Cape and Are Responsible for Cape.*

Since 2017, Cape has been part of the Altrad Group, a self-described "world leader in industrial services with a turnover of £5 billion per year."[114] In particular, on or around October 9, 2017, AIA, through Altrad UK Ltd. (controlling Cape UK Holdings Newco Ltd.), acquired Cape for £332 million, and has controlled it since that time.[115] AIA, the head of the Altrad Group, purchased Cape through its wholly owned subsidiary, the defaulted Third-Party Defendant Altrad UK Ltd., which (i) was incorporated in June 2017 for the 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.[116] AIA publicly touted the acquisition of Cape as an "exceptional opportunity" to acquire "one of the world's leading providers of services to industry."[117]

The Altrad Group—and thus Cape—is controlled by its President and Founder, Mohed Altrad, the so-called "Scaffolding King" who was convicted of corruption charges in a French

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[114] Ex. 73, Correspondence from Winston & Strawn London LLP to Peter D. Protopapas, at 2 (Aug. 30, 2024).

[115] Ex. 74, Altrad, Annual Report (2017), at Cape_Receiver_00040530 ("The acquisition of Cape PLC shares was carried out through the intermediary holding company Altrad UK, a wholly owned subsidiary of AIA and financed by AIA through a current account."); *see id.* at Cape_Receiver_00040529.

[116] Ex.75, Certificate of Incorporation of a Private Limited Company, Altrad UK Limited (June 1, 2017), at Cape_Receiver_00185738-72 (identifying AIA as owner of all shares and Mohed Altrad as sole "Individual Person with Significant Control" and as Company Director 1 and Chairman); Ex. 74, Altrad, Annual Report (2017), at Cape_Receiver_00040530-1;; Reuters, Altrad Investment to Buy UK Oil Services Firm Cape for 332.2 Mln Pounds (July 7, 2017), https://www.reuters.com/article/cape-ma-altrad-investment/altrad-investment-to-buy-uk-oil-services-firm-cape-for-332-2-mln-pounds-idUSL4N1JY2KG.

[117] Ex. 74, Altrad, Annual Report (2017), at Cape_Receiver_00040529.

court in 2022.[118] Upon Altrad UK Ltd.'s formation in 2017 for the purpose of the acquisition of Cape, and continuing after the acquisition, Mr. Altrad was director of Altrad UK Ltd. and later a director of Cape UK Holdings Newco Ltd. and Cape Industrial Services Group Ltd.[119] Indeed, in the year the Altrad Group acquired Cape, Mr. Altrad "h[e]ld 77.78% of the [Altrad Group's] shares."[120] Since AIA's acquisition of Cape, Mr. Altrad's control has only grown. The annual reports of Altrad UK identifies AIA as being "controlled by Dr M Altrad."[121] Further, as of September 30, 2023, Mr. Altrad controlled 97.60% of the Altrad Group.[122]

Altrad purchased Cape fully aware of Cape's asbestos liabilities.[123] When Altrad purchased Cape in 2017, it stated its intention to ensure that members of the Cape Group continued

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[118] *See* Ex. 76, Altrad, Annual Report (2022), at Cape_Receiver_00040825; *see also* Ex. 77, Gaspard Sebag & Tara Patel, *Billionaire Scaffolding 'King' Guilty of Bribing Rugby Boss*, Bloomberg (Dec. 13, 2022) (reporting Mr. Altrad's 2022 conviction of bribery, influence peddling, and misuse of corporate assets charges, punished with an 18-month suspended jail term and €50,000 fine), https://www.bloomberg.com/news/articles/2022-12-13/scaffolding-billionaire-convicted-of-corruption-over-sponsorship#xj4y7vzkg.

[119] Ex. 75, Certificate of Incorporation of Altrad UK Ltd., June 1, 2017, at Cape_Receiver_00185738 (showing creation of company one month prior to media reports of Cape takeover); Ex. 74, Altrad, Annual Report (2017), at Cape_Receiver_00040530 ("The acquisition of Cape PLC shares was caried out through the intermediary holding company Altrad UK, a wholly owned subsidiary of AIR and financed by AIA." (modified from all caps)); *see also* Ex. 78, Termination of a Director Appointment of Altrad UK Ltd., Nov. 11, 2017, Cape_Receiver_00185779; Ex. 79, Termination of a Director Appointment of Cape UK Holdings Newco Ltd., Oct. 29, 2020, Cape_Receiver_00187939; Ex. 94, Termination of a Director Appointment of Cape Industrial Services Group Ltd., Oct. 29, 2020, Cape_Receiver_00187592.

[120] Ex. 74, Altrad, Annual Report (2017), at Cape_Receiver_00040519.

[121] Ex. 80, Altrad UK Ltd., Annual Report (2021), at Cape_Receiver_00185906.

[122] Ex. 81, Altrad, Annual Report (2023), at Cape_Receiver_00040879.

[123] Altrad's 2017 Annual Report acknowledged Cape's establishment (pursuant to a Scheme of Arrangement) of a compensation fund in 2006 for its employees who were exposed to asbestos. Ex. 74, Altrad, Annual Report (2017), at Cape_Receiver_00040530; *see also* Ex. 82, The Scheme Of Arrangement, June 9, 2006, Cape_Receiver_00104532-56.

to fund their commitments to the Scheme of Arrangement established in 2006 (the "IDC Scheme") to address certain asbestos liabilities:

> Altrad has undertaken to the IDC Scheme Directors and the IDC Scheme Shareholder that, whilst it intends to explore collaboratively with the IDC Scheme Directors and the IDC Scheme Shareholder (subject always to the appropriate consent of the IDC Scheme Directors and the IDC Scheme Shareholder) certain administrative revisions or clarifications to Cape's constitutional documents to facilitate intra-group transactions between members of the Enlarged Group post-Acquisition and to assist financial reporting following the Acquisition, ***it intends to procure that each member of the Cape Group honours its obligations under, or in connection with, the IDC Scheme (including with respect to the funding commitments for future liabilities of the IDC Scheme, the current IDC Scheme administrative arrangements and all related contractual obligations to which members of the Cape Group are subject) following completion of the Offer***.[124]

In the years since the acquisition, Altrad has continued to acknowledge Cape's asbestos liabilities—and reaffirm its responsibility for them. For example, in its annual report for the year ended August 31, 2022, Altrad Services Ltd. (a member of the Altrad Group and another Third-Party Defendant against which default has been entered) not only 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, but also disclosed AIA's letter of support of it as a going concern.[125] That 2022 annual report stated that

[124] Ex. 83, Recommended Cash Offer for Cape plc, Cape_Receiver_00104914-40 (emphasis added).

[125] Ex. 84, Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022, at Cape_Receiver_00248438 ("The Group continues to receive claims, from both individuals and insurance companies, in connection with historical alleged exposure to asbestos. Where claims are determined to have merit, the costs are provided for and claims are settled in the ordinary course, otherwise claims are defended."); Ex. 85, Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2023, at Cape_Receiver_00248371 (referring to the letter of support from AIA, which "confirms continuing support for the going concern period until 30 April 2025").

AIA "manages risk at a Group level"[126] and further acknowledged that "[m]any of [AIA's] operating environments have associated health and safety risks," including 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."[127] The Altrad Group thus made a £118.1 million provision of funds to address certain non-U.S. historical asbestos claims that reportedly "captured all expected material industrial disease scheme liabilities for which the Board believes ***the Group may become liable***" (the "Provision of Funds").[128]

Most recently, AIA's 2023 Annual Report acknowledged its asbestos liability and affirmed its commitment to pay a limited number of claims pursuant to a court order:

> When Altrad acquired Cape in 2017, the acquired business had well disclosed outstanding claims related to the manufacture and distribution of asbestos in the mid twentieth century and the resulting damaging health consequences of exposure, leading to related industrial diseases including mesothelioma. Altrad . . . ***is fully committed to settling claims that are determined to have merit*** pursuant to Cape's court approved mechanism for settling such claims. An amount of £ 118 million has been paid or set aside for the settling of valid claims.[129]

[126] Ex. 84, Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022, at Cape_Receiver_00248391.

[127] *Id.* at Cape_Receiver_00248392.

[128] *Id.* at Cape_Receiver_00248438 (emphasis added); *see also* Joshua Stein, *Altrad Makes £118m Provision for Asbestos Claims*, Construction News (Apr. 14, 2023), *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

[129] Ex. 81, Altrad, Annual Report (2023) at Cape_Receiver_00040862 (emphasis added). This mechanism for payment of claims, of course, does not account for claims by U.S. plaintiffs; it is limited to Cape's former U.K. employees.

In the years since it acquired Cape, AIA also has exercised operational control over Cape on issues ranging from branding—as reflected by its renaming of Cape entities, including defaulted Third-Party Defendant Altrad Services Ltd. (f/k/a Cape Industrial Services Ltd.)—to risk management.[130] 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.[131]

2. *ESAB Is Responsible for Charter*.

The story of Charter is a tortured one of constant reorganizations. Despite this history, there is no question that ESAB, a Delaware company created in 2022, holds the liability for Charter.

Beginning in 1994, Charter became intertwined with ESAB, first with ESAB as a subsidiary of Charter, and then ultimately, with ESAB as Charter's parent. The following is a timeline of critical events in this history:

1993: Charter plc ("New Charter") acquires all the interest of Charter Consolidated pursuant to a 1993 Scheme of Arrangement.[132]

1994: New Charter acquires all of the equity interests of ESAB AB.[133]

[130] Ex. 84, Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022, at Cape_Receiver_00248391 ("The Board of [AIA] (the ultimate parent company) manages risk at a Group level"); *id.* at Cape_Receiver_00248439 ("Altrad Services Limited (formerly Cape Industrial Services Limited)").

[131] Ex. 84, Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022, at Cape_Receiver_00248391 (AIA "manages risk at a Group level," including with respect to asbestos-related claims).

[132] Ex. 86, 1993 Scheme of Arrangement, Aug. 18, 1993, Cape_Receiver_00178003-16.

[133] Ex. 87, ESAB Holdings Limited Annual 1994 Report (ESAB Holdings Limited was a subsidiary of ESAB AB).

2008: Charter International Limited ("PubCo Charter", and formerly known as Charter International PLC) is formed. Pursuant to a 2008 Scheme of Arrangement, Pubco Charter acquires all of the equity interest of New Charter.[134]

2011: Colfax UK Holdings Ltd., a wholly-owned subsidiary of Colfax Corporation ("Colfax Parent"), acquires all of the equity interest of Pubco Charter (including Esab) pursuant to an Implementation Agreement and effected by a Scheme of Arrangement.[135]

2021: Colfax Parent forms ESAB Corporation, a Delaware corporation.[136]

2022: Colfax Parent, the ultimate parent of Colfax UK Holdings, completes a spin-off of ESAB Corporation, the parent of Colfax UK and indirect parent of PubCo Charter. In this spin-off, PubCo Charter, which holds the Charter liabilities, spun off into ESAB Corporation.[137]

When Colfax spun off ESAB Corporation as a public entity which was the parent company of Charter, it agreed to assume certain liabilities of its subsidiaries and provided certain financial guarantees to its subsidiaries.[138] Indeed, post-separation, several Charter subsidiaries reported that ESAB Corporation was their ultimate parent and "controlling party" and that ESAB Corporation had agreed to meet all liabilities with respect to their ability to operate as going

[134] Ex. 88, 2008 Scheme of Arrangement, Cape_Receiver_00182324-31.

[135] Ex. 89, Implementation Agreement, dated as of September 12, 2011, by and among Colfax Corporation, Colfax UK Holdings LTD and Charter International PLC, Cape_Receiver_00102613-95.

[136] Ex. 90, Certificate of Incorporation of ESAB Corporation, dated May 19, 2021, Cape_Receiver_00185411-3.

[137] Ex. 91, Separation and Distribution Agreement, by and between Colfax Corporation and ESAB Corporation (hereinafter "Separation Agreement") (April 4, 2022), at Cape_Receiver_00183869-936. New Charter later transferred the shares of ESAB AB to ESAB Group Limited, a newly formed wholly owned subsidiary, which itself was later renamed Charter Overseas Holdings Limited and was the parent company of various ESAB entities until 2011.

[138] Ex. 91, Separation Agreement, § 2.1(a), at Cape_Receiver_00183887 ("Transfers of Assets and Assumptions of Liabilities; ESAB Assets; Enovis Assets.") (emphases added).

concerns.[139] Post-separation, ESAB has continued the familiar liability avoidance strategy, refusing to acknowledge this Court's jurisdiction over it or to participate in discovery.

G. Procedural History.

1. *This Court Appointed the Receiver When Cape Failed to Appear in an Asbestos Personal Injury Action.*

On June 4, 2021, Isabella Park filed a lawsuit in Richland County, South Carolina 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 after her diagnosis, and within five days of filing her lawsuit, Ms. Park passed away. On November 17, 2021, Ms. Park's son, Keith, amended the complaint, appearing individually and as personal representative to Ms. Park's estate (the "*Park* Plaintiffs), to assert a wrongful death action. *See* First Amended Compl., *Park et al. v. Armstrong Int'l, Inc., et al.*, No. 2021-CP04002727 (Nov. 17, 2021). The amended complaint added Cape Intermediate Holdings Limited (f/k/a Cape Intermediate Holdings PLC) as a defendant, though both Cape Intermediate Holdings Limited and Cape PLC referred to the same English company originally named Cape Asbestos Company Ltd. and were both identified as the successors in interest to that company. *Id.* at 9; *see also id.* at ¶¶ 26–27. In December 2021, the *Park* Plaintiffs

[139] *See, e.g.*, Ex. 92, 2022 Charter Consolidated Ltd. Report (Oct. 25, 2023), Cape_Receiver_00172486; Ex. 93, 2023 Central Mining & Inv. Corp. Ltd. Report (Mar. 27, 2024), Cape_Receiver_00172654.

served the named Cape entity, which (as has been Cape's practice for decades) never answered, moved, or otherwise responded.

After Cape failed to answer the *Park* Complaint, Ms. Park moved for the appointment of a Receiver. *See* Mot. to Appoint Receiver (March 6, 2023) (2021-CP-40-02727, Richland County). On March 17, 2023, this Court appointed Peter D. Protopapas as a receiver for an entity identified as "Cape PLC as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)" pursuant to S.C. Code § 15-65-10(5), as well as § 15-65-10(4) in the alternative. *See* Order, *Park et al. v. Armstrong Int'l, Inc., et al.*, No. 2021-CP-4002727 (Mar. 17, 2023) ("Appointment Order"), at 1.

2. *The Receiver Initiated this Third-Party Action Against Participants to and Beneficiaries of Cape's Liability Avoidance Scheme.*

Following his appointment, the Receiver confirmed from court records and other publicly available information that Cape's failure to appear in *Park* was just one example of a decades-long liability avoidance scheme described herein. Further, the Receiver discovered that rather than perpetuate that scheme alone, Cape's business practices were directed, guided, and inured to the benefit of numerous entities associated with Cape over their histories.

On June 30, 2023, the Receiver filed the above-captioned action against third-party defendants with responsibility for Cape's fraud on the U.S. market in arising from its Cape's U.S.-based asbestos sales and associated diversion of proceeds outside of the United States and its attendant Cape's liability avoidance scheme, including the Charter and Altrad Third-Party Defendants.

H. The Altrad and Charter Third Party Defendants' Ongoing Refusal to Participate in Discovery Results in Adverse Inferences.

The Altrad and Charter Third Party Defendants' refusal to participate in discovery, as chronicled below, has limited the Receiver's ability to learn key information related to its causes

of action other than from publicly available sources. After a series of Motions to Compel directed to the Altrad and Charter Third-Party Defendants' wholesale refusal to participate in the discovery process, this Court entered adverse inferences against the Charter and Altrad Third-Party Defendants.[140] To date, the Altrad and Charter Third-Party Defendants have made no attempt to rebut those adverse inferences.

1. *Trial Continued Due to Third-Party Defendants' Refusal to Participate.*

Although originally set for a bench trial in the trial block set to commence April 15, 2024, the Court was forced to continue the trial during the April 10, 2024 pre-trial hearing "because of the Altrad and Charter Third Party Defendants' refusal to provide **any** discovery to the Receiver to prepare this case for trial." Order Granting Cape Receiver's Mot. for Sanctions (May 23, 2024); *see also* Order Setting Trial Date (June 20, 2024) (trial continued "due to the lack of participation in the discovery process" by the Charter and Altrad Third-Party Defendants). This matter was ultimately reset for trial on February 3, 2025.

2. *This Court Enters Adverse Inferences After It Grants Two Motions to Compel.*

Two Orders on Motions to Compel further demonstrate the Charter and Altrad Third-Party Defendants' discovery recalcitrance. First, on March 12, 2024, this Court directed all Third-Party Defendants "(i) to provide responsive, substantive, and complete answers to the Receiver's Discovery Requests within 14 days of entry of this Order and (ii) to begin producing documents in response to the Receiver's Requests for Production the same day," among other things.[141] The Third-Party Defendants did not meaningfully comply with this Order.

[140] *See generally* Order Granting Cape Receiver's Mot. for Sanctions (May 23, 2024).

[141] Order Granting Receiver's Mot. Compel Disc. Resps. (March 12, 2014), at 13.

As a result, on May 23, 2024, this Court granted the Receiver's second Motion to Compel. This time, the Court found that the "only excuses offered by these Third-Party Defendants are frivolous. . . . They argue that Rule 205, SCACR, poses a jurisdictional bar preventing this third-party action from continuing, because by simply appealing [their] denied motions to dissolve the receivership, they can deprive the trial court of jurisdiction for an indeterminate time period." May 23, 2024 Order at 11-12. Citing a string of orders by the South Carolina Court of Appeals and the South Carolina Supreme Court in receivership actions, the Court reasoned, "Thus, the Supreme Court and Court of Appeals have made clear that—categorically—the denial of motions to dismiss and dissolve a receivership, like discovery orders, are not immediately appealable." *Id.* at 12.

The Court found that the Charter and Altrad Third-Party Defendants' "continued discovery misconduct"—*i.e.*, their refusal to participate in discovery "amount[ed] to bad faith, willful disobedience, and gross indifference to the rights of the Receiver and this Court's management of its docket," entered a series of adverse inferences against the Charter and Altrad Third-Party Defendants.[142]

As to Charter, adverse inferences included the following:

- It is " part of a single business enterprise . . ., ha[s] an amalgamation of corporate interests, entities, and activities, and ha[s] unified, integrated, and intertwined business operations and resources to achieve and act with a common business purpose" (Adverse Inference No. 71);
- It was" responsible for efforts to misinform companies, persons, and the general public about the health hazards associated with asbestos" (Adverse Inference No. 16);

[142] Order Granting Cape Receiver's Mot. Sanctions (May 23, 2024), at 15, 17, 27-31 ("[T]he Altrad and Charter Third-Party Defendants continue to refuse any effort at compliance with the Court's orders and the discovery rules of this State. Despite multiple warnings by this Court and directives to **proceed with discovery**, these Third Party Defendants have continued their misconduct while filing multiple frivolous appeals that, based on clearly applicable precedent, will inevitably be dismissed." (emphasis in original)).

- It was "responsible for operating NAAC in an undercapitalized manner, including through the siphoning of funds from NAAC" (Adverse inference No. 17);

- Along with Central Mining, it "owned, dominated, and controlled Cape and its subsidiaries including NAAC, between 1965 and 1996, including with respect to their financing and capitalization" (Adverse Inference No. 20);

- It "seconded employees and other officials to work for Cape, or otherwise financed and spent resources for Cape, including for operational, marketing, research and development, and lobbying activities" (Adverse Inference No. 22);

- It was "aware that Cape asbestos was being sold or ultimately distributed into the State of South Carolina" (Adverse Inference No. 23);

- Charter was responsible for (i) "the decision to close and liquidate NAAC," and (ii) "designing ways to continue the flow of South African asbestos to US customers and the counterflow of asbestos profits out of the United States after the liquidation of NAAC," (Adverse Inference Nos. 30 and 32); and

- It was "part of a corporate arrangement to eliminate or reduce as much as possible [its] exposure in the United States to lawsuits brought against them for the sale of asbestos in the United States" (Adverse Inference No. 39).[143]

As to the Altrad Third-Party Defendants, the Court drew the adverse inference that "each of the Altrad Third-Party Defendants is responsible for or has benefitted unjustly from Cape's liability-avoidance scheme."[144] The Court also entered 46 separate adverse inferences, including as follows:

- Mr. Altrad is the majority shareholder of the Altrad Group and "controls the Altrad Group, including AIA" (Adverse Inference Nos 1, 2, 42);

- AIA and Mr. Altrad dominate and control Altrad UK Ltd. (Adverse Inference No. 11);

- AIA and Mr. Altrad were aware of Cape's asbestos-related liabilities and liability avoidance scheme prior to the acquisition of Cape" and "acquired Cape with the intent to continue Cape's liability avoidance scheme and refusal to respond to litigation in the United States" (Adverse Inference Nos. 12 and 13);

[143] *See generally* Order Granting Cape Receiver's Mot. for Sanctions (May 23, 2024).

[144] *Id.* at 27.

- Since the acquisition, AIA and Mohed Altrad have dominated and controlled Cape, including with respect to its financing and capitalization" as well as appointment of executive personnel and directors (Adverse Inference Nos. 14 and 15); and

- AIA and Mr. Altrad "are responsible for Cape's continued failure to respond to litigation against Cape in the United States" (Adverse Inference Nos. 18, 32, and 33).[145]

As to ESAB, the Court drew several adverse inferences, including as follows:

- ESAB " obfuscated the relationship between ESAB and its post-spinoff subsidiaries—including Charter Consolidated Ltd. and Central Mining—and also historically with Cape, with the purpose of frustrating creditors and avoiding liability" (Adverse Inference No 55);

- ESAB " is the successor in interest to Central Mining and Charter Consolidated Ltd" (Adverse Inference No 56);

- "Charter Consolidated Ltd. [is] financially dependent upon ESAB Corporation" (Adverse Inference No 63); and

- "The Charter Third-Party Defendants—with Cape prior to 1996—are subject to the same total dominion and control, and ability to be influenced with respect to major business decisions and are mere instrumentalities for the purposes of committing fraud or other violations of statutory or legal duties—namely, by ESAB Corporation currently, and by Charter Consolidated Ltd. previously" (Adverse Inference No 69).

The Court emphasized that those inferences were rebuttable, should these Third-Party Defendants choose to start participating in the litigation and offering a viable defense. They have not.

3. *The Charter and Altrad Third-Party Defendants Persist in Refusal to Participate in Discovery.*

After entry of those adverse inferences, the Charter and Altrad Third-Party Defendants continued to pursue their strategy of stonewalling by filing serial improper interlocutory appeals[146]

[145] *Id.* at 27-31.

[146] In an attempt to avoid trial in this matter, the Third-Party defendants have filed 16 improper appeals of interlocutory orders. Most recently, on November 1, 2024, the Charter and Altrad Third-Party Defendants each filed appeals of the Court's October 2, 2024 Scheduling Order.

and then incorrectly claiming that the pendency of those appeals protects them from answering discovery.[147] The Altrad Third-Party Defendants also have refused to appear for depositions or provide substantive responses to any other discovery.[148] While the Receiver has reported these continued deficiencies to the Court, including initially in a June 11 report of the Third-Party Defendants' continued non-compliance, the Charter and Altrad Third-Party Defendants continue their non-compliances while fighting progress of this action in other ways.[149]

Because the Altrad and Charter Third-Party Defendants' ongoing wholesale refusal to participate in discovery, they have failed to adduce any evidence to contest their liability, much

[147] *See, e.g.*, Ex. 95, Third-Party Def. Mohed Altrad's Resps. and Objs. Receiver's Second Set of Interrogs. and Second Set of Reqs for Produc., at 3 ("In addition to the Reservation of Rights stated above, the Third-Party Defendant objects to this Interrogatory on the grounds that the Circuit Court lacks jurisdiction, and the Receiver is without authority, to proceed with this matter at the present time, as all issues regarding the purported Receiver's appointment and his purported authority to engage in litigation are presently pending before the South Carolina Court of Appeals").

[148] *E.g.*, Ex. 96, Correspondence from T. Carroll to L. Seaborn et al. (Sept. 3, 2024) ("[T]he Altrad Defendants will not be attending these depositions. . . I'll be sending . . . our objections by separate cover[.]"); *see also, e.g.*, Ex. 133, Third-Party Defs.' Charter's Resps. Second Set Interrogs. (May 31, 2024) (refusing to provide responses to Second Set of Interrogatories); Ex. 97, Altrad Owners Third-Party Def. Mohed Altrad's Resps. and Objs. Receiver's Second Set of Interrogs. and Second Set of Reqs for Produc. (May 31, 2024) (refusing to provide responses to Second Set of Interrogatories and, as to Mohed Altrad, Second Set of Requests for Production); Ex. 98, Third-Party Def. Charter's Objs. Deps. (June 3, 2024) (stating no witnesses to appear on June 5–7, 2024); Ex. 99, Altrad Owners Third-Party Defs.' AIA and Mohed Altrad Objs. Deps. (June 9, 2024) (stating no witnesses to appear on June 10–11, 2024); Ex. 100, Third-Party Defs.' Arranco, Hawk Bidco, and Altrad Sparrows Objs. Deps. (June 10, 2024) (stating no witnesses to appear for depositions noticed for June 12–14, 2024); Ex. 101, Charter Third-Party Defs.' First Obj. Letter (July 8, 2024) (refusing to provide responses to Second Set of Requests for Production); Ex. 102, Charter Third-Party Defs.' Second Obj. Letter (July 16, 2024) (refusing to provide responses to Third Set of Requests for Production); Ex. 96, Altrad Owners Third-Party Defs.' Obj. Letter (Sept. 4, 2024) (stating no witnesses to appear on September 4 and 5, 2024); Ex. 103, Arranco, Hawk, and Sparrows' Third-Party Defs.' Obj. Letter, at 2 (Sept. 4, 2024) (stating no witnesses to appear on September 6, 10, and 11, 2024); Ex. 104, Charter Third-Party Defs.' Obj. Letter (Sept. 4, 2024) (stating no witnesses to appear on September 9, 12, and 13, 2024).

[149] *See, e.g.*, Altrad Third-Party Defs.' Obj. to Entry of New Order Setting Nonjury Trial (Sept. 26, 2024); Charter Third-Party Defs.' Obj. to Entry of New Order Regarding Non-Jury Trial (Sept. 26, 2024).

less evidence sufficient to create a genuine issue of material fact or otherwise rebut the record evidence (or the adverse inferences made by this Court in its May 23 Order).

III. LEGAL STANDARD

"Summary judgment should be granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *Bell v. Progressive Direct Ins. Co.*, 407 S.C. 565, 575, 757 S.E.2d 399, 404 (2014) (citing Rule 56(c), SCRCP). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." *McNair v. Rainsford*, 330 S.C. 332, 342, 499 S.E.2d 488, 493 (Ct. App. 1998) (citing *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 401 S.E.2d 537 (1991)). "With respect to any issue upon which the nonmoving party bears the burden of proof, this initial responsibility may be discharged by showing the trial court where there is an absence of evidence to support the nonmoving party's case." *McNair v. Rainsford*, 330 S.C. at 342, 499 S.E.2d at 493.

When opposing a summary judgment motion, the nonmoving party must do more than 'simply show that there is a metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial.*"* *Dunes W. Golf Club, LLC v. Town of Mt. Pleasant*, 401 S.C. 280, 293, 737 S.E.2d 601, 608 (2013) (citing *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 220, 578 S.E.2d 329, 335 (2003) (quoting *Baughman*, 306 S.C. at 115, 410 S.E.2d at 545)). Once the initial burden of showing an absence of evidentiary support for the opponent's case is met, "the opponent cannot simply rest on mere allegations or denials contained in the pleadings . . . [r]ather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." *Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 220, 616 S.E.2d 722, 730 (Ct. App. 2005) (citing *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003)); *see also Moody v. McLellan*, 295 S.C. 157, 163, 367 S.E.2d 449, 453 (Ct. App. 1998)

(genuine issues of fact must be supported by "admissible . . . evidence" and "summary judgment should be entered" if the opposing party fails to "so respond").

In determining whether a genuine issue of material fact exists, the court views the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Gignilliat v. Gignilliat, Savitz & Bettis, L.L.P.*, 385 S.C. 452, 456, 684 S.E.2d 756, 758 (2009). However, "when the evidence is susceptible of only one reasonable interpretation, summary judgment may be granted." *Brooks v. Northwood Little League, Inc.*, 327 S.C. 400, 403, 489 S.E.2d 647, 648 (Ct. App. 1997).

IV. ARGUMENT

A. The Receiver Is Entitled to Summary Judgment on Liability Under Various Successorship or Veil Piercing Theories (Third Cause of Action).

1. *Charter Is Liable for Cape's Actions and Debts Under an Alter Ego Theory.*

The Receiver is entitled to summary judgment that each of the Charter Third-Party Defendants are the alter egos of Cape, which in turn is the alter ego of NAAC. The question of whether to pierce the corporate veil via an allegation of alter ego sounds in equity. *Oskin v. Johnson*, 400 S.C. 390, 397, 735 S.E.2d 459, 463 (2012) (Toal, C.J.); *see also Drury Dev. Corp. v. Found. Ins. Co.*, 380 S.C. 97, 101, 668 S.E.2d 798, 800 (2008) (Toal, C.J.) ("In general, equitable principles govern the veil-piercing remedy," and "[i]n applying South Carolina's veil-piercing doctrine, as all forms of equitable relief, the equities of both sides are to be considered, and each case must be decided on its own particular facts." (internal quotation marks and citations omitted)). 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 v. Armstrong Int'l*, 2020 S.C. C.P. LEXIS 649, at *14 (Richland Cnty. Ct. Com. Pl. June 29, 2020).

"An alter-ego theory requires a showing of (1) total domination and control of one entity by another and (2) inequitable consequences caused thereby." *Oskin*, 400 S.C. at 400, 735 S.E.2d at 465 (citing *Colleton Cnty. Taxpayers Ass'n v. Sch. Dist. of Colleton Cnty.*, 371 S.C. 224, 237, 638 S.E.2d 685, 692 (2006) (Toal, C.J.)). "This theory does not apply . . . in the absence of fraud, injustice, or contravention of public policy." *Oskin*, 400 S.C. at 400, 735 S.E.2d at 465 (citing *Colleton Cnty.*, 371 S.C. at 237, 638 S.E.2d at 692). The alter ego theory nevertheless "is meant to be 'flexible' to enable courts to 'weigh the circumstances of the individual case.'" *Ret. Plan of UNITE HERE Nat'l Ret. Fund v. Kombassan Holdings A.S.*, 629 F.3d 282, 288 (2d Cir. 2010) (using flexible alter ego test in ERISA context (citation omitted)). Acknowledging the need for flexibility to achieve justice, the "majority of jurisdictions addressing" this issue "allow veil-piercing against nonshareholders." *Buckley v. Abuzir*, 8 N.E.3d 1166, 1172 (Ill. App. 2014). "[W]ith few exceptions, those jurisdictions that allow veil-piercing against nonshareholders have not required that the nonshareholder hold other formal roles within the corporation—for instance, as an officer, director, or employee—but rather abandon such formalism in favor of an equitable approach focusing on the individual's domination of the corporation." *Id.* "If veil piercing were solely dependent on a party's ownership interest in an entity, unscrupulous parties could avoid personal liability under the doctrine by simply acting in a capacity that does not involve ownership." *Equity Trust Co. v. Cole*, 766 N.W.2d 334, 339 (Minn. Ct. App. 2009).

Based on the unrebutted record evidence, there is no genuine issue of material fact that, just as Cape was NAAC's alter ego, and Charter was Cape's alter ego.

a. Cape Is NAAC's Alter Ego.

At the outset, there is no genuine issue of material fact that Cape is NAAC's alter ego. As set forth at length in Section II.E *supra*, Cape established NAAC in 1953 as a direct subsidiary designed 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 South Carolina).[150] Throughout NAAC's existence, Cape exercised total dominion and control over NAAC, and that dominion and control produced gravely inequitable consequences. *See Oskin*, 400 S.C. at 400, 735 S.E.2d at 465.

(i) Cape exercised total dominion and control over NAAC.

NAAC was Cape's sales agent in the United States, with exclusive authority to offer Cape products and responsibility for transmitting information about customer needs to Cape mines, and ensure that shipments from South African mines made it "all the way through to the customer's plant," including to locations in South Carolina or through South Carolina ports.[151] NAAC "effect[ively] . . . put the Mines at every U.S. port."[152] Indeed, Cape's "most bountiful years were the two decades until 1976"—the period when Cape operated NAAC to provide raw amosite asbestos fiber to customers in the United States.[153] By 1970, NAAC was the "largest U.S. importer of Amphibole Fibres," which were "re-distributed from . . . warehouse locations in East Coast, Gulf Coast and West Coast Ports."[154]

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[150] *See* Ex. 105, Cape_Receiver_00127365; Ex. 16, Cape_Receiver_00127971-2 (1982 court filing describing NAAC's history); Ex. 106, Cape_Receiver_00128081 (identifying NAAC as the sole U.S.-based entity of the Cape mining division); Ex. 107, Cape_Receiver_00126974 (1973 letter describing NAAC as "a division of Cape Asbestos Co. Ltd., with corporate offices in London").

[151] *See* Ex. 108, Cape_Receiver_00126392-4 (describing intended business of NAAC); Ex. 109, Cape_Receiver_00127141 (1975 Cape cover letter of NAAC director resignations); Ex. 110, Cape_Receiver_00128071 (appointment announcement describing NAAC as "specialize[d] in marketing and distribution of Blue and Amosite asbestos in the United States, Canada, Mexico and the Caribbean"); Ex. 111, Cape_Receiver_00126847-8 (1969 NAAC memorandum describing customer services).

[152] Ex. 111, Cape_Receiver_00126847-8.

[153] Ex. 112, Jock McCulloch, Asbestos Blues: Labour, Capital, Physicians & the State 68 (2002).

[154] Ex. 113, Cape_Receiver_00126883-4.

Cape and NAAC implemented a "conscious pattern of product distribution [of asbestos] nationally"—particularly, amosite, over which Cape had a monopoly. *See In re: Asbestosis Cases*, Case No. 78-CP-06-105, Order (S.C. Common Pleas Apr. 7, 1980) (rejecting objection to the exercise of personal jurisdiction over NAAC in South Carolina). Despite this "conscious pattern of product distribution," and NAAC's success in distributing Cape's asbestos, in fact, it was "essentially a one-man operation" consisting of an operational lead supported by four office clerical personnel.[155] All key decisions, including with respect to the fulfillment of specific purchase orders, were closely coordinated with and directed by Cape, or made by a board made up of Cape lawyers and executives (until Cape executives resigned in 1975, in what they described at the time as a "sensible precaution" against U.S. litigation).[156]

As detailed in Section II.E, Cape's control over NAAC was vast and complete; it controlled company governance issues, board make-up, the content of board meeting minutes, the determination of its commission, the process by which it was paid, its strategic underinsurance, the establishment of dividends, and the salaries of its employees.

(ii) Cape's dominion and control over NAAC caused gravely inequitable consequences.

Cape exercised this absolute control over NAAC to devastating, and plainly inequitable, end. As set forth in Section II.E.1, Cape actively suppressed its knowledge of the health hazards of asbestos to protect and expand its mining efforts and U.S. sales. After the onset of asbestos-related products liability litigation in the early 1970s, Cape undertook numerous actions in a

[155] *See* Ex. 16, Cape_Receiver_00127971-2 (describing NAAC's lean staffing); Ex. 17, Cape_Receiver_00127267 ("Despite the volume of sales and profits of NAAC, our operation is a very small one, with only a total of 5 employees").

[156] *E.g.*, Ex. 114, Cape_Receiver_00127141; Ex. 115, Cape_Receiver_00127025 (listing six directors in 1970)

deliberate effort to limit its own responsibility for the known harm caused by its products.[157] While Cape went through tortured machinations to make it *appear* it was reducing oversight over NAAC, in reality, NAAC continued to operate as a controlled instrumentality under Cape's domination.[158] Indeed, these changes were the result of careful assessments by Cape officials—with the help of its lawyers and other advisors—regarding how to minimize the liability exposure of Cape and others in the Group system.[159]

Cape's records confirm its implementation of 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

[157] *See, e.g.*, Ex. 116, Cape_Receiver_00127185-90 (1975 lawyer letter referring to "attempt to limit NAAC's and Cape's exposure to future United States litigation"); *see also Borel v. Fibreboard Paper Prods. Corp.*, 493 F.2d 1076 (5th Cir. 1973) (successful suit by insulation worker, widely acknowledged to have precipitated a wave of asbestos litigation in the 1970s).

[158] *See* Ex. 117, Cape_Receiver_00127808 (NAAC discouraging Cape visits to the U.S. in 1978 or else negate "maneuvers" related to "continued problems with product liability litigation"); Ex. 118, Cape_Receiver_00127138 (1975 letter suggesting to "disassociate the Parent Company as fully as possible from the operating companies"); Ex. 119, Cape_Receiver_00127140 (1975 letter raising whether to "do something to change the identity of NAAC in order to avoid exposing the company unnecessarily," while doing "everything possible to maintain a successful selling operation in the United States"); Ex. 120, Cape_Receiver_00127008-9 (1974 NAAC letter suggesting that "no one from Cape be an officer of NAAC since we want it to be as independent as possible in order to avoid any contention that it is the alter ego of Cape and that Cape is doing business in the United States"); Ex. 114, Cape_Receiver_00127141 (1975 Cape Asbestos letter stating "that it would be a sensible precaution against Cape's involvement in any future proceedings for [Cape personnel] to resign from the N.A.A.C. Board," and enclosing resignation letters).

[159] *See* Ex.56, Cape_Receiver_00127259-61 (NAAC counsel advising Cape on risk of judgments attaching to Charter assets).

in the Park lawsuit pending here).[160] Cape's communications with its former counsel 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.[161]

Put simply, NAAC existed only to do the bidding of Cape and the entities that controlled Cape, *i.e.*, to serve as a mechanism to both extract profits from the sale and distribution of deadly asbestos in the U.S. market and to insulate Cape from suit in the United States. The unrebutted evidence makes clear that Cape was NAAC's wholly controlled agent, and further that Cape exercised that control for fraudulent purposes, *i.e.*, using NAAC to make sales of its asbestos in the lucrative U.S. market, siphon those profits outside of the United States, and avoid answering to the U.S. legal system for the resulting harms.

b. Charter Is Cape's (and in Turn, NAAC's) Alter Egos.

There is likewise no genuine issue of material fact with respect to Charter's status as alter egos of Cape. Just as NAAC operated as an instrumentality for Cape, Cape was an instrumentality for the Oppenheimer Group System, including Charter. That is how the Group System was designed to operate, and it functioned perfectly here.

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[160] Ex. 1, July 4, 1977 Letter from A. J. Penna, Esq. Group Solicitor, Cape Industries Limited, Cape_Receiver_00133865 ("We here, having heard more disturbing information recently about the value of Texas awards are rapidly coming to the conclusion that Cape and Cape Fibers should take a risk on the UK enforceability and withdraw, as in practice we cannot foresee any court or government here enforcing a judgement which would have enormous financial and employment repercussions, when ***we really cannot be said to have a moral responsibility and are simply victims of the US product liability cult***." (emphasis added)).

[161] Ex. 56, Cape_Receiver_00127259-61; *see also* Order Granting Cape Receiver's Mot. for Sanctions (May 23, 2024).

(i) Charter exercised total dominion and control over Cape (and, in turn, over NAAC).

Cape had no true control over its own operations—it was part of a Group System in which power was concentrated in the hands of the Oppenheimer family and their trusted advisors. The top-to-bottom control exercised in the Group System governed every aspect of a Group subsidiary's operations, made possible by control at the board level and operational control through immediate parent entities. For Cape, its immediate parent Charter. Within the Group System, Charter was designed to exert full dominion and control over Cape.

Cape became part of the Oppenheimer Group by the late 1950s as part of the Oppenheimer Group's plan to dominate the global mining industry. As Dr. Press explains, after Ernest Oppenheimer "poached the Corner House's diamond business, as run by De Beers, in the 1920s," Harry Oppenheimer would "swallow and rearrange the various parts of the Corner House" starting in the late 1950s.[162]

By 1960, the former Corner House interests, including Cape, were fused with an Anglo American subsidiary, Rand Selection.[163] Then, as part of a broader reorganization, Harry Oppenheimer created Charter in 1965 as a "pet project" designed to diversify the Oppenheimer business operations.[164]

As a holding company, Charter conducted virtually all of its business through subsidiaries like Cape, such that it made money through dividends and other diverted funds, payments, or

[162] Ex. 8, Press Report at 56.

[163] First, Harry Oppenheimer relied on his American business partner, Charles Engelhard, to take over the Corner House through Rand American Investments. Second, in 1960, Rand American Investments merged into an Anglo American entity, Rand Selection. *See* Ex. 8, Press Report at 54-58.

[164] Ex. 8, Press Report at 54-58.

returns from such investments.[165] As detailed in Section II.D, Cape was Charter's profit-generating center, and Charter relied on Cape to operate NAAC in an undercapitalized manner such that dividends and service fees could be siphoned from NAAC and diverted first to Cape and then to Charter.[166] Charter owned, dominated, and controlled Cape and its subsidiaries, including NAAC, between 1965 and 1996, including with respect to their financing and capitalization; by exercising influence in Apartheid-era South Africa, thereby allowing Cape to profitably mine and export asbestos to the United States and distribute it throughout the nation, including in South Carolina; and by its presence on Cape's board and operational team, including through seconded employees and expenditures to support Cape's operations, marketing, research, and lobbying.[167]

(ii) Charter exercised its control over Cape (and NAAC) to produce inequitable results.

Charter used its control over Cape and NAAC to effect a fraud on the U.S. market that remains unaddressed decades later. As set forth in Sections II.E.1 and II.E.2, Charter knew of the health risks of asbestos, including death, throughout Cape's efforts to expand distribution of its asbestos in the United States. It directed and financed efforts to conceal these risks and provide false information about the health hazards of asbestos to the general public. It was responsible for operating NAAC in an undercapitalized manner, including by siphoning off funds from NAAC and diverting them outside of the United States, and for NAAC's inadequate risk management and strategic underinsurance decisions. When the risk of litigation loomed, Charter was responsible for the decisions to create the appearance of separation between NAAC and Cape, to deplete

[165] Ex. 68, Deposition of G. Higham, Oct. 17, 1986, at Cape_Receiver_00096909.

[166] *See* Section II.D; *see also* Order Granting Cape Receiver's Mot. for Sanctions (May 23, 2024), at 18 ¶ 17.

[167] *See* Section II.D; *see also* Order Granting Cape Receiver's Mot. for Sanctions (May 23, 2024), at 19 ¶¶ 20-23.

NAAC of assets that would be available to claimants, and to implement Cape's litigation avoidance strategy.[168] Charter also was responsible for the decision to close and liquidate NAAC, to permit default judgments to be entered against Cape and its subsidiaries, and to design new ways to continue the flow of South African asbestos to the United States after NAAC's liquidation.[169]

2. *Charter Is Liable for Unaddressed Harm Caused by Cape's Asbestos Under a Veil Piercing Theory.*

Charter is likewise responsible for the harm caused by Cape (and NAAC) through a traditional veil piercing theory. Although it overlaps to some extent with alter ego analysis, courts in South Carolina considering whether to pierce the corporate veil undertake a separate inquiry based on the South Carolina Court of Appeals' decision in *Sturkie v. Sifly*, 280 S.C. 453, 313 S.E.2d 316 (Ct. App. 1984). A two-prong test is used to determine whether the corporate entity should be disregarded. The first part of the test is an eight-factor analysis that looks to observance of the corporate formalities by the dominant shareholders. The second part of the test requires that there be an element of injustice or fundamental unfairness if the veil were not pierced. *Sturkie*, 280 S.C. at 458-59.

In determining whether the corporate formalities were observed under the first prong of the *Sturkie* test, courts consider the following eight factors:

(1) whether the corporation was grossly undercapitalized;

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[168] Ex. 70, Charter Annual Report (1982), at Cape_Receiver_00076050 ("Cape has received legal advice that default judgments, in certain of which plaintiffs have been granted damages totalling approximately US$57 million, and any other judgments obtained in the United States in such actions against Cape group companies will not be enforceable in the United Kingdom. The directors believe, in light of legal advice received, that the outcome of all the actions against Cape and Charter and the obligations retained by Cape are unlikely to have any material effect on Charter's financial position, and accordingly no provision for them has been made.").

[169] *See* Section II.E.2; Ex. 68, Deposition of G. Higham, Oct. 17, 1986, at Cape_Receiver_00096935-6; *see also* Order Granting Cape Receiver's Mot. for Sanctions (May 23, 2024), at 19 ¶¶ 20-23.

(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) absence of corporate records; and

(8) the fact that the corporation was merely a facade for the operations of the dominant stockholder.

Hunting v. Elders, 359 S.C. 217, 224, 597 S.E.2d 803, 807 (Ct. App. 2004). "The conclusion to disregard the corporate entity must involve a number of the eight factors, but need not involve them all." *Id.* While the eight *Sturkie* factors may not perfectly fit the facts of any given case,[170] the record evidence makes clear that at least half of the factors are satisfied with respect to Charter's control of Cape (and in turn NAAC):

- ***Factor 1:*** At Charter's direction, Cape ensured that its U.S. subsidiary was grossly undercapitalized, with funds regularly siphoned out of the United States—purportedly out of the reach of U.S. creditors and into the hands of NAAC's ultimate owners;

- ***Factor 5:*** Charter siphoned funds from Cape (and NAAC) for its own benefit, stripping NAAC of funds to answer U.S. claimant harmed by Cape's asbestos;

- ***Factor 6***: Cape and NAAC's employees were directed by Charter leadership;

- ***Factor 8***: Cape and NAAC were mere instrumentalities for Charter and the broader Oppenheimer Group System to profit from the sale of a deadly product in the U.S. market for asbestos while avoiding the attendant liability.[171]

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[170] *See Rochester Gas & Elec. Corp. v. GPU, Inc.*, 355 F. App'x 547, 550 (2nd Cir. 2009) (observing that application of veil-piercing factors "to the infinite variety of situations that might warrant disregarding the corporate form is not an easy task because disregarding corporate separateness is a remedy that differs with the circumstances of each case." (quoting *Wm. Passalacqua Builders, Inc. v. Resnick Developers S., Inc.*, 933 F.2d 131, 139 (2d Cir. 1991) (internal quotation marks omitted)).

[171] *See* Sections II.D and II.E.

Neither NAAC nor Cape was permitted to act contrary to its Group Parents' interests. The Group Parents—Charter for Cape, and Cape for NAAC—acted in a self-serving manner by prioritizing their own profits, in the form of subsidiary dividends, over those of their subsidiaries and, more importantly, over the health and safety of U.S. consumers.

Cape, Charter, and the Oppenheimer Group knew that asbestos could cause lung disease, including mesothelioma.[172] To protect the profitability of Cape—Charter's primary profit generator in the 1960s and 1970s—Cape, Charter, and the Oppenheimer Group actively concealed their knowledge of the dangers associated with the high volume of asbestos fibers they sold in the U.S. market.[173]

Moreover, when it became clear that NAAC, Cape, and Charter could face liability in U.S. litigation for its asbestos sales, Cape and Charter worked a fraud on the U.S. market by (i) shuttering NAAC to cut clear ties from the U.S. to the Oppenheimer Group and (ii) concocting a scheme to continue selling Cape raw asbestos fiber to the U.S. market through a new company nearly identical to NAAC, CPC. It would be fundamentally unfair to allow Cape and Charter to benefit from this fraud.

Charter and Cape's activity thus satisfies the second *Sturkie* element. Under the second prong of the *Sturkie* test, the party seeking to pierce the corporate veil must prove an element of "injustice or fundamental unfairness" if the corporate veil is not pierced. To demonstrate fundamental unfairness, the plaintiff must show that "(1) the defendant was aware of the plaintiff's claims against the corporation, and (2) thereafter, the defendant acted in a self-serving manner with

[172] *See* Section II.F.1.

[173] *See* Section II.F.1.

regard to the property of the corporation and in disregard of the plaintiff's claim in the property." *Dumas*, 463 S.E.2d at 644. The Supreme Court of South Carolina has held that "awareness" of the claims against the corporation need not be actual awareness. *Multimedia Publishing of S.C., Inc. v. Mullins*, 314 S.C. 551, 431 S.E.2d 569 (1993) ("A corporate director is chargeable with all matters pertaining to the corporate affairs, of which he has or should have knowledge in the exercise of the duties required of him as a director. . . . We find that knowledge of the Multimedia account gained by [defendant] in his capacity as the director of FSG was sufficient to put him on inquiry, which, if pursued with reasonable diligence, would have lead [sic] to knowledge that the account was unpaid.").

The Oppenheimers perfected a system of control in which they acted in a capacity that did not involve full ownership—they relied on others to spread risk.[174] They were proud of the "minimum investment, maximum control" system they created.[175] No entity should be permitted to profit from a corporate structure specifically designed to avoid liability in this way. *See Drury Dev. Corp.*, 380 S.C. at 101, 668 S.E.2d at 800.

3. *Cape and Charter Shared an Amalgamation of Interests and/or Were Part of a Single Business Enterprise.*

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. This theory provides another framework by which this Court should find Charter liable for the harm caused by Cape's distribution of deadly asbestos throughout the United States.

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[174] *See* Section II.C.

[175] Ex. 6, *Anglo American Corp.*, Forbes, June 15, 1973, at 49; Ex. 7, A.J. Limebeer, *The Group System of Administration in the Gold Mining Industry*, I Optima 26, 26-30 (1951); *see also* Ex. 8, Press Report at 10, 34, and 75.

Under this theory, where affiliated entities function as a single enterprise, South Carolina law requires the enterprise as a whole to answer for the debts and liabilities of its members.[176] *See Las Palmas Assocs. v. Las Palmas Ctr. Assocs.*, 235 Cal. App. 3d 1220, 1249–50, 1 Cal. Rptr. 2d 301, 318 (1991) ("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)).

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 identities 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. 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

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[176] 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 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).

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.").

Despite the Charter Third-Party Defendants' refusal to participate in the discovery process, the record is replete with evidence that Cape and Charter "unified their business operations and resources to achieve a common business purpose"—namely, promoting both the sale and distribution of hazardous asbestos from South African mines into the United States and the flow of resulting funds out of the United States, including for the purpose of stripping their U.S.-based instrumentality, NAAC, of funds that could otherwise be available to U.S. creditors. Moreover, there is no legitimate dispute that the adherence to the fiction of separate corporate entities would defeat justice and deny U.S. citizens harmed by Cape's asbestos any recourse for that harm.[177] *See Walbeck v. I'on Co., LLC*, 439 S.C. 568, 889 S.E.2d 537 (2023) ("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

[177] *See* Sections II.D and II.E; *see also* Order Granting Cape Receiver's Mot. for Sanctions (May 23, 2024), at 16-21, 25-26.

told the HOA and the residents they would do . . . [T]he corporate structure should not shield—fraud, ***evasion of existing obligations***, circumvention of statutes, monopolization, criminal conduct, and the like." (emphasis in original)).

4. *AIA Is Liable for Cape's Asbestos-Related Liabilities as the Successor to Cape Based on Its Express Assumption of Responsibility or, in the Alternative, as Cape's Alter Ego with Respect to Its Continuing Litigation Avoidance.*

a. AIA Expressly Assumed Responsibility for Cape's Asbestos-Related Liabilities.

In connection with its 2017 acquisition of Cape, AIA expressly affirmed the assumption of responsibility for Cape's historical asbestos liability, and it has continued to affirm that responsibility over the intervening years. As a result of this express assumption of responsibility, AIA is liable as a successor for Cape's asbestos-related liabilities.

AIA formed Altrad UK Ltd. (or Altrad Bidco) in June 2017 for the purpose of acquiring Cape.[178] At the time of its purchase of Cape, AIA expressly acknowledged the asbestos-related liabilities of Cape.[179] More significantly, as part of its recommended tender offer for Cape, AIA stated its commitment to ensuring that Cape's asbestos liabilities be honored, affirming its "inten[tion] to procure that each member of the Cape Group honours its obligations under, or in

[178] Ex. 75, Certificate of Incorporation of a Private Limited Company, Altrad UK Limited (June 1, 2017), Cape_Receiver_00185738-72 (identifying AIA as owner of all shares and Mohed Altrad as sole "Individual Person with Significant Control" and as Company Director 1 and Chairman; Ex. 74, Altrad, Annual Report (2017), at Cape_Receiver_00040530 ("The acquisition of Cape PLC shares was carried out through the intermediary holding company Altrad UK, a wholly owned subsidiary of AIA and financed by AIA through a current account."); *see id.* at Cape_Receiver_00040529.

[179] Altrad's 2017 Annual Report acknowledged Cape's establishment (pursuant to a Scheme of Arrangement) of a compensation fund in 2006 for its employees who were exposed to asbestos. Ex. 74, Altrad 2017 Annual Report, at Cape_Receiver_00040530; *see also* Ex. 82, The Scheme Of Arrangement, In the High Court of Justice, Chancery Division (June 2006), at Cape_Receiver_00104532-56.

connection with, the IDC Scheme (including with respect to the funding commitments for future liabilities of the IDC Scheme, the current IDC Scheme administrative arrangements and all related contractual obligations to which members of the Cape Group are subject) following completion of the Offer."[180]

In the years since the acquisition, AIA has continued to acknowledge Cape's asbestos liabilities and reaffirm its responsibility for them. For example, in its annual report for the year ended August 31, 2022, defaulted Third-Party Defendant Altrad Services Ltd. (f/k/a Cape Industrial Services Ltd.) acknowledged Cape's responsibility for harm from asbestos exposure and reported the Altrad Group had set aside £118 million in a 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***."[181] That 2022 annual report further explained that that "[t]he 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."[182] That annual report further stated that "[t]he Group continues to receive claims, from both individuals and insurance companies, in connection with historical alleged exposure to asbestos. ***Where claims are***

[180] Ex. 83, Recommended Cash Offer for Cape plc, at Cape_Receiver_00104914-40 (touting the acquisition as an opportunity to "deliver attractive near and longer term benefit for the Cape Group and the Altrad Group and their respective stakeholders, ***including the IDC Scheme***" (emphasis added)).

[181] Ex. 84, Altrad Servs. Ltd. Annual Report and Financial Statements for the Year Ended 31 August 2022, at Cape_Receiver_00248438-441. Corporate documents define Altrad Group to mean AIA. Ex. 83, Recommended Cash Offer, at Cape_Receiver 00104914.

[182] Ex. 84, Altrad Servs. Ltd. Annual Report and Financial Statements for the Year Ended 31 August 2022, at Cape_Receiver_00248438-441

determined to have merit, the costs are provided for and claims are settled in the ordinary course, otherwise claims are defended." [183]

AIA's 2023 annual report likewise acknowledged its responsibility for Cape's asbestos-related liabilities and stated "Altrad . . . is ***fully committed to settling claims that are determined to have merit*** pursuant to Cape's court approved mechanism for settling such claims. An amount of £ 118 million has been paid or set aside for the settling of valid claims.[184] Of course, a purchaser like AIA can assume the liabilities of an acquired entity if it does so expressly.[185] *Cf. Portfolio Fin. Servicing Co. ex rel. Jacom Computer Servs. v. Sharemax.com, Inc.*, 334 F. Supp. 2d 620, 625 (D.N.J. 2004) (quoting *Arch v. Am. Tobacco Co.*, 984 F. Supp. 830, 841 (E.D. Pa. 1997)) ("where a corporation acquires the stock of another corporation and the target corporation continues to operate as a separate corporate entity, the purchaser corporation does not thereby assume the liabilities of the acquired corporation ***unless it does so expressly***" (emphasis added)).

[183] Ex. 84, Altrad Servs. Ltd. Annual Report and Financial Statements for the Year Ended 31 August 2022, at Cape_Receiver_00248438 n.23; *id.* at Cape_Receiver_00248392 (reporting that "[m]any of [AIA's] operating environments have associated health and safety risks," including 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.").

[184] Ex. 81, Altrad 2023 Annual Report, at Cape_Receiver_00040862. This mechanism for paying claims does not account for U.S. plaintiffs, but is limited to Cape's former U.K. employees.

[185] It is likewise the case that a purchaser can agree to assume liabilities in the context of an asset purchase. In the context of an asset purchase rather than a stock purchase, and in the absence of a statute, a successor corporation is not ordinarily liable for the obligations of the predecessor, unless (i) there was an agreement to assume those 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 for the purpose of wrongfully defeating creditors' claims. *Nationwide Mut. Ins. Co. v. Eagle Window & Door, Inc.*, 424 S.C. 256, 818 S.E. 2d 447 (2018) (citing *Brown v. American Ry. Express Co.*, 128 S.C. 428, 123 S.E. 97 (1924)).

b. Even If AIA Had Not Assumed Cape's Asbestos Liabilities, It Is Cape's Alter Ego With Respect to Its Ongoing Litigation Avoidance.

Even if AIA were deemed not to have assumed Cape's asbestos liabilities despite its repeated public statements to the contrary, AIA would be liable for Cape's ongoing efforts to avoid responsibility as the alter ego of the acquired Cape entities (including Altrad UK Ltd and Altrad Services Ltd.) for continuing the long-running litigation avoidance scheme. *Oskin*, 400 S.C. at 400, 735 S.E.2d at 465 ("An alter-ego theory requires a showing of (1) total domination and control of one entity by another and (2) inequitable consequences caused thereby.").

(i) AIA dominates and controls its wholly owned subsidiaries through which it purchased Cape and that have provided for funds to resolve non-U.S. asbestos claims.

As set forth in Section II.F.1, AIA dominates and controls its wholly owned subsidiaries that acquired Cape (Altrad UK Ltd.) and that have made provisions of funds to address non-U.S. claims stemming from Cape's asbestos liabilities (Altrad Services Ltd.). Altrad UK Ltd. was created by AIA for the sole purpose of effectuating the acquisition of Cape for AIA, and AIA remains its "immediate and ultimate parent undertaking."[186]

In connection with the acquisition of Cape itself, AIA asserted its control, making clear it would ensure that members of the Cape Group continued to fund their existing commitments to the IDC Scheme, stating it

> ***intends to procure that each member of the Cape Group honours its obligations*** under, or in connection with, the IDC Scheme (including with respect to the funding

[186] Ex. 121, Altrad UK Ltd. Annual Report for the Year Ended 31 August 2022, at Cape_Receiver_00185943 ¶ 14 ("Controlling party"; "The company's immediate and ultimate parent undertaking is Altrad Investment Authority S.A.S., a company controlled by M Altrad."); Ex. 122, Altrad UK Ltd. Annual Report for the Year Ended 31 August 2023, at Cape_Receiver_00185987 ¶ 14 ("Controlling party"; "The company's immediate and ultimate parent undertaking is [AI], a company incorporated in France. [AIA], which is controlled by Dr M Altrad.").

> commitments for future liabilities of the IDC Scheme, the current IDC Scheme administrative arrangements and all related contractual obligations to which members of the Cape Group are subject)[.][187]

Moreover, since its acquisition, AIA has controlled Cape financially and with respect to risk management (including the management of asbestos liabilities).[188] Altrad Services' financial statements state that AIA "manages risk at a Group level," including the "health and safety risks" present in "[m]any of [AIA's] operating environments.[189] AIA also provided a letter of support for Altrad Services Ltd., the entity that made the £118.1 million Provision of Funds to address certain non-U.S. historical claims relating to asbestos exposure, as a going concern in connection with that entity's financial statements.[190] Altrad UK Ltd. is substantially indebted to AIA, including

[187] Ex. _83, Recommended Cash Offer for Cape plc, at Cape_Receiver_00104914-40 (emphasis added).

[188] Ex. 84, Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022, at Cape_Receiver_00248391 ("The Board of [AIA] (the ultimate parent company) manages risk at a Group level.").

[189] Ex. 85, Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2023, at 3, 4; *see also* Ex. 84, Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022, at Cape_Receiver_00248391.

[190] Ex. 85, Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2023, at Cape_Receiver_00248371 (referring to the letter of support from AIA, which "confirms continuing support for the going concern period until 30 April 2025"); Ex. 84, Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022, at Cape_Receiver_00248399; Ex. 84, Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022, at Cape_Receiver_00248412, Cape_Receiver_00248438 n.23; *see also* Joshua Stein, *Altrad Makes £118m Provision for Asbestos Claims*, Construction News (Apr. 14, 2023), *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.

£448,304,150 in 2018, growing to £996,570,000 in 2023, but AIA has confirmed no repayment will be sought until such time as Altrad UK Ltd. has sufficient funds to repay it.[191]

(ii) AIA has exercised its dominion and control to produce inequitable results.

Despite its stated "commit[ment] to supporting victims of asbestos," and its avowed ability to "procure that each member of the Cape Group honor its obligations," AIA has exercised its control to perpetuate Cape's wrongful litigation avoidance scheme, at least with respect to U.S. claimants.[192] 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 Altrad entities named as Third-Party Defendants ***in this action***, including (i) Altrad UK Ltd., which is represented by the same counsel as AIA, and (ii) Altrad Services Ltd. [193] This unrebutted evidence is consistent with the adverse inferences previously drawn by this Court.[194]

Application of alter ego theory requires fraud, injustice, or contravention of public policy, and each are manifest here. *See Oskin*, 400 S.C. at 400, 735 S.E.2d at 465 (citing *Colleton Cnty.*, 371 S.C. at 237, 638 S.E.2d at 692). AIA publicly purports to be "fully committed to settling [asbestos-related] claims that are determined to have merit," but directs its wholly owned subsidiaries to continue perpetuating Cape's decades-long scheme to avoid answering to U.S.

[191] Ex. 123, 2019 Altrad UK Ltd. Annual Report, at Cape_Receiver_0018526; Ex. 122, 2023 Altrad UK Ltd. Annual Report, at Cape_Receiver_00185980.

[192] Ex. 81, Altrad Annual Report 2023, at Cape_Receiver_00040862 ("Altrad takes these commitments seriously. . . . Looking forward, the company is actively looking for opportunities to support victims of mesothelioma . . .").

[193] Order Entering Default (Dec. 6, 2023); *see also* Ex. 124, Correspondence Between L. Joyner, J. T. Lay, and T. Carroll, dated August 18–20, 2023, at Cape_Receiver_00001982.

[194] Order Granting Cape Receiver's Mot. for Sanctions (May 23, 2024), ¶¶ 18, 33, 34, 36, 44-46 ("AIA and Mohed Altrad are responsible for Cape's and other non-responding Altrad Third-Party Defendants' failure to respond to litigation involving Cape it the United States. . . .").

citizens harmed or killed by its asbestos.[195] That is precisely the inequitable outcome the doctrine is meant to prevent.

5. *Mr. Altrad Is Liable for Cape's Historic Asbestos Liabilities Based on AIA's Assumption of Liability or, in the Alternative, Is Liable for Cape's Continuing Litigation Avoidance as an Alter Ego.*

Mohed Altrad, the founder and President of the Altrad Group, is the alter ego of AIA and its Cape-related subsidiaries and is liable for Cape's asbestos-related liabilities and ongoing litigation avoidance scheme to the same extent as AIA.[196]

a. Mr. Altrad Dominates and Controls AIA and the Wholly Owned Subsidiaries Through Which AIA Purchased Cape and That Have Provided for Funds to Resolve Non-U.S. Asbestos Claims.

There is no legitimate dispute that Mr. Altrad is the alter ego of AIA and the various subsidiaries that bear his name. 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 [Altrad Group's] shares."[197] By September 30, 2022, ***Mr. Altrad held 97.60% of the company's shares***.[198] As of September 30, 2023, Mr. Altrad maintained that near-total ownership level, owning 97.60% of the

[195] Ex. 81, Altrad 2023 Annual Report, at Cape_Receiver_00040862.

[196] *See* Ex. 76, Altrad 2022 Annual Report, at Cape_Receiver_00040825; *see also* Ex. 77, Gaspard Sebag & Tara Patel, *Billionaire Scaffolding 'King' Guilty of Bribing Rugby Boss*, Bloomberg (Dec. 13, 2022) (reporting Mr. Altrad's recent corruption conviction, punished with an 18-month suspended jail term and €50,000 fine), *Available at* https://www.bloomberg.com/news/articles/2022-12-13/scaffolding-billionaire-convicted-of-corruption-over-sponsorship#xj4y7vzkg.

[197] Ex. 74, Altrad, Annual Report (2017), at Cape_Receiver_00040519.

[198] Ex. 76, Altrad, Annual Report (2022), at Cape_Receiver_00040825 (depicting new shareholder structure as of September 30, 2022, as 97.60% owned by Mohed Altrad and 2.40% owned by "Others").

Altrad Group.[199] 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 and under his control.

Moreover, 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.[200] Indeed, it acknowledged as much in its Recommended Cash Offer for Cape plc, in which it stated "Altrad [defined as AIA] is a private company which is ***controlled by Mr. Mohed Altrad***." [201] As the Altrad Group's website currently states, Mr. Altrad "still le[ads]" the Altrad Group of companies.[202] 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."[203]

In addition to his controlling ownership and leadership of the AIA, Mr. Altrad was identified as the "individual person with significant control" over Altrad UK Ltd. upon its

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[199] Ex. 81, Altrad, Annual Report (2023), Cape_Receiver_00040879.

[200] Ex. 125, Affidavit of M. Altrad ¶ 32; Ex. 84, Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022, Cape_Receiver_00248388.

[201] Ex. 83, Recommended Cash Offer for Cape plc, at Cape_Receiver_00104914 ¶ 7 ("Information on the Altrad Group") (emphasis added).

[202] Ex. 126, Altrad Website, *Our History*, https://www.altrad.com/en/our-history.html, Cape_Receiver_00002425-6 ("Today, the group is still led by its founder, Mohed Altrad.") (last visited November 3, 2024).

[203] Ex. 127, Altrad Website, *Governance*, https://www.altrad.com/en/governance.html#:~:text=It%20is%20headed%20by%20Mohed,humanist%20conception%20of%20the%20company, Cape_Receiver_00002423-4 (last visited November 3, 2024).

formation.[204] Mr. Altrad also was a director of Altrad UK Ltd. at its formation and subsequently became a director of defaulting Third-Party Defendants Cape UK Holdings Newco Ltd. and Cape Industrial Services Group Ltd.[205] Further, in Altrad UK Ltd.'s most recent annual report, Mr. Altrad is identified as the ultimate controlling party: "The company's immediate and ultimate parent undertaking is [AIA]," which in turn "is controlled by Dr M Altrad." [206]

b. Mr. Altrad has exercised his dominion and control to produce inequitable results.

Like AIA, and as set forth in Section II.F.1, Mr. Altrad has exercised his control for fraudulent and inequitable purposes, *i.e.*, to reaffirm AIA's commitment to accept responsibility for Cape's asbestos-related liabilities while continuing to evade those liabilities in the United States, and to perpetuate Cape's wrongful litigation avoidance scheme even today.[207] For the reasons set forth in Sections II.F.1 and IV.A.4, equity requires that he be recognized as the alter ego of AIA and its Cape-related subsidiaries. *Oskin*, 400 S.C. at 400, 735 S.E.2d at 465. This

[204] Ex. 75, Certificate of Incorporation of a Private Limited Company, Altrad UK Limited (June 1, 2017), Cape_Receiver_00185738-72 (identifying Mohed Altrad as sole "Individual Person with Significant Control" and as Company Director 1 and Chairman); Ex. 74, Altrad, Annual Report (2017), at Cape_Receiver_00040529-30; *Altrad Investment to Buy UK Oil Services Firm Cape for 332.2 mln Pounds*, REUTERS (July 7, 2017), https://www.reuters.com/article/cape-ma-altrad-investment/altrad-investment-to-buy-uk-oil-services-firm-cape-for-332-2-mln-pounds-idUSL4N1JY2KG.

[205] Ex. 75, Certificate of Incorporation of Altrad UK Ltd. (June 1, 2017); Ex. 79, Cape_Receiver_00187939, Termination of a Director Appointment of Cape UK Holdings Newco Ltd., dated October 29, 2020; Ex. 94, Cape_Receiver_00187592, Termination of a Director Appointment of Cape Industrial Services Group Ltd., dated October 29, 2020).

[206] Ex. 122, Altrad UK Annual Report for the Year Ended 31 August 2023, at Cape_Receiver_00248387 ("Controlling party.").

[207] Ex. 81, Altrad, Annual Report (2023), at Cape_Receiver_00040862 ("Altrad takes these commitments seriously. . . . Looking forward, the company is actively looking for opportunities to support victims of mesothelioma . . .").

evidence is unrebutted and consistent with consistent with the adverse inferences previously drawn by this Court.[208]

6. *ESAB Corp. Controls Charter Today and Should Be Held Responsible for Its Wrongful Litigation Avoidance.*

ESAB is the corporate successor-in-interest to Charter and has assumed the historical liability associated with their asbestos-related activities. In August 1993, Charter plc ("New Charter") acquired all of the interests of Charter Consolidated plc (f/k/a Charter Consolidated Limited) under a court-approved Scheme of Arrangement via a share exchange, with Charter Consolidated plc becoming New Charter's subsidiaries.[209] In 2008, Charter International Limited ("PubCo Charter", and formerly known as Charter International PLC) acquired all of the interests of New Charter under a court-approved Scheme of Arrangement, also via a share exchange.[210]

These were not arm's-length transactions with unrelated parties; instead, they were internal reorganizations in which the liabilities of Charter remained Charter's, whether it was called New Charter, PubCo Charter, or some other variant. Stated another way, this was an extension of the Group System and Charter's control over Cape from prior decades. *See Ed Peters Jewelry Co. v. C & J Jewelry Co.*, 124 F.3d 252, 268 (1st Cir. 1997) ("equity is loath to elevate the form of the transfer over its substance, and deigns to inquire into its true nature"); *Kaiser Found. Health Plan of Mid-Atl. States v. Clary & Moore, P.C.*, 123 F.3d 201, 205 (4th Cir. 1997).

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[208] Order Granting Cape Receiver's Mot. for Sanctions (May 23, 2024), at 27-31, ¶¶ 18, 33, 34, 36, 41, 42, 44–46 ("Mohed Altrad controls decision making within the Altrad Group, including for Cape."; "AIA and Mohed Altrad are responsible for Cape's and other non-responding Altrad Third-Party Defendants' failure to respond to litigation involving Cape it the United States. . . .").

[209] Ex. 86, 1993 Scheme of Arrangement, Cape_Receiver_00178003-16.

[210] Ex. 128, 2008 Scheme of Arrangement, Cape_Receiver_00182324-31.

Meanwhile, in 1994, New Charter had acquired all of the equity interests of ESAB AB (including its South Carolina subsidiary and operations), with the ESAB conglomerate also becoming a subsidiary New Charter.[211] Once PubCo Charter acquired New Charter's interests (and the Charter liabilities), it also acquired the ESAB conglomerate's interests.

In 2011, Colfax UK Holdings Ltd., a wholly owned subsidiary of Colfax Corporation ("Colfax Parent"), acquired all of the equity interest of Pubco Charter (including the ESAB conglomerate) pursuant to an Implementation Agreement, with Pubco becoming a wholly owned subsidiary of Colfax UK Holdings Ltd.[212] In 2021, Colfax Parent formed ESAB Corporation, a Delaware corporation,[213] and the next year, Colfax Parent, the ultimate parent of Colfax UK Holdings, completed a spin-off of the new ESAB Corporation, which became the parent of Colfax UK and indirect parent of PubCo Charter.[214]

As a result of this spin-off, Charter became part of ESAB Corporation. In its prospectus, Colfax stated that "subsidiaries to be contributed by Colfax" to the newly spun off ESAB Corp. were "each one of many defendants in a large number of lawsuits that claim personal injury as a result of exposure to asbestos," including for products that "were provided to meet specifications of the subsidiaries' customers, including the U.S. Navy" (referencing Cape's monopoly over

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[211] Ex. 90, Certificate of Incorporation of ESAB Corporation, May 19, 2021, at Cape_Receiver_00185411 (ESAB Holdings Limited was a subsidiary of ESAB AB).

[212] Ex. 89, Implementation Agreement, dated as of September 12, 2011, by and among Colfax Corporation, Colfax UK Holdings LTD and Charter International PLC, Cape_Receiver_00102613-95.

[213] Ex. 90, Certificate of Incorporation of ESAB Corporation, dated May 19, 2021, Cape_Receiver_00185411-3.

[214] Ex. 91, Separation Agreement, at Cape_Receiver_00183869.

amosite).[215] The contributed subsidiaries included Charter.[216] As part of the spin-off, Colfax and ESAB Corp. executed a 2022 Separation Agreement that addressed the transfer of assets and liabilities to ESAB and memorialized ESAB's assumption of liabilities and provision of financial guarantees to its new Charter subsidiaries:

> In order to effect the Separation, the Parties ***shall, to the extent necessary, cause, and shall, to the extent necessary, cause the members of their respective Groups to cause***, (i) the ESAB Group to own, to the extent it does not already own, all of the ESAB Assets and none of the Enovis Assets, and (ii) ***the ESAB Group to be liable for***, to the extent it is not already liable for, ***all of the ESAB Liabilities***.[217]

"ESAB Group" was defined to include not only ESAB Corp., but also "***each Subsidiary of ESAB***,"[218] which included Charter. "ESAB Liabilities" was defined broadly and included:

> any and all Liabilities relating to, arising out of or resulting from the actions, inactions, events, omissions, conditions, facts or circumstances occurring or existing prior to, at or after the Effective Time (whether or not such Liabilities cease being contingent, mature, become known, are asserted or foreseen, or accrue, in each case before, at or after the Effective Time), in each case to the extent that such Liabilities relate to, arise out of or result from . . . an ESAB Asset . . . , including: (i) all Liabilities included or reflected as liabilities or obligations of ESAB or the members of the ESAB Group on the ESAB Balance Sheet, subject to any discharge of such Liabilities subsequent to the date of the ESAB Balance Sheet; . . . [or] (iv) any and all Liabilities that are expressly provided by this Agreement or any Ancillary Agreement as Liabilities to be assumed by ESAB or any other member of the ESAB Group, and all agreements, obligations and Liabilities of any member of the ESAB Group under this Agreement or any of the Ancillary Agreements; . . . [219]

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[215] Ex. 129, *Information Statement of Colfax Corp.*, at Cape_Receiver_00184395, Cape_Receiver_00184400-1 (Mar. 17, 2022).

[216] ESAB Corp.'s subsidiaries include Charter Consolidated Limited, Charter Overseas Holdings Limited, Charter International Limited, among other related entities..

[217] Ex. 91, Separation Agreement, § 2.1(a) ("Transfers of Assets and Assumptions of Liabilities; ESAB Assets; Enovis Assets.") at Cape_Receiver_00183887 (emphases added).

[218] Ex. 91, Separation Agreement, § 1.1 ("Definitions") at Cape_Receiver_00183874.

[219] Ex. 91, Separation Agreement, § 2.1(d)(i), (iv) ("Transfers of Assets and Assumptions of Liabilities; ESAB Assets; Enovis Assets.") at Cape_Receiver_00183889-90.

Finally, not only was ESAB Corp. the ultimate parent for the Charter entities post-spinoff, in their annual reports, Charter describes ESAB Corp. as "the controlling party."[220] Several Charter entities also reported post-separation that "***ESAB Corporation will support the company to meet all liabilities for a period to 31 December 2024***, which is consistent with the company's going concern assessment period."[221] Several of these Charter entities appear to have neither operational revenue nor employees.[222] By their very own admissions, Charter no longer operate, have employees, or generate revenue, but instead are shells of what they once were and are "controlled" by their new American parent corporation, ESAB Corp.

As with AIA's control over Cape, ESAB's control over Charter has been exercised to result in inequitable results, *i.e.*, the continuation of a litigation avoidance scheme to deny U.S. claimants redress, including as reflected in the wholesale failure of ESAB and Charter to participate in discovery in this case. This evidence, much of which is a matter of public record, is unrebutted and is consistent with the adverse inferences previously drawn by this Court.[223] Indeed, ESAB

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[220] *See, e.g.*, Ex. 92, Charter Consolidated Ltd. Report (2022), at Cape_Receiver_00177649 (reporting £664,288,000 in net assets in 2022, with the "company's shares . . . held by Charter limited, its immediate parent ***and controlling party***," while it "regards ESAB Corporation . . . as the Company's ultimate parent company ***and controlling party***" (emphasis added)); Ex. 93, Central Mining & Inv. Corp. Ltd. Report (2023), Cape_Receiver_00172654-57 (also reporting ESAB Corporation as "ultimate parent company ***and controlling party***," and net assets of £78,857,000 (emphasis added)).

[221] Ex. 92, Charter Consolidated Limited Audited Financial Statements for the Year Ended 31 December 2022, at Cape_Receiver_00177636; Ex. 131, CAST Limited Audited Financial Statements for the Year Ended 31 December 2022 at 3.

[222] Ex. 130, Central Mining Annual Report for the Period Ended 31 December 2022, at Cape_Receiver_00175381 ("The Company has not prepared a profit and loss account as there was no revenue during the period ended 31 December 2022"); Ex. 92, Charter Consolidated Limited Audited Financial Statements for the Year Ended 31 December 2022, at Cape_Receiver_00177646 (no income or employees); Ex. 131, CAST Limited Audited Financial Statements for the Year Ended 31 December 2022 at 13 (no employees).

[223] Order Granting Cape Receiver's Mot. for Sanctions (May 23, 2024) at 21-26, ¶¶ 54-66, 69-71.

has not produced a shred of evidence in this action, much less evidence that would relieve it of responsibility for the unaddressed harm of its "controlled" subsidiary, Charter. For decades, Charter has escaped liability by dissolving NAAC and retreating from U.S. shores. Now that they are "controlled" by ESAB Corp., a U.S. corporation, equity demands that this Court hold ESAB responsible for the reprehensible acts of Charter. *Oskin*, 400 S.C. 390, 397.

V. CONCLUSION

For the foregoing reasons, the Receiver respectfully requests entry of summary judgment in his favor and against the Charter and Altrad Third-Party Defendants on the issue of their successor liability and/or alter ego/veil piercing liability for the harm caused by, and the continuing litigation avoidance scheme of, Cape and NAAC.

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Attorneys for Third-Party Plaintiff

November 8, 2024
Columbia, South Carolina

The Supreme Court of South Carolina

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

v.

3M Company, et al., Defendants,

and

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

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa LTD., et al., Third-Party Defendants,

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

Appellate Case No. 2024-000916

AND

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

v.

3M Company, et al., Defendants,

and

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

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa LTD., et al., Third-Party Defendants,

Of which Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. are the Petitioners.

Appellate Case No. 2024-001423

AND

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

v.

3M Company, et al., Defendants,

and

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

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa LTD., et al., Third-Party Defendants,

Of which Mohed Altrad and Altrad Investment Authority

S.A.S. are the Petitioners.

Appellate Case No. 2024-001499

AND

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

v.

3M Company, et al., Defendants,

and

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

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa LTD., et al., Third-Party Defendants,

Of which ArranCo US, LLC, Hawk Bidco US Inc., Sparrows Offshore, LLC, Mohed Altrad, Altrad Investment Authority SAS, Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. are the Petitioners.

Appellate Case No. 2024-002114

AND

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

v.

3M Company, et al., Defendants,

and

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

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa LTD., et al., Third-Party Defendants,

Of which Mohed Altrad and Altrad Investment Authority S.A.S. are the Petitioners.

Appellate Case No. 2024-002116

AND

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

v.

3M Company, et al., Defendants,

and

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

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa LTD., et al., Third-Party Defendants,

Of which Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. are the Petitioners.

Appellate Case No. 2024-002117

ORDER

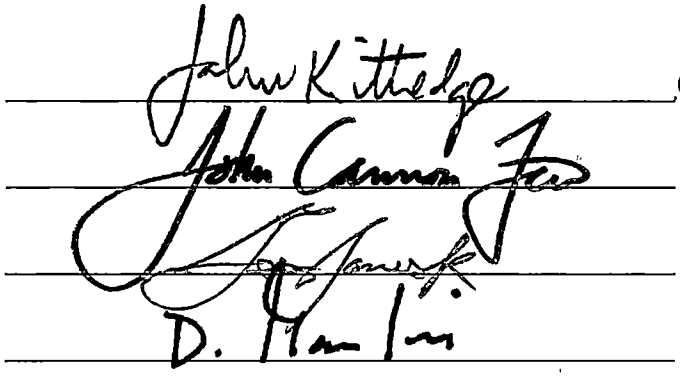
Peter D. Protopapas, Receiver for Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, has filed a motion for a writ of supersedeas and a temporary restraining order and a motion to stay the filing deadlines pending resolution of the motion for a writ of supersedeas.

The basis for the supersedeas request is an order issued by Justice Mann of the High Court of Justice Business and Property Courts of England and Wales Business List (CHD) (the English Court Order), which declares the March 16, 2023 order issued by the South Carolina Fifth Judicial Circuit Court appointing the Receiver "is not recognised and has no legal effect in England and Wales and worldwide." The Order further restrains the Receiver's actions on behalf of Cape Intermediate Holdings Limited "in England and Wales . . . *in the South Carolina Court* and worldwide." (Emphasis added). The English Court Order threatens the Receiver, as well as any person who knows of and disobeys the Order or does anything that helps or permits any person to whom the Order applies to breach the terms of the Order, with contempt of court, imprisonment, fines, or seizure of assets.

Any attempt by a foreign court to intervene in and threaten the participants in matters properly pending in the courts of South Carolina would be shocking and indefensible. The dispute giving rise to the English Court's attempt to intervene in these matters involves the appropriate reach of the Receiver appointed by the South Carolina Circuit Court—an issue this Court will hear during its February term of court and resolve after oral argument.

As an independent judiciary in a sovereign independent state, we are well-equipped to decide the issues presented to us. In the interim, all parties shall comply with all scheduling orders and rules, and all proceedings in these matters will continue in the ordinary course in the circuit court and this Court.

Having addressed the underlying and legitimate concerns of the parties related to the English Court Order, we conclude there is no reason for a writ of supersedeas to be issued in these matters. Therefore, we deny the Receiver's emergency motion for supersedeas and motion to stay the filing deadlines.



C.J.

J.

J.

J.

Verdin, J., not participating

Columbia, South Carolina
January 16, 2025

cc:
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Lindsay Anne Joyner
Eleanor Lasseigne Jones
Jonathan M. Robinson
Shanon N. Peake
G. Murrell Smith, Jr.

The Supreme Court of South Carolina

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; Zurn Industries, LLC, Defendants,

and

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

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa LTD., 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, and The Sparrows Group, LLC, Third-Party Defendants,

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

Appellate Case Nos:
2024-001423, 2024-001499, 2024-000916, 2024-002114, 2024-002116, 2024-002117, 2025-000052

ORDER

We have before us seven petitions for writs of certiorari filed in this Court under Rule 242 of the South Carolina Appellate Court Rules. Each petition was filed by some combination of Petitioners Mohed Altrad, Altrad Investment Authority SAS, Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd., and each arises from an order of the court of appeals dismissing an appeal on the ground the order appealed from was not immediately appealable. Each appeal and now each petition challenges some aspect of the circuit court's order appointing Peter D. Protopapas as Receiver for Defendant Cape PLC. We deny the petitions in cases 2024-000916, 2024-002114, 2024-002116, 2024-002117, and 2025-000052. In cases 2024-001423 and 2024-001499, we convert the petitions to common law writs of certiorari, and grant them pursuant to article V, section 5 of the South Carolina Constitution and section 14-3-310 of the South

Carolina Code (2017). We dispense with any briefing and remand the cases to the circuit court for all purposes, specifically including:

(A) On May 21, this Court filed its opinion in *Welch v. Atlas Turner, Inc*, Op. No. 28284 (S.C. Sup. Ct. filed May 21, 2025) (Howard Adv. Sh. No. 19 at 12). In that opinion, we analyzed the circuit court's jurisdiction to appoint a receiver, discussed the factual basis on which such an order must be based, and set forth limitations on the receiver's scope of authority. We also made it clear that appointing a receiver before judgment is permissible only in the "rarest" and "most extraordinary" cases. We now direct the circuit court to:

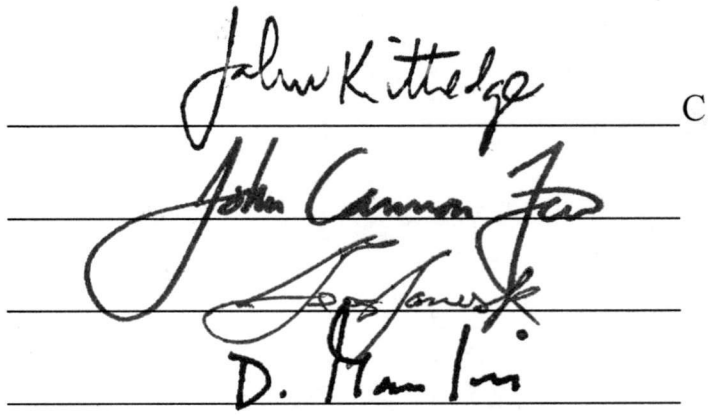
1) Ensure the receiver has been authorized to conduct its work by an order filed in the specific case as to which the work is to take place. The receiver is not to be authorized to conduct work as to a case in which no receiver appointment order has been filed.
2) Ensure that such an order is based on findings of fact sufficient under *Welch* to justify the order, and that the receiver's scope of authority is limited as set forth in *Welch*.
3) To the extent the circuit court intends to authorize the work of a receiver based on facts not found sufficient in *Welch*, or to authorize a scope of work not approved in *Welch*, the circuit court should make specific findings of fact and conclusions of law the circuit court finds justify its action.

(B) It has come to our attention there may be motions filed in this case and other asbestos cases that have not been ruled on by the circuit court. Specifically, we understand there is a pending motion to dissolve the receivership filed September 15, 2023, and a pending motion to reconsider a "clarifying" order filed November 15, 2024, both in *Park v. Armstrong International, Inc, et al.*, 2021-CP-40-2727. To the extent that is true, we direct the circuit court to either rule on all pending motions or set forth an explanation of the reasons the court determines it should not rule at this time.

(C) We ask that the circuit court provide this Court with a report on its progress on matters (A) and (B), including the current status of *Park* and all asbestos cases in which a receiver has been appointed, every 30 days until further order of this Court.

We address one final matter. Over the last few years, the court of appeals and this Court have received dozens of interlocutory appeals in asbestos cases such as this one. In the vast majority of those cases, the court of appeals dismissed the appeal

because the order was not an immediately appealable order, and we denied certiorari because we agreed the dismissal was proper. In fact, many of the appeals from those orders have bordered on frivolous. We will rule at a later time on any currently pending motion for sanctions, and any further frivolous appeals in these cases from interlocutory orders that are not immediately appealable will result in sanctions. In addition, the parties' filings at the court of appeals and this Court have been unnecessarily antagonistic, predominated by what one litigant in these petitions characterized as "sniping" at each other on matters that have nothing to do with the merits of the appeal. No party gains an advantage in the exercise of this inappropriate behavior. This Court and the court of appeals will not tolerate it any further. Appeals will be summarily dismissed, or requested relief will be summarily granted, if any party continues with this inappropriate behavior. Our intention is to reach and address the merits of issues properly before us without the distraction of unnecessary sniping by the lawyers, and if the lawyers persist in this sniping, appropriate sanctions will be imposed.



C.J.

J.

J.

J.

Verdin, J., not participating.

Columbia, South Carolina
June 26, 2025

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Eleanor Lasseigne Jones
Jonathan M. Robinson
Brian Montgomery Barnwell
Amelia Morgan Farmer
Ioannis (Ian) George Conits
Peter Demos Protopapas
William James Blount
A.Victor Rawl, Jr.
John S. Nichols
Steven James Pugh
Benjamin Palmer Carlton
Carmen Vaughn Ganjehsani
Ashwin Ray Sanzgiri
John Kenneth Chandler
The Honorable Jeanette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

JOHN A. TIBBS and MARGARET B. TIBBS,
Plaintiffs,
v.
3M COMPANY *et al.*,

Defendants.

****

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

Third-Party Plaintiff,

v.

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

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

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

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

NOTICE OF AND MOTION TO CONFIRM APPOINTMENT OF RECEIVER

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

Third-Party Defendants.

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

INTRODUCTION

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

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

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

PROCEDURAL BACKGROUND

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

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

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

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

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

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

[4] *Id.*

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

FACTUAL BACKGROUND[6]

A. The Foundation of Cape's Moral Fraud

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

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

[5] No. 2023-001096, 2025 WL 1450573, at *9-12 (S.C. May 21, 2025)
[6] In an effort to avoid overwhelming the e-filing system and duplicating many exhibits that are already in the record, the documents referred to herein reflect the respective exhibit numbers in the Report of the Receiver Relating to the Factual Predicate Underlying the Cape Appointment Order, filed with this Court on July 11, 2025.
[7] Ex. 1, Robert L. Virta, *Asbestos: Geology, Mineralogy, Mining, and Uses*, U.S. Geological Survey Open-File Rep. 02-149, at 5 (2002).
[8] *See Id.*

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

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

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

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[9] Ex. 2, Jock McCulloch, *Surviving Blue Asbestos: Mining and Occupational Disease in South Africa* 115 (2002).
[10] Ex. 1 at 13.
[11] Ex. 2.1, Jock McCulloch, *Asbestos Blues: Labour, Capital, Physicians & the State in South Africa* 27 (James Currey 2002).
[12] *Id.* at 30.
[13] *See, e.g.,* Ex. 3, "Asbestos Manufacturers," The Mesothelioma Center (Nov. 14, 2024), https://www.asbestos.com/companies/.
[14] Ex. 4, U.S. Gov't Accountability Off., GAO-11-819, *Asbestos Injury Compensation: The Role and Administration of Asbestos Trusts Highlights* (2011) (report noting that "about 100 companies have declared bankruptcy at least partially due to asbestos-related liability" and that "since 1988, 60 trusts have been established to pay claims").
[15] Ex. 5, J.S. Harington & N.D. McGlashan, *South African Asbestos: Production, Exports, and Destinations*, 1959–1993, 33 AM. J. INDUS. MED. 321, 323 (1998) (reporting that in the early-1960s North America was a major recipient of South-African amosite and crocidolite exports); Karen Selby, *Mesothelioma in South Africa*, ASBESTOS.COM (Apr. 17, 2025), https://www.asbestos.com/mesothelioma/south-africa/ (noting South Africa supplied ≈97 % of the world's crocidolite and "practically all" amosite and that the mines were owned by companies including Cape Asbestos); *See also, e.g.*, North American Asbestos Corporation, "States Where

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

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

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

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

[16] *See supra* note 15.

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

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

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

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

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

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

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

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

Plaintiffs' counsel also described Cape's moral fraud in the Park Appointment Motion.[23] The successor corporation to Cape is a third-party defendant in the above-captioned matter—Altrad Investment Authority S.A.S ("Altrad"), which purchased Cape in 2017—and Altrad has, as this court knows, absolutely refused to participate in discovery in this case.[24] Altrad has not produced a single document to the Receiver, and as a result, this court entered an order against Altrad for sanctions and other relief on May 23, 2024.[25] The Park Appointment Motion was based on publicly available documents from litigation against Cape in the 1970s and against Cape-associated entities.[26] These documents outline the moral fraud allegations against Cape:

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

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[23] *See generally* Motion to Appoint Receiver, *Park v. Armstrong Int'l, Inc.*, No. 2021-CP-40-02727 (S.C. Ct. Com. Pl. Mar. 6, 2023).
[24] *See* Order Granting the Receiver for Cape PLC's Motion for Sanctions and Motion for Adverse Inference as to the Altrad and Charter Third-Party Defendants, *Tibbs v. 3M Co.*, No. 2023-CP-40-01759 (S.C. Ct. Com. Pl. May 23, 2024).
[25] *See generally id.*
[26] *See, e.g.*, Motion to Appoint Receiver, *Park v. Armstrong Int'l, Inc.*, No. 2021-CP-40-02727.

6. Cape's strategy was to sell asbestos to US customers, despite its private knowledge of the dangers of asbestos exposure and then retreat to England where US default judgments would not be enforced.

7. Cape set up a phantom company in Liechtenstein designed to camouflage its connection to Cape, but was in fact Cape, to continue to sell asbestos in the US after Cape closed NAAC and retreated to England.[27]

B. Cape's Continuing Moral Fraud

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

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

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

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

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

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

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

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

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

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

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

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

[34] *Id.* Cape_Receiver_000 95988 ("Q. Who drew the Articles of Incorporation? A. Mr. Max Meyer. At least I asked him to do this work for me. Who actually did the work I couldn't say.").
[35] Ex. 18, Testimony of A. Penna, Mar. 14, 1988, at Cape_Receiver_00132246.
[36] *Id.* at Cape_Receiver_00132239-40.
[37] *Id.*
[38] Ex. 19, Deposition of C. Morgan, Feb. 20, 1981, at Cape_Receiver_00096022. ("I advised them that North American Asbestos was being liquidated, it was no longer to be in the position to supply them with fiber, I had made a connection where I thought I could supply them with fiber, I would like their consideration very much."); *id.* at Cape_Receiver_00096003, Cape_Receiver_00096063-4 ("Q. When Tony Penna contacted you on behalf of the Lichtenstein corporation you knew, did you not, in fact he was actually contacting you on behalf of Cape Asbestos? A. No, Sir, I did not know that."); *id.* at Cape_Receiver_00096064 ("Q. Do you know who owns the Lichtenstein corporation? A. No, Sir. Q. Has anyone ever suggested to you that Cape Asbestos has some ownership in the Lichtenstein corporation, Associated Minerals Corp.? A. Definitely not. Q. has anyone ever suggested to you that any of the principals of Cape Asbestos had some interest in that Liechtenstein corporation? A. No, Sir.").

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

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

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

[39] *Id*. at Cape_Receiver_00096000.
[40] *Id.* at Cape_Receiver_00095991.
[41] *Id.* at Cape_Receiver_00095992-3.
[42] *Id.* at Cape_Receiver_00096066.
[43] Ex. 20, Deposition of J. Holtze, Apr. 12, 1979, at Cape_Receiver_00097838-9.
[44] *See Cape Intermediate Holdings Ltd. v. Protopapas*, [2024] EWHC 2999 (Ch) (Eng.).
[45] *See id.*

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

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

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

[46] Order Appointing Receiver at 3, *Park v. Armstrong Int'l, Inc.*, No. 2021-CP-40-02727 (S.C. Ct. Com. Pl. Mar. 17, 2023).
[47] *Welch,* 2025 WL 1450573, at *10-12.
[48] Altrad, through Cape Intermediate Holdings Limited, obtained an injunction against the Receiver in the High Court of England and Wales on November 22, 2024. The order includes a Penal Notice threatening criminal prosecution and imprisonment for anyone who knows of the order and fails to comply with it. [cite] ("IF YOU THE DEFENDANT DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED. ANY PERSON WHO KNOWS OF THIS ORDER AND DISOBEYS THIS ORDER OR DOES ANYTHING WHICH HELPS OR PERMITS ANY PERSON TO WHOM THIS ORDER APPLIES TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.") (all capitals in original) .

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

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

C. Key Evidence Supporting Appointment of a Receiver over Cape

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

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

[49] *See* Ex. 21, Letter from Signature Litigation to P. Protopapas (May 19, 2025).
[50] *See, e.g.*, Ex. 22, Letter from R. Oren to Lloyd's (May 7, 2025).
[51] *See id.*; *see also Welch,* 2025 WL 1450573, at *7. Altrad does not limit its use of threats and intimidation to U.S. parties. Just a week ago, a report was issued by the U.K. All-Party Parliamentary Group (APPG) on Occupational Safety and Health relating to a request by an asbestos victims' support group for mesothelioma research funding by Altrad. The APPG was composed of Peers and Members of Parliament. The report notes that "Altrad is the ultimate parent company of Cape. It purchased Cape in 2017 and has benefitted substantially from the transaction." APPG Report (2025) at 7. The report noted that, on numerous occasions, Altrad lawyers (representing the parent in claims against Cape) "threatened to report" claimants' attorneys to the Solicitors Regulations Authority for requesting or disclosing certain documents relating to Cape. *See generally id.* Mr. Oren's unfavorable conduct in dealing with the victims' support group features prominently in the APPG Report. *See id.* at 10.

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

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

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

[52] Prior to 1953, Cape used an "agent" in New York City to assist in marketing to U.S. buyers. *See* Ex. 35, Letter from R. Dent to Lord Bissell, Sept. 18, 1953 ("We have recently discontinued our representation in America, which has hitherto been carried on in New York by Mr. A.W. Koehler, who runs a small selling agency, in which we were by far the largest of his principals.").
[53] Ex. 36, *Cape asbestos, the story of the Cape Asbestos Company Limited, 1893-1953* (hereinafter "Cape Story").
[54] *Id.* at 50.
[55] *See id.*
[56] *See generally id.*
[57] *See generally id.*
[58] *Id.* at 56.

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

Among other products, Barking manufactured a pre-formed pipe and block insulation named "Caposite."[60] Anthony Mendelle (who was deposed in 1984) was the Plant Manager at Barking from 1960 to 1968, following his work as the Production Manager at the same plant from 1956 to 1960.[61] Mendelle saw first-hand the effects of asbestos exposure on plant workers—the plant had a "running total" of about 60 asbestosis cases a year, and more ominously, workers were also contracting mesothelioma, an incurable cancer of the lining of the lung that is usually fatal within a year of diagnosis.[62] Mendelle was instrumental in the closure of the Barking Plant because of the number of workers dying from exposures at the Plant.[63] Mendelle testified that Caposite was a "major department" at Barking.[64] Caposite was made with 100% amosite asbestos.[65] Other operations used the two other types of asbestos, crocidolite and chrysotile.[66]

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

[59] Cape Story at 50, 62; Ex. 37.1, Cape Inquests (1929-1938) (summaries of coroner inquests revealing early recognition of asbestos-related worker deaths at Cape's U.K. facilities.).
[60] Ex. 36 at 62.
[61] Ex. 37, Deposition of Anthony Mendelle at 3, *Smith v. Pittsburgh Corning Corp.*, Nos. GD81-20383 & GD81-20381 (Pa. Ct. Com. Pl. Allegheny Cnty. Nov. 13, 1984).
[62] *Id.* at 11.
[63] *Id.* at 48-49.
[64] *Id.* at 40.
[65] *Id.* at 37.
[66] *Id.* at 41-42.

as of 1984, when Mendelle was deposed.[67] Richard Gaze worked at Barking from 1943 to 1963.[68] Gaze rose to become the "Chief Scientist" at Cape and held senior management roles across the entire Cape asbestos operation.[69] These included membership on the Board of Directors of numerous Cape asbestos subsidiaries.[70] The minutes of a "special meeting of the board of directors of the North American Asbestos Corporation" held on April 7, 1970, note that "[t]he chairman reported that Dr. Richard Gaze of Cape Asbestos, Ltd will have direct responsibility on behalf of the parent company for the operations of North American Asbestos Corporation."[71]

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

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[67] *Id.* at 5.
[68] *Id.* at 7. The evidence in this case will place Gaze and Smithers squarely at the center of Cape's efforts to exploit asbestos for profit, to mislead others about the dangers of asbestos, and to hide what Cape actually knew about effects of asbestos exposure.
[69] *Id.* at 6.
[70] *Id.*
[71] Ex. 38, NAAC Special Meeting Minutes (April 7, 1970).
[72] Ex. 37 at 11-12.
[73] *Id.* at 11-12, 69.
[74] *Id.* at 56-57; Ex. 39, Muriel L. Newhouse, *Asbestos in the Workplace and the Community*, 16 Ann. Occup. Hyg. 97 (1973).
[75] Ex. 37 at 58.
[76] *Id.* at 56-57.

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

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

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

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

[77] *Id.* at 66.
[78] *Id.* at 68.
[79] Ex. 40, Letter from Gaze to Cryor (March 22, 1966) (emphasis in original).
[80] Ex. 41, Letter from Buckley to Gaze (March 30, 1966).
[81] Ex. 42, Letter from Galloway (Aug 19, 1966).
[82] *Id.*

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

Dr. Wagner reported a series of 33 mesothelioma cases in South African mine workers, and in people living near the mines, at the 1959 Pneumoconiosis Conference in Johannesburg. The formal scientific paper was published in 1960.[84] Wagner's investigation triggered the PRU to investigate mesothelioma at the South African asbestos mines.[85] Cape and other mining companies partially financed the study, which meant the mining companies were copied on all reports and had input on establishing study parameters.[86]

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

[83] Ex. 43, Letter from Christopher Wagner to Cape (November 30, 1994).
[84] *Id.*; Ex. 44, Wagner, J.C., Sleggs, C.A., and Marchand, P, *Diffuse Pleural Mesothelioma and Asbestos Exposure in the North West Cape Province*, Br. J. Ind. Med. 17:260-65 (1960).
[85] Ex. 45, Memo from Gear re: Proposed Study of Mesothelioma in South Africa (Nov. 29, 1960).
[86] *Id.*
[87] Ex. 46, Letter from Naude to Diederichs (Oct. 6, 1961).

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

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

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

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

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

[88] *Id*.
[89] Ex. 47, PRU Preliminary Report (April 30, 1962).
[90] *Id.*
[91] *Id.*
[92] Ex. 48, Smither, *Visit to South Africa* (August 1962) (hereinafter "Smither Report").
[93] *Id.* at 2.

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

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

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

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

[94] *Id.* at 34.
[95] *See, e.g.*, *id.*
[96] *Id.* at 35.
[97] Ex. 49, Letter from Walters to Baxter (July 19, 1962).
[98] *Id.* at 2 (the letter reveals Cape’s membership by noting that the committee "recently brought their London Branch Medical Office (Dr. Smither) to this country to investigate the problem on their behalf.").
[99] The Receiver has been unable to locate this memorandum but hopes that it will become available if the Third-Party Defendants comply with their discovery obligations at some point in the future.
[100] *Id.* at 2.
[101] *Id.*

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

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

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

Dr. Matthys van Rooyen—the local Prieska doctor caring for 10 mesothelioma patients—was deposed in 1996.[106] He testified that Cape periodically dispatched "executives" and doctors (presumably, Smither) from London to visit asbestos mines in South Africa.[107] Dr. Van Rooyen testified that he tried to warn Cape about the dangers of asbestos exposure, but met a chilly response: "I experienced opposition[ ] . . . whenever we talked about asbestos as a danger, people saw us as dangers . . . we had a lot of opposition from these people. But very definitely, from the chief executives of Cape Blue Mines."[108]

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

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[102] Ex. 48 at 11-12.
[103] *Id.*
[104] *Id.* at 13.
[105] *Id.*
[106] Ex. 50, Deposition of Dr. Matthys van Rooyen, *In re Asbestos Personal Injury Cases, Arrington Lead*, No. 93-9-114 (Ms. Cir. Ct. Jones County, 1996).
[107] *Id.* at 135.
[108] *Id.* at 116.
[109] *Id.* at 24.

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

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

> Q: Was there any discussion about other doctors coming to Prieska?
>
> A: That was one of the threats used very regularly. Now, why do I call it a threat? If you live in an area where you have a population of 16,000, there are two doctors there. They are still fit, and they can work hard. They do work. And if you take away a quarter or more of their practice by introducing a doctor or more in that area, you can definitely break them. And that is -- so that threat was used to me, personally, on more than one occasion. I don't accept it nicely, and I still don't.
>
> Q: Did you have occasion to specifically have a conversation with one of the Cape executives regarding the effect of this discussion would have on the company?
>
> A: Yes. . . . I remember distinctly that this was treated in a very superficial way. And the chap . . . he said that with our directors in London earning a million a year, do you think they would listen to you?[113]

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

[110] *Id.* at 38, 63.
[111] *Id.* at 11-12, 30.
[112] *Id.* at 40, 57.
[113] *Id.* at 41.
[114] Ex. 49

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

Dr. Smither returned from South Africa on June 30, 1962.[115] Less than two weeks later, on July 12, 1962, Drs. Smither and Gaze attended a meeting in London of the Asbestosis Research Council (ARC).[116] The ARC was an industry group founded by Cape and another mining and asbestos products company, Turner & Newell.[117] The ARC sponsored research into asbestos disease and had a hand in shaping final reports given its funding of the studies.[118] Scientists and physicians from Queen's College in Cambridge, Reading University, and Cambridge University, and some industry representatives attended the July 12 meeting.[119] The Receiver has located the 6-page detailed memorandum reporting the detailed minutes of the meeting.[120] Dr. Smither and Dr. Gaze remained silent and reported nothing about the PRU study, nor even that Dr. Smither just returned from a three-week trip to South Africa to investigate mesothelioma in the mines.[121]

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[115] Ex. 48 at 42.
[116] Ex. 51, ARC-19th meeting (July 12, 1962).
[117] *See generally* Ex. 52, Geoffrey Tweedale, *Science or Public Relations? The Inside Story of the Asbestosis Research Council, 1957–1990*, 38 AM. J. INDUS. MED. (2000).
[118] *Id.* at 723-29.
[119] Ex. 51.
[120] *Id.*
[121] *See generally id.*

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

In 1953, Cape approached Lord Bissell & Kadyk, a Chicago law firm, to form a U.S. subsidiary named North American Asbestos Corporation ("NAAC," as noted above) in Chicago.[123] Max Meyer, a young partner at Lord Bissell, agreed to the representation.[124] Max Meyer represented Cape until after NAAC dissolved in 1978.[125] He was on the Board of Directors from 1953—1978 and served as the trustee in NAAC's dissolution.[126] Meyer attended virtually every Board meeting and was the principal point of contact between the parent company Cape Asbestos in London, and NAAC.[127]

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

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[122] Although the successor entities have refused to participate in discovery in this case, the Receiver was able to obtain the historical materials used in the following section from an archive at the University of Strathclyde in Glasgow, Scotland.
[123] Ex. 52.1, Letter from R. Dent to Lord Bissell & Kadyk (Sept. 18, 1953).
[124] Ex. 53, Letter from Lord Bissell & Kadyk to Cape (Sept. 29, 1953).
[125] *See, e.g.*, Ex. 54, NAAC Meeting Minutes (1971-77); Ex. 55, NAAC Meeting Minutes (Nov. 1971); Ex. 56 NAAC Meeting Minutes (1972); Ex. 57, NAAC Meeting Minutes (1973); Ex. 58, NAAC Meeting Minutes (1974); Ex. 59, NAAC Meeting Minutes (1975); Ex. 60, NAAC Meeting Minutes (1976); Ex. 61, NAAC Meeting Minutes (1977).
[126] *Id.*
[127] *Id.*
[128] Ex. 62, Deposition of Joan Holtze at 15:12–16:8, *Barber v. Pittsburgh Corning Corp.*, No. GD 79-21544 (Pa. Ct. Com. Pl. Nov. 7, 1980).
[129] *See* Exs. 54-61.
[130] *Id*.

NAAC was a small operation staffed by the President, who was the client liaison, and a few secretaries. Cape consistently described NAAC as a "one-man" operation.[131] Meyer, from his office at Lord Bissell, was involved in all decisions both small[132] and large.[133] Gerry Morgan, the President of NAAC from 1970—1978, testified that his influence on the Board or as a company decision-maker was "certainly nil" and that the Cape member of the Board (Richard Gaze) and Meyer would meet beforehand to "have their discussions."[134]

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

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[131] Ex. 63, Deposition of Charles G. Morgan at 33, *Johnson v. North American Asbestos Corporation*, No. 75-L-1006 (May 27, 1975).
[132] Ex. 64, Letter from R. Gaze to M. Meyer (July 20, 1971) (correspondence regarding NAAC computerizing their systems).
[133] Ex. 65, Deposition of Charles G. Morgan at 227, *Johnson v. North American Asbestos Corporation*, No. 75-L-1006 (May 20, 1975) (Meyer unilaterally dictated the dividend NAAC declared to Cape, without the NAAC president's input).
[134] *Id.*
[135] Ex. 66, Letter from A. Penna to M. Meyer (June 25, 1975).
[136] Ex. 67, Memo from A. Sarabia to M. Meyer (July 25, 1975).
[137] Ex. 68, Letter to A. Penna re Limiting NAAC and Cape's Exposure to US Litigation (Oct. 3, 1975).

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

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

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

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

[138] Ex. 69, Letter from A. Penna to M. Meyer (June 3, 1977).
[139] *Id.*
[140] Ex. 70, Telex from A. Penna to S. Milwid (July 4, 1977).
[141] *See id.*; *See also* Ex. 71, Letter from A. Penna to S. Milwid (Feb. 24, 1978) ("As you know our policy now is not to defend any asbestosis proceedings brought against us in the United States and in view of the fact that there is a likelihood that this will result in large default judgments being awarded against us . . . it would be extremely unwise for Cape to contemplate any further substantial acquisition in the United States . . .).
[142] Ex. 72, Letter from S. Milwid to A. Penna re: Pending Cases (Oct. 26, 1977).
[143] Ex. 73, Letter from S. Milwid to A. Penna re: NAAC Products Liability Coverage (Oct. 26, 1977).

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

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

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

[144] Ex. 74, Cape's Board Meeting Minutes (Nov. 1, 1977).
[145] Ex. 15, Memo from A. Sarabia to M. Meyer (Jan. 1, 1978).
[146] *Id.*
[147] *See id.*
[148] Ex. 75, Memo to NAAC File re Liquidation of NAAC (April 7, 1978).
[149] Ex. 76, Letter from M. Meyer to A. Penna (June 26, 1978). Meyer was in the thick of the plan to create CPC and in fact formed the corporation, according to Gerry Morgan, the President of NAAC at the time. Morgan May 19, 1982 depo, pdf 39. In a memo dated Dec 19, 1983, a Lord Bissell Partner inquired of Meyer about his formation of CPC in 1978 but noted that there were no billing records at LBB relating to this work; Ex. 77, Letter from Ingersoll to Meyer (Dec. 19, 1983).

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

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

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

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

LAW AND ARGUMENT

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

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[150] Ex. 78, Letter from M. Meyer to R. Gaze (July 29, 1980).
[151] Ex. 79, Deposition of Geoffrey Higham at 142, *In re Asbestos Pers. Injury Cases, Arrington Lead*, No. 93-9-114 (Miss. Cir. Ct. Jones Cnty., 2d Jud. Dist. Oct. 24, 1996).
[152] Ex. 80, Cape Statement to Granada TV (July 6, 1982) (emphasis added).
[153] *See, e.g.*, Ex. 81, Telex from A. Penna to S. Milwid (Aug. 7, 1984).

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

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

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

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

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

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

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

[154] Ex. 24, CIHL Annual Report 3, 12, 14 (2025) ("Cape Intermediate Holdings had no employees in the current or prior year."); *id.* at 3 ("The Company is a non-trading holding company").
[155] *See id*. at 13 ("the director was not remunerated for his services to the Company during the year. No director accrued retirement benefits . . . during the current or previous year. [CIHL] had no employees during the current or prior year.").

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

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

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

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

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[156] *Id*. at 8.
[157] See *id.* at 13; Ex. 25, Altrad Services Ltd. Annual Report 33 (2025); Ex. 26, Cape Insulation Ltd. Annual Report 9 (2025); Ex. 27, Cape Industries Ltd. Annual Report 9 (2025); Ex. 28, Cape Building Products Ltd. Annual Report 9 (2025).
[158] Ex. 26 at 3; Ex. 27 at 3; Ex. 28 at 3.
[159] *See* Ex. 25 at 9.
[160] *See* Ex. 24 at 7 (declaring 24,769,000 as dividends received for 2024).

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

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

[161] Ex. 29, Altrad Grp., Interim Consolidated Financial Statements at 32 (Feb. 28, 2025) (emphasis added).
[162] *See id.*
[163] Ex. 30, Altrad Services Limited Annual Report and Financial Statements for the Year Ended 31 August 2022, at Cape_Receiver_00248438 ("The Group continues to receive claims, from both individuals and insurance companies, in connection with historical alleged exposure to asbestos. Where claims are determined to have merit, the costs are provided for and claims are settled in the ordinary course, otherwise claims are defended.").
[164] Ex. 31, *Former asbestos firm offers victims 3 m under gag clause*, Health & Safety Int'l, https://www.healthandsafetyinternational.com/article/1913269/former-asbestos-firm-offers-victims-3m-gag-clause

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

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

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

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

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

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

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

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

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

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

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

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

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

Moreover, the Altrad and Charter Third-Party Defendants[166] in the Tibbs Action, who were, among other entities, responsible for and/or benefited from Cape's litigation-avoidance strategy, have refused to participate in discovery on the basis that they could not be forced to participate in discovery during the pendency of a series of improper interlocutory appeals. This Court entered adverse inferences against those parties on May 23, 2024. The Third-Party Defendants have instituted a series of delay tactics to avoid a trial in this case, including non-participation in discovery, institution of proceedings in London that have led to a judgment against Mr. Protopapas personally, and a frivolous removal of the case to federal court, to name a few. Refusing to participate in litigation in the United States, but suing the Receiver personally in London and threatening criminal liability, is the height of moral fraud. The entities related to and/or responsible for Cape have continued to assist in the perpetration of Cape's moral fraud and litigation-avoidance scheme by "seeking to evade its responsibilities as a civil litigant," just like Atlas Turner did in *Welch*. 2025 WL 1450573, at *8.

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

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

Indeed, limiting the Cape receivership to insurance assets only would defeat the very purpose of bringing Cape and other entities related to and/or responsible for Cape to justice for injuring South Carolinas and then implementing its decades-old litigation-avoidance scheme and moral fraud. Cape set up NAAC to be intentionally underinsured, and its insurance appears to have been exhausted soon after NAAC dissolved in 1978.[167] While the Receiver continues to try to uncover any available insurance assets, it is important to recognize that Cape's underinsurance was part of the moral fraud scheme itself. As a result, and in order to achieve an equitable result, this receivership in the Tibbs Action could not be limited to Cape's insurance assets alone. Instead, the Receiver had to be able to pursue the assets – insurance, property, or otherwise – of other entities who are responsible for and/or benefited from Cape's litigation-avoidance scheme and moral fraud, to the extent the Receiver is able to establish such liability through the alter ego, veil piercing, and/or amalgamation/single business enterprise theories asserted in the third-party suit against Third-Party Defendants in the Tibbs Action. That explains the scope of this Court's Cape Receivership Order, which is perfectly consistent with the *Welch* decision.

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

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

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

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

CONCLUSION

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

Respectfully submitted,

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July 11, 2025
Columbia, South Carolina

STATE OF SOUTH CAROLINA) COUNTY OF RICHLAND)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
John A. Tibbs and Margaret B. Tibbs, Plaintiffs, vs. 3M Company, *et al.*, Defendants.	Civil Action No. 2023-CP-40-01759 ALTRAD DEFENDANTS' NOTICE OF RECENT SUPREME COURT AUTHORITY VOIDING THIRD-PARTY LITIGATION, RENEWED MOTION TO DISMISS, AND MOTION TO STRIKE ALL FILINGS AND ORDERS IN THE THIRD-PARTY CASE
Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas, Third-Party Plaintiff, vs. Anglo American PLC, *et al.*, Third-Party Defendants.	

The Altrad Defendants submit this notice of new, controlling authority to the Court and request that the Court promptly dismiss the "third-party complaint" in the above-captioned action. As the South Carolina Supreme Court recently made clear, this Court lacks jurisdiction and the third-party case must be dismissed.

Twice in the last 60 days, the Supreme Court has stated unequivocally that a receiver cannot operate—or "conduct work," as stated in the *Tibbs* order—outside of the case in which he or she has been appointed. Because that is exactly what purports to be happening here, these third-party proceedings are a nullity. This third-party case should be dismissed, and everything the Receiver has filed and that the Court has ordered from the outset should be withdrawn or stricken.

RECENT AUTHORITY FROM THE SOUTH CAROLINA SUPREME COURT

In *Welch v. Advance Auto Parts, Inc.* Op. No. 28284 (S.C.Sup.Ct. filed May 21, 2025) (Howard Adv.Sh. No. 19 at 12), the South Carolina Supreme Court reversed in part a receivership appointment from this Court because it exceeded the scope of what a receiver can lawfully do. The Supreme Court held that: (1) a receiver can only be authorized to marshal assets needed to pay debts owed to the party responsible for the receiver's appointment; (2) as a natural corollary, a receiver's activity is limited to the case in which he or she was appointed; and (3) a receiver must stay out of the "boardroom" and "business activities" of the entity whose assets he or she is charged with marshaling. (*Id.* at 30.)

Barely one month later, the South Carolina Supreme Court issued an order in this case that reiterates these same points. In *Tibbs v. 3M Co.*, Appellate Case No. 2024-001423, the Supreme Court heavily quoted its *Welch* opinion to reinforce that a receiver is only permitted "in the 'rarest' and 'most extraordinary' cases," and it then stated without condition or exception: "The receiver is not to be authorized to conduct work as to a case in which no receiver appointment order has been filed."

THE RECEIVER HAS NO STANDING, VOIDING THESE PROCEEDINGS

There is no appointment order in this case.

Without an appointment order authorizing the Receiver to do anything on behalf of the Tibbs plaintiffs, the Receiver does not exist as a jural entity in this case and therefore lacks standing to do or say anything in this matter—including (1) purporting to accept service on behalf of Cape PLC; (2) purporting to file an answer on behalf of Cape PLC; (3) purporting to file a third-party complaint on behalf of Cape PLC; (4) seeking discovery from or sanctions against the third-party defendants; (5) purporting to enter into "tolling agreements" with plaintiffs' counsel on behalf of

Cape PLC; (6) holding himself out "as attorney for" Cape PLC in Case No. 2024-CP-40-06639; (7) suing Winston & Strawn and several individual attorneys simply because that law firm also represents Cape PLC and CIHL in Case No. 2024-CP-40-05397; and (8) most recently, seeking to have himself appointed (since he has never been in ***this*** case) as a receiver following the Supreme Court's rulings in *Welch* and *Tibbs*. *See, e.g.*, *Glenn v. E.I. DuPont de Nemours & Co.*, 254 S.C. 128, 134, 174 S.E.2d 155, 158 (1970) ("A complaint brought in the name of a plaintiff which is not a legal entity is a nullity and there is no foundation upon which to base an amendment."); *Porter v. Brown*, 149 S.C. 151, 158, 146 S.E. 810, 812–13 (1929) (finding that an order appointing a receiver mis-identified the entity to be placed in receivership and, therefore, all proceedings initiated by the receiver "must fall" because "F.S. Porter is not the legally appointed receiver in this case"); *see also Berg v. Kingdom of the Netherlands*, Case No. 2:18-cv-3123-BHH, 2020 U.S. Dist. LEXIS 102042, at *4–6 (D.S.C. June 11, 2020) (denying motion to reconsider the dismissal of a case due to lack of standing because the plaintiff "was not actually appointed personal representative" at the time he brought suit, and rejecting the plaintiff's arguments that his subsequent appointment could cure that defect because "standing generally must exist ***at the inception*** of a lawsuit and not based on later developments during litigation") (emphasis in original), *aff'd* 24 F.4th 987 (4th Cir. 2022); *Johnston Mem. Hosp. v. Bazemore*, 672 S.E.2d 858, 861–62 (Va. 2009) ("Since Wanda Bazemore had not qualified as the personal representative of her husband's estate when this wrongful death action was filed, the named plaintiff, which was not a legal entity at that time, lacked standing to file the action. ***The action is therefore a nullity*** and cannot be nonsuited. Thus, we will reverse the circuit court's judgment granting a nonsuit and denying the defendants' motions to abate, and dismiss the action with prejudice.") (emphasis added).

Because the Receiver has no standing, everything he has filed and every order the circuit court has issued in this third-party case are void as a matter of law. *See, e.g.*, *Bailey v. Bailey*, 312 S.C. 454, 458–59, 441 S.E.2d 325, 327–28 (1994) (holding that "respondents lack standing to intervene in appellants' lawsuit" because they did not "have a personal stake in the subject matter" of the case, and concluding that because "the respondents were without standing to intervene, the resulting restraining order [issued by the circuit court] is rendered void"); *Glenn*, 254 S.C. at 136, 174 S.E.2d at 159 (holding that litigation filed by a putative administratrix without an appointment order from the probate court "was a nullity"); *Porter*, 149 S.C. at 158, 146 S.E. at 812–13 (holding that "all proceedings" involving a not-properly-appointed receiver "must fall"); *see also Porter*, 149 S.C. at 162 n.1, 146 S.E. at 814 n.1 ("If the Court is without jurisdiction to appoint a receiver the order is void and may be attacked or disregarded whenever it comes collaterally in question." (quoting 34 Cyc. at 168)) (Cothran, J., concurring).

The Altrad Defendants respectfully notify the Court of the *Welch* and *Tibbs* decisions so that it can acknowledge that the third-party proceedings here are void and put an end to them.

THE DEFECTS IN THESE PROCEEDINGS ARE INCURABLE

Nor is the Receiver's lack of standing and this third-party case's status as a "nullity" something that can be fixed. This is so for several independent reasons:

1. *Standing is required at inception.* Standing must exist at the outset of a case, which the Receiver indisputably did not have here when filing the third-party complaint. *See Youngblood v. S.C. DSS*, 402 S.C. 311, 317, 741 S.E.2d 515, 518 (2013) (explaining that standing is "a fundamental prerequisite to instituting an action"). And the fact the Receiver is seeking an appointment ***in this case*** makes it clear that the Receiver himself recognizes he has had no standing since the inception of this case.

2. *A receiver cannot seek his or her own appointment.* The Receiver cannot seek his own appointment, as he lacks standing to file anything in this matter or any other because there is no appointment order for this case, and his appointment order in *Park* is in any event void on its face, as discussed below. Nor would it make sense for any receiver to ever seek his or her own appointment. A receiver exists only to collect assets to pay specific, identifiable debts owed to the person who actually seeks the appointment; *Welch* and *Tibbs* both reinforce this exact point. By definition, a receiver cannot have any independent or personal interest in the litigation. *Va.-Carolina Chem. Co. v. Hunter*, 84 S.C. 214, 224, 66 S.E. 177, 180 (1909). Because no "Cape" entity owes any debt to the Receiver in this case or any other, he has no standing to seek the appointment of a receiver, including an appointment for himself.

Moreover, the Receiver concedes that, if appointed here, he wouldn't act for the Tibbs plaintiffs. Instead, he states on Page 3 of his "Notice of and Motion to Confirm Appointment of Receiver" that he views his hoped-for job to be to "pursue activities that are necessary to address the liabilities for injured South Carolinians" at large. *Welch* and *Tibbs*, among other authorities, make clear that this can never be the job of a receiver.

3. *Only a "party" can seek appointment of a receiver.* Similar to Point 2 above, the South Carolina Code only allows an actual "party" to seek the appointment of a receiver, and the Code imposes on a movant the risk of significant adverse consequences if the appointment proves to be "improper":

> Whenever a receiver shall have been appointed of any property against the opposition of any party to the cause and shall have taken possession of the property and thereafter by final adjudication such receiver shall be held to have been improperly appointed, the costs, charges and expenses of such receivership shall not be charges upon the property as a whole but only upon the interests therein of ***the party procuring the appointment***. And any party to the cause having opposed such receivership may apply to the court after

> final adjudication, as aforesaid, and have it referred to a master, referee or jury, as the practice in the case presented may be proper, and to have his actual damages by reason of such receivership ascertained and assessed and for judgment therefor against ***the party or parties having procured such receiver***.

S.C. Code Ann. § 15-65-90 (emphasis added). The Tibbs plaintiffs have never asked the Court to appoint a receiver to do anything at all, much less agreed to pay all "costs," "charges," "expenses," and "actual damages" if the appointment ends up being improper.

Without an order authorizing him to "conduct work" in this case, the Receiver is not and cannot be a "party" here, and the law does not authorize him, as a non-party, to seek his own appointment to try to collect assets on behalf of the Tibbs plaintiffs (much less on behalf of all South Carolinians)—actual parties who have never requested a receiver's involvement in this case, and have never assumed the risk of paying all "costs," "charges," "expenses," and "actual damages" associated with an improper appointment.[1]

4. *Neither Cape entity has been served in Tibbs.* Like the Receiver, neither Cape PLC (Jersey) nor Cape Intermediate Holdings Limited (England) are actual parties to this case. The Tibbs plaintiffs named Cape PLC (but not CIHL) in the complaint, but they alleged that it is a defendant only by way of "its court appointed Receiver maintaining its principal place of business in South Carolina." (Compl. ¶ 41 (Apr. 5, 2023); Am. Compl. ¶ 48 (May 3, 2023).) There is no proof of service of any summons or any complaint on Cape PLC itself (or on CIHL itself, for that matter) anywhere in the *Tibbs* docket, as required by Rules 4(g) and 4.1(c), SCRCP. Without

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[1] This statutory limitation that only a "party" may seek the appointment of a receiver is consistent with the norm that an entity who is not a "party" has no standing to file anything with a court. *See, e.g.*, *Ex parte S.C. DMV v. State*, 390 S.C. 457, 458, 702 S.E.2d 568, 568 (2010) (dismissing an appeal filed by the South Carolina Department of Motor Vehicles where the agency "attempted to portray itself as a party" but never actually intervened "as a party," and thus lacked the ability to notice an appeal).

proper service, there can be no personal jurisdiction. *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006).

Instead, the Receiver—without an order authorizing him to do anything on behalf of the Tibbs plaintiffs—appears to have "accepted" service and then answered the complaint on behalf of Cape PLC without asserting a single affirmative defense, such as the absence of service of process and the absence of personal jurisdiction, among innumerable others. (Receiver's Answer for Cape PLC (June 29, 2023).) This in no way comports with a receiver's role, Due Process, or any South Carolina procedure.

Unless and until (1) the Tibbs plaintiffs file a motion, are granted leave, and then actually amend their pleadings to name Cape PLC or CIHL as defendants without incorrectly tethering either to a void receivership; (2) the Tibbs plaintiffs serve the Cape entities with process according to the law; (3) personal jurisdiction somehow attaches (neither Cape PLC nor CIHL has any contacts with South Carolina); and (4) Cape PLC and CIHL are given notice of any receivership request, the Court lacks authority to appoint a receiver over either of these European companies. *See Porter*, 149 S.C. at 161–62, 146 S.E. at 813–14 (finding that because the "proceeding for the appointment of a Receiver was instituted without the institution of an action against the [correct] Opera Company, the Court was without authority to appoint a receiver, and all proceedings connected therewith are *coram non judice*").[2]

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[2] This holding is reported in two concurring opinions in *Porter*, but four of the five justices deciding the case signed on to the above-quoted passage. "*Coram non judice*" means "'before a person, not a judge'—meaning, in effect, that the proceeding in question was not a ***judicial*** proceeding because lawful judicial authority was not present," and therefore anything involved in the proceeding is "void and, 'is, in legal effect, nothing.'" *Innovative Waste Mgmt. Inc. v. Crest Energy Partners GP, LLC*, 423 S.C. 611, 614–15, 815 S.E.2d 780, 782 (Ct. App. 2018) (quoting *Burnham v. Superior Court of Cal.*, 495 U.S. 604, 609 (1990), and *Turner v. Malone*, 24 S.C. 398, 401 (1886)) (emphasis in original).

5. *No statutory "receivership" notice has been served on either Cape entity.* Even if Cape PLC or CIHL is ever named as a defendant in a *Tibbs* pleading, is served with process, and personal jurisdiction is established, a receivership still cannot be created unless and until the targeted company is given notice of such a motion. S.C. Code Ann. § 15-65-20. No such motion and no such notice exist here.

6. *There is no South Carolina property at stake.* If a receiver were to be appointed, the appointment would be void because neither Cape PLC nor CIHL has any property in this state that a receiver could marshal. *Welch* reasons that a party subject to the court's personal jurisdiction may be required to turn over assets located outside of the state, but it does not hold that a receiver's power to marshal assets extends beyond the territorial jurisdiction of the court. And while *Welch* involved insurance assets believed to have had a South Carolina nexus, the assets of Cape PLC and CIHL are not tethered to any insurance—the Receiver admits no insurance is involved here—and have no "in-South Carolina" characteristics. Accordingly, basic federalism and constitutional limitations, including the Commerce Clause, prohibit a receivership over either Cape entity that attempts to marshal any of not-in-South Carolina assets. *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, as here, "there [wa]s a total failure of any proof that it ha[d] property in this state"); *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.").

7. *The Cape entities and the Altrad entities have exchanged mutual releases, mooting this dispute.* As the Court is aware, Cape PLC and CIHL have executed mutual releases of all claims (including of the type the Receiver purported to assert here) with the Altrad Defendants. The Altrad Defendants filed a copy of those mutual releases on June 4, 2025, with the Court.

Accordingly, everything that was supposedly at issue in the third-party complaint is now moot vis-à-vis the Altrad Defendants and their other direct and indirect subsidiaries, including Altrad UK. *See Morgan v. S.C. DOR*, Case No. 2012-CP-40-07331, 2013 S.C. C.P. LEXIS 2, at *10 (S.C. C.P. Feb. 27, 2013) ("A keystone of any court's subject matter jurisdiction is that there must be an ongoing controversy between the parties, as courts are forbidden from ruling on 'academic questions' or from 'making an adjudication where there remains no actual controversy.'" (quoting *Fabian's Uptown Charleston, Inc. v. S.C. Tax Comm'n*, 247 S.C. 164, 166, 146 S.E.2d 608, 608 (1966))) (cleaned up).

8. *Courts elsewhere have already nullified this receivership.* As the Court is aware, two European courts have already recognized the invalidity of this receivership: the High Court of Justice in the Business and Property Courts of England and Wales in *Cape Intermediate Holdings Limited v. Protopapas* [2024] EWHC 2999 (Nov. 22, 2024); and the Montpellier Civil Court in *Cape PLC v. Protopapas*, Case DBYB-W-B7J-PM3N (Apr. 8, 2025). Copies of each court's rejection of this receivership as being without jurisdiction and void have been filed with the South Carolina Supreme Court in this case and are incorporated by reference.

While the South Carolina Supreme Court expressed disappointment in the scope of the English Court's ruling cited above, the English decision is undoubtedly consistent with South Carolina law, particularly in light of *Welch* and *Tibbs*. The English Court identified considerable problems with the Receiver's behavior that was detrimental to CIHL and that was flatly contrary to the wishes of the company's directors. Acknowledging ***precisely the same concerns*** expressed by the English Court, the South Carolina Supreme Court in *Welch* reaffirmed longstanding law regarding receiverships and imposed the limitation on receivers that requires them to stay out of the "boardroom" and out of "business activities" of the entity over whose assets they have been

appointed. Given that these English and French rulings align with the South Carolina Supreme Court's recent decisions, they provide further confirmation that this receivership is and always has been a nullity.

PARK **CANNOT SAVE THE RECEIVERSHIP**

The Receiver regularly points to his appointment order from *Park v. Armstrong International, Inc.*, Case No. 2021-CP-40-02727, as being an elixir for the incurable problems cited above. But *Park* only further undercuts the Receiver's position, and it does so in several respects:

1. *Park was only about the Park family.* Like the receivership statute itself, *Welch* and *Tibbs* make clear that an appointment is not portable among different cases and among different plaintiffs/alleged creditors. Instead, each appointment must be specific to the case and the creditor seeking the appointment; and, once appointed, the activities of a receiver are limited to marshaling assets only to the extent necessary in relation to the claim and damages of the alleged creditor in that specific case. As such, and as the Supreme Court just reiterated, an order issued to and at the request of the Park family is irrelevant to the Tibbs family, who are strangers to the *Park* case.[3]

2. *The appointment order in Park is itself void.* The original plaintiff in *Park* was Isabella Park, who passed away during the pendency of that case. Her son, Keith Park, was substituted in as the personal representative of her estate. On June 3, 2022, counsel for the Park family represented to the Court that the case was "fully resolved." Three days later, on June 6,

[3] At various points, the Receiver appears to argue this Court should ignore the South Carolina Supreme Court's limitations in *Welch* and *Tibbs* and allow him to be a receiver unbounded by any case because of Rule 66(b), SCRCP. The Court should decline this invitation to ignore the Supreme Court's direct instructions. For one, Rule 66(b) specifically applies only to "debtors," meaning that, by definition, it cannot apply to a prejudgment receivership. What's more, the rule also says it is subservient to "restrict[ions] by order of the court"; *Welch* and *Tibbs* provide precisely that.

2022, Mr. Park represented to the Spartanburg County Probate Court the estate was now fully settled and moved to terminate his appointment as personal representative. On August 26, 2022, Judge Caldwell granted that motion, terminated Mr. Park's appointment as personal representative, and closed the estate.

Remarkably, the motion to appoint a receiver over Cape PLC, purportedly filed on behalf of Mr. Park as the personal representative of Ms. Park's estate, was not filed until March 6, 2023—***more than six months after the Probate Court terminated his appointment as personal representative and closed the estate***.[4]

Without an active appointment as personal representative for Ms. Park's estate, Mr. Park had no standing to seek such appointment, and the appointment order in *Park* has been "void" and a "nullity" from the outset. *E.g.*, *Berg*, 2020 U.S. Dist. LEXIS 102042, at *4–6; *Glenn*, 254 S.C. at 134–37, 174 S.E.2d at 158–59; *Porter*, 149 S.C. at 158, 146 S.E. at 812–13; *Bazemore*, 672 S.E.2d 858, 861–62.

3. *The Park family is barred from pursuing any claims against either Cape entity.* As a matter of law, the Park family is now prohibited from seeking a receivership over Cape PLC (or CIHL) because Mr. Park represented to the Probate Court that the estate had been fully administered, and the Probate Court closed Ms. Park's estate without leaving any provision for ongoing or future claims against either of these Cape entities. In fact, nothing that Mr. Park filed with the Probate Court suggested in any way that the Park family was still pursuing any kind of

[4] Documents confirming this timeline are attached as Exhibit A It is unclear if Mr. Park recognized that he was assuming the risk of paying all "costs," "charges," "expenses," and "actual damages" associated with an improper appointment of a receiver over Cape PLC when his counsel filed the motion seeking such an appointment. S.C. Code Ann. § 15-65-90.

claim against any defendant at all—which is presumably why the Parks' lawyers represented to this Court that the case was "fully resolved."

The South Carolina Supreme Court has held that the "highest considerations of public policy and morality" prohibit a personal representative from adding in a previously-omitted asset when he or she stands to benefit from the belated disclosure. *Williams v. Mower*, 29 S.C. 332, 341, 7 S.E. 505, 509 (1888). And courts nationally bar claims from being asserted in a case after they were not disclosed in asset schedules filed before another court, citing judicial estoppel, res judicata, or both. *See generally First Union Commercial Corp. v. Nelson, Mullins, Riley & Scarborough*, 81 F.3d 1310, 1317 (4th Cir. 1996) ("Once a plan is confirmed, neither a debtor nor a creditor can assert rights that are inconsistent with its provisions."); *Sprowl v. Pfizer, Inc.*, Case No. 8:08-cv-3316-RBH, 2010 U.S. Dist. LEXIS 30939, at *15 (D.S.C. Mar. 30, 2010) ("[U]pon review, it appears to the court that Plaintiff may actually be judicially estopped from bringing this suit based on Plaintiff's failure to amend his bankruptcy petition to disclose his potential legal claims."). Accordingly, there can never be a basis for an appointment order in *Park*, as any claims by the estate against either Cape entity are barred as a matter of law.

4. *There was no service, no default, no judgment, and no personal jurisdiction over either Cape entity.* There remains no proof at all that either Cape PLC or CIHL was ever served with process, including a summons and any actual complaint, in *Park*. Notably, the Park family has never even argued that service was proper; only the Receiver, who lacks standing to even be heard and was not involved in the putative service of either of these entities, has argued that service was proper. But without service, there can be no personal jurisdiction. And, as the Court knows, there was never any entry of default, nor was a default judgment entered or even sought against

either of these two entities in *Park*. There is nothing proper or legitimate about how the *Park* receivership order came to be.

5. *A bond is required for a receivership appointment, yet is absent from the Park order.* Even if everything about the *Park* receivership order was proper—which it clearly and incurably isn't—that order is still invalid as a matter of law because it lacks the bonding provision required by South Carolina Code §§ 15-65-50 and -60, as emphasized in *Welch* (Howard Adv.Sh. No. 19 at 30).

* * * * *

With no service, no personal jurisdiction, no appointment as personal representative, no estate, no bond, and no claims against Cape PLC or CIHL, *Park* cannot provide any aid to the Receiver here.

WELCH PROHIBITS THE RECEIVER'S DESIRED OUTCOME

The Receiver's efforts to have himself appointed in this case are all aimed at the goal of continuing to pursue his third-party complaint, in the name of Cape PLC (or CIHL). He concedes this exact point on Page 40 of his "Notice of and Motion to Confirm Appointment of Receiver." But *Welch* specifically prohibits the entire notion that underlies the Receiver's filings: a receiver is, by definition, limited only to seeking assets to pay the debts owed to the person responsible for his or her appointment and "that power does not properly extend to reach every claim" that could exist against the targeted company. (Howard Adv.Sh. No. 19 at 30.) So when the Receiver tells this Court that he views his mission as "address[ing] the liabilities for injured South Carolinians" (Mot. to Confirm Appt. at 3, 40), he is directly defying one of the exact points on which *Welch* reversed a prior receivership appointment from this Court involving this Receiver.

Moreover, *Welch* specifically prohibits a receiver from "boardroom" decisions, like whether to bring litigation against other companies, to accept service, or assert affirmative defenses. Even if the receivership could be recreated from scratch and could overcome all of the hurdles identified above—it cannot—there is no way the Receiver could assert what are self-piercing claims on behalf of any "Cape" entity. *Welch* was clear: a receiver must stay out of the "boardroom" and may not involve him- or herself in the "business activities" of the company whose assets he is charged with marshaling to pay a specific debt. (Howard Adv.Sh. No. 19 at 30.)

Litigation decisions are quintessential "boardroom" decisions and "business activities"—which is why the directors of Cape PLC, CIHL, Altrad Investment Authority, and the various subsidiaries had the authority to and did agree to mutually release claims against one another. *See, e.g.*, *Freedman v. Redstone*, 753 F.3d 416, 424 (3d Cir. 2014) ("The decision whether to bring a lawsuit is a 'decision concerning the management of the corporation and consequently is the responsibility of the directors.'" (quoting *Blasband v. Rales*, 971 F.2d 1034, 1048 (3d Cir. 1992))), *rev'd in unrelated part by In re Cognizant Tech. Sols. Corp. Deriv. Litig.*, 101 F.4th 250 (3d Cir. 2024); *Muzek v. Eagle Mfg. of N. Am., Inc.*, Case No. 6:18-cv-199-REW-EBA, 2019 U.S. Dist. LEXIS 244216, at *5 (E.D. Ky. Oct. 23, 2019) ("Thus, directors rather than shareholders [or receivers] manage the business and affairs of a corporation. In other words, a decision whether to bring a lawsuit, refrain from litigation on behalf of a corporation, or the appointment of an examiner is a decision concerning the management of a corporation.").

Other courts have already applied this same principle to this same Receiver. *See Protopapas v. Whittaker, Clark & Daniels, Inc.*, Case No. 23-4151 (ZNQ), 2024 U.S. Dist. LEXIS 97270, at *22 (D.N.J. May 31, 2024) ("The Court affirms the Bankruptcy Court's opinion that under New Jersey state law, the text of the Receivership Order did not change the fact that WCD's

Board of Directors [and not the Receiver] held the power to file for bankruptcy and properly did so."), *further appeal pending at* Case No. 24-2210 (3d Cir.).

And even the South Carolina General Assembly recognizes that only a business operating through its actual directors can make the decision to file suit. *See generally* S.C. Code Ann. § 33-2-102(1) (providing "sue and be sued, complain, and defend in its corporate name" as the very first "general power" of a South Carolina corporation); *id.* § 33-8-101 (providing that, with limited irrelevant exceptions, "all corporate powers must be exercised by or under the authority of, and the business and affairs of a corporation must be managed under the direction of, a board of directors").

There is simply no way to reconcile the power the Receiver seeks to seize here with *Welch*'s unambiguous limitations.[5]

THE RECEIVER IS PUSHING A FALSE NARRATIVE

Not only is the Receiver seeking authority that *Welch* (and the courts in England and France) specifically prohibit, he is doing so through "factual predicates" to tell a story of "moral fraud" that were fully vetted and categorically rejected in ***1988 and 1990*** in a 34-day trial and a subsequent 17-day appeal in English courts in *Adams v. Cape Industries plc* (1990) 1 Ch 433 (CA).[6] Nor is *Adams* some obscure ruling, lost to history and unknown to these litigants. Rather,

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[5] In his various post-*Welch* filings to this Court and others, the Receiver has argued that *Welch* is only concerned with "Section 5" receivership appointments. There is no basis for such an argument. *Welch* itself makes no distinction among the five categories of receiverships allowed by South Carolina Code § 15-65-10 with respect to the unambiguous limitations *Welch* placed on receiverships. And if there was any doubt on the point, the *Tibbs* order—which arises from a putative "Section 4 and Section 5" appointment in this case—fully embraces *Welch* and applies its "limitations on the receiver's scope of authority" to this very case.

[6] A full copy of *Adams*—including the appellate court's ruling, the appendix accompanying the appellate court's ruling, and the trial court's ruling—is also filed with the South Carolina Supreme

the very rulings in *Adams* were unequivocally affirmed in the November 22, 2024 Judgment of the High Court of Justice of England and Wales in a case involving both CIHL and this Receiver. *Cape Intermediate Holdings Limited v. Protopapas* [2024] EWHC 2999. Despite this, the Receiver continues to push a story on this Court that he knows has been repeatedly debunked.

The supposed "factual predicate" underlying the Receiver's story, of course, predates the 1990 *Adams* ruling. Among other things, *Adams* addressed with finality that CIHL is not the alter ego of NAAC; there was no basis to pierce CIHL's corporate veil or impose vicarious liability on it; and CIHL could not be held responsible in the United States for any alleged conduct of NAAC.[7] And *Adams* did so on the basis of extensive testimony and documentary presentations by witnesses who had contemporaneous knowledge of the facts and issues in dispute—51 days of trials and appeals in total. *Adams* is not the product of whim or political favor; it is a deep and thorough examination of the facts and law that completely debunk the story the Receiver is telling this Court.

But rather than provide *Adams* to this Court at the earliest possible opportunity, which would have required the Receiver to acknowledge the falsity of his "factual predicate," the Receiver continues to simply ignore this valid and binding ruling from the court in the jurisdiction that properly governs the affairs of CIHL. Accordingly, the English Court took care to reaffirm these long-settled points of *Adams* in litigation involving the Receiver himself:

1. NAAC and CIHL were separate legal entities.

Court in this case and is incorporated by reference herein. What's more, the "moral fraud" discussed in *Welch* involves Atlas Turner's litigation conduct; neither Cape PLC nor CIHL have any comparable litigation conduct in this case because neither has even been named as a defendant, much less served with any process that could possibly even begin the litigation process with respect to those two foreign companies.

[7] Those findings and rulings are more fully set forth in Third-Party Defendants Mohed Altrad & Altrad Investment Authority SAS's Legal and Procedural Opposition to the Purported Receiver's Motion for Summary Judgment, filed on November 22, 2024, and incorporated fully herein.

2. NAAC had no authority to behave or act on behalf of CIHL or any of its related entities.

3. NAAC carried on its own business.

4. NAAC was the direct purchaser of asbestos fibers, not from CIHL, but instead from Egnep Pty. Ltd ("Egnep") and Cape Asbestos South Africa (Pty.) Ltd. ("Casap")—entities that were sold to a South African entity, Transvaal Consolidated Exploration Co. Ltd in 1979.

5. All NAAC did was assist in sale of asbestos. That was not enough to find action on behalf of CIHL.

6. There was no evidence of any control by CIHL over NAAC's commercial activities.

7. The corporate form and formalities of the "Cape Group," including as to NAAC, were observed. Each member of the group had its own commercial functions which were well-defined and provided no basis for veil-piercing.

Cape Intermediate Holdings Limited v. Protopapas [2024] EWHC 2999 (J. Mann).

The *Adams* judgment in 1990, the English High Court's affirmation of the same in 2024, and the principles of law relied upon in those rulings—a part of the common law of England—are already "in full force and effect" in South Carolina by virtue of the "Reception Statute." *See* S.C. Code Ann. § 14-1-50 ("All, and every part, of the common law of England, where it is not altered by the Code or inconsistent with the Constitution or laws of this State, is hereby continued in full force and effect in the same manner as before the adoption of this section."); *see also S.C. Nat'l Bank v. Westpac Banking Corp.*, 678 F. Supp. 596, 598 (D.S.C. 1987) (explaining that courts in the United States apply principles of comity to determine the effect of foreign judgments (quoting *Hilton v. Guyot*, 159 U.S. 113, 202–03 (1895))); *Collins v. Collins*, 219 S.C. 1, 16, 63 S.E.2d 811, 817 (1951) (noting South Carolina courts observe principles of comity).

Even more pressing than the comity issues at play, the Receiver seeks to represent CIHL—the ***prevailing party*** in *Adams*—while taking positions wholly inconsistent with that ruling. The Court should reject out of hand such an effort at sabotaging CIHL, an English company with no connection to South Carolina. Likewise, basic principles of estoppel prevent the Receiver from contravening decades-old case law developed on a full record that addresses and rejects—head on—the Receiver's "factual" allegations to this Court. *See, e.g.*, *Hayne Fed. Credit Union. v. Bailey*, 327 S.C. 242, 251–52, 489 S.E.2d 472, 476–77 (1997) (adopting and applying judicial estoppel in order "to protect the integrity of the judicial process or the integrity of the courts").

Indeed, it is unconscionable that the Receiver would claim to speak for CIHL while ignoring (and actively telling a contrary story about) *Adams* and its rulings—all in an apparent effort to create liability for CIHL. This provides all the more reason for the Court to strike from the record each and every one of the Receiver's filings here. These filings are already void under *Welch* and *Tibbs*, and there is no reason for them to remain in the record when they simply tell a false story designed to harm an English company that has nothing to do with South Carolina.

CONCLUSION

The Receiver's request to "confirm" his own appointment is fatally circular: a receiver who was never duly appointed cannot now seek to retroactively confirm an appointment that never existed in the first place. And *Welch* and *Tibbs* unequivocally bar the Receiver from porting into *Tibbs* a different appointment order from *Park* involving a different plaintiff—especially when the *Park* order was a legal nullity because the Probate Court, ***six months earlier***, had terminated that plaintiff's authority to seek a receivership or do anything else on behalf of the closed estate.

The Receiver's purported appointment in *Park* is void *ab initio*, and everything he has filed in this case is a nullity, too. The Receiver has no standing to undertake any of the actions, to make

any of the filings, or to present any of the arguments he is trying to assert here. His activity has been enjoined by international courts, and *Welch* and *Tibbs* confirm that those rulings were entirely correct and are consistent with the law of South Carolina. Accordingly, the Court should strike all of the Receiver's prior filings, it should vacate all of its prior rulings in this third-party case, and it should dismiss the putative third-party action as a nullity.[8]

[8] In making this filing, the Altrad Defendants do not waive, and specifically preserve and incorporate herein, all defenses asserted and objections previously made regarding these proceedings through their written motions, oral arguments, memoranda and briefs, responsive pleadings, served responses, and appellate filings, as well as such publicly available documents as to which the Court may take judicial notice, including, *inter alia*: (i) the Court lacks personal jurisdiction over each of the Altrad Defendants; (ii) the Court lacks subject matter jurisdiction; (iii) the Receiver lacks standing; (iv) the Receiver was improperly appointed in a separate case, *Park*, which had been "fully resolved" months before a receivership was sought to be created on behalf of a plaintiff whose personal representative status had been likewise terminated months before; (v) the *Park* case and the purported receivership appointment were and remain beset by a host of uncurable, fatal deficiencies, including defective service, lack of statutorily required notice, failure to satisfy other statutory mandates such as inclusion of the required clause in the appointment order fixing the value for which bond may be given following a purported appointment, and the lack of judgment *and* creditors; (vi) the Cape PLC receivership was improperly continued and modified in this case without meeting any of the mandatory statutory predicates on at least two separate occasions, including this Court's Orders dated December 6, 2023 and November 5, 2024; (vii) the Receiver's claims are improperly pled and fail under Rules 12(b) and 14, SCRCP; (viii) these proceedings and the claims asserted and relief sought against the Altrad Defendants violate their fundamental procedural and substantive constitutional rights and protections, including but not limited to those rights and protections afforded by the Due Process, Equal Protection, Commerce (including Dormant Commerce), Takings, Excessive Fines, and Supremacy Clauses of the United States Constitution and, where applicable, their counterparts in the South Carolina Constitution; (ix) these proceedings are illusory and should be confirmed dismissed by virtue of the prior "tolling agreement"—in reality an agreement of dismissal—allegedly entered into by and between counsel for the *Tibbs* Plaintiffs and the Receiver; (x) all possible claims asserted by the Receiver have been fully and finally released by the parties he purports to represent and the Altrad entities he targets; and (xi) the very basis of the Receiver's claims against the companies he purports to represent are the subject of a final decision affirmed on appeal of foreign courts in 1990 and again reaffirmed as recently as 2024, which the Receiver is estopped from challenging. Moreover, to the extent not inconsistent with anything herein, the Altrad Defendants join all other filings by any other third-party defendant that challenges the propriety of these proceedings and the activity of the Receiver.

Respectfully submitted,

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July 18, 2025

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, individually and as successor in interest to ANGLO AMERICAN CORPORATION OF SOUTH AFRICA LTD., et al., Third-Party Defendants.	C/A No. 2023-CP-40-01759 In Re: Asbestos Personal Injury Litigation Coordinated Docket

THIRD-PARTY DEFENDANTS CHARTER CONSOLIDATED LTD., ESAB CORPORATION, AND CENTRAL MINING AND INVESTMENT CORPORATION LTD.'S OBJECTION AND OPPOSITION TO RECEIVER'S JULY 11, 2025 SUBMISSIONS

Third-Party Defendants Charter Consolidated Ltd. ("Charter"), ESAB Corporation ("ESAB"), and Central Mining and Investment Corporation Ltd. ("Central Mining" and, collectively, "Charter Third-Party Defendants"), by and through their undersigned counsel, submit this opposition/objection ("the Opposition") to the Receiver's Report ("Report") and Notice of and

Motion to Confirm Appointment of Receiver ("Motion") filed by the purported receiver for Cape PLC ("Receiver") on July 11, 2025.[1]

OBJECTION AND OPPOSITION[2]

The Charter Third-Party Defendants respectfully object to the Motion as both procedurally and substantively defective. As a procedural matter, the Motion is improper because the South Carolina Supreme Court's June 26, 2025 Order ("June 26 Order") explicitly prohibits the Receiver from taking action in matters such as *Tibbs* in which a case-specific receivership appointment has not been made.

The South Carolina Supreme Court's June 26 Order

In the June 26 Order, the South Carolina Supreme Court converted the Charter Third-Party Defendants' petition for writ of certiorari in case 2024-001423 (seeking, *inter alia*, review of whether the Receiver has authority to act) to a common law writ of certiorari and granted it pursuant to article V, section 5 of the South Carolina Constitution and section 14-3-310 of the

[1] By filing this Opposition, the Charter Third-Party Defendants do not waive, but instead specifically preserve, their objections to personal jurisdiction in South Carolina, for the reasons explained in the Motions to Dismiss for Lack of Personal Jurisdiction filed on September 1, 2023 and Memorandums in Support filed on October 23, 2023, as well as the Responses and Objections to Third-Party Plaintiff's Proposed Order Denying Third-Party Defendants' Motions to Dismiss for Lack of Personal Jurisdiction filed on December 4, 2023. The Charter Third-Party Defendants maintain their objections to personal jurisdiction in South Carolina, notwithstanding the Court's denial of their Motion to Dismiss on December 6, 2023. Moreover, the Charter Third-Party Defendants do not waive, but instead specifically preserve, all other objections previously made regarding these proceedings through their written motions, oral arguments, and in responsive pleadings, including that the Court lacks subject matter jurisdiction, that the purported Receiver was unlawfully appointed, that the purported Receiver lacks standing, and that all third-party claims against the Charter Third-Party Defendants should be dismissed for failure to state a claim.

[2] The Charter Third-Party Defendants incorporate by reference and adopt the arguments set forth in their Opposition To Third-Party Plaintiff's Motion For Leave To Amend Third-Party Complaint (filed November 15, 2024), Memorandum In Opposition To Motion For Summary Judgment (filed on November 22, 2024), and Objection and Opposition to Receiver's Request for Trial Date (filed on June 4, 2025). The Charter Third-Party Defendants also incorporate by reference and adopt the arguments advanced by any other party opposing or objecting to the Receiver's Motion to Confirm Appointment of Receiver, the continuation of the receivership over any Cape entity, and/or the continuation of this case.

South Carolina Code (2017). June 26 Order at pp. 1-2. Rather than request briefing, the South Carolina Supreme Court remanded the case and directed the Court how to proceed. *Id.* at p. 2.

First, the South Carolina Supreme Court cited to its recent opinion in *Welch v. Advance Auto Parts, et al.*, Opinion No. 28284 ("Welch Decision"), in which it "analyzed the circuit court's jurisdiction to appoint a receiver, discussed the factual basis on which such an order must be based, and set forth limitations on the receiver's scope of authority." *Id.* at Section A. In describing the Welch Decision, the June 26 Order reiterates the South Carolina Supreme Court's caution that a prejudgment receiver may only be appointed in the most drastic of circumstances: "appointing a receiver before judgment is permissible only in the 'rarest' and 'most extraordinary' cases." *Id.*

The June 26 Order then directs this Court to complete three tasks to determine and demonstrate whether the Receiver has authority to act in *Tibbs*: (1) ensure that the Receiver has been authorized to conduct his work by a receiver appointment order filed in *Tibbs*; (2) ensure that the receiver appointment order issued in *Tibbs* is based on findings of fact that meet the Welch Decision's standards and the Receiver's scope of authority is limited as required by the Welch Decision; and (3) to the extent the Court wishes to proceed with appointing a Receiver in Tibbs whose mandate differs from the Receiver's mandate in the Welch Decision (to identify and marshal insurance assets), the Court must make specific findings of fact and conclusions of law that it believes justifies its actions. *Id.*

As to the first task, the June 26 Order is crystal clear that orders from other lawsuits, a blanket order across lawsuits, or an order in *Tibbs* that is not a receiver appointment order will not suffice. Instead, only a receiver appointment order specifically issued in *Tibbs* will satisfy the South Carolina Supreme Court's directive: "[t]he receiver is not to be authorized to conduct work

as to a case in which no *receiver appointment order* has been filed." June 26 Order at Section A.1 (emphasis added).

No Receivership Order Has Been Issued In Tibbs, *So the Receiver Has No Authority To Act*

A receiver appointment order has never been issued in *Tibbs*. As the Receiver himself admits, his purported appointment as receiver for "Cape"[3] was made in the *Park* case[4] – but no such appointment has been made in *Tibbs*. Motion at p. 3 (indicating that the Cape receivership order was issued in *Park*). Certainly, the Motion does not argue that such an appointment has been made, and how could it when the appointment order was issued in *Park*? To the contrary, the Motion does not even address or reference that aspect of the June 26 Order.

Instead, in the Receiver's own words, everything he has done in *Tibbs* has been in purported "fulfillment of his duties under the Park Appointment Order," as opposed to pursuant to any receiver appointment filed in *Tibbs*. *Id.* at p. 4. Additionally, although the Motion appears to suggest that a November 5, 2024 "Clarification Order" legitimizes the Receiver's actions in *Tibbs*, *see* Motion at p. 4, this too is simply an order issued in *Park*, as opposed to a receivership appointment order issued in *Tibbs*.

[3] The Receiver and the *Tibbs* plaintiffs have applied a shifting definition of "Cape," sometimes to mean Cape PLC, at other times to refer to Cape Intermediate Holdings Ltd. ("CIHL"), and sometimes to refer to both entities collectively. When using the term "Cape" herein, the Charter Third-Party Defendants have attempted to use the term in the same way used by the Receiver or the *Tibbs* plaintiffs, but in doing so do not waive any objections to the improper continuation and modification of the Cape PLC receivership.

[4] Even if the *Park* appointment could extend to *Tibbs* (which *Welch* holds it cannot), the *Park* appointment itself is defective. In addition to the deficiencies raised in prior submissions, the *Park* appointment does not pass muster under the Welch Decision's requirement of a factual finding supporting the extraordinary remedy of a prejudgment receivership. No such factual finding is set forth in the *Park* appointment order, which instead simply states that "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." March 17, 2023 Order in *Park v. Armstrong International, Inc.* at p. 1. The *Park* plaintiffs have never demonstrated that Cape had dissolved, forfeited its charter, and been served but failed to answer – but even if they had, this would not suffice under *Welch*. Additionally, it appears that the personal representative of the *Park* estate had been relieved months before the receivership motion in *Park*, further indicating significant deficiencies in the *Park* appointment.

No receiver has been appointed over Cape in *Tibbs*. For such a prejudgment appointment to have been made, Cape would have had to have been served with the *Tibbs* complaint and the first-party plaintiffs would have had to move for the Receiver's appointment by making the requisite showing under S.C. Code § 15-65-10(4) or (5), and the Court, upon determining that the requirements for the drastic and rare remedy of receivership had been met, would have had to issue an order appointing a receiver over Cape in *Tibbs* and setting out the precise mandate of the Receiver in *Tibbs* in a way that comports with the Welch Decision. None of that has happened.[5] Instead, the Receiver improperly accepted service of the *Tibbs* complaint on behalf of Cape based on his appointment as Receiver in *Park* (which itself was procedurally defective, as discussed above), answered, and then filed a Third-Party Complaint admitting massive liability on the part of Cape (without Cape's consent to do so) and asserting third-party claims wholly premised on the admissions made by the Receiver.

Nor can a court confirm in a particular case, as the Receiver asks this Court to do for his own supposed appointment, a receivership that was never created in that case. Motion at p. 40 (requesting that "this Court Confirm [sic] [the Receiver's] appointment in the Tibbs Action"); *id.* at pp. 3-4 (indicating there is only a receivership appointment order in *Park*, not *Tibbs*). A receiver cannot move to appoint himself, and this is not an application for the Receiver to make for himself after years of purporting to act on Cape's behalf in *Tibbs*, as he attempts to do here. Indeed, because a receiver "has no personal interest in the property in his official character, except that which arises out of his responsibility in the faithful and correct discharge of his duties" and is merely "the medium through which the court acts in the execution of its orders and decrees," a putative receiver

[5] In fact, the Receiver has affirmatively argued in appellate submissions that no such appointment has occurred in *Tibbs*. *See, e.g.*, Reply in Support of Motion to Dismiss Interlocutory Appeals, Appellate Case No. 2023-002008, at p. 5 (urging the Court of Appeals to reject the argument that the *Tibbs* court had created a Cape receivership as part of a third-party defendant's 'gotcha' game").

has no standing to move for his own appointment. *Peurifoy v. Gamble*, 145 S.C. 1, 142 S.E. 788, 790 (1928).

Accordingly, The Charter Third-Party Defendants object to the Receiver filing submissions seeking his own appointment. This is an application to be made by a plaintiff in an active case in the limited and rare circumstances when the appointment of a Receiver is supported under South Carolina law. Such an application was never made in *Tibbs* by the Tibbs family, nor has any receivership appointment order been issued in *Tibbs*. Accordingly, the Motion must be denied. The first task of the June 26 Order's directive is to ensure that the Receiver has been authorized to conduct his work by a receiver appointment order filed in *Tibbs* – and the June 26 Order makes clear that without such an order, the Receiver has no authority to act. This is the threshold inquiry mandated by the South Carolina Supreme Court here, and because there is no receiver appointment order in *Tibbs*, the Court's inquiry under the June 26 Order need go no further.

Moreover, pursuant to the South Carolina Supreme Court's directive in the June 26 Order, each and every one of the Receiver's actions in Cape's name in *Tibbs* – from his initial acceptance of the Complaint to his filing of the Third-Party Complaint to the filing of the Motion and countless other motions through the course of two years of this litigation – has been unauthorized. The Receiver has never had power to act for Cape in this case because he was never appointed in this case. He cannot bring this Motion, nor has he ever had the standing or authority to act on Cape's behalf in *Tibbs*. As a result, the Receiver's would-be third-party claims against the Charter Third-Party Defendants and others are void *ab initio*, necessitating the dismissal of the Third-Party Complaint and rendering the Motion and all other pending motions and proceedings arising out of the Receiver's alleged third-party claims in *Tibbs* moot.

The Other Requirements for Receivership Have Not Been Met

Even absent these fatal procedural defects, the Motion would nevertheless fail as substantively defective because it does not set forth valid findings of fact to support placing Cape into receivership in *Tibbs* (or in any other case, for that matter). For instance, although the Motion suggests that receivership is warranted under S.C. Code § 15-65-10(4) because the Receiver believes Cape is in danger of insolvency, the proffered "evidence" of such danger amounts to nothing more than conjecture. The Motion speculates that because CIHL is a non-operating holding company, it could hide profits from plaintiffs (but provides no evidence that CIHL is in fact doing this) and because Cape-related entities pay out asbestos-related claims to United Kingdom-based plaintiffs but the Receiver is unsure about how much money CIHL itself has, *see* Motion at pp. 32-34, this must mean there is "danger of imminent insolvency for CIHL." *Id.* at 35. None of this constitutes evidence that Cape is in immediate danger of becoming insolvent such that the drastic remedy of receivership should be implemented.

The Motion's assertions regarding Cape's "moral fraud" are likewise without merit. Although the Receiver argues that receivership is also warranted under S.C. Code § 15-65-10(5) because the Welch Decision identified moral fraud as grounds for receivership, the Motion does not identify any moral fraud committed by Cape in the *Tibbs* case that could support the extraordinary remedy of appointing a prejudgment receivership over an active foreign entity.

More specifically, the Motion is largely premised on a lengthy recitation of alleged historic machinations by Cape and other entities that the Receiver has essentially "admitted" on Cape's behalf without authority to do so. According to the Motion, these unproven allegations of wrongdoing, largely based on hearsay such as assorted books and articles, are no different from

the evidence of moral fraud that the South Carolina Supreme Court determined warranted appointing a receiver over Atlas Turner in *Welch.*

But the Motion's position overlooks a critical distinction: in *Welch*, the requisite moral fraud supporting the Atlas Turner receivership consisted of proven evidence of misconduct by Atlas Turner that occurred in *Welch*, including but not limited to making misrepresentations to the trial court and disregarding its orders. Welch Decision at pp. 13-14 (enumerating Atlas Turner's improper actions in *Welch*, which constituted "evidence support[ing] the finding that Atlas Turner engaged in moral fraud against the trial court, the state of South Carolina, and Respondent"). In contrast, the alleged "moral fraud" identified in the Motion is simply a narrative description of the Receiver's allegations of historic wrongdoing by Cape based on hearsay, as opposed to evidence of any actual wrongdoing by Cape in the *Tibbs* action itself, as well as Cape's lack of answer in the *Park* case (in which it is unclear whether the proper Cape entity was ever even served or if personal jurisdiction exists, both of which must have been established before a receiver could be appointed in that action). Cape has not engaged in any misconduct in *Tibbs*; it has not even been served with process in the case. There has been no showing of "moral fraud" by Cape in the *Tibbs* case that could support appointment of a receiver over it in that action.

No Receiver Could Assert the Tibbs *Third-Party Claims – Only Cape's Board Could Do So*

Finally, the Motion's position that the Welch Decision's limitations on receivership (allowing their use in some circumstances to identify and marshal certain insurance assets to cover the plaintiff's damages) nevertheless permit a receiver to "confess" decades of wrongdoing and fraud by the entity over which it has been appointed, over the explicit objections of the entity and its management, is wholly unsupported. No matter what the Motion may argue, the Welch Decision directs that a receiver's power cannot include entry into an entity's boardroom or the ability to take

over operation of the entity but rather is limited to collecting insurance and other assets to cover the injuries of the plaintiff in the case in which the receiver was appointed. Welch Decision at p. 18. Even if the Receiver had been properly appointed in *Tibbs* – which he has not been and cannot be – he would not have the power to make stunning admissions of liability on Cape's behalf and then bring third-party claims based solely on those admissions to cover all asbestos-related injuries alleged by all South Carolinians, past and present. This goes far beyond the limited plaintiff-specific, insurance-specific scope of receivership delineated by *Welch*. Indeed, the Welch Decision makes clear that no South Carolina receivership order can take that decision-making power from Cape's board and give it to a receiver.

CONCLUSION

The Motion has been brought by a party without power to act in this case, essentially seeking his own receivership appointment and asking the Court to overlook the requirements of the Welch Decision and South Carolina receivership law in doing so. Even if the Receiver had standing to bring the Motion and had demonstrated entitlement to the requested relief – which he has not – granting the Motion would violate the requirements of the June 26 Order. The South Carolina Supreme Court's directive was clear: the Court may not authorize the Receiver to conduct work in *Tibbs* unless and until a receiver appointment order has been filed in this case. There is no receiver appointment order in place, nor has anyone with standing to do so made an application for such an order. This alone, without more, requires immediate denial of the Motion. Moreover, even if there were a receiver appointment order in *Tibbs*, the June 26 Order and the Welch Decision still mandate dismissal of the Motion, as the Receiver has not demonstrated findings of fact that support the rarest, most extraordinary remedy of prejudgment receivership. Accordingly, the

Charter Third-Party Defendants respectfully submit that the numerous procedural and substantive points described herein require denial of the Motion.

Dated: July 18, 2025

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