

RECEIVED

Dec 10 2025

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 VII)

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

v.

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

Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Incl; SPX Corporation; Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable, LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; and Zurn Industries, LLC, ...	Defendants,

of which

Asbestos Corporation Limited is the.....	Appellant in Related Case,

and

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

v.

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

Offshore Group Ltd.; Hawk Bidco US Inc.; Arranco US, LLC; Third-Party
Sparrows Offshore, LLC; The Sparrows Group, LLC, ... Defendants,

of which

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

WOMBLE BOND DICKINSON (US) LLP

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

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

SMITH ROBINSON, LLC

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

Attorneys for Respondent

GORDON REES SCULLY MANSUKHANI,
LLP

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

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

GALLIVAN, WHITE & BOYD, PA

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

Attorneys for Respondent

MORGAN, LEWIS & BOCKIUS LLP

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

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

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

Attorneys for Respondent

Other Counsel of Record:

KASSEL MCVEY

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

Counsel for Plaintiffs

DEAN OMAR BRANHAM SHIRLEY LLP

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

Counsel for Plaintiffs

TABLE OF CONTENTS

<u>Document</u>	<u>Page</u>

Volume I

Order on Motion to Confirm the Appointment of the Receiver (Oct. 13, 2025).....	1

Tibbs Pleadings

<i>Tibbs</i> Complaint (Apr. 5, 2023).....	50
<i>Tibbs</i> First Amended Complaint (May 3, 2023).....	141
“Cape PLC’s” Answer (June 29, 2023)	245
Putative Receiver’s Third-Party Complaint (June 30, 2023).....	249

Volume II

Motions to Dismiss for Lack of Personal Jurisdiction and Motions to Dissolve Receivership

Mohed Altrad’s Motion to Dismiss for Lack of Personal Jurisdiction with Affidavit (Sept. 1, 2023)	316
Altrad Investment Authority SAS’s Motion to Dismiss for Lack of Personal Jurisdiction with Affidavit (Sept. 1, 2023)	336
ESAB’s Motion to Dismiss for Lack of Personal Jurisdiction with Affidavit (Sept. 1, 2023).....	360
Central Mining’s Motion to Dismiss for Lack of Personal Jurisdiction with Affidavit (Sept. 1, 2023)	377
Charter Consolidated’s Motion to Dismiss for Lack of Personal Jurisdiction with Affidavit (Sept. 1, 2023)	394

Volume III

Altrad Defendants’ Motion to Dissolve the Putative Receivership with Exhibits from <i>Park</i> Tort Case (Sept. 1, 2023).....	411

Volume IV

ESAB’s Motion to Dissolve the Putative Receivership (Oct. 6, 2023)	807
Centrral Mining’s Motion to Dissolve the Putative Receivership (Oct. 6, 2023).....	813
Charter Consolidated’s Motion to Dissolve the Putative Receivership (Oct. 6, 2023)	819

Putative Receiver’s Opposition to Motion to Dissolve (Oct. 18, 2023) (without exhibits).....	825
ESAB’s Memorandum in Support of Motion to Dismiss (Oct. 23, 2023)	862
Central Mining’s Memorandum in Support of Motion to Dismiss (Oct. 23, 2023)	903
Charter Consolidated’s Memorandum in Support of Motion to Dismiss (Oct. 23, 2023).....	942

Volume V

Transcript of Hearing (Oct. 25, 2023)	982
Altrad Defendants’ Objections to Proposed Order (Dec. 4, 2023) (without exhibits)	1034
ESAB’s Objections to Proposed Order (Dec. 4, 2023) (without exhibits)	1056
Central Mining’s Objections to Proposed Order (Dec. 4, 2023) (without exhibits).....	1073
Charter Consolidated’s Objections to Proposed Order (Dec. 4, 2023) (without exhibits)	1089
Order Denying Motions to Dismiss for Lack of Personal Jurisdiction and to Dissolve Receivership (Dec. 6, 2023).....	1104

Initial Notices of Appeals

Altrad Defendants’ Notice of Appeal (Dec. 18, 2023)	1178
ESAB’s Notice of Appeal (Dec. 19, 2023).....	1196
Central Mining’s Notice of Appeal (Dec. 19, 2023)	1213
Charter Consolidated’s Notice of Appeal (Dec. 19, 2023).....	1230

Answers to Third-Party Complaint

Altrad Defendants’ Answer (Jan. 2, 2024)	1247
Charter Defendants’ Answer (Jan. 2, 2024).....	1310

Initial Proceedings Before the Court of Appeals

Altrad Defendants’ Initial Appellate Brief (Feb. 22, 2024).....	1371
Charter Defendants’ Initial Appellate Brief (Feb. 22, 2024)	1429

Volume VI

Receiver’s Motion to Dismiss Appeal (Apr. 16, 2024)	1491
Court of Appeals Order Dismissing Appeal (May 9, 2024)	1518

Activity Pending Appeal

Receiver’s Motion to Compel Against Herbert, Smith Freehills (Nov. 18, 2024)	1522
Receiver’s Motion for Summary Judgment (Nov. 8, 2024)	1556
Supreme Court Order (Jan. 16, 2025)	1637

Remand and Post-Remand Proceedings

Supreme Court Order (June 16, 2025)	1643
Putative Receiver’s Motion to “Confirm” Appointment (July 11, 2025)	1649
Altrad Defendants’ Notice of Recent Supreme Court Authority Voiding Litigation (July 18, 2025)	1691
Charter Defendants’ Objection to the Receiver’s Motion to Confirm (July 18, 2025)	1711

Volume VII

Transcript of Hearing (July 22, 2025)	1721
Joint Response to the Circuit Court’s First Report (July 31, 2025)	1915
Altrad Defendants’ Objection to Proposed Order (Aug. 4, 2025)	1924
Charter Defendants’ Objection to Proposed Order (Aug. 5, 2025)	1943
Transcript of Hearing (Aug. 12, 2025)	1967
Letter from Circuit Court (Aug. 13, 2025)	2036
Altrad Defendants’ Objections to Letter (Aug. 27, 2025)	2039
Charter Defendants’ Objection to Letter (Aug. 27, 2025)	2057
Transcript of Hearing (Oct. 6, 2025)	2087

Volume VIII

Order Approving Confidential Settlement and Qualified Settlement Fund Operating Agreement (Oct. 30, 2025)	2172

Park Filings

Initial Complaint (June 4, 2021)	2206

Note: All subsequent complaints in *Park*, as well as other materials related to service, scheduling trial, and the case being “fully resolved,” are attached as exhibits to the Altrad Defendants’ Motion to Dissolve the Receivership in **Volume III**.

Receiver’s Amended Complaint Against Troutman Pepper Locke (Aug. 9, 2023)	2276
Troutman Pepper Locke’s Motion to Dissolve the Putative Receivership (Sept. 15, 2023) (without exhibits)	2285
Receiver’s Motion to Clarify (Nov. 1, 2024).....	2306
Order Granting Receiver’s Motion to Clarify (Nov. 5, 2024)	2312
Troutman Pepper Locke’s Rule 59 Motion Regarding Order Granting Motion to Clarify (Nov. 15, 2024) (without exhibits).....	2316
Order on Motion to Enforce Subpoenas [Confirm the Appointment of the Receiver in <i>Park</i>] (Oct. 13, 2025)	2324
Order Vacating Confirmation of Appointment in <i>Park</i> (Oct. 30, 2025)	2367

Volume IX

Complete Park Probate File

Park Will	2370
Application for Formal Testacy and Appointment as Personal Representative	2387
Inventory and Appraisement of Estate.....	2415
Receipt and Release of Beneficiary Fiona Wiley (May 21, 2022)	2432
Receipt and Release of Beneficiary Alastair Park (May 22, 2022)	2433
Receipt and Release of Beneficiary Keith Park (June 6, 2022).....	2434
Sworn/Notarized Application to Close Estate and Discharge Personal Representative (June 6, 2022)	2435
Probate Court Order Closing Estate (Aug. 26, 2022)	2436
Probate Court Order Terminating Appointment as Personal Representative (Aug. 26, 2022).....	2438
Application for Subsequent Appointment (July 24, 2025)	2443
Certificate of Appointment (July 30, 2025).....	2447
<i>Park</i> Mediation Appointment (May 24, 2022)	2448

<i>Park</i> is “Fully Resolved” Email of Counsel (June 3, 2022)	2449

Additional Activity of the Receiver

“Tolling Agreement” (June 12, 2023)	2457
Receiver’s Complaint Against Winston & Strawn, LLP (Sept. 5, 2024)	2461
Letter from Winston & Strawn on behalf of CIHL (Aug. 30, 2024)	2488
Complaint in <i>Adams v. Cape plc</i> (Richland County Nov. 12, 2024)	2498
Acceptance of Service as “Attorney For” Cape plc (Nov. 12, 2024)	2588

Volume X

International Authorities

<i>Adams v. Cape Industries plc</i> (1990) 1 Ch 433 (CA)	2589
Appendix to <i>Adams v. Cape Industries plc</i> (1990) 1 Ch 433 (CA)	2729
<i>CIHL v. Protopapas</i> [2024] EWHC 2999 (“ <i>Mann I</i> ”)	2769
Schedule of Overlap between <i>Adams</i> and “Third-Party Complaint”	2854
Transcript of Preliminary Proceedings in <i>Mann I</i> (Oct. 9, 2024)	2875
<i>Cape plc v. Protopapas</i> , Case DBYB-W-B7J-PM3N (Montpellier Court of Appeal Apr. 8, 2025)	2923
<i>Altrad Investment Auth. SAS v. Protopapas</i> [2025] EWHC 2470 (Ch) (“ <i>Smith</i> ”)	2937
Agreement for Full and Final Settlement and Release of Claims	2976
<i>CIHL v. Protopapas</i> [2025] EWHC 2706 (Ch) (“ <i>Mann IP</i> ”)	2986

Additional Materials

South Carolina Receivership Statute (1880)	3004
South Carolina Receivership Statute (1897)	3009
In re Plan of Arrangement or Compromise of Asbestos Corporation Limited, Case No. 235-11- 000008-259 (Superior Court of Quebec July 30, 2025)	3013
Altrad Defendants’ Notice of Appeal of October 13, 2025 Order (Oct. 14, 2025)	3044
Charter Defendants’ Notice of Appeal of October 13, 2025 Order (Oct. 14, 2025)	3050

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

JOHN A. TIBBS AND
MARGARITE B. TIBBS,

Plaintiffs,

vs.

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

3M COMPANY, ET AL.,

Defendants.

(Caption continued on the following page.)

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

DATE TAKEN: Tuesday, July 22, 2025

TIME START: 9:24 a.m.

TIME END: 1:38 p.m.

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

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

CAPTION CONTINUED:

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

Third-Party Plaintiff,

v.

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

Third-Party Defendants.

APPEARANCES:

ATTORNEYS FOR THE PLAINTIFFS:

KASSEL MCVEY
BY: THEILE B. MCVEY, ESQUIRE
1330 Laurel Street
Columbia, South Carolina 29201
803.256.4242
tmcvey@kassellaw.com

ATTORNEYS FOR THE RECEIVER
PETER D. PROTOPAPAS:

SMITH ROBINSON HOLLER DUBOSE MORGAN, LLC
BY: JONATHAN M. ROBINSON, ESQUIRE
3200 Devine Street
Columbia, South Carolina 29205
803.254.5445
jon@smithrobinsonlaw.com

-and-

GALLIVAN, WHITE & BOYD, P.A.
BY: JOHN T. LAY, ESQUIRE
-and- LINDSAY A. JOYNER, ESQUIRE
1201 Main Street, Suite 1200
Columbia, South Carolina 29201
803.779.1833
jlay@gwblawfirm.com
ljoyner@gwblawfirm.com

ATTORNEYS FOR THE THIRD-PARTY DEFENDANTS
ALTRAD INVESTMENT AUTHORITY AND MOHED ALTRAD:

WOMBLE BOND DICKINSON, LLC
BY: M. TODD CARROLL, ESQUIRE
1221 Main Street, Suite 1600
Columbia, South Carolina 29201
803.454.6504
todd.carroll@wbd-us.com

APPEARANCES CONTINUED:

ATTORNEYS FOR THE THIRD-PARTY DEFENDANTS
CHARTER ENTITIES, ESAB, AND
CENTRAL MINING:

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

ATTORNEYS FOR THE THIRD-PARTY DEFENDANTS
DE BEERS PLC AND ANGLO AMERICAN PLC:

HERBERT SMITH FREEHILLS KRAMER NEW YORK, LLP
BY: SCOTT BALBER, ESQUIRE
-and- BENJAMIN RUBINSTEIN, ESQUIRE
-and- CHRISTOPHER B. EMCH, ESQUIRE
-and- ELIZABETH KAMINSKI, ESQUIRE
200 Park Avenue, 16th Floor
New York, New York 10166
917.542.7600
scott.balber@hsfkramer.com
benjamin.rubinstein@hsfkramer.com
chris.emch@hsfkramer.com

ATTORNEYS FOR CERTAIN UNDERWRITERS AT
LLOYD'S LONDON, CONTINENTAL CASUALTY
COMPANY, AND LIBERTY MUTUAL INSURANCE
COMPANY (PARK v. CAPE):

MURPHY & GRANTLAND, P.A.
BY: WESLEY B. SAWYER, ESQUIRE
4406-B Forest Drive
Columbia, South Carolina 29206
803.782.4100
wsawyer@murphygrantland.com

I N D E X

	PAGE
Receivership Report and Responses	6
Certificate of Reporter	194

E X H I B I T S

(None were proffered.)

- - -

P R O C E E D I N G S

- - -

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

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

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

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

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

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

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

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

1 the receiver.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 So it was against that understanding by

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

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

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

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

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

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

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

1 Indy Catawba.

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

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

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

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

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

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

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

1 have described for you all.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 THE COURT: What's that?

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

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

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

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

18 MR. ROBINSON: May I proceed?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 And in your agenda, it is --

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

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

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

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

15 THE COURT: 15.

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

23 That's the motion and that is --

24 THE COURT: 13?

25 MR. ROBINSON: Yes, Your Honor.

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

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

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

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

8 THE COURT: Yeah.

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

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

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

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

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

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

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

18 MR. ROBINSON: Yes, Your Honor.

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

22 MR. ROBINSON: Yes, Your Honor.

23 THE COURT: All right.

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

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

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

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

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

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

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

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

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

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

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

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

11 THE COURT: Right.

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

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

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

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

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

4 THE COURT: Okay.

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

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

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

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

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

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

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

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

25 That's what the Supreme Court had in front

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 MR. ROBINSON: Correct, Your Honor.

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

23 MR. ROBINSON: Correct.

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

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

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

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

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

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

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

21 THE COURT: Right.

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

1 than Taylor --

2 THE COURT: That's correct.

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

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

12 MR. ROBINSON: It was.

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

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

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

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

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

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

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

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

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

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

19 THE COURT: Not Taylor. Not Taylor.

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

21 THE COURT: And not Finch.

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

1 it, was timely or material to the breach.

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

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

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

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

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

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

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

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

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

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

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

1 outside of the insurance assets.

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

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

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

25 And they cited Virginia Chemical and Wright

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 THE COURT: Well, all right.

24 MR. ROBINSON: If we get to those.

25 THE COURT: We are certainly going to get

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

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

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

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

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

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

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

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

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

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

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

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

10 MR. ROBINSON: Say that again.

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

14 MR. ROBINSON: Well, the motion.

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

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

21 THE COURT: Yes.

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

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

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

8 MR. ROBINSON: That's correct.

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

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

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

16 MR. ROBINSON: It's been dismissed.

17 THE COURT: Dismissed.

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

20 THE COURT: The underlying Park case
21 continues?

22 MR. ROBINSON: Correct, Your Honor.

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

25 MR. ROBINSON: Not in that provision,

1 that's correct.

2 THE COURT: Right.

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

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

14 What do you say to that?

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

23 THE COURT: Under Title 15.

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

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

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

8 THE COURT: Right.

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

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

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

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

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

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

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

12 THE COURT: Yeah.

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

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

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

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

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

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

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

8 You agree with that?

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

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

23 You know, we discussed the Murdaugh
24 situation.

25 THE COURT: Murdaugh is another example

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

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

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

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

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

11 THE COURT: Thank you, Mr. Robinson.

12 Ms. McVey.

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

16 THE COURT: Come a little closer.

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

23 THE COURT: That's correct.

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

1 entered is silly.

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

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

13 MS. MCVEY: That's right.

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

18 MS. MCVEY: That's right.

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

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

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

5 THE COURT: Right.

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

12 THE COURT: Accused who?

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

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

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

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

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

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

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

17 THE COURT: Right.

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

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

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

4 THE COURT: Thank you.

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

7 THE COURT: How about we do that.

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

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

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

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

1 cases.

2 THE COURT: Right.

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

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

14 So when I see --

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

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

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

25 I don't think they're ex parte

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

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

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

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

9 THE COURT: Yeah.

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

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

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

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

19 MR. CARROLL: Yes, ma'am.

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

25 MR. CARROLL: Yes, ma'am.

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

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

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

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

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

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

14 THE COURT: Mr. Protopapas.

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

18 THE COURT: Speak up a little bit.

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

23 THE COURT: Yes.

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

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

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

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

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

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

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

9 THE COURT: Right.

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

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

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

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

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

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

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

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

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

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

15 MR. PROTOPAPAS: In the Stafford --

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

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

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

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

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

13 THE COURT: They are.

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

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

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

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

6 MR. PROTOPAPAS: Thank you, Your Honor.

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

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

10 THE COURT: Yes. Yes.

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

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

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

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

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

1 my clients in the Tibbs case.

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

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

16 THE COURT: In what document?

17 MR. CARROLL: The Welch decision.

18 THE COURT: Right.

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

21 THE COURT: All right.

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

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

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

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

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

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

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

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

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

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

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

25 THE COURT: Let me ask you this,

1 Mr. Carroll.

2 MR. CARROLL: Yes, ma'am.

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

8 MR. CARROLL: No, ma'am.

9 THE COURT: So --

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

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

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

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

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

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

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

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

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

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

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

1 Atlas Turner's asset in business activities."

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

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

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

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

14 MR. CARROLL: Yes, ma'am.

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

22 MR. CARROLL: No, ma'am.

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

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

1 court said in that case.

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

3 Let's not do --

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

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

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

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

22 MR. CARROLL: Yes, ma'am.

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

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

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

10 THE COURT: I think because --

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

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

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

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

21 MR. CARROLL: Your Honor.

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

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

3 MR. CARROLL: Okay.

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

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

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

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

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

1 MR. CARROLL: I understand.

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

8 MR. CARROLL: Absolutely.

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

10 MR. CARROLL: Yes, ma'am.

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

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

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

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

22 THE COURT: I understand your argument.

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

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

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

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

14 THE COURT: All right.

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

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

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

20 THE COURT: Well, what does it say?

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

1 days.

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

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

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

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

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

18 So that part of Welch is the law.

19 Now, if I can talk about --

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

1 MR. CARROLL: Yes, ma'am.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 MR. CARROLL: Yes, ma'am.

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

1 MR. CARROLL: Yes, ma'am.

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

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

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

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

25 MR. CARROLL: Your Honor --

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

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

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

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

1 our papers on this point.

2 THE COURT: I have.

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

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

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

25 Cape --

1 THE COURT: Let me understand something.

2 MR. CARROLL: Yes, ma'am.

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

7 MR. CARROLL: Yes, ma'am.

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

13 MR. CARROLL: Yes, ma'am.

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

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

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

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

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

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

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

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

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

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

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

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

25 Number two, false statements regarding

1 insurance coverage.

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

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

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

25 There's never been any service of Cape

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

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

13 THE COURT: All right, sir.

14 MR. CARROLL: Thank you.

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

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

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

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

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

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

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

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

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

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

10 THE COURT: Let me stop you right there.

11 MR. RAWL: Of course.

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

17 MR. RAWL: Correct.

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

1 MR. RAWL: Yes.

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

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

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

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

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

7 How did the Covil insurance get discovered?

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

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

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

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

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

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

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

1 appointment of the receiver in Covil.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 MR. RAWL: Thank you, Your Honor.

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

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

24 THE COURT: Okay. All right.

25 MR. RAWL: Again, I don't want to rehash

1 all the arguments, but I do want to go back to
2 my original point, which is if -- in any case
3 where the issue is was the appointment
4 sufficient? Well, that appointment order in the
5 motion, you know, for the appointment was made
6 by the underlying plaintiff.

7 You know, the receiver was not there --
8 let's take the Park case, for example. You
9 know, Mr. Protopapas was not acting in the Park
10 case prior to the time Your Honor issued the
11 order appointing him as the receiver. He wasn't
12 there saying, Your Honor, you should appoint me
13 as a receiver in this Park case for all these
14 reasons. You know, it was the Park plaintiff.

15 We now have a different understanding now
16 because that we know there was actually no
17 plaintiff at the time of the case. There was no
18 case in controversy. You have to have at least
19 two parties to have a case in controversy. So
20 it is my client's position as well that that
21 case was over and that there would be no proper
22 appointment.

23 Even if the plaintiff at the time, you
24 know, was still appointed PR and still had
25 authority to act on behalf of the Park estate,

1 and that case was not -- have already been fully
2 resolved, by making the motion, he is making the
3 argument as to why our receiver should be
4 appointed. If that becomes in question again,
5 it's not up to the receiver who is the arm of
6 the court, who is supposed to be a neutral and
7 not have, you know, an advocate of any party, it
8 is not up to the receiver to go then stand in
9 the shoes of Mr. Park and say, well, Mr. Park
10 should have argued this, or he meant to argue
11 this but he didn't.

12 THE COURT: I don't understand that to be
13 what the receiver is doing at all. The receiver
14 is acting as the representative of the defendant
15 not as the -- he's acting as a receiver for a
16 specific defendant party. He's not acting as a
17 representative for the plaintiff at all.

18 MR. RAWL: Your Honor, respectfully, the
19 receiver made a motion to confirm the
20 receivership. He made a motion to confirm his
21 own authority and suggesting that this Court --

22 THE COURT: Right. That's not a motion
23 made by the plaintiff in any case.

24 MR. RAWL: No. And that's my point,
25 Your Honor.

1 THE COURT: So none of these appointments
2 or even appointments where you -- you want to
3 invalidate them all, including those that where
4 a receiver is appointed pursuant to an order
5 initially issued in Taylor, for example, for
6 Covil. Unless the plaintiff did the requesting,
7 no third-party request would be valid, in your
8 opinion?

9 MR. RAWL: I don't think that any action of
10 a receiver appointed in one case pursuant to
11 15-65-10, et. seq., you know, any action would
12 be appropriate in another case.

13 THE COURT: Okay. Well, now you're talking
14 another case. You're not asking for the
15 invalidation of every receiver appointment?

16 MR. RAWL: I'm only here in regard to the
17 Tibbs case. I represent ESAB, Charter --

18 THE COURT: I understand who you represent.

19 MR. RAWL: Yes. And so it is -- I do think
20 that --

21 THE COURT: But you're making a pretty
22 broad argument about the authority of the
23 receiver appointed in any of these cases. And
24 pursuant to the argument you make, all these
25 receiverships, except those that pertain to the

1 specific case in which a receiver was initially
2 appointed, would be invalid.

3 MR. RAWL: I believe that, yes.

4 THE COURT: And a case in which he's
5 appointed unless the plaintiff asks for the
6 appointment, they would be invalid.

7 MR. RAWL: If a plaintiff gets an
8 appointment of a receiver in a certain case, if
9 the receiver acts beyond that case, if it's
10 under this statute, then he would not have the
11 authority to act in that other case, is my
12 client's reading of this case.

13 THE COURT: I understand.

14 MR. RAWL: But again --

15 THE COURT: That would have gotten rid of a
16 lot of litigation that's already gone over the
17 dam and been resolved and gone even as high as
18 the Supreme Court.

19 MR. RAWL: And I don't know why different
20 parties did not challenge the appointment of the
21 receiver at those times. I notice there were
22 some challenges, but the appeals were not
23 accepted as immediately appealable. This is the
24 first, you know --

25 THE COURT: That's clearly something wrong

1 that was done in this case. That the court has
2 recognized. These were not immediately
3 appealable orders, and the court has made that
4 very clear.

5 MR. RAWL: I did read the Tibbs opinion or
6 Tibbs order, yes, ma'am, Your Honor.

7 THE COURT: What's that?

8 MR. RAWL: I said, yes, Your Honor, I did
9 read the Tibbs order. So I do understand what
10 they said?

11 THE COURT: Some parts you like other parts
12 you don't like?

13 MR. RAWL: Isn't that every case?

14 THE COURT: Yeah, well, it is. That's what
15 I'm all about.

16 MR. RAWL: Your Honor, but in this, the
17 Tibbs case that I'm standing here for today, my
18 client objects that the receiver does not have
19 standing to act in this case. But further --

20 THE COURT: That's an underlying argument.

21 MR. RAWL: Doesn't have standing to try and
22 argue for his own appointment. You know,
23 whether or not the appointment was appropriate
24 or not or enough evidence or not,
25 Mr. Protopapas, he didn't have anything to do

1 with getting himself appointed. The order was
2 made, he was appointed. So whatever happened
3 before his appointment, whether that appointment
4 order was appropriate or whether the evidence
5 that was provided to the court was sufficient,
6 you know, under Welch, that is not the receiver
7 standing to make this argument.

8 For example, we made this argument when we
9 made a motion to resolve the receivership in
10 this case. And there was an issue, if Your
11 Honor remembers, with -- we pointed out that the
12 Cape entity, the motion to appoint the receiver
13 had all this information, but what it did not
14 provide to the court was any evidence that there
15 was personal jurisdiction over the Cape entity.

16 Later in the briefing, there was a receiver
17 provided a copy of reported service. There was
18 an affidavit that said the summons had been
19 filed or had been served but no summons and
20 complaint.

21 And we make the argument that that --
22 you -- whatever happened in the underlying
23 appointment would be the argument of Mr. Park
24 that said, yes, I did it the right way, and not
25 for Mr. Protopapas or his lawyers to say, oh,

1 no, Park did it the right way, and we're going
2 to try and supplement and make some arguments
3 that Park did not make in the underlying case.

4 I'm saying the same thing here, Your Honor.
5 I don't think it's appropriate for the receiver
6 to argue, hey, you should go back and maybe
7 include some of these facts because Mr. Park
8 didn't make them. If Mr. Park thinks that the
9 appointment order was correct, then he should be
10 here arguing that -- what was argued and then
11 the underlying appointment order is correct.

12 Not Your Honor's arm of the court,
13 Mr. Protopapas, which should be -- I don't think
14 it should be argued in furtherance of his own
15 authority. His authority comes through you. It
16 would be up to the person seeking the
17 appointment to say whether or not if there's a
18 challenge to the appointment and that under --

19 THE COURT: That's the same argument you
20 made before, right?

21 MR. RAWL: It is similar. It is not the
22 same because we have different evidence now.
23 Because right now, Park can't come back. Park
24 is no longer a plaintiff. There is no plaintiff
25 in the Park case. That probably explains why he

1 may not have come back earlier because it's
2 definitely not back now.

3 I have just a couple of objections unless,
4 of course, Your Honor wants to ask me some more
5 questions. I want to make sure that on the
6 record that, you know, my client does object to,
7 you know, Mr. Protopapas' assertion that he has
8 standing to make any of these arguments because
9 the -- I think that the receivership, his
10 ability to act in Tibbs is a nullity. There is
11 no order appointing the receiver in the Tibbs
12 case. And that the order in Park was a nullity
13 to begin with because there was no case in
14 controversy.

15 The -- we also object to --

16 THE COURT: Okay. Well, let me just ask
17 you this: The main thrust of all of you all's
18 arguments has been the appointment of Protopapas
19 was not proper because it wasn't in the Tibbs
20 case. I got that. I don't think you need to
21 plow that ground anymore.

22 But all the other issues about why a
23 receiver can't be appointed for your clients.
24 So let's say for reasons beyond what I'm
25 prepared to decide today it's decided that his

1 appointment was proper. Now what is your
2 argument?

3 MR. RAWL: If Your Honor was to decide that
4 the only appointment order regarding any Cape
5 entity was the appointment order in the Park
6 case.

7 THE COURT: I understand that. I
8 understand that, Mr. Rawl. I'm trying to -- I
9 understand that completely, and I understand you
10 would like to resolve the whole thing on that
11 basis alone.

12 MR. RAWL: Yes.

13 THE COURT: I am asking you a little bit
14 different question right now.

15 MR. RAWL: Okay.

16 THE COURT: Which is assume for a moment
17 the appointment is not the problem, but there
18 are other issues about whether any receiver
19 should have been appointed over your client
20 because your client is not a defendant or
21 related to a defendant, et cetera, et cetera. I
22 would like to at least hear a little bit about
23 that.

24 MR. RAWL: I apologize, Your Honor. I want
25 to make sure we're on the same page. There is

1 no receiver appointed over my client.

2 THE COURT: Right.

3 MR. RAWL: A receiver was -- a receiver
4 order was appointed. Well, in the Park case to
5 put an --

6 THE COURT: Let's not go to the Park case.
7 How did your client get in here at all?

8 MR. RAWL: The receiver -- Mr. Protopapas
9 purports to be a receiver for an entity called
10 Cape PLC.

11 THE COURT: Exactly. That's where I want
12 to go now. He says he's a receiver for Cape
13 PLC. And you say, well, he hasn't been
14 appointed as a receiver for Cape PLC in the
15 Tibbs case, therefore, his authority is null to
16 begin with. I got that argument.

17 MR. RAWL: Okay.

18 THE COURT: But I'm looking for a little
19 bit different argument, which is let's assume
20 for a moment that he was properly appointed to
21 be the receiver and act for Cape as the
22 receiver. Your clients get hooked into this
23 thing because of their alleged relationship to
24 Cape, correct?

25 MR. RAWL: Well, I'll say --

1 THE COURT: That's the area I would like to
2 at least have addressed to some extent instead
3 of keep going on a doom scroll about this one
4 issue, there is the validity of his appointment
5 at all. I got what your argument is there. I
6 got the argument that Mr. Carroll has made about
7 that. It's an argument based on Welch. It's an
8 argument based on statute. Argument based on
9 the order of June the 26th. I got all that.

10 But in addition, there was an underlying
11 dispute as the case left me with a determination
12 about the relationship between Cape and Altrad
13 and the other defendants that are now in this
14 thing. I want you to talk about that for a
15 minute.

16 You represent ESAB, Central Mining, other
17 insurers of London, insureds, Charter, et
18 cetera, right?

19 MR. RAWL: I represent ESAB, Charter, and
20 Central Mining.

21 THE COURT: Okay.

22 MR. RAWL: Your Honor, my clients --

23 THE COURT: They are in this case why?

24 MR. RAWL: They are in this case because
25 what we claim is, of course, an improperly

1 appointed receiver brought a third-party action
2 in a case where he was not appointed receiver.

3 THE COURT: He brought a third-party case.
4 We've talked at length about the fact he can't
5 do that. But let's go to the merits of the case
6 he did bring.

7 MR. RAWL: Sure.

8 THE COURT: How it originally got to me.
9 And that is your claim that he can't make a
10 claim against you.

11 MR. RAWL: Well --

12 THE COURT: What is his claim based on?

13 MR. RAWL: If you go to the actual claim he
14 makes. I'll take one of my clients, for
15 example, ESAB. ESAB is a company who's only
16 been in business for a couple of years. There's
17 only I think one paragraph in the entire
18 90-something-page complaint. And in what we
19 said is there is no personal jurisdiction --
20 even if you have the authority to act, there's
21 no personal jurisdiction.

22 You show no connection whatsoever between
23 this historic, what they claim to be a terrible
24 actor from South Africa and my client, which is
25 a U.S. corporation that has nothing to do with

1 asbestos.

2 And so we made a motion to dismiss for lack
3 of personal jurisdiction, and then have been
4 challenging the authority of the receiver and
5 the standing on personal jurisdiction issue
6 since. So what I would say is the underlying
7 case, what it is about is the receiver did not
8 seek -- did not go and try to marshal some kind
9 of insurance asset. They did not identify any
10 asset of any entity that are presented in
11 South Carolina.

12 They said, oh, we think that there are some
13 relationship between these clients, and they
14 brought one cause of action, which is the unjust
15 enrichment cause of action, which they think
16 that somehow my client was unjustly enriched by
17 the actions of this entity from fifty-something
18 years ago.

19 That's basically what the underlying case
20 is. But until very recently, we've had all
21 these issuance on appeal. And from my client's
22 standpoint and what happened the Supreme Court
23 pointed out and the Tibbs order is all of my
24 client's appellate activity challenged the
25 authority of the receiver to act in the

1 underlying appointment of Mr. Protopapas as a
2 receiver.

3 THE COURT: I got that. I got that,
4 Mr. Rawl.

5 MR. RAWL: That's where we are.

6 THE COURT: Mr. Rawl, settle just for a
7 minute, please, sir. I'm not dismissing those
8 arguments by saying that they may not be good
9 arguments. I get the basic Park appointment
10 can't help in the Tibbs case. I got that.

11 I'm just trying to probe for a little bit
12 the specifics of how they claim you -- your
13 client is related to Cape and therefore becomes
14 a legitimate defendant if all -- the appointment
15 thing is not a problem.

16 MR. RAWL: Even if every bit of the
17 appointment was proper --

18 THE COURT: Right.

19 MR. RAWL: -- there's no merit whatsoever
20 to the underlying case against my client.

21 THE COURT: Okay. And what is that
22 underlying case? What is their claim?

23 MR. RAWL: Again, they're claiming that
24 somehow my client, who is a relatively
25 newly-formed corporation, somehow has something

1 to do with Cape from fifty years ago. There's
2 no connection. I'm sorry.

3 THE COURT: I think you know more than what
4 you're answering here. I'm frustrated that you
5 keep kind of going in vague circles.

6 But what I understand your client's
7 position in this case to be is that there's a
8 claim that it ended up with the assets or part
9 of the assets of the corporations that
10 distributed South African asbestos to
11 South Carolina and injured South Carolina
12 plaintiffs.

13 MR. RAWL: No, Your Honor.

14 THE COURT: Then what is the claim? What
15 is the relationship claim claimed between your
16 client and Cape?

17 MR. RAWL: That somehow my client was
18 unjustly enriched by Cape's bad acts.

19 THE COURT: Bad acts in what? Selling off
20 its assets or distributing these assets or
21 closing down one company and putting the assets
22 in the name of another shell corporation?

23 MR. RAWL: I mean, the complaint says that
24 this underlying Cape entity, you know, was a
25 large miner of asbestos. That its products were

1 distributed, and it would be in a lot of other
2 products maybe in South Carolina. That they
3 allege that there is a company called NAAC that
4 was a subsidiary.

5 THE COURT: Right. That's a big part of
6 their claim is that when Cape decided, hey, we
7 don't like this litigation environment in the
8 United States even though we've distributed
9 asbestos here for years, so we are going to get
10 out of the United States and put our affairs in
11 the hands of NAAC. The receiver's contention is
12 that NAAC is just a shell corporation that Cape
13 continues to control. But it was the named
14 distributor. In fact, it even had an office in
15 South Carolina.

16 And so what is the claim about the
17 relationship between that entity or any other
18 Cape entity and your claims?

19 MR. RAWL: There is no claim that my
20 clients, at least not in the complaint, that my
21 clients have any relation whatsoever to NAAC.

22 THE COURT: What is the -- what corporation
23 in the Cape chain do they say your client was
24 either related to or received the assets of?

25 MR. RAWL: I think they did allege at one

1 point that my client was a small shareholder of
2 one related Cape entity. But there's no
3 allegation that any assets of Cape were put into
4 the hands of my client. That is -- those are
5 not the allegations.

6 THE COURT: Okay. If that's the case,
7 doesn't that solve your problem completely?
8 Shouldn't you be out just on that without
9 getting into all this other complexity?

10 MR. RAWL: Well, Your Honor, when we argue
11 personal jurisdiction, I thought you were
12 actually going to -- were with me.

13 THE COURT: Yeah.

14 MR. RAWL: I thought that you were going to
15 find that there was no link and there was
16 nothing. But we did make that argument, but you
17 did deny my motion and at this point we are
18 still in the case.

19 But also I believe that NAAC never had any
20 connection. There's no allegation there's a
21 connection with South Carolina, is my
22 understanding. I think they said there was one
23 employee of NAAC that was in Chicago.

24 THE COURT: Well, the allegation is that
25 NAAC actually had an office in South Carolina.

1 MR. RAWL: Not in this complaint,
2 Your Honor.

3 THE COURT: Huh?

4 MR. RAWL: Not in this complaint, I don't
5 believe. I've read it so many times because
6 it's somewhat of a struggle for me to discern
7 what's being alleged against my client. It
8 is -- I am pretty confident that the allegation
9 is that NAAC had an office only in Chicago. But
10 if I'm wrong about that, it doesn't make any
11 difference from any client's standpoint.

12 THE COURT: Your personal jurisdiction
13 argument the thing beyond anything else, you say
14 get your client out, right?

15 MR. RAWL: I think that at the time we made
16 the argument, we did not know that Park was not
17 actually still a plaintiff. So we did not have
18 the ability to make the argument at the time.

19 THE COURT: But you don't need that if the
20 court revisits the personal jurisdiction issue.

21 MR. RAWL: I think we should win on
22 personal jurisdiction also, Your Honor, yes.

23 THE COURT: All right.

24 MR. RAWL: If I can put the rest of my
25 objections on the record real quick. Your

1 patience --

2 THE COURT: The rest of your objections?

3 MR. RAWL: I have a couple of objections to
4 make sure I have some of the stuff that the
5 receiver has done here.

6 THE COURT: Is that going to get into kind
7 of the personal back and forth that the court
8 asked me to put an end to?

9 MR. RAWL: No, I'm not looking to be
10 personal back and forth. What I do want to do
11 on behalf of my client, I do want to object to
12 the consideration of nonparties filing --

13 THE COURT: Are you in this the same thing
14 that Mr. Carroll has already covered about the
15 Amy Hill letter and other things?

16 MR. RAWL: I'm not arguing anything about
17 ex parte communication. My only point is that,
18 you know, as the judge in the Tibbs case, I
19 think it is -- you know, I'm asking that
20 Your Honor only consider the filings by the
21 parties in the Tibbs case. And to the extent
22 that there are filings being filed in the Tibbs
23 case trying to sway this court on how it should
24 rule on these receivership issues by parties
25 that -- or by lawyers that don't represent a

1 party in a Tibbs case, or I mean, I think
2 Mr. McCoy is a very nice person, but his view of
3 receiverships from the Murdaugh case are not
4 relevant to the Tibbs' decision.

5 THE COURT: Okay. So your argument is on
6 the merits of these materials that have been
7 submitted as exhibits not on the basis that they
8 are ex parte? On the merits you think it
9 shouldn't be considered.

10 MR. RAWL: I'm saying they are not
11 considered -- I think they're improper and we
12 would ask that the court not consider them in
13 regard to the Tibbs case because they are not
14 properly filed in this -- they should not have
15 been filed in this case.

16 THE COURT: All right.

17 MR. RAWL: Also to the extent we would ask
18 that they not be provided in any report that
19 goes to the Supreme Court.

20 Also, similarly there are some letters that
21 were filed that are general letters by law firms
22 that say on behalf of our past, future, and
23 present clients, here's our position. I don't
24 think that a lawyer can represent, still work in
25 the past or future client if they're going to

1 make any positions in any case on behalf of a
2 current client.

3 THE COURT: Wait a minute. Now that does
4 go a little beyond what I've even heard from
5 your colleague.

6 MR. RAWL: Mr. Carroll, yes.

7 THE COURT: Are you now saying that that
8 disqualifies them from any other participation
9 in any other case, what's been filed in this
10 case?

11 MR. RAWL: No, Your Honor. I'm not
12 suggesting anything nefarious. What I'm
13 suggesting is if this court -- if I think that
14 counsel is going to say I'm making these
15 arguments in this case on behalf of -- I'm
16 standing here today on behalf of ESAB, Charter,
17 and Consolidated Mining. But I've disclosed to
18 the Court who I'm making arguments on behalf of.
19 There are certain filings that were just made
20 generally by law firms that say on behalf of my
21 past, present, and future clients.

22 THE COURT: That's so nitpicky. I
23 understand you don't like that. It's not going
24 to have anything to do one way or another with
25 what I do about the legal issues in this case.

1 But what it does suggest to me is that the
2 receiverships are working.

3 The lawyers in various asbestos cases to
4 file letters that start off by saying "On behalf
5 of their past, present, and future clients,"
6 I'll ignore that. The rest of their comments
7 about what is happening in the receivership
8 world in general, they file, and they are there
9 for whatever good they do.

10 My judgments are going to be made on what I
11 think the law is in this area.

12 MR. RAWL: Your Honor, I do appreciate
13 that.

14 THE COURT: So I don't think you need to
15 make any more arguments along those lines.

16 MR. RAWL: That's my only point is I do not
17 believe those people had standing to make any
18 arguments for how --

19 THE COURT: All right. I've heard that. I
20 got it.

21 MR. RAWL: Your Honor, unless you have any
22 other questions for me, I am happy to sit down.

23 THE COURT: Thank you, sir.

24 MR. RAWL: Thank you, Your Honor.

25 THE COURT: 12 o'clock is way past when I

1 normally break. Let's take a 15-minute break.
2 Be back at 12:15.

3 - - -

4 (A recess transpired.)

5 - - -

6 THE COURT: All right. Welcome. If you
7 don't have anything new to say, make it very
8 brief. Thank you.

9 MR. BALBER: Thank you, Your Honor. I will
10 be brief.

11 I am Scott Balber from Herbert Smith
12 Freehills on behalf of the
13 Anglo American-De Beers defendants.

14 The first thing I want to do is address a
15 question you asked Mr. Rawl about why my clients
16 are here and who we are. I think it's
17 important.

18 So the Anglo American-De Beers entities are
19 ultimately a publicly-traded company in the
20 business of mining platinum, diamonds, and
21 copper. Not asbestos. Never mined asbestos.
22 Never sold asbestos. Not in South Carolina or
23 anywhere else in the world.

24 We're also not insurance company. Never
25 have been.

1 We are here in this case because one of my
2 client entities owned an equity interest, a
3 minority equity stake in one of Mr. Rawl's
4 client-related entities, which itself ultimately
5 owned a minority equity stake in Cape PLC. So
6 we are the historically minority owner of a
7 minority ownership interest in an entity that
8 was a minority owner in Cape. That's it, Judge.

9 So to answer your question, yes, you can
10 revisit the personal jurisdiction motions, which
11 we continue to reserve, and the other motions to
12 dismiss we made, and not negatively impact, I
13 think, the good work that Your Honor has done in
14 the insurance context.

15 This is not an insurance case. I just want
16 to be clear about that because there are no
17 insurance defendants. And I think very
18 significantly, Your Honor, the receiver himself
19 acknowledges that Cape's insurance was exhausted
20 in 1978. That's in page 14 of the Interim
21 Statute Report.

22 So nothing in this case has to do with
23 insurance. And again, Your Honor can dispense
24 with all the issues in this case without
25 negatively impacting the insurance regime where

1 I know Your Honor has done substantial good work
2 and which continues to progress onward.

3 THE COURT: One of the things that I'm
4 curious about in terms of your assertion about
5 what insurance was around, I get your basic
6 assertion, which is we are at such a removed
7 from the South African company and its series of
8 more directly associated corporations that were
9 in the asbestos business that we are at best for
10 a minority or a minority interest, so we are two
11 steps removed from any association. Get that
12 argument.

13 The insurance thing, though, makes me a
14 little bit curious. There is an issue in this
15 part of this complex matter in which some of the
16 lawyers and certain London insurers take the
17 position that they should not have any
18 involvement in the case for all kind of
19 jurisdictional reasons, but this is the same
20 company that's been selling liability insurance
21 to South Carolina corporations for commercial
22 general liability policies that cover this kind
23 of thing for years and years and years.

24 But you're not a part of any insurance
25 regime or anything else and your argument about

1 insurance asset is just another argument about
2 who you are. You aren't in the insurance
3 business, you aren't in the asbestos mining
4 business, and you really -- that's the central
5 argument you make.

6 You, of course, agree with all the other
7 arguments they're making about the lack of
8 authority or the receiver because receiver
9 wasn't properly appointed in this matter. I get
10 that.

11 But your basic touchstone is we ought not
12 to be in this case at all.

13 MR. BALBER: That's right, Your Honor. One
14 more nuance, which I would like to explain,
15 which is I can appreciate the propriety of the
16 receivership regime in the context of insurance
17 cases for all the reasons Your Honor described
18 with regard to the -- that's makes sense.

19 We are a different regime so it is, yes, we
20 don't think we belong here at all. But
21 particularly, the appropriateness of the
22 receivership in this context is far less
23 compelling than what Your Honor has articulated
24 in the insurance.

25 THE COURT: Sure. I understand.

1 MR. BALBER: Okay. My only other point,
2 Your Honor, is again Your Honor asked one of my
3 colleagues the question about, well, if we
4 assume there's a receivership order in this
5 case, what does that mean? So I'm just going to
6 take Your Honor's assumption and address the
7 question, if I may.

8 The problem is not only the absence of the
9 receivership order in this case. I'm not going
10 to argue that again. You've heard plenty of
11 that and been very patient. But it's also the
12 scope of the receivership order that existed in
13 Park that is being deployed in this case.

14 Okay. And the Supreme Court in Welch, I
15 think made a couple of things clear, many of
16 which have been discussed. But one of the
17 things that haven't been given enough attention
18 yet, which is that the receiver cannot gain
19 entry into the boardroom or have some vague
20 right to take over the operations of the
21 company.

22 Now certain things we all would agree would
23 be improper under Welch and certainly cannot
24 fall under the purview of a receivership order.
25 But certain things have happened in this case

1 which I respectfully submit also fall within the
2 parameters of what has by prohibited by Welch.

3 For example, waiving jurisdictional and
4 merit defenses, which the receiver has done on
5 behalf of Cape. Confessing to misconduct on
6 behalf of Cape. That's happened in the
7 complaint and elsewhere.

8 Waiving the attorney-client privilege.
9 Privileging documents on behalf of Cape.
10 Entering into a tolling agreement with
11 plaintiff's counsel. That's also happened in
12 this case.

13 And last but by no means least, is
14 accepting service of the complaint on behalf of
15 Cape. And let me just explain why I think, Your
16 Honor, that is so significant.

17 Cape, be it a good company, a bad company,
18 or the worst company, is entitled to due
19 process. Due process is not just for the good
20 guys. And in this case, in the Tibbs case, Cape
21 was deprived of due process because it was not
22 served with the complaint by the Tibbs. Rather,
23 this was short-cutted.

24 This, again, goes into the argument of who
25 had the right to seek the receiver. We think it

1 was the Tibbs only, but I'm not going to
2 reiterate that. But regardless, Cape has to be
3 served with a complaint by the Tibbs in order
4 for due process to be honored. And then if Cape
5 did what it may have done in other cases, what I
6 know the receiver claims it would have done
7 here, defaults, engaged in bad conduct, in this
8 case, well, then, Your Honor, we're off to the
9 races and whatever happens happens.

10 But Cape was deprived of that due process
11 because it was never served with the complaint.

12 Again, I don't want to reiterate anything
13 else. I've certainly agreed with my colleagues'
14 arguments. And I appreciate your time,
15 Your Honor.

16 THE COURT: Thank you very much.

17 Mr. Sawyer.

18 MR SAWYER: Good afternoon, Your Honor.
19 May it please the Court. Wesley Sawyer. I am
20 actually here in the Park case, not in the Tibbs
21 case.

22 THE COURT: I'm not hearing the Park case
23 today.

24 MR SAWYER: That's why I asked about
25 stepping up earlier, Your Honor, for

1 clarification. There's a motion to compel
2 against my clients in the Park case agenda.

3 THE COURT: What I am told is that the one
4 order that was discussed in the Supreme Court's
5 order of June 26, 2025, which is the reason for
6 this hearing -- I'm not down into motions that
7 are also pending yet -- but that case that in
8 Section B refers to the Park case.

9 MR SAWYER: It does refer to the Park case,
10 Your Honor.

11 THE COURT: And what's been represented to
12 me is that that pending motion has been settled.
13 Is that not so?

14 MR SAWYER: My understanding, Your Honor,
15 is that after the Supreme Court issued the Tibbs
16 order directing that this Court rule on those
17 pending motions from Locke Lord to dissolve the
18 receivership, that the receiver voluntarily
19 dismissed that case with prejudice.

20 THE COURT: There's nothing for you to
21 worry about in terms of the Park case. Who did
22 you represent in Park?

23 MR. SAWYER: I currently -- I'm new to
24 Park -- represent Certain Underwriters of
25 Lloyd's of London, Continental --

1 THE COURT: What are the certain other
2 insurers -- that crowd gets my attention because
3 they've been saying all along they don't have
4 any insurance. They don't represent anybody.
5 Lloyd's is one of the biggest insurers and
6 directly and indirectly in South Carolina that
7 there is in a commercial general liability
8 field. So I'm -- but why in the world are they
9 paying you to appear in a case when the motion
10 they care about has been settled?

11 MR SAWYER: That's not the motion that I'm
12 here for, Your Honor.

13 THE COURT: What are you here for?

14 MR SAWYER: May I let the court reporter
15 know who else I represent so the record is
16 clear?

17 THE COURT: Yes.

18 MR. SAWYER: I represent also Continental
19 Casualty Company and Liberty Mutual Insurance
20 Company.

21 And, Your Honor, I'm here because the
22 receiver filed a motion to compel against my
23 clients in connection with the subpoena while
24 his claim -- his third-party claim against
25 Locke Lord was still pending. That motion is on

1 your agenda for today, which is why I'm here
2 today. So my involvement in Park is limited to
3 opposing that motion to compel and is filed and
4 added to the court's agenda. I'm happy to
5 address it now or later today.

6 THE COURT: The receiver filed that motion
7 in which case?

8 MR SAWYER: In Park. That's where the
9 subpoenas were captured in Park and the motion
10 to enforce the subpoenas is --

11 THE COURT: But Park has been resolved, as
12 I understand it.

13 MR SAWYER: During our break, Your Honor, I
14 approached the receiver's counsel to ask if this
15 motion is resolved or not. They said it is not
16 resolved. I did ask for clarification,
17 Your Honor.

18 MR. PROTOPAPAS: Your Honor --

19 THE COURT: What motion are you talking
20 about?

21 MR SAWYER: The receiver's motion to
22 enforce the subpoenas against Continental
23 Casualty Company.

24 THE COURT: Receiver's motion to enforce
25 subpoenas against who?

1 MR SAWYER: Continental Casualty Company,
2 Certain Underwrites at Lloyd's of London, and
3 Liberty Mutual Insurance Company.

4 THE COURT: And they are parties in what
5 case?

6 MR SAWYER: They are not parties. They
7 were subpoenaed in the Park case and objected to
8 the subpoena.

9 THE COURT: They were subpoenaed in the
10 Park case?

11 MR SAWYER: Yes.

12 THE COURT: And the Park case is no more,
13 as I understand it.

14 MR SAWYER: If it's no more, then the
15 subpoenas are moot and that's put on the record,
16 I'll sit down, Your Honor.

17 THE COURT: All right. Mr. Protopapas. I
18 don't want any long-winded argument now. I just
19 want to know specifically what's the scoop on
20 the Park case?

21 MR. PROTOPAPAS: The Park claim is pending
22 against Cape.

23 THE COURT: Speak up.

24 MR. PROTOPAPAS: Certainly, Your Honor.

25 The Park case is pending against Cape, and

1 it's part of a normal, if you have a normal
2 receivership --

3 THE COURT: Park is still pending against
4 Cape by means of the original Park versus
5 everybody --

6 MR. PROTOPAPAS: Yes.

7 THE COURT: -- or by means of the
8 appointment of a receiver?

9 MR. PROTOPAPAS: By the original Park
10 versus everybody.

11 THE COURT: The original Park case had Cape
12 as a defendant?

13 MR. PROTOPAPAS: Yes, Your Honor. The sole
14 remaining defendant.

15 THE COURT: And -- all right. The original
16 Park case is still in existence? It hadn't
17 settled?

18 MR. PROTOPAPAS: It's settled as to all
19 defendants but Cape, and I am searching to find
20 assets available to satisfy the Park claim.

21 THE COURT: Okay. And so the demand for a
22 subpoena is still pending?

23 MR. PROTOPAPAS: Your Honor, yes. Your
24 Honor sent in April of 2025. A motion to compel
25 was filed June 2nd of '25.

1 THE COURT: All right. What you want to do
2 is talk about that, Mr. Sawyer?

3 MR SAWYER: Yes, Your Honor.

4 THE COURT: There will be a time.

5 MR SAWYER: Okay.

6 THE COURT: It's not today.

7 MR SAWYER: It was on today's agenda, so I
8 apologize.

9 THE COURT: No problem. No problem. It's
10 listed as one of the many pending matters that's
11 still out there. And I just didn't understand
12 that -- I was prepared to tell it's certainly
13 not pending in connection with the motion that
14 is talked about in the June 26 order.

15 MR SAWYER: That's correct, Your Honor.

16 THE COURT: That has been resolved, and I
17 can tell the court it's been resolved and it's
18 over with. The Park case itself is still alive
19 and well as to Cape.

20 MR SAWYER: And a very important part of my
21 argument is as to the propriety and the
22 receivership in Cape, which is also why I wasn't
23 sure if you wanted to hear from me now on that
24 particular issue. Not the whole context in the
25 Motion to Compel, but as to the receivership of

1 Cape in Park.

2 THE COURT: So far I'm trying to get with
3 these Altrad defendants and the propriety in
4 Tibbs, which is what's been projected to me to
5 look at. So let's put that one on the shelf for
6 a minute.

7 MR SAWYER: Okay. Thank you, Your Honor.
8 I'll sit down.

9 THE COURT: We're going to get back to how
10 to take up all these motions and when to take
11 them up.

12 MR SAWYER: That would be great, Your
13 Honor. Thank you.

14 MR. CARROLL: Your Honor, I did not want to
15 interrupt the dialogue, but I did want to have a
16 record before you that the Park case --

17 THE COURT: You have to speak up.

18 MR. CARROLL: Todd Carroll on behalf of the
19 Altrad defendants.

20 According to the public index, the Park
21 case appears to be fully resolved.

22 THE COURT: Wait a minute.

23 MR. CARROLL: According to the public
24 index, the Park case appears to be fully
25 resolved. That's how the Park plaintiff's

1 attorney reported it to this court more than
2 three years ago. That is what the Spartanburg
3 County Probate Court file also indicates.

4 THE COURT: All right. I'll find out about
5 that, but you're not in that as far as
6 Mr. Sawyer's clients are concerned, and I'm not
7 going to get into a full-blown discussion. You
8 have enough on your hands to deal with what
9 you've got.

10 MR. CARROLL: Yes, ma'am. I just did not
11 want my silence to be misunderstood on the
12 record as to agreement with those cases.

13 THE COURT: I understand.

14 MR. CARROLL: Thank you.

15 THE COURT: We have a big dust-up as to
16 whether the Park case is still alive. There
17 must be some agreements or something out there
18 that's keeping it alive.

19 MR SAWYER: There's a big dust-up in
20 particular because there's no PR for the estate
21 and the estate is closed.

22 THE COURT: I understand all that. I
23 understand all that. I'm not going to argue
24 that today. I understand that. They are
25 representing things that may or may not be true.

1 I don't take them as God's-given fact written in
2 the stars anywhere. That's their contention.
3 And that's why we want to have a hearing on
4 whoever motions they have. But that's all they
5 are at this moment is contentions.

6 They do not, however, directly impact what
7 I'm asked to do in the piece of Park that is
8 mentioned in this remand order. The piece of
9 Park that's mentioned in this remand order was a
10 reconsideration of a motion to dissolve the
11 partner -- the receivership, right?

12 MR. CARROLL: Your Honor, the two motions
13 in Park that are --

14 THE COURT: Okay. Just a minute. We're
15 not going to have back and forth. Hold it for a
16 minute. Let me look at this thing one more
17 time.

18 Here's what the court says, "It has come to
19 our attention that there may be motions filed in
20 this case and other asbestos cases that have not
21 been ruled on by the circuit court.

22 Specifically, we understand there is a pending
23 motion to dissolve the receivership filed
24 September the 15th, 2023, and a pending motion
25 to reconsider a clarifying order filed November

1 the 15th, 2024, both in the Park case.

2 "To the extent that is true, we direct the
3 Circuit Court to either rule on all the pending
4 motions or set forth an explanation of the
5 reasons the court determines it should not rule
6 at this time."

7 Now, that both of those -- all of that has
8 to do with Park. And I'm not in Park today
9 except that it was represented to me that some
10 parts of Park that are mentioned in this
11 clarifying order have been resolved. But I will
12 take that up when I deal with the Park motions.
13 I am not getting into a duplicate argument about
14 that today.

15 So I understand, Mr. Carroll. You don't
16 need to say anything else. I have heard enough
17 about the Park case.

18 All right. We've got a whole other set of
19 documents about where did the receiver for Cape
20 get his appointment? And I understand that's a
21 big issue out there.

22 So, you know, was that in the Park case?
23 That in the Tibbs case? Or where was it? I
24 don't know. But I'm not here to resolve that
25 today. I'm here to figure out a mechanism

1 whereby I can deal with what I've been asked to
2 deal with by the court.

3 All right. Now, I finished with
4 Mr. Sawyer. Anybody else?

5 All right. Mr. Robinson, I'm coming back
6 to you for a brief response. And one of the
7 things I would like to ask you before we get
8 started is very simply this: In what case was
9 Protopapas appointed as a receiver for Cape?

10 MR. ROBINSON: Park originally.

11 THE COURT: All right. Was it because of a
12 third-party complaint? Or who made the motion
13 for the approval of Protopapas as the receiver
14 in the Park case? Did the plaintiff make that
15 motion?

16 MR. ROBINSON: Your Honor, the plaintiff,
17 Ms. McVey.

18 THE COURT: All right. Ms. McVey made that
19 motion, that a receiver be appointed for one of
20 the defendants that her client, Park, had sued,
21 correct?

22 MR. ROBINSON: Correct, Your Honor.

23 THE COURT: All right. You may sit for a
24 minute. It looks like I'm going to get into
25 this whether I like it or not.

1 MR. ROBINSON: Your Honor, may I --

2 THE COURT: No. Keep your seat for a
3 minute.

4 MR. ROBINSON: Okay.

5 THE COURT: Ms. McVey, how did the Park
6 appointment of Cape's receiver come about?
7 What's the scoop on that?

8 MS. MCVEY: So, Your Honor, we sued Cape in
9 the Park case.

10 THE COURT: Right. I see that, and I
11 noticed that. I know that Cape's name appears
12 there.

13 MS. MCVEY: That's right. And as part of
14 that, they never filed an answer.

15 THE COURT: Right. They were in default.

16 MS. MCVEY: We did not move for a default
17 in Cape because what we didn't want to do is get
18 some judgment and then not be able to do
19 anything with it. Right?

20 THE COURT: Right.

21 MS. MCVEY: So what we did is we moved to a
22 receiver. I have -- I can hand it up to you --
23 the motion to appoint a receiver in Park.

24 THE COURT: Let me see it.

25 MS. MCVEY: And in that motion we allege

1 the worldwide fraud that Cape had engaged in.
2 And it's pretty detailed. It's about nine
3 pages.

4 THE COURT: Yeah, I'm familiar with the
5 motion. This is where you allege that Cape's
6 responsibility was projected through NAAC and --

7 MS. MCVEY: We alleged --

8 THE COURT: And then they liquidated NAAC,
9 as further means of retiring from the fray of
10 the United States, and a receiver could marshal
11 Cape's asset to satisfy their claims. That's
12 what you contend.

13 MS. MCVEY: Right.

14 THE COURT: And therefore appoint a
15 receiver for Cape.

16 Now, at the point in which you did this --
17 was filed in March of 2023. All right. And I
18 generally, if it's a motion to appoint a
19 receiver, under circumstances like this, whether
20 they're in default, then I don't give them any
21 chance to reply, I just appoint the receiver.

22 MS. MCVEY: That's right.

23 THE COURT: That's what I probably did
24 here. Is that right?

25 MS. MCVEY: Yes, ma'am.

1 THE COURT: Okay. So the receiver got
2 appointed.

3 MS. MCVEY: The receiver got appointed.

4 THE COURT: And the Park case was still
5 alive and kicking at that point.

6 MS. MCVEY: So the case had -- they keep
7 making this huge deal about me saying to the
8 court the Park case is fully resolved. And what
9 I meant by that is we had total agreement with
10 the receiver and that the Cape was up for trial.

11 THE COURT: Hold for a minute. You asked
12 for the receiver in March of 2023.

13 MS. MCVEY: So they --

14 THE COURT: And the receiver was appointed.
15 When was the tolling agreement made?

16 MS. MCVEY: It was after that.

17 THE COURT: Sometime thereafter --

18 MS. MCVEY: Right.

19 THE COURT: -- with the receiver --

20 MS. MCVEY: Right.

21 THE COURT: -- you made a tolling
22 agreement.

23 MS. MCVEY: Here's why. Because the Park
24 case, the underlying Park case that had many
25 defendants in it had been up for trial.

1 THE COURT: Right.

2 MS. MCVEY: And we had resolved with
3 everybody but Cape.

4 THE COURT: But Cape.

5 MS. MCVEY: The receiver had not finished
6 doing his work so we didn't want to go get any
7 kind of judgment that couldn't be collected.

8 THE COURT: Right. You were trying to
9 figure out whether there was some insurance to
10 cover the Park or some other asset that would
11 cover the Park case, right?

12 MS. MCVEY: That's right. That is correct.

13 THE COURT: I understand. That's typical.

14 MS. MCVEY: So that's what happened. Let
15 me back up and address, if you will let me --

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

17 MS. MCVEY: Yes.

18 THE COURT: Okay. That happened.

19 MS. MCVEY: Right.

20 THE COURT: Now, is the tolling agreement
21 still out there?

22 MS. MCVEY: Yes, ma'am.

23 THE COURT: So you're still not settled
24 with Cape.

25 MS. MCVEY: Right.

1 THE COURT: Cape has still not admitted any
2 responsibility. And in the Park case, the Park
3 case is still alive as far as Cape is concerned.

4 MS. MCVEY: Correct.

5 THE COURT: Now, tell me about the
6 allegation that the public record says the case
7 is over.

8 MS. MCVEY: Okay. So I don't know why in
9 the world the case under the Spartanburg -- or
10 I'm sorry, the Richland County Clerk of Court
11 would say that the tort case is over. I don't
12 know why that would say that. I mean, we enter
13 into individual stipulations of dismissal for
14 defendants as they settle, as you know, where
15 they're dismissed or whatever.

16 THE COURT: Right.

17 MS. MCVEY: We didn't do that with Cape.

18 THE COURT: I have looked in the record,
19 and I see nothing in the record that you pull up
20 on the --

21 MS. MCVEY: Right.

22 THE COURT: -- website.

23 MS. MCVEY: The case is open. The Park --
24 the underlying -- thank you. Ms. Valek just
25 showed me.

1 THE COURT: The case --

2 MS. MCVEY: The Park case is open.

3 THE COURT: Yeah. I'm looking right at it.

4 That case is still an open case.

5 MS. MCVEY: That's right.

6 THE COURT: Assigned to me. And this is
7 the case in which Protopapas was appointed as
8 the receiver.

9 MS. MCVEY: Yes, ma'am.

10 THE COURT: All right.

11 MS. MCVEY: One other issue.

12 THE COURT: Then why are they saying that?

13 MS. MCVEY: Okay. So I don't know why they
14 said that, but what they wanted -- here's what
15 happened. When the Park case was filed, it was
16 filed as Mr. Park individually and as personal
17 representative of the estate of. Right?

18 THE COURT: Yeah.

19 MS. MCVEY: So we filed the case and when
20 we sued Cape, there was a personal
21 representative appointed. There was an
22 individual case, but there was also a personal
23 representative appointed.

24 THE COURT: Right.

25 MS. MCVEY: So the case moved along as it

1 did. What I didn't know until Friday is that
2 apparently the probate court has closed the
3 personal representative. In other words, he has
4 absolved the personal representative of any
5 authority at the moment going forward.

6 And what they want to say is that means
7 everything is done. You cannot do anything
8 about that.

9 Now, number one, I had no idea that it
10 happened. No one had told me. We weren't
11 copied on it. Didn't do the probate. I didn't
12 know.

13 But when I went and looked at the law of
14 this, number one, we had authority to sue Cape
15 because he was appointed the representative at
16 the time. But number two, when you go and look
17 at the statute about the ability of a personal
18 representative, and the case law that's
19 interpreting it, all we could do is reopen,
20 which is already in process.

21 THE COURT: Okay. That's the status of the
22 case. The case is still alive. Probate Court
23 closed the estate, and be a lot of reasons why
24 that might be done, is going to be reopening to
25 make it clear that the PR is still able to

1 function as the PR in Park.

2 MS. MCVEY: Absolutely. And when that
3 happens again, then the statute in the case law
4 says that it is retroactive.

5 THE COURT: It's retroactive. I'm familiar
6 with developing and closing of the states and
7 the reopening all that kind of thing. It all
8 reaches back.

9 MS. MCVEY: I think that's just a red
10 herring, but I want to make sure it's clear on
11 the record.

12 THE COURT: I get that. Now let me ask one
13 other question that has nothing to do with Park.
14 It has to do with Tibbs.

15 MS. MCVEY: Yes, ma'am.

16 THE COURT: Protopapas used his authority
17 as -- he got it in Park to also function as the
18 receiver for Cape in the Tibbs case, as I
19 understand it.

20 MS. MCVEY: Yes, ma'am.

21 THE COURT: That was a big issue floating
22 around here that's going to be resolved about
23 whether you can do that, right?

24 But what was filed in the Tibbs case was
25 Protopapas' order of appointment in the Covil

1 case, in the Taylor or in the Covil case, at
2 least by what I'm looking at here. I don't
3 understand that.

4 MS. MCVEY: Well, Covil was a defendant in
5 the Tibbs case. Is that what you're talking
6 about?

7 THE COURT: Then Covil is a defendant and
8 that's why that order was filed. It wasn't
9 filed because of an attempt to say that that
10 order authorized Cape.

11 MS. MCVEY: No. No. The Cape order was
12 also filed.

13 THE COURT: The Cape order was filed as
14 well.

15 MS. MCVEY: Yes.

16 THE COURT: And that is -- the Cape order
17 in Parks was filed as an exhibit in the Tibbs
18 case when the -- when the receiver became
19 involved as the third-party plaintiff in the
20 Tibbs case, right?

21 MS. MCVEY: Correct.

22 THE COURT: Okay. I got you.

23 MS. MCVEY: And we served the receiver as
24 Cape in the Tibbs case.

25 THE COURT: Right.

1 MS. MCVEY: As we've done in every other
2 receivership-type case.

3 THE COURT: Right. Right. Right.

4 MS. MCVEY: And you know, we look at Rule
5 66.

6 THE COURT: The issue about whether the
7 court has either in Welch or the most recent
8 order or both said that's a no-no.

9 MS. MCVEY: Right.

10 THE COURT: We got it resolved. Okay.
11 Very good. That clears it up. Thank you very
12 much.

13 MR SAWYER: Your Honor, I think since we've
14 gone into Cape and Park, I feel like --

15 THE COURT: No. I'm not going to get into
16 the merits of your argument at all.

17 MR SAWYER: I want to correct statements.

18 THE COURT: I'm going to conduct a full
19 hearing, Mr. Sawyer, on whether your client is
20 te absolve in Park or not. All I was trying to
21 do is look at the record and see what the record
22 reveals and particularly what the record reveals
23 about Park.

24 I am not going to today to hear any
25 arguments about whether the personal

1 representative has any authority to reopen the
2 closure of the estate of Park. That can wait
3 until we hear the Park motions.

4 MR SAWYER: Well, Your Honor --

5 THE COURT: She is simply explaining what
6 she understands about that and that's fine. You
7 explained what you understood about Park.
8 That's also fine. I'm going to have a big
9 argument on that, and I'm not going to have it
10 today.

11 MR SAWYER: Your Honor, just --

12 THE COURT: I'm not going to have that
13 argument today.

14 MR SAWYER: I'll note my objections to
15 everything she said. We didn't have a chance
16 to --

17 THE COURT: You object to everything I
18 said, that's fine.

19 MR SAWYER: To what Attorney McVey said.

20 THE COURT: Sir? I'm not hearing you.

21 MR. SAWYER: I was just noting I object to
22 what Ms. McVey said because I did not get a
23 chance to respond to it, so I want to note my
24 objection.

25 THE COURT: I note your objection. And I

1 note that I'm going to give you a chance to file
2 briefs on this point and argue it to your
3 heart's content when I take up Park.

4 All I wanted to do is see whether in fact
5 the notations that I was told by you and by
6 Mr. Carroll that the Park case had been closed
7 on the record is right, and that's not right.

8 It hasn't been -- the Park case is still
9 alive and pending with me assigned as the judge.
10 Therefore, these contentions about Park will be
11 resolved in the due course of time by a hearing.

12 MR SAWYER: To be clear, the notations I
13 made from exhibits from court filings, from the
14 probate court submitted to Your Honor. We have
15 a full brief on the Park motion that's been
16 submitted to Your Honor as well.

17 THE COURT: That's fine. And I'm not
18 hearing that Park motion and I'm not ruling
19 against you on the Park motion today. I'm
20 simply saying I wanted some clarification as to
21 whether the Park case had been dismissed and
22 shown on the public record as no longer an open
23 case.

24 And the Park case is shown on the record of
25 the Richland County Fifth Judicial Circuit's

1 Public Index as an open case.

2 MR SAWYER: And what I was noting as the
3 probate --

4 THE COURT: I understand what you all say
5 about Spartanburg County Probate Court. I'm not
6 ruling on that or dealing with that today. You
7 say one thing, she says another thing. That's
8 why we're going to have a hearing.

9 MR SAWYER: Okay. Thank you, Your Honor.

10 THE COURT: All right.

11 MR. CARROLL: Your Honor, just for the
12 record, I join.

13 THE COURT: I understand you join
14 everything he says twice. Noted.

15 MR. RAWL: For ESAB --

16 THE COURT: Noted. Noted.

17 MR. RAWL: I also like just to object on
18 behalf of ESAB and Charter that we don't
19 believe --

20 THE COURT: You know, this is not
21 necessary, Vic. None of it is necessary. You
22 all are going to file voluminous briefs on the
23 subject. Please don't do that me. I'm not
24 hearing that case today. I told you that when
25 we got started. I let you do a few things by

1 way of noting why you're going to be in that
2 case. But I'm not hearing that right now.

3 MR. RAWL: Thank you, Your Honor.

4 THE COURT: Thank you.

5 MR. RAWL: Objection noted. Thank you.

6 THE COURT: Okay. Now, let's get back to
7 Mr. Robinson.

8 Mr. Robinson, I think I've got some clarity
9 about where things stand and where Protopapas
10 was appointed and what he did with that
11 appointment in terms of filing it in the Tibbs
12 case. I get that.

13 And that we are going to have to a big
14 hearing about. A whole issue of whether a
15 receiver's authority extends to other cases
16 beyond an original appointment. We're going
17 to -- that's going to be a big -- it's going
18 back up to the Supreme Court. They are going to
19 have a lot of looking at it, and who knows what
20 the answer is going to be. I at least
21 understand the landscape a little better now.

22 You got anything else you need to tell me?

23 MR. ROBINSON: Your Honor, I would like to
24 just express my sincere apologies for
25 interrupting Mr. Carroll when he was talking.

1 He, as the Court noted, sat quietly and listened
2 as I argued, and I apologize for interjecting.

3 The issue that I was going to raise with
4 the Court, I think Mr. Lay would address. I
5 apologize.

6 THE COURT: I appreciate that,
7 Mr. Robinson, and I assure Mr. Carroll
8 appreciates that as well. He nods. Thank you
9 so much.

10 Now, let's talk practical sense about how
11 we approach this. To me, there's one big issue
12 about how receiverships in South Carolina are
13 handled, how appointments are handled, and what
14 the ambit of a receiver's authority is. And I
15 really -- I'm asking -- this is open ended --
16 I'm searching for what the best vehicle is for
17 dealing with this.

18 All these things continue to be raised
19 repetitively in all these various matters,
20 including the remanded material. And the
21 remanded seven cases are themselves cases in
22 which the motions that are made sometimes had
23 only indirect validity in the case to which the
24 matters were made.

25 So it's kind of a -- I'm trying to figure

1 out which is the case I really ought to be
2 looking at. Is it these seven cases where it's
3 a big old bust-up between Altrad and whether
4 it's the Cape -- even if it were properly named
5 would grab into Altrad, all them? Because the
6 motions, the seven cases in which the motions
7 were made are all wrapped up with the Altrad
8 matter.

9 I don't want to get into the details of
10 whether Altrad is the -- is an appropriate party
11 to be grabbed up in the mal of Cape. There's to
12 be a -- there ought to be a time and place on
13 this docket about standing motions for us to
14 explore the big issue of whether Cape can be
15 sued at all and then whether it can drag in, by
16 all these allegations that Mr. Lay makes in his
17 various filings, all these other corporations
18 like NAAC, like Altrad, like all the rest of
19 these entities.

20 Because they all are in various pieces and
21 parts of what's before me because of the initial
22 contention of liability on the part of Cape and
23 its related companies.

24 So that's one thing. And is that an
25 exploration that would be best done through the

1 vehicle of the remanded motion? The remanded
2 seven cases or seven really petitions, or is
3 there another and better vehicle? And I suspect
4 there is, which is one of the substantive cases
5 being tried that's not got that as a part of its
6 activity.

7 So I'm going to turn to you for a minute,
8 Mr. Lay. What would your --

9 MR. PROTOPAPAS: Your Honor, may I?

10 THE COURT: Well, I'll let you, yeah,
11 Mr. Protopapas. What are you all -- you all are
12 kind of in this thing together. So what do you
13 think an appropriate vehicle would be? And I'm
14 not going to necessarily agree with you because
15 I'm going to ask the same question of these
16 other folks. But what is an appropriate vehicle
17 for exploring the Cape and its extended
18 relationship allegedly with other organizations?

19 Some of these folks say they don't even
20 have enough to get closely to what would
21 proximate personal jurisdiction. Others say
22 it's all a bunch of stuff made up by all these
23 mean books that have been written about us and
24 it doesn't have any factual predicate to it and
25 it ought to be thrown out for that reason. That

1 may be a pretty good reason to do it.

2 What's the case and controversy I've got
3 before me that would most effectively explore
4 the Cape situation? I've done it once with
5 these motions on personal jurisdiction, but that
6 apparently is -- doesn't satisfy anybody,
7 including the Supreme Court. So you tell me.

8 MR. PROTOPAPAS: Tibbs, the case remanded
9 to you by the Supreme Court, where it retained
10 original jurisdiction over to is the appropriate
11 vehicle for the Cape matter.

12 THE COURT: Okay. Now, let's talk about
13 Tibbs for a minute. Tibbs names Cape. And then
14 it's through that naming of Cape that Mohed
15 Altrad, Altrad Investments, ESAB, Central Mining
16 are alleged to come in, right?

17 MR. PROTOPAPAS: Yes, Your Honor.

18 THE COURT: So if the Tibbs' case is back
19 in my responsibility, then what pending motions
20 best deal with this overall issue? I had an
21 original ruling on personal jurisdiction, but it
22 may have to be revisited. But what's the best
23 vehicle for exploring an issue that I think the
24 Supreme Court wants the court to explore?

25 MR. PROTOPAPAS: We have a motion to amend

1 our complaint, Your Honor, which the Court has
2 heard and deferred ruling on. The personal
3 jurisdiction issue can come by a motion right
4 after the amended complaint, or we can take it
5 up as part of the motion to amend and encourage
6 our friends to go ahead and renew --

7 THE COURT: Well, the motion to amend is a
8 motion that puts all this averment we are
9 talking about at issue, right?

10 MR. PROTOPAPAS: Yes, Your Honor.

11 THE COURT: Your Lawyer Lay is trying to --
12 I can't hear both of you now, Mr. Lay.

13 MR. LAY: I'm raising my hand. It seems to
14 me that the best vehicle would be the motion to
15 dissolve and our response, the motion for
16 confirmation.

17 THE COURT: Wait a minute. You got to go
18 again.

19 MR. LAY: Let me back up. There are a
20 bunch of motions that are filed in the Tibbs'
21 case. One of them is a motion by the defendants
22 to dissolve the receivership. We have our
23 motion to confirm the receivership. Embedded in
24 those motions are issues that you addressed in a
25 73-page order in December 2023, again, on the

1 dissolution. They raised things like personal
2 jurisdiction --

3 THE COURT: I don't agree with you,
4 Mr. Lay. There is Cape and whether the naming
5 of Cape can now legitimately include these other
6 corporations. That's an issue all by itself
7 that has nothing to do with motions to dissolve
8 the receivership. That's a separate thing.
9 It's an attack on the legitimacy of the
10 receivership.

11 And there's also a contention that the
12 parties can never include some of these that
13 made all these motions the Supreme Court didn't
14 have and sent back to me, like Altrad and some
15 big -- Rawl's clients and his clients. I mean,
16 there are a bunch of them that say it doesn't
17 extend as far as me. Those have got to be dealt
18 with.

19 MR. LAY: So I think in the motion for
20 dissolution and in the motion to confirm the
21 appointment, that is going to be about the scope
22 of our responsibility as receiver and ability to
23 bring those suits. So we're going to be talking
24 about --

25 THE COURT: That's fine. But before we do

1 that is the basic question: Should these people
2 be in this lawsuit? And you say I've already
3 ruled on that when I denied the motions for
4 personal jurisdiction. But they use that to
5 race all the way up to the Supreme Court, who
6 sent it back to me and now says take a look at
7 everything.

8 MR. LAY: Well, I'll respond to that
9 because I was chomping at the bit to get up to
10 explain when I was listening to Mr. Rawl explain
11 his confusion about what the case is about. I
12 can explain that now. If you would rather defer
13 that, I can do that.

14 THE COURT: That's what I want to have a
15 hearing about.

16 MR. LAY: Okay. I think as part of the
17 scope, in our -- they have a motion for summary
18 judgment, which is really not ripe at this
19 point. If they're wanting to revisit with a
20 motion to dismiss, we're glad to address that.
21 You have ruled on that.

22 THE COURT: I have.

23 MR. LAY: If that needs to be revisited,
24 then I guess that's something they can revisit.
25 We'll gladly take that on. But I think the

1 motion for dissolution and our authority, which
2 extends to what we're actually doing in the
3 third-party complaint, and the viability of that
4 third-party complaint are all embedded in the
5 motion for dissolution and our motion for
6 confirmation. If they need to supplement their
7 motion for dissolution, do it.

8 THE COURT: Here's what I want to do. I
9 want to separate out the part of the case that
10 deals with their continued contention that they
11 don't have anything to do with the case, and
12 therefore, I'm not to be in the case. I want to
13 take another shot at that.

14 And then I want to talk directly about the
15 scope of the receivership and their contentions
16 to the whole thing ought to be dissolved. They
17 have got several contentions. Some of them are
18 about the method of appointment itself. They
19 say you can't use these old appointments. You
20 had to have an appointment in the Tibbs case.

21 Then because they already had an
22 appointment in Park, they go back and attack the
23 Park case. And, you know, it might not even be
24 in the Park case, some of them, but they go back
25 and attack the appointment in Park for all kind

1 of procedural things.

2 So we have got to deal with the validity of
3 the appointment in Park to begin with. And we
4 want to go back that far. And then we have to
5 deal whether the appointment in Park can stand
6 for activities in Tibbs.

7 MR. LAY: Okay. Let me repeat it back and
8 make sure that I understand. If I can get some
9 help on this. You have the Park case in which
10 the appointment occurred.

11 THE COURT: Right.

12 MR. LAY: That appointment goes to Tibbs,
13 and in the Tibbs case, once, you know, they
14 responded, Cape responded to the complaint and
15 brought a third-party action against these
16 defendants.

17 THE COURT: Right. Typical that's done in
18 a bunch of asbestos cases.

19 MR. LAY: Yes, ma'am. Instead of it being
20 insurance based, it may be insurance based, at
21 some point there may be insurance involved in
22 this and that's part of what we're trying to
23 discover.

24 THE COURT: They're making a big point of
25 the fact that even if you could justify the

1 receiver as going over into the Tibbs case,
2 under no circumstances could they go after
3 assets other than insurance assets.

4 MR. LAY: Which is a wrong reading of
5 Welch.

6 THE COURT: I understand all that. That's
7 got to be dealt with.

8 MR. LAY: That's their argument and our
9 argument is we are responsible for assimilating
10 assets. That may be insurance --

11 THE COURT: That's fine.

12 MR. LAY: And then it's this third party --

13 THE COURT: I don't need to hear that
14 argument today. I understand.

15 MR. LAY: Yes, ma'am.

16 THE COURT: That's one that we're going to
17 have to deal with.

18 MR. LAY: Yes, ma'am. So how do we get --
19 I mean, I think the dissolution motion and the
20 confirmation motion have those issues, our
21 ability to do it. Now you're talking about
22 taking it a step further and looking at the
23 viability, it sounds like, effective motion to
24 dismiss on the third-party defendants. That
25 motion is not pending in front of you right now.

1 I don't know of a vehicle where that could
2 occur.

3 THE COURT: Well, it's pending to me in a
4 sense that -- wait a minute. What is pending
5 before me is a motion to dissolve the
6 receivership and that motion does go to the
7 heart of what their contention is, to Welch, to
8 some new order. Their reading of what the
9 difference is between custodian and receiver and
10 their reading of what the Business Corporation
11 Act says, Rule 66 says, what the Title 15 says
12 and so forth. That's all in their thing. This
13 is an illegit receivership.

14 That's got to be dealt with, and it's got
15 some of these other elements in it. But
16 that's -- their motion to dissolve the
17 receivership is a motion pending in Tibbs and
18 it's got to be heard.

19 MR. LAY: The fundamental issue is the
20 motion for dissolution and for confirmation.
21 And that's step one and that's fundamental. And
22 it seems to me that's what you need to be
23 addressing. As part of that, the motion to
24 amend, which is the operative complaint, needs
25 to be dealt with.

1 So I think those are the three motions that
2 give you a vehicle to get this started to have
3 this hearing.

4 THE COURT: Okay.

5 MR. LAY: Those are the three primary
6 motions.

7 THE COURT: So basically all these things
8 would go together if you did a motion to
9 dissolve, motion to confirm, and a motion to
10 amend --

11 MR. LAY: Yes, ma'am.

12 THE COURT: -- in Tibbs.

13 MR. LAY: In Tibbs. Yes, ma'am.

14 THE COURT: Okay. Now, let's go back to
15 Park for a minute.

16 Sawyer says that he still has motions
17 pending in Park even though Carroll says Park
18 has been totally resolved. I show on the
19 Richland County website that the Park case is
20 still an open case and noted as such on there.
21 So then I got to figure out what matters are
22 still pending in Park for resolution.

23 And I asked this to Protopapas.
24 Protopapas, are there motions in Park that
25 attack the receivership?

1 MR. PROTOPAPAS: No, Your Honor. There is
2 only a motion to compel insurance carriers that
3 Mr. Sawyer represents. On that motion to
4 compel, I will note I have withdrawn it as to
5 Travelers. I have reached agreement. I have
6 withdrawn it against Interstate. I reached an
7 agreement on their response. I have not reached
8 agreement with Mr. Sawyer's clients. I
9 apologize, Your Honor. Mr. Sawyer's clients.

10 THE COURT: So other clients may have --
11 other insurers may have gotten some resolution,
12 but where his clients have not given him any
13 permission to resolve so we still have to hear
14 his motions.

15 MR. PROTOPAPAS: Yes, Your Honor. I will
16 say, as I said earlier, I have reached out to
17 Resolute, who is his client, like I advised the
18 court, to see --

19 THE COURT: But Park is kind of -- that is
20 not as necessitous because you've got a toll
21 agreement in effect with Park with really the
22 only defendants that are left, right?

23 MR. PROTOPAPAS: Yes, Your Honor. Not to
24 confuse matters more, I do believe there is
25 insurance assets. I do believe there is money

1 for me to chase.

2 THE COURT: But that's the subject of more
3 discovery and so forth and so on. Right now,
4 what I got on the books for them is Wes Sawyer's
5 motion and that's it, right?

6 MR. PROTOPAPAS: My motion to compel his
7 memo in opposition. I should note his memo in
8 opposition raises all the --

9 THE COURT: And in his motion in
10 opposition, he raises all these questions about
11 the legitimacy of your appointment.

12 MR. PROTOPAPAS: Yes, Your Honor.

13 THE COURT: Okay. And that's how he gets
14 into the bigger playground of that.

15 MR. PROTOPAPAS: Yes, Your Honor. Probably
16 better dealt with in Tibbs with the primary
17 counsel.

18 THE COURT: Of course, Wes would not agree
19 with you on that.

20 MR SAWYER: Actually, Your Honor, I think
21 they are all very well equipped to fight that
22 fight. But if I have a motion against my
23 client, I have to make the arguments.

24 THE COURT: No question. No question.

25 MR SAWYER: Thank you, Your Honor.

1 THE COURT: You believe more thoroughly in
2 brevity being the sole of wit than some of your
3 brothers do. That's why I was trying to get you
4 to be the lead guy on that.

5 Okay. I understand that.

6 So here's what I want done. I want --
7 Todd, can you speak for all these brethren here
8 at least in the procedural matter talking about
9 how we would handle this?

10 MR. CARROLL: Your Honor, we've not
11 consulted.

12 THE COURT: If they -- if you say something
13 they don't like, I'm sure they will tell me.

14 MR. CARROLL: I'm sure they'll tell me,
15 too.

16 THE COURT: Here's what I would like to do,
17 is I would like to go on and take Tibbs and set
18 the motion to dissolve by you all, the motion to
19 confirm appointment by them, and the motion to
20 amend by them.

21 I would like to set these three things.
22 That would probably bring to the fore for
23 adjudication all these contentions about the
24 legitimacy of the receiver and all the rest of
25 it. Do you agree?

1 MR. CARROLL: Your Honor, I think the
2 motion to amend is completely premature because
3 as it stands --

4 THE COURT: I will put it third to be
5 heard. The first two things I would hear would
6 be the motion to dissolve and the motion to
7 confirm and then we would get to the motion to
8 amend.

9 MR. CARROLL: Sure. My client's file will
10 be styled a notice of the Supreme Court's orders
11 and a motion to strike. Our position is that
12 everything they file is a nullity.

13 THE COURT: Well, I understand that. The
14 motion to dissolve and the motion to confirm
15 will go a long way towards dealing with that.

16 MR. CARROLL: Yes, ma'am.

17 THE COURT: I can assure you if you then
18 try to, on an interim basis, appeal those two
19 things, that the South Carolina Supreme Court is
20 going to look at you with a big fish eye. But
21 we'll cross that bridge when we come to it. You
22 all won't be able to take a breath wrong. I
23 have no -- what you all do in that. But that's
24 how we will attack what I think is the main
25 questions raised by the Welch case and by the

1 Supreme Court's June the 26 case.

2 The main questions they raise can all be
3 accommodated in the legitimacy of the
4 receivership appointment and whether it should
5 be dissolved. And that will set the stage for
6 the rest of these matters to trail along behind.

7 MR. CARROLL: Yes, ma'am. The only reason
8 I distinguish my filing is because mine is not
9 called a motion to dissolve.

10 THE COURT: What is it called?

11 MR. CARROLL: It's a notice of the Supreme
12 Court's authority and a motion to strike.

13 THE COURT: Well, is that filed in the
14 Supreme Court?

15 MR. CARROLL: No, ma'am. It was filed on
16 Friday in this --

17 THE COURT: The motion to strike is a
18 motion on the pleadings. And, you know, if I'm
19 going to get into the motion to strike, I'm
20 going to get into the motion to amend. I will
21 put the motion to strike down there with the
22 motion to amend.

23 That's, to me, not the best vehicle for
24 talking about what we've got to talk about. The
25 motion to dissolve the receivership is the more

1 direct --

2 MR. CARROLL: Yes, ma'am. I promise I'm
3 not trying to quibble. I'm only saying what I'm
4 saying so that the record is clear that I think
5 my client's papers need to be considered as part
6 of that whole -- that whole set of issues.

7 THE COURT: Well, your clients are the two
8 Altrads, right?

9 MR. CARROLL: Yes, ma'am.

10 THE COURT: And you want to stay in the
11 case and talk about your motion to strike, but
12 you want to get out of the case because you want
13 the whole --

14 MR. CARROLL: I don't want to stay in the
15 case.

16 THE COURT: Well, then dissolving the
17 receivership I believe is the first thing you
18 want to do before you talk about nitpicking the
19 complaint.

20 MR. CARROLL: Your Honor, the only reason
21 I'm not nitpicking the complaint, I am not
22 saying -- I'm making this distinction because a
23 motion to dissolve the receivership presumes the
24 receivership exists in this case and no such
25 receivership exists. No, ma'am. That is the

1 heart and soul of our filing. So I don't want
2 anybody to hand me --

3 THE COURT: That's fine. You may not like
4 the way I set it up, then you can argue what you
5 want to argue.

6 MR. CARROLL: It's not how you set it up.
7 That is what the De Beers' motion is called.
8 And so I'm just making sure the record is clear
9 that I want my client's papers considered as
10 part of that whole consideration of the
11 receivership in this case, does it even exist in
12 this case? And if it doesn't, should it? I
13 just want my --

14 THE COURT: I see nothing, but I like my
15 writing better than your writing here because
16 the motion to dissolve the receivership --

17 MR. CARROLL: No, ma'am.

18 THE COURT: -- is made on the same basis as
19 your motion to strike. Motion to strike is a
20 pleadings motion to strike certain things that
21 are in the pleading. If that's an indirect way
22 of saying, I want to strike everything except
23 the receiver, you're just trying to attack the
24 receivership.

25 I'm not going to get into the nit-picky

1 details of this, but I think I know the way I'm
2 going to set this thing up. You can file what
3 you want to.

4 MR. CARROLL: No, Your Honor. I take your
5 point. I'm not trying to quibble. On the Park
6 case, if I may, item B, please.

7 THE COURT: No, I'm just saying I don't
8 hear you as well from there as you come up here.

9 Now you want to talk about the Park case?

10 MR. CARROLL: Briefly.

11 THE COURT: I'm not on the Park right now.

12 MR. CARROLL: I know you're not on Park,
13 but Item B on the Supreme Court Tibbs order,
14 calls out two motions in Park.

15 THE COURT: Yeah, both of them are
16 resolved.

17 MR. CARROLL: Those were my motions, and I
18 was just coming to report that those motions
19 don't exist anymore.

20 THE COURT: Do what?

21 MR. CARROLL: They do not exist anymore.

22 THE COURT: Right. So I'm going to tell --
23 don't worry, I'm going to tell that to the
24 Supreme Court right away. Those motions don't
25 exist anymore because what the heck are you

1 doing in the Park case?

2 MR. CARROLL: We talked about this earlier.
3 The only reason I've even raised any issue about
4 Park is because the receiver, with no
5 appointment in Tibbs, has said, oh, that's okay,
6 just Park --

7 THE COURT: You're going to attack that in
8 the motion to dissolve the receivership. You
9 want to dissolve it because you say you can't
10 operate in Tibbs. I get that. But this other
11 motion to strike and everything I don't get in
12 the Park case, you are not involved in Park
13 anymore.

14 MR. CARROLL: That's it. I was just trying
15 to help you clarify the point B on the Supreme
16 Court's order.

17 THE COURT: I get that.

18 MR. CARROLL: Okay. Those are my motions.
19 I owned them, now they're gone. That's that.

20 THE COURT: Thank you.

21 MR. CARROLL: Thank you.

22 THE COURT: All right. So get the calendar
23 out here for a minute.

24 MR. RAWL: Your Honor, if I may just
25 briefly. I want to incorporate what Mr. Carroll

1 said on behalf of ESAB and then Charter clients,
2 but our only point would be is that we think
3 that you do have to determine whether or not the
4 receivership appointment is proper first, so we
5 would ask that --

6 THE COURT: That's the predicate for the
7 motion to dissolve it, is it wasn't proper to
8 begin with, Mr. Rawl. And that's the first
9 thing I'm going to set for this proceeding.

10 MR. RAWL: Your Honor, my only request was
11 that the -- of the Anglo Group filed a motion to
12 dissolve -- the friends of the receiver filed a
13 motion to confirm. I believe -- I agree with
14 you that those motions together heard will deal
15 with the receivership appointment issues.

16 I would just ask that just those issues be
17 set first so that we can get a ruling
18 determination from you so that we can determine
19 that the receiver does have authority to
20 continue to push any other motion that he may
21 have.

22 THE COURT: That's why I set them to begin
23 with. Either I'm not making myself clear or
24 something funny is happening or everybody just
25 wants to get a word in and be heard.

1 That's just what I said, Mr. Rawl. I'm
2 going to set the motion to dissolve first. Then
3 I'm going to set the motion to confirm the
4 appointment. And we're going to probably hear
5 arguments on each of those things. I'm going to
6 cogitate. I'm going to rule from the bench, as
7 I generally do, and ask the winner to draw an
8 order. Okay.

9 MR. RAWL: Thank you, Your Honor.

10 THE COURT: Yes, sir. And that, depending
11 on what I do with those, may or may not obviate
12 the necessity for a motion to amend or motion to
13 strike.

14 Okay?

15 MR. RAWL: Thank you, Your Honor.

16 THE COURT: Now, what about this August
17 term? Is that the Motley Rice term? Come give
18 me some good news.

19 MR. LEDLIE: Yes, Your Honor. I'll be
20 happy to. This is James Ledlie.

21 THE COURT: Yes, James, I'm glad to see
22 you.

23 MR. LEDLIE: Thank you, Your Honor. I am
24 happy to report and follow up on what
25 Mr. Protopapas followed up on earlier. As to

1 all of our cases pending in August, all have
2 been resolved. As to all parties, subject to
3 the discussion with Mr. Protopapas, there's a D
4 block coming, and so I'm happy to report that we
5 can release back to the court.

6 THE COURT: That's what I was hoping. I
7 have the August term back.

8 Oh boy, we got somebody else? Surely
9 you're not going to blow this up for me.

10 MR. MERIWETHER: I am going to do my level
11 best not to do that. Robert Meriwether. Just
12 wanted to let Your Honor know that in one of the
13 remaining cases in the August term, which is
14 a -- it's one of the smoking lung cancer
15 cases --

16 THE COURT: Right. Right. Right.

17 MR. MERIWETHER: -- from an out of town
18 group. And we still are working hard to resolve
19 for two clients, but I didn't want you to think
20 that because Mr. Ledlie's have gone, that we
21 still have got that Vincent case.

22 THE COURT: Okay.

23 MR. MERIWETHER: Just not pulling anything
24 out. Working hard to get rid of it.

25 THE COURT: Good. Excellent. Thank you so

1 much.

2 So we still have an outstanding case left
3 on the August term, but a child is always
4 hoping. I am going to hope that one of the most
5 experienced asbestos defense attorneys that ever
6 practiced at the bar will work his magic and we
7 will get that case resolved.

8 And based on that, we had a pretrial
9 hearing set for the August term on Wednesday,
10 the 30th. And then we had trial beginning --
11 what is the 3rd, a holiday?

12 That's Monday. Okay. So then August 4th
13 would begin the August term. So that's when I
14 would like to set a hearing in Tibbs on the
15 motion to dissolve the receivership that's made
16 by the defense. The motion to confirm the
17 receiver's appointment in Tibbs. That's made by
18 the receiver.

19 Those two are kind of the opposite sides of
20 the same coin. They all revolve around whether
21 the receiver has been properly appointed. Then
22 the motion to amend the Tibbs complaint. And
23 then the motion to strike certain things from
24 the Tibbs complaint, which is really a place
25 keeper from the continued objection by Altrad

1 defendants to the right of the receiver to do
2 anything. Probably will be resolved in those
3 other arguments.

4 Now, I would like to set those matters to
5 be heard. And I think it's going to take a
6 couple of days. So I'm going to say pretrial on
7 those things to see if there's anything --
8 procedure that needs to be done. But pretrial
9 can go by the boards, we don't need it, would be
10 July the 30th.

11 And then merits hearing in Tibbs on those
12 motions, let's set it for the 4th, 5th, and 6th
13 with the idea that there may be other things
14 that would come up and with the promise that at
15 the end of that, whether it be the 5th or the
16 6th, I can't imagine we would get through all
17 those things in less than a day, we would hear
18 the Motion to Compel in Park and the opposition
19 of Sawyer day two.

20 And the combination of those things would
21 lead to the Court being able to make an order
22 that is responsive to the order of the Supreme
23 Court of June the 26th. And that's what I
24 would -- that's what my report will tell the
25 court, if that's what we can agree upon.

1 And can you think of anything else? We've
2 got -- we've got all this De Beers stuff. Who's
3 here for De Beers?

4 You are. So your stuff will be -- we ought
5 to contingently set your stuff as well. If the
6 receiver survives the first big, which is to
7 dissolve the receivership, that will take care
8 of your stuff. Wouldn't you agree?

9 MR. BALBER: That's right, Your Honor.
10 Yes.

11 THE COURT: Okay. Then I would think we
12 could tack all your stuff on after the motion to
13 strike for -- before we get to any of the Park
14 stuff.

15 MR. BALBER: Let me step up so you can hear
16 me, Your Honor.

17 THE COURT: Sure. Sure.

18 MR. BALBER: That largely makes sense. I
19 think one item that is among our stuff is our
20 motion for summary judgment.

21 THE COURT: Yeah. That ought to be heard,
22 you know, if the receiver survives that part.

23 MR. BALBER: And even then, we filed it
24 because we had to make a due date.

25 THE COURT: That's right. In all events,

1 your motion for summary judgment should be heard
2 because the larger landscape of Tibbs, of
3 course, continues.

4 MR. BALBER: Well, except we're only a
5 third-party defendant in Tibbs. So it's only
6 contingent, as you noted, on the receivership
7 being filed.

8 THE COURT: Right. Right.

9 MR. BALBER: But I was making a slightly
10 different point, which is actually may be at
11 this juncture premature because there's still
12 some discovery going on in our third-party
13 action.

14 THE COURT: I'll leave it off.

15 MR. BALBER: I would suggest you leave it
16 off, Your Honor. If I could just get a little
17 clarification for what you expect from us all on
18 the 4th, 5th, and 6th. I know we all want to
19 make sure we're prepared and present to you what
20 you want to hear.

21 Because I think the motions themselves, in
22 my humble opinion, are not going to require more
23 than a couple of hours. If you're envisioning
24 an evidentiary hearing or something like that, I
25 think we all want to make sure we're

1 accommodating what Your Honor is expecting.

2 THE COURT: Well, I am envisioning a
3 hearing which can include the presentation of
4 evidence, if anybody thinks that needs to be
5 done. So I'm not going to restrict the hearing
6 at this moment. You all got all huffy with each
7 other about exchanging letters that were kind of
8 evidentiary exhibits, as I saw them. So I sat
9 up here and being put the stop on that.

10 If there are evidentiary matters, even by
11 way of sworn affidavit or something else that
12 you all consider need to be considered as a part
13 of this matter, then I think that should be
14 done.

15 We know that if the receivership survives,
16 there's still all kinds of claims and
17 contentions about Cape and a lot of corporations
18 that are only averments and pleadings at this
19 point but will have to at some point be heard.

20 MR. BALBER: Right. The last question,
21 Your Honor, what is the Court's expectation on
22 July 30th?

23 THE COURT: That would be a pretrial to see
24 if any of these things have been resolved. It
25 would just be a place keeper for any prehearing

1 motions that you wanted to make to either
2 exclude things that have been selected for
3 possible use as exhibits or whatever. I just
4 find it's good to have a place keeper. We don't
5 have to use it if it's nothing that needs to be
6 done.

7 MR. BALBER: Okay. Thank you, Your Honor.

8 THE COURT: Any other questions?

9 Okay. Then what I'm going to do is two
10 things: Number one, I'm going to prepare an
11 order that sets these matters in Tibbs to be
12 heard.

13 Number two, I'm going to prepare a status
14 report to the Supreme Court in accordance with
15 its desires in the June 25th material. And
16 I'll -- if I can get them done by my 30 days
17 deadlines, I think is when -- the end of this
18 week -- then I'll try to get them to you all and
19 see if you have a stroke or heart attack or
20 something like that, don't like what I said,
21 then doesn't mean I'm going to change what I
22 said, but I'll give you a shot at it. It should
23 not be substance but rather what it fairly
24 reflects what I said I'm going to do.

25 And Stafford, as I understand it, it's

1 been -- there's a potential, upcoming mediation
2 with a potential agreement to dismiss without
3 prejudice. But that hadn't been officially done
4 yet.

5 MR. PROTOPAPAS: Your Honor, in Stafford,
6 the asbestos plaintiffs have agreed to dismissal
7 without prejudice on a toll agreement, as
8 Mr. Ledlie said. My individual action to
9 provide coverage for Mr. Ledlie's clients is
10 going to be part of the mediation at the end of
11 the month. My friends at Travelers want to keep
12 the motion alive in case they may want to move
13 to dissolve Stafford.

14 THE COURT: So they want to keep their
15 protection motion alive and -- that makes
16 perfect sense to me. That's fine.

17 MR. PROTOPAPAS: We will report back,
18 Your Honor.

19 THE COURT: We will just continue with
20 Stafford out there and on the list kind of like
21 we do with Park and the pretrial may resolve it.

22 MR. PROTOPAPAS: Yes, Your Honor.

23 THE COURT: Anything else?

24 I thank you for your patience. And as
25 contentious as these matters might all seem to

1 my brothers and sisters at the Supreme Court, I
2 think you will get along well enough, as you
3 always do in front of me. Let's get this thing
4 moving along and make some decisions that you
5 can legitimately appeal to the South Carolina
6 Supreme Court.

7 All right. Thanks.

8 - - -

9 (The hearing concluded at 1:38 p.m.)

10 - - -

CERTIFICATE OF REPORTER

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

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

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

Witness my hand, I have hereunto affixed my official seal this 24th day of July, 2024, at Lexington, Lexington County, South Carolina.



Sheri L. Byers,
Registered Professional Reporter,
Notary Public
State of South Carolina at Large
My Commission expires:
November 1, 2033

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

John A. Tibbs and Margaret B. Tibbs,) Civil Action No. 2023-CP-40-01759

Plaintiffs,)

vs.)

3M Company, *et al.*,)

Defendants.)

RESPONSE TO THE COURT'S FIRST
REPORT REGARDING THE
CURRENT STATUS OF PARK

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.)

RICHLAND COUNTY
FILED
2025 JUL 31 PM 2:52
JEANETTE W. McBRIDE
C.R. 9.2. & F.C.

We appreciate this Court considering this response and the additional information discussed herein, which is directly responsive to the Supreme Court's instructions in its June 26, 2025 *Tibbs* Order. As the Court is aware, the below-signed counsel were in a hearing with Judge William Brown of the District of South Carolina on July 23, 2025, when the Court circulated its proposed First Report to the Supreme Court and requested feedback from them that same afternoon. Because they were in that hearing, counsel were unable to provide immediate feedback to the Court's proposed draft, and therefore are providing this response to ensure that the record is complete. Counsel appreciates this Court soliciting comments, apologizes that they were unable to return comments within the timeframe requested due to the hearing before Judge Brown, and,

also in accordance with the reporting process contemplated by the June 26, 2025 *Tibbs* Order, request that the Court transmit this response to the Supreme Court so that it has a complete record against which to evaluate the *Park* proceedings.¹

The Supreme Court's June 26, 2025 Order stated as follows: "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." *Tibbs* Order ¶ (C) (emphasis added).

On this point, this Court's First Report to the Supreme Court stated as follows:

With respect to the *Park* matter, there was some question raised in the hearing before me on July 22, 2025, about whether or not the *Park* case is still a viable and open case. The Public Index of the Fifth Judicial Circuit in Richland County, and my own records, indicate the *Park* case is still open and on my docket. I am advised that Cape, and its related entities, is the only Defendant left in the *Park* case. There is some question raised about the status of the Estate of Park, which was made a Plaintiff when the principal Plaintiff died. Defendant Altrad's Counsel contends that the Park Estate has been closed. Counsel for the Plaintiffs in *Park* stated that they were unaware that the Estate had been closed until Counsel for Altrad raised this issue. Counsel for Park have moved to reopen the Estate. I will continue to report to the Court as to my progress in hearing these matters.

First Report at 4 (signed July 23, 2025, and file-stamped July 24, 2025).

The below-signed respectfully submit that there are additional material details germane to "the current status of *Park*" of which this Court and the Supreme Court should be aware. They are as follows, all of which appear in the Public Index or the transcript resulting from the July 22, 2025 hearing, which is attached as well for reference:

¹ The undersigned counsels' respective clients expressly preserve all of their objections, including to personal jurisdiction, that have appeared in their filings to this Court and to the appellate courts. Counsel for the Altrad Defendants submits this response in connection with the *Tibbs* matter. Counsel for Certain Insurers submits this in connection with the *Park* matter. We submit this response jointly to avoid burdening the e-filing system and Public Index with repetitious filings.

Pleadings in *Park*

1. The *Park* case was commenced on June 4, 2021, by the filing of a summons and complaint. The original plaintiff was Isabella Park. No “Cape” entity was sued in that pleading. (Complaint (June 4, 2021).)

2. Ms. Park passed away on June 9, 2021. On August 4, 2021, the Spartanburg County Probate Court appointed Keith Park, Ms. Park’s son, as the personal representative of her estate, which was Probate Court Case No. 2021-ES-42-01296. A copy of Ms. Park’s death certificate and the August 4, 2021 Certificate of Appointment from the Spartanburg County Probate Court are attached as Exhibit B to the November 8, 2021 Motion to Amend the complaint to substitute Mr. Park as the personal representative of Ms. Park’s estate as the plaintiff. (Exhibit B to Motion to Amend (Nov. 8, 2021).) The circuit court granted the motion to amend by order entered on November 12, 2021.

3. On November 17, 2021, Mr. Park filed a First Amended Complaint. The caption of that complaint indicates that Mr. Park is the plaintiff in both his individual and representative capacity. There are no claims alleged in Mr. Park’s individual capacity, such as loss of consortium, in the First Amended Complaint. (First Am. Compl. (Nov. 17, 2021).)

4. The First Amended Complaint was the first pleading to assert claims against any “Cape” entity. It identified two new defendants: (i) Cape Intermediate Holdings Limited, and (ii) Cape plc. (*Id.* ¶¶ 26–27.)²

5. On December 13, 2021, Mr. Park filed a petition for approval of wrongful death and survival settlements. That filing stated: “That Petitioner is the duly appointed Personal

² It is therefore unclear to what entity the Court was referring in its report to the Supreme Court when it stated as follows: “I am advised that Cape, and its related entities, is the only Defendant left in the *Park* case.” First Report at 4.

Representative of the Estate described above, which Estate was administered in Spartanburg County, South Carolina, the county in which decedent Isabella Park has a right and has a legal action pending.” (Petition for Approval ¶ 2 (Dec. 13, 2021).) The circuit court approved that settlement by order entered on December 22, 2021.

6. On December 17, 2021, Mr. Park moved to amend the complaint again to add Honeywell International and FMC Corporation as defendants. (Mot. to Amend (Dec. 17, 2021).) The circuit court granted the second motion to amend by order entered on December 23, 2021.

7. On December 23, 2021, Mr. Park filed a Second Amended Complaint. It did not allege any claims in Mr. Park’s individual capacity, such as loss of consortium. (Second Am. Compl. (Dec. 23, 2021).) Like the First Amended Complaint, the Second Amended Complaint identified both Cape Intermediate Holdings Limited and Cape plc as defendants. (*Id.* ¶¶ 26–27.)

Trial is Scheduled/Case is Reported as “Fully Resolved” in June 2022

8. The *Park* case was set to begin trial on June 20, 2022. (Asbestos Trial Docketing Order (Dec. 1, 2021).)

9. On Friday, June 3, 2022, plaintiffs’ counsel in *Park* sent an email to the circuit court, copying counsel of record who had appeared in the *Park* case. It was titled: “June Pretrial Hearing.” That email stated: “By way of update, the *Park* and *Garren* cases have ***both fully resolved***. The remaining Defendants in *Wannamaker* and *Wilson* are listed below.” (emphasis added). A copy of that email is attached as Exhibit B to Certain Insurers’ Response filing of July 18, 2025, in *Park*.

Park Estate Closed/Personal Representative Appointment Terminated in August 2022

10. On Monday, June 6, 2022, Mr. Park filed a notarized Application for Settlement with the Spartanburg County Probate Court. In that filing, Mr. Park attested that he had performed

all acts “pertaining to Estate of Decedent” and that “[t]he time period for submission of claims has expired.” He then requested that the Probate Court discharge him as personal representative for the estate. A copy of that notarized Application for Settlement in Probate Court Case No. 2021-ES-42-01296 is attached as Exhibit C to Certain Insurers’ Response filing of July 18, 2025, in *Park*.

11. On August 26, 2022, Judge Caldwell of the Spartanburg County Probate Court granted Mr. Park’s motion, held “the estate is closed,” and declared “the appointment is hereby terminated.” A copy of Judge Caldwell’s Order Closing Estate in Probate Court Case No. 2021-ES-42-01296 is attached as Exhibit D to Certain Insurers’ Response filing of July 18, 2025, in *Park*.

12. Also on August 26, 2022, Judge Caldwell of the Spartanburg County Probate Court issued a Termination of Appointment that memorialized Mr. Park’s status as personal representative of Ms. Park’s estate was being terminated for “satisfactory completion of assigned duties.” A copy of Judge Caldwell’s Termination of Appointment in Probate Court Case No. 2021-ES-42-01296 is attached as Exhibit E to Certain Insurers’ Response filing of July 18, 2025, in *Park*.

Receivership Motion Filed in March 2023

13. Over six months after the Spartanburg County Probate Court terminated Mr. Park’s appointment as personal representative, on March 6, 2023, plaintiffs’ counsel in *Park* filed a motion to appoint a receiver over Cape plc. (Motion to Appoint Receiver (Mar. 6, 2023).) That filing made no mention of Cape Intermediate Holdings Limited. (*Id.*)

14. At the time the Motion to Appoint a Receiver was filed, Mr. Park was no longer a personal representative for Ms. Park’s estate, as the “estate [was] closed” and Mr. Park’s

appointment had been “terminated” by the Spartanburg County Probate Court. During a hearing before the circuit court on July 22, 2025, plaintiffs’ counsel in *Park* conceded not knowing that the appointment had been terminated almost three years earlier: “What I didn’t know until Friday is that apparently the probate court has closed the personal representative. In other words, he [sic: she] has absolved the personal representative of any authority at the moment going forward. And what they want to say is that means everything is done. You cannot do anything about that. Now, number one, I had no idea that it happened. No one had told me. We weren’t copied on it. Didn’t do the probate. I didn’t know.” (Hr’g Tr. 154:1–12 (July 22, 2025) (comments of Ms. McVey).)

15. On March 17, 2023, the circuit court granted the Motion to Appoint a Receiver over Cape plc only, stating that Cape plc has “dissolved” and “has forfeited its charter and has further failed to answer this case and therefore, Plaintiffs’ request for an expedited ruling on this motion is appropriate.” (Order Appointing Receiver at 1 (Mar. 17, 2023).) The circuit court did not hold a hearing prior to entering this order, as confirmed during the July 22, 2025 hearing: “And I generally, if it’s a motion to appoint a receiver, under circumstances like this, whether they’re in default, then I don’t give them any chance to reply, I just appoint the receiver.” (Hr’g Tr. 149:17–21 (July 22, 2025) (statements of Chief Justice Toal).)

No Record of Service on Any Cape Entity in *Park*

16. At the time the Motion to Appoint a Receiver was filed and granted, no proof of service existed in the Public Index showing that either Cape Intermediate Holdings Limited or Cape plc had been served with any materials in the *Park* case.

17. On August 28, 2023, plaintiffs’ counsel in *Park* filed a document captioned “Notice of Filing of Ommitted [sic] Exhibit.” Attached to that filing was an “affirmation” from an English solicitor, Andrew Morgan, who affirmed: “On 14 December 2021, I did serve copies of the First

Amended Summons in this matter on Cape PLC and Cape Intermediate Holdings Limited at the aforementioned registered address and I did so by Royal Mail First Class post.” (Affirmation of Morgan ¶ 5 (attached as Exhibit A to Notice of Filing of Omitted [sic] Exhibit (Aug. 28, 2023).)

18. Mr. Morgan also attached copies of his letters to Cape Intermediate Holdings Limited and Cape plc, both of which state: “We enclose herewith by way of service the First Amended Summons in this matter which is proceeding in the Court of Common Pleas for the Fifth Judicial Circuit in the County of Richland in the State of South Carolina, one of the United States of America, with C/A No. 2021-CP-40-02727.” Those letters also identify the only enclosure as: “First Amended Summons.” (Exhibit AGM1 to Affirmation of Morgan.)

19. Mr. Morgan also attached photographs of his mailings, which show that they required only £1 of postage. (Exhibit AGM4 to Affirmation of Morgan.)

20. The Public Index does not contain any record of any complaint in *Park*—the initial Complaint, the First Amended Complaint, or the Second Amended Complaint—being mailed to either Cape Intermediate Holdings Limited or Cape plc.

No Cape Entity in Default in *Park*

21. The Public Index does not contain any record of any entry of default, request for any entry of default, default judgment, or motion for default judgment against Cape Intermediate Holdings Limited or Cape plc, as no such default or default judgment was ever sought.

22. During the July 22, 2025 hearing, the circuit court inquired about this. In response, plaintiffs’ counsel in *Park* stated as follows: “We did not move for a default in Cape because what we didn’t want to do is get some judgment and then not be able to do anything with it.” (Hr’g Tr. 148:16–19 (July 22, 2025) (statement of Ms. McVey).)

23. During that hearing, plaintiffs' counsel in *Park* explained the statement in counsel's June 3, 2022 email to the circuit court that the *Park* case was "fully resolved" as follows: "So the case had—they keep making this huge deal about me saying to the court the *Park* case is fully resolved. And what I meant by that is we had total [sic: tolling] agreement with the receiver and that the Cape was up for trial." (Hr'g Tr. 150:6–10 (July 22, 2025) (statement of Ms. McVey).)

Counsel continued:

Ms. McVey: Because the *Park* case, the underlying *Park* case that had many defendants in it had been up for trial.

The Court: Right.

Ms. McVey: And we had resolved with everybody but Cape.

The Court: But Cape.

Ms. McVey: The receiver had not finished doing his work so we didn't want to go get any kind of judgment that couldn't be collected.

(Hr'g Tr. 150:23–151:7 (July 22, 2025) (exchange between Ms. McVey and Chief Justice Toal).)

24. During that hearing, each of the below-signed counsel, as well as counsel for the Charter Third-Party Defendants, attempted to address the statements that, in June 2022, plaintiffs' counsel reported *Park* as being "fully resolved" due to a "total [sic: tolling] agreement with the receiver." The receiver was not appointed until March 17, 2023, which was (i) more than nine months after plaintiffs' counsel reported the case as "fully resolved" (June 3, 2022); and (ii) more than six months after Mr. Park's appointment as personal representative had been terminated and Ms. Park's estate was closed by the Spartanburg County Probate Court at Mr. Park's request (August 26, 2022). The circuit court did not allow responses. (Hr'g Tr. 157:13–161:4 (July 22, 2025) (exchanges among below-signed counsel and Chief Justice Toal).)

No Cape Entity Served in Tibbs

25. During the July 22, 2025 hearing, plaintiffs' counsel in *Park* stated that they "served the receiver as Cape in the *Tibbs* case." (Hr'g Tr. 156:23–24 (July 22, 2025) (statement of Ms. McVey).)

* * * * *

As stated above, we appreciate this Court's invitation for comments. We believe that the listing above is critical to provide a complete procedural history and current status of *Park*. We apologize again for being unable to return these points to the Court within the timeframe requested due to our presence at a hearing in federal court before Judge Brown. We would appreciate the Court supplementing its required report to the Supreme Court with this submission so that the Supreme Court has before it a complete understanding of the current status of *Park*, as it requested in its June 26, 2025 Order.

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: /s/ M. Todd Carroll
S.C. Bar No. 74000
todd.carroll@wbd-us.com
1221 Main Street, Suite 1600
Columbia, SC 29201
(803) 454-6504

*Attorneys for Mohed Altrad and
Altrad Investment Authority SAS in Tibbs*

July 29, 2025

MURPHY & GRANTLAND, P.A.

By: /s/ Wesley B. Sawyer
S.C. Bar No. 100229
wsawyer@murphygrantland.com
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100

*Attorneys for Certain Underwriters at Lloyd's,
London, Continental Casualty Company, and
Liberty Mutual Insurance Company in Park*

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

John A. Tibbs and Margaret B. Tibbs,) Civil Action No. 2023-CP-40-01759
Plaintiffs,)
vs.)
3M Company, *et al.*,)
Defendants.)

ALTRAD DEFENDANTS' RESPONSE
TO THE RECEIVER'S "PROPOSED
ORDER"

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 have already filed their memorandum explaining why everything that purports to be happening in this "third-party complaint" is a nullity and is void as a matter of law. They have also already argued the motions presented—both their motion to strike and the Receiver's "motion to confirm"—during the July 22, 2025 hearing. Everything the Receiver tries to present in this case is a nullity, and everything the Receiver files and attempts to argue is *ultra vires* and void for numerous reasons that are irrebuttable and incurable as a matter of law.

During the July 22, 2025 hearing, the Receiver had no answer to any of the Altrad Defendants' (and others') arguments—because there can be no answer that is consistent with the truth. And the truth is that the Receiver's appointment was invalid from the beginning, just as the

Altrad Defendants have argued since Day One of their involvement in this case. Every action the Receiver has taken or attempted to take is void *ab initio*, and this result is unavoidable under the Supreme Court's most recent pronouncements in *Welch* and *Tibbs*.

Nevertheless, the Receiver persists in what is an unlawful effort to extract "billions" of dollars from and wreak boardroom havoc on a host of international companies (and a French citizen) that have nothing to do with South Carolina. That cannot happen as a matter of law, and the Court does not need to waste further resources revisiting the same issues that were already fully argued (for which the Receiver had no response) on July 22nd. This whole proceeding has been unlawful from the start, and it should not continue one moment longer.

To summarize the myriad incurable problems that *independently* void these proceedings:

Principle 1: A receiver can only act in the case in which he is appointed and can only act to secure assets needed to pay the claim of the party responsible for seeking the appointment.

This baseline point comes straight from the South Carolina Supreme Court's two most recent pronouncements on receivership law in this State. 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.)

In June, the Supreme Court specifically 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.”

Welch and *Tibbs* are consistent with the state receivership statute, which allows only a “party” to seek the appointment of a receiver. S.C. Code Ann. § 15-65-90; see *White v. Britton*, 72 S.C. 175, 179, 51 S.E. 547, 548 (1905) (vacating an order appointing a receiver where the order was entered “by the Circuit Judge on his own motion” and “no application by either party was made for such appointment”).

The following are not disputed: (1) there is no appointment order in this case, and (2) the plaintiffs in this case have never served any Cape entity or filed a motion for a receivership appointment in this case. The analysis does not need to go any further: *Welch* and *Tibbs* unequivocally end these illusory proceedings right now.

Principle 2: Receiverships are not to be used prejudgment absent extraordinary circumstances, such as a clear danger that property will be materially injured before the case can be determined or when a defendant’s conduct demonstrates it is fraudulently concealing or disposing of assets.

This point has been reiterated countless times by the South Carolina Supreme Court, and it has now been reinforced in both *Welch* and *Tibbs*. To be sure, the fact that *Welch* and *Tibbs* strongly reinforce this point—and both explain that a prejudgment receivership is improper in the absence of in-litigation conduct amounting to “moral fraud”—makes it clear that this Court should end all receiverships in the Asbestos Docket that run afoul of the Supreme Court’s rulings.

There is nothing in the record that would support such an extraordinary remedy here. The fact that a foreign company has no assets in the United States is obviously not “fraud”; it is simply a function of international commerce, and a state trial court or receiver have no authority to act

extraterritorially to attempt to grab assets of a company that was never in the state in the first place. *See, e.g., Frink v. Nat'l Mut. Fire Ins. Co.*, 90 S.C. 544, 549, 74 S.E. 33, 35 (1912) (“That a receiver has no extra territorial authority is too well settled to require the citation of authority.”).

Principle 3: A court cannot appoint a receiver over any portion of a defendant’s assets without first having personal jurisdiction over that defendant.

This is a threshold constitutional point and was specifically recognized in *Welch*, where the Supreme Court held that personal jurisdiction attached to Atlas Turner because Atlas Turner had directly sold insulation products to a Greenville supplier that may have caused that plaintiff’s injury. Without personal jurisdiction, of course, a court is powerless to act. And here, there is nothing at all that could support any suggestion that the Court has personal jurisdiction over any “Cape” entity. This is true for several reasons.

First, there is no proof that any “Cape” entity was served in *Park*, and plaintiffs’ counsel conceded during the July 22nd hearing that they never even tried to serve any “Cape” entity with process in *Tibbs*. Instead, they only sent paperwork to the Receiver, who himself was a nullity and had no authority to do anything at all on behalf of any “Cape” entity, including specifically accepting service and engaging in any litigation activities.

Second, it is a settled point of law that no “Cape” entity was present in the United States, and the Receiver’s arguments to the contrary are precisely the same arguments that were flatly rejected at all levels in *Adams*. For the Receiver to try to argue around the thorough findings and conclusions of *Adams* (which fully protect CIHL from proceedings like this case)—and to pretend to do so on behalf of CIHL—is corporate sabotage that this Court should reject.

Third, similar to the prerequisite of personal jurisdiction, the absence of any in-state property at all for any “Cape” entity makes them ineligible for any potential receivership. *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”).

Principle 4: Any receivership appointment must comport with *Welch* and the South Carolina receivership statutes.

Consistent with the principle that receiverships are to be rarely invoked, the *Tibbs* order was explicit that any receivership appointment must include findings of fact and conclusions of law that could support an appointment under *Welch*’s guidelines, which themselves incorporated the basics of the state receivership statute (such as the requisite bonding provision).

But at the July 22nd hearing, counsel for the Receiver conceded that the *Park* appointment order (which itself is a nullity) does not meet the requirements of *Welch*. (See Hr’g Tr. 54:19–55:3 (conceding “[t]he order that you issued in response to that petition [in *Park*], I’m not sure made factual findings” that are required by *Welch*”) (statements of Mr. Robinson).) The Receiver’s concession of that indisputable and now-undisputed point dooms this case from moving forward.

What’s more, no “Cape” entity has engaged in any litigation conduct in this case that could approximate in any way the litigation activities of Atlas Turner that *Welch* deemed to be proof of “moral fraud”—allegedly ignoring court orders, lying about insurance coverage, and failing to tender claims to carriers. The reason is obvious: no “Cape” entity has been served with process in either *Tibbs* or *Park*, so no “Cape” entity has had any occasion to even appear in either matter in the first place. *And CIHL isn’t even a party to Tibbs.*

The fact that CIHL has sued Mr. Protopapas in England to put an end to his *ultra vires* attempts to control CIHL is hardly “moral fraud.” Of course a foreign defendant can protect itself from unlawful behavior, including conduct by a supposed receiver. The United States Supreme

Court's oft-cited ruling in *Barton v. Barbour*, 104 U.S. 126, 134 (1881), unambiguously provides that if a receiver is acting without legitimate authority, the receiver subjects him- or herself to personal liability wherever the party injured by the receiver's *ultra vires* conduct brings suit.¹

Further, as *Welch* reiterated, the receivership statutes require a bond sufficient to cover the claim of the party seeking the receivership to be included in any appointment order so that a company's assets are not wrongly tied up by a receiver. There is no such bond in *Park*, likely because there was no longer a claim in *Park* against any "Cape" entity at the time the appointment order was entered (*nine months after* plaintiffs' counsel reported the case as "fully resolved," *six months after* Mr. Park's personal-representative appointment and the estate were closed by the Spartanburg County Probate Court, and *without* a hearing). But the absence of a bond further removes any ability for the Receiver to point to the *Park* order as a legitimate appointment.

Principle 5: A receiver cannot make "boardroom" decisions or be involved in the "business activities" of a company over whose assets he or she has been appointed.

This is an exact, direct prohibition from *Welch*. And tasks like accepting service of litigation, defending claims, filing affirmative claims, and undertaking other litigation activities are all quintessential "boardroom" and "business activities" of a company. Other courts have already applied this same principle to this same Receiver. *See, e.g., 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

¹ Two other points bear noting. One, even if any "Cape" entity is ever served with process, it is not "fraudulent" to simply not respond to litigation. The Receiver himself has proven this point by repeatedly ignoring litigation when properly served with process for proceedings in England and in France. Two, *Welch*'s "moral fraud" discussion was focused exclusively on alleged fraud on the judicial process through in-litigation conduct. Accordingly, the overwhelming bulk of the Receiver's "proposed order," which alleges bad acts against "Cape" through history, is entirely irrelevant.

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.).

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").

The putative "third-party complaint" at issue here violates this direct prohibition from *Welch* because it amounts to an attempt by the Receiver to file a self-piercing suit allegedly on behalf of a "Cape" entity, a quintessential boardroom decision that a receiver cannot make. To make matters worse, the Receiver, while purporting to act in the "Cape" entity's own interests, then sues its corporate affiliates and other companies with which it has historically had contact. The Receiver—again, supposedly acting in the interests a "Cape" entity—purports to confess the "Cape" entity to an alleged century-long international conspiracy. The Receiver then seeks to be paid "billions" of dollars for "Cape's" alleged participation in the conspiracy to which he has confessed it—an alleged conspiracy that would have had to take place decades before the Altrad Defendants bought CIHL's stock. This unlawful attempt to seize control of a private foreign company's boardroom is forbidden by *Welch*, the U.S. Constitution, and other authorities.

Likewise, the fact that *Welch* confirms that companies retain control of their own "boardrooms" and "business activities" affirms the propriety of the mutual release executed by the "Cape" entities, on the one hand, and other companies within the Altrad organization, on the other.

Though it is not a question of South Carolina law, and the issue is not even before this Court (and never will be), *Welch* underscores that these companies were fully within their rights to document their rejection of the artificial poison pill that the Receiver was pretending to force on both parent and subsidiary companies within the Altrad organization.

* * * * *

The points that (1) this Court has no personal jurisdiction over any of the international companies or individuals allegedly involved in this case (including the “Cape” entities and the Altrad Defendants), (2) there is no appointment order in this case, (3) the Receiver has no authority at all to seek his own appointment, (4) the order in *Park* is itself an incurable nullity, (5) the order from *Park* also suffers from myriad defects, and (6) numerous other dispositive issues have been fully briefed by the Altrad Defendants in their filings to this Court—from first appearance to present. Those filings are incorporated herein by reference, and a sampling of those filings are indexed below:

*Index of Issues and Prior Discussions in
Altrad Defendants' Filings on Following Pages*

Index of Issues and Prior Discussions in Altrad Defendants' Filings

Applicable Point of Law	Title of Filing in <i>Tibbs</i> Public Index (Date Filed)
There is no appointment order in <i>Tibbs</i> , and the Receiver has no authority to seek his own appointment, as he does not exist as a matter of law as far as the <i>Tibbs</i> case is concerned.	Altrad Defendants' Notice of Supreme Court Authority (July 18, 2025)
No "Cape" entity has even been served in <i>Tibbs</i> .	Altrad Defendants' Notice of Supreme Court Authority (July 18, 2025) Response to the Court's First Report Regarding Current Status of <i>Park</i> (July 29, 2025)
No plaintiff has sought an appointment in <i>Tibbs</i> .	Altrad Defendants' Notice of Supreme Court Authority (July 18, 2025)
No receivership prerequisites have been or could be met in <i>Tibbs</i> .	Altrad Defendants' Notice of Supreme Court Authority (July 18, 2025) Altrad Defendants' Objections to the Cape PLC Receiver's Proposed Order Regarding the Motion to Dissolve the Receivership and Dismiss for Lack of Personal Jurisdiction (December 4, 2023)
The <i>Park</i> appointment was void for lack of a plaintiff who could properly seek an appointment. ²	Altrad Defendants' Notice of Supreme Court Authority (July 18, 2025)

² During the July 22, 2025 hearing, counsel for *Park* told the Court that they would try to fix this problem. But this problem cannot be "fixed"; the supposed motion to appoint a receiver that came more than half a year after the Probate Court, *at Mr. Park's sworn and notarized request*, terminated his personal representative appointment is an incurable "nullity," and the South Carolina Supreme Court

	Response to the Court's First Report Regarding Current Status of <i>Park</i> (July 29, 2025)
The <i>Park</i> appointment was sought over Cape PLC, not Cape Intermediate Holdings Limited (CIHL).	Third-Party Defendants Mohed Altrad and Altrad Investment Authority SAS's Motion to Dissolve the Cape PLC "Receivership" and associated exhibits (September 1, 2023) Reply in Support of Mohed Altrad and Altrad Investment Authority SAS's Motion to Dissolve the Cape PLC "Receivership" and Motion for Protective Order and to Dissolve Receivership (October 23, 2023) Third-Party Defendants Mohed Altrad & Altrad Investment Authority SAS's Legal & Procedural Opposition to the Purported Receiver's Motion for Summary Judgment (November 22, 2024)
Cape PLC and CIHL are two separate and distinct, active entities, neither of which was served in <i>Park</i> .	Third-Party Defendants Mohed Altrad and Altrad Investment Authority SAS's Motion to Dissolve the Cape PLC "Receivership" and associated exhibits (September 1, 2023) Reply in Support of Mohed Altrad and Altrad Investment Authority SAS's Motion to Dissolve the Cape PLC

has specifically said so. *See, e.g., McCullar v. Estate of Campbell*, 381 S.C. 205, 207, 672 S.E.2d 784, 785 (2009) ("If there is a lack of legal entity, the whole action fails. If an action is brought in the name of that which under the *lex fori* has no legal entity, **it is as if there was no plaintiff in the record and therefore no action before the Court.**" (quoting *Comm. & Sav. Bank of Lake City v. Ward*, 146 S.C. 77, 143 S.E. 546 (1928))) (cleaned up and emphasis added); *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.**") (emphasis added).

	"Receivership" and Motion for Protective Order and to Dissolve Receivership (October 23, 2023) Third-Party Defendants Mohed Altrad & Altrad Investment Authority SAS's Legal & Procedural Opposition to the Purported Receiver's Motion for Summary Judgment (November 22, 2024) Altrad Defendants' Notice of Supreme Court Authority (July 18, 2025) Response to the Court's First Report Regarding Current Status of <i>Park</i> (July 29, 2025)
There was never personal jurisdiction over Cape PLC (Bailiwick of Jersey) or CIHL (England), nor could there be.	Third-Party Defendants Mohed Altrad and Altrad Investment Authority SAS's Motion to Dissolve the Cape PLC "Receivership" and associated exhibits (September 1, 2023) Reply in Support of Mohed Altrad and Altrad Investment Authority SAS's Motion to Dissolve the Cape PLC "Receivership" and Motion for Protective Order and to Dissolve Receivership (October 23, 2023) 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 (July 18, 2025)
The home court of Cape PLC and CIHL has ruled, <i>twice</i> , that neither company was or is present in the United States, let alone South Carolina.	Mohed Altrad and Altrad Investment Authority SAS's Objections to the Cape PLC Receiver's Proposed Order Regarding the Motion to Dissolve the Receivership and

	Dismiss for Lack of Personal Jurisdiction (December 4, 2023) Altrad Defendants' Notice of Supreme Court Authority (July 18, 2025)
There is also no personal jurisdiction as to Mohed Altrad (French individual) or Altrad Investment Authority SAS (French company).	Mohed Altrad's Motion to Dismiss Third-Party Complaint for Lack of Personal Jurisdiction and for Stay of Discovery and associated exhibits (September 1, 2023) Altrad Investment Authority SAS's Motion to Dismiss Third-Party Complaint for Lack of Personal Jurisdiction and For Stay of Discovery and associated exhibits (September 1, 2023) Defendants Mohed Altrad and Altrad Investment Authority SAS's Reply in Support of Motion to Dismiss Third-Party Complaint for Lack of Personal Jurisdiction and for Stay of Discovery (October 23, 2023) Mohed Altrad and Altrad Investment Authority SAS's Objections to the Cape PLC Receiver's Proposed Order Regarding the Motion to Dissolve the Receivership and Dismiss for Lack of Personal Jurisdiction (December 4, 2023)
Plaintiffs failed to establish any extraordinary circumstances, having never served any Cape entity or provided notice of the appointment being sought in <i>Park</i> , and there are no defaults or default judgments in <i>Park</i> or <i>Tibbs</i> .	Third-Party Defendants Mohed Altrad and Altrad Investment Authority SAS's Motion to Dissolve the Cape PLC "Receivership" and associated exhibits (September 1, 2023)

	Reply in Support of Mohed Altrad and Altrad Investment Authority SAS's Motion to Dissolve the Cape PLC "Receivership" and Motion for Protective Order and to Dissolve Receivership (October 23, 2023) Altrad Defendants' Notice of Supreme Court Authority (July 18, 2025)
No showing that could support a receivership appointment was made in <i>Tibbs</i> , as no appointment was ever sought.	Mohed Altrad and Altrad Investment Authority SAS's Objections to the Cape PLC Receiver's Proposed Order Regarding the Motion to Dissolve the Receivership and Dismiss for Lack of Personal Jurisdiction (December 4, 2023) Defendants Mohed Altrad and Altrad Investment Authority SAS' Adoption and Notice of Joinder in Filings of Other Third-Party Defendants (April 9, 2024) Altrad Defendants' Notice of Supreme Court Authority (July 18, 2025)
The Receiver is not seeking assets to pay claims asserted by the plaintiff in <i>Park</i> (or in <i>Tibbs</i> , for that matter), and the notion of a roving receivership, able to secure assets to pay any conceivable claim, is prohibited by South Carolina law, as recently reiterated in <i>Welch</i> .	Defendants Mohed Altrad and Altrad Investment Authority SAS's Motion to Dismiss Pursuant to Rules 12(b)(1) & 12(b)(6) and Alternative Motion for More Definite Statement and to Strike or Sever Pursuant to Rules 12(e) & 14 (October 23, 2023) Third-Party Defendants Mohed Altrad and Altrad Investment Authority SAS's Reply in Support of Motion to Dismiss Pursuant to Rules 12(b)(1) & 12(b)(6) and Alternative Motion for More Definite Statement and to Strike or Sever Pursuant to Rules 12(e) & 14 (October 23, 2023)

	Altrad Defendants' Notice of Supreme Court Authority (July 18, 2025)
<i>Welch</i> requires a receiver to stay out of the boardroom, but the purported Receiver has been making <i>ultra vires</i> boardroom decisions for CIHL, a going concern over which he was never appointed receiver. This includes: (1) improper entry of an alleged, yet-to-be-produced tolling agreement with Plaintiffs' counsel in <i>Park</i>, months before the purported Receiver was allegedly appointed and after the <i>Park</i> estate was closed; (2) ignoring or making admissions against interest regarding the dispositive, decades-old <i>Adams</i> decision; (3) representing to others that he speaks for or can operate on behalf of Cape PLC and/or CIHL; (4) attempting to dictate CIHL's legal strategy by suing its actual attorneys, other companies, and Mr. Altrad; and (5) claiming to accept service on behalf of Cape PLC and/or CIHL, claiming to answer complaints on their behalf, and even claiming to be their attorney.	Mohed Altrad and Altrad Investment Authority SAS's Objections to the Cape PLC Receiver's Proposed Order Regarding the Motion to Dissolve the Receivership and Dismiss for Lack of Personal Jurisdiction (December 4, 2023) Third-Party Defendants Mohed Altrad & Altrad Investment Authority SAS's Legal & Procedural Opposition to the Purported Receiver's Motion for Summary Judgment (November 22, 2024) 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 (July 18, 2025)
Plaintiffs failed to establish any extraordinary circumstances, having never served any Cape entity or provided notice of the appointment being sought in <i>Park</i>.	Third-Party Defendants Mohed Altrad and Altrad Investment Authority SAS's Motion to Dissolve the Cape PLC "Receivership" and associated exhibits (September 1, 2023) Reply in Support of Mohed Altrad and Altrad Investment Authority SAS's Motion to Dissolve the Cape PLC "Receivership" and Motion for Protective Order and to Dissolve Receivership (October 23, 2023) Altrad Defendants' Notice of Supreme Court Authority (July 18, 2025)

The 1990 <i>Adams</i> decision is dispositive of the Receiver's core claims.	Third-Party Defendants Mohed Altrad & Altrad Investment Authority SAS's Legal & Procedural Opposition to the Purported Receiver's Motion for Summary Judgment (November 22, 2024) Altrad Defendants' Notice of Supreme Court Authority (July 18, 2025)
The 2024 UK Judgment and 2025 French ruling affirmed <i>Adams</i> and are conclusive as to the Receiver's core claims.	Third-Party Defendants Mohed Altrad & Altrad Investment Authority SAS's Legal & Procedural Opposition to the Purported Receiver's Motion for Summary Judgment (November 22, 2024) Altrad Defendants' Notice of Supreme Court Authority (July 18, 2025)
Principles of estoppel and comity require South Carolina courts to honor <i>Adams</i> and its progeny.	Third-Party Defendants Mohed Altrad & Altrad Investment Authority SAS's Legal & Procedural Opposition to the Purported Receiver's Motion for Summary Judgment (November 22, 2024) Altrad Defendants' Notice of Supreme Court Authority (July 18, 2025)
The claims the Receiver purports to bring—although he cannot bring them for lack of standing as reflected in <i>Welch</i> —are the subject of a binding mutual release.	Altrad Defendants' Notice of Supreme Court Authority (July 18, 2025)
Allowing a receivership to be created here would be unconstitutional, as would the creation of a new receivership, violating the Commerce and dormant Commerce, Takings, Due Process, Equal Protection,	Third-Party Defendants Mohed Altrad and Altrad Investment Authority SAS's Motion to Dissolve the Cape PLC "Receivership" and associated exhibits (September 1, 2023)

Excessive Fines, Import-Export, and Supremacy Clauses of the U.S. and S.C. Constitutions	Reply in Support of Mohed Altrad and Altrad Investment Authority SAS's Motion to Dissolve the Cape PLC "Receivership" and Motion for Protective Order and to Dissolve Receivership (October 23, 2023) Third-Party Defendants Mohed Altrad & Altrad Investment Authority SAS's Legal & Procedural Opposition to the Purported Receiver's Motion for Summary Judgment (November 22, 2024)
All proceedings relative to any receivership(s) over CIHL or Cape PLC are nullities, <i>void ab initio</i> .	Third-Party Defendants Mohed Altrad and Altrad Investment Authority SAS's Motion to Dissolve the Cape PLC "Receivership" and associated exhibits (September 1, 2023) Reply in Support of Mohed Altrad and Altrad Investment Authority SAS's Motion to Dissolve the Cape PLC "Receivership" and Motion for Protective Order and to Dissolve Receivership (October 23, 2023) Altrad Defendants' Notice of Supreme Court Authority (July 18, 2025) Response to the Court's First Report Regarding Current Status of <i>Park</i> (July 29, 2025)

CONCLUSION

The Receiver's request to "confirm" his own appointment remains 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* an appointment order from *Park* involving a different plaintiff—especially when the *Park* order was a legal nullity because, among other reasons, 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. *Welch* and *Tibbs* make this conclusion inescapable, and the myriad jurisdictional bars to this case advancing any further are incurable.

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 *ultra vires* activity has been enjoined by international courts, and *Welch* and *Tibbs* confirm that those foreign rulings 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.³

³ 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

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: /s/ M. Todd Carroll

S.C. Bar No. 74000

todd.carroll@wbd-us.com

Kevin A. Hall

S.C. Bar No. 15063

kevin.hall@wbd-us.com

M. Elizabeth O'Neill

S.C. Bar No. 104013

elizabeth.oneill@wbd-us.com

1221 Main Street, Suite 1600

Columbia, SC 29201

(803) 454-6504

*Attorneys for Mohed Altrad and Altrad Investment
Authority SAS*

August 4, 2025

host of incurable, 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.

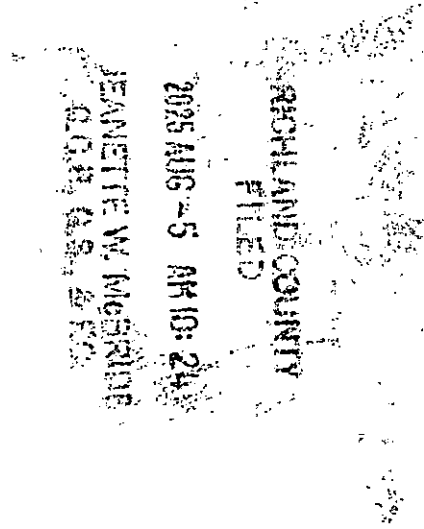
PROOF OF SERVICE

I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for the Altrad Defendants, do hereby certify that I have served all parties to this matter with a copy of the pleading(s) specific below by emailing them at their counsel's respective email addresses:

Pleading(s): Altrad Defendants' Response to the Receiver's Proposed Order and Certificate of Technical Failure

By: /s/ M. Todd Carroll

August 4, 2025



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., 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

RICHLAND COUNTY
FILED
2025 AUG -5 AM 9:37
JANETTE M. MCGRIDE
CLERK OF COURT

**THIRD-PARTY DEFENDANTS CHARTER CONSOLIDATED LTD., ESAB
CORPORATION, AND CENTRAL MINING AND INVESTMENT CORPORATION
LTD.'S SUPPLEMENTAL OBJECTION AND OPPOSITION TO RECEIVER'S
MOTION TO CONFIRM APPOINTMENT OF RECEIVER AND RECEIVER'S
AMENDED MOTION FOR LEAVE TO AMEND THIRD-PARTY COMPLAINT**

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 supplemental opposition/objection ("the Opposition") to the Receiver's Notice of and Motion

to Confirm Appointment of Receiver (“Motion”) filed by the purported receiver for Cape PLC (“Receiver”) on July 11, 2025, as well as the Supplemental Memorandum in Support of Motion to Confirm Appointment of Receiver, filed by the Receiver on July 31, 2025, including the Receiver’s unasked for Proposed Findings of Fact and Conclusions of Law as to Receiver Appointment.¹ Charter Third-Party Defendants further submit this Opposition to the Receiver’s Amended Notice of Motion and Motion for Leave to Amend Third-Party Complaint, filed by the Receiver on June 20, 2025 (the “Motion to Amend”).

OBJECTION AND OPPOSITION²

The Charter Third-Party Defendants respectfully object to the Motion and Motion to Amend as both procedurally and substantively defective. The Receiver’s Motion, presented under the guise of a procedural clarification to “confirm” a non-existent prior order, improperly seeks retroactive ratification of actions taken without authority and proposes a reading of the South

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.

Carolina Supreme Court's June 26, 2025 Order (the "June 26 Order") that would render the Supreme Court's directives meaningless.

The Supreme Court's directive was explicit: a receiver may not act in a case unless and until a specific appointment order has been filed in that case and the appointment order must have been supported by factual findings consistent with *Welch v. Advance Auto Parts, Inc.*, Op. No. 28284 (S.C. May 21, 2025) (the "Welch Decision"), with the receiver's scope of authority limited as set forth in the Welch Decision. This is critically important as appointing a prejudgment receiver is an "extreme power" that should only occur in the "rarest" and "extreme cases." Indeed, it is an "extraordinary remedy reserved for the most extraordinary cases. It is not to be used in the typical default case."

Here, no appointment order exists in *Tibbs*. Despite this, the Receiver has actively litigated the case allegedly in Cape's name for over two years—without jurisdiction, without service on Cape, and without legal authority.³ This Court is now being asked to endorse that conduct retroactively. Even if the Court were inclined to retroactively endorse a *Tibbs* receivership, it has no ability to do so without violating the recent holdings from the Supreme Court. The Receiver is impermissibly attempting to glue back together a structure that can never be fixed.

Accordingly, the Motion must be denied for the following *independent* reasons:

- (1) No receiver appointment order has ever been issued in *Tibbs*. The Supreme Court's June 26 Order expressly forbids a receiver from acting in a case absent such an appointment.

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.

- (2) The Receiver's reliance on the *Park* receivership order, even if belatedly filed in *Tibbs* months after the Receiver accepted service of the *Tibbs* Complaint and filed his Third-Party Action, does not satisfy the Supreme Court's requirement for a case-specific appointment, prior to work being conducted, based on independent findings in *Tibbs*.
- (3) The Receiver lacks standing to move for his own appointment and cannot cure two years of ultra vires conduct through a self-serving motion to confirm something that never existed in the first place.
- (4) The Receiver never even had authority to act in *Park* pursuant to the *Park* appointment order because no *Park* plaintiff was legally in existence when the receivership motion was made, and therefore the *Park* appointment order was void *ab initio*.
- (5) The purported proposed findings of fact, submitted without solicitation from the court, are based on inadmissible evidence that is flatly contradicted by years of precedent and does not justify the appointment of a prejudgment receiver under the standard outlined in *Welch*.

I. The Motion Must Be Denied Because The Receiver Is Not Authorized To Conduct Work In Tibbs.

Pursuant to the Supreme Court's directive in the June 26 Order and its decision in *Welch*, every action the Receiver has taken in *Tibbs*—purportedly in Cape's name—has been unauthorized. From his initial acceptance of the Complaint to his filing of the Third-Party Complaint to the filing of the present Motion and participation in any hearings, the Receiver has lacked authority 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*. The Third-Party Complaint must be dismissed, and the Motion—as well as all other motions proceedings arising from the Receiver's alleged third-party claims—are moot.

A. No receiver has been appointed in *Tibbs*, and the Supreme Court expressly forbids action without a case-specific appointment order

The June 26 Order leaves no room for ambiguity: "The receiver is not to be authorized to conduct work as to a case in which no receiver appointment order has been filed." This language

is neither permissive nor conditional. It imposes a categorical limitation on the Receiver's authority—one that applies with full force in this case.

The problem for the Receiver is straightforward: there is no prejudgment receivership appointment order in *Tibbs*. The Motion does not identify one because none exists. Indeed, the Court's docket contains no motion from the *Tibbs* plaintiffs seeking such an appointment,⁴ no evidentiary submissions to support the appointment of a prejudgment receiver, and no findings by the Court that would satisfy the statutory prerequisites for prejudgment receivership under S.C. Code Ann. § 15-65-10(4) or (5). Critically, this is the threshold inquiry mandated by the South Carolina Supreme Court, and because there is no receiver appointment order in *Tibbs*, the Court's inquiry under the June 26 Order need go no further.

The Receiver has not even attempted to point to any specific language in the *Tibbs* record that would constitute a valid appointment order. Instead, he asserts that the *Park* appointment order—entered in a different case involving different parties and different facts—was simply filed in *Tibbs* and should be deemed sufficient. Motion, at p. 3. Indeed, 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. But, as discussed more fully below, the Receiver's logic ignores both the substance and purpose of the June 26 Order and the Welch Decision. The Supreme Court's remand made clear that authority for a prejudgment receivership must be established on a case-by-case basis, with evidence and findings that apply to the particular litigation at hand. This makes sense, of course,

⁴ Although John A. Tibbs and Margaret B. Tibbs (the "Tibbs") filed a Joinder to Receiver's Motion to Confirm Appointment of Receiver on July 18, 2025, that single sentence filing is not the equivalent of the Tibbs filing a motion to appoint a receiver over Cape. This is especially true considering that no such filing would be appropriate given there has never been a default by Cape in the *Tibbs* action (nor has Cape even been served).

given the Supreme Court's emphasis in *Welch* that a prejudgment receiver can only marshal assets to cover the injuries of the specific plaintiff that sought the receiver's appointment.⁵ The limitations expressed in *Welch* are particularly critical here given the Receiver's own conduct—namely, initiating a third-party action that, as a matter of law, must be derivative of the Tibbs' alleged injuries.⁶ Yet, based on the clear holdings in *Welch*, the very order the Receiver relies on to justify his authority must be limited to marshaling assets solely to satisfy Ms. Park's injuries (not the Tibbs' injuries).

Thus, the Receiver's entire litigation activity in *Tibbs*—from accepting service to filing pleadings and motions—was conducted without jurisdiction. The Court has no discretion to retroactively validate such conduct. The absence of a receiver appointment order is not a technical defect—it is a jurisdictional failure. The Receiver lacked standing, the filings are void, and the Motion must be denied.

B. The *Park* appointment order, even if filed in *Tibbs*, is not a substitute for a case-specific receiver appointment

The Receiver incorrectly attempts to meet the first criteria in the June 26 Order by claiming that the Supreme Court's use of the word "filed" means that so long as an appointment order was filed by someone on the docket, no matter from what case or whether there is an appropriate scope

⁵ The Supreme Court repeated over and over again that the receiver over Atlas Turner only had power and control over the assets to "cover Mr. Welch's injuries." Under South Carolina law, a prejudgment receiver simply does not have the authority to pursue claims to marshal assets to generically "address the liabilities for injured South Carolinians," as the Receiver now requests in this Motion. Such an appointment order runs afoul of the clear mandate from the Supreme Court in *Welch* that a receiver be appointed only to marshal assets sufficient to cover a particular plaintiff's injury.

⁶ The Charter Third-Party Defendants incorporate by reference the arguments regarding the necessity that a third-party claim be derivative of the underlying plaintiff's liability, which were made in the Charter Third-Party Defendants' Memorandum in Opposition to Cape PLC's Motion for Sanctions, filed on April 23, 2024.

of authority given under the appointment order, that grants the receiver the authority to conduct work in a case, including accepting service on behalf of a company.⁷ The assertion that the *Park* receivership order suffices to establish the Receiver's authority in *Tibbs*, however, is squarely refuted by both the June 26 Order and *Welch* Decision. The June 26 Order states unequivocally: "Ensure that 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." That language contemplates a discrete, case-specific order. It is not satisfied by the administrative act of attaching or cross-filing a receivership order from a different action, much less one that involves different parties, different factual records, and different procedural postures.

The filing of the *Park* order in *Tibbs* may have placed that document in the *Tibbs* record, but it did not—and could not—convert it into an order of appointment in *Tibbs*. The *Park* receivership should have been created based on circumstances specific to that case—circumstances that, even if presumed to be true, are not automatically transferable to this case. And those circumstances were never tested against the requirements of S.C. Code Ann. § 15-65-10 as applied to *Tibbs*. Indeed, the Court has never adopted or ratified the *Park* findings (which, as discussed below, do not meet the standards outlined in *Welch*) for purposes of *Tibbs*. No motion was heard, no findings made, and no authority granted in *Tibbs*. The *Park* appointment order is, by every meaningful measure, a separate judicial act—one with no operative effect here.

⁷ During the July 22 hearing, the Receiver further suggested that filing the *Park* order in *Tibbs* was sufficient because it put everyone "on notice" that he was acting as Cape's representative. See Transcript of July 22, 2025 Hearing, at 38:5-9. But notice is not an appointment. The act of filing does not transform a "extraordinary" order in one case into a valid order in another case, nor does it satisfy the Supreme Court's requirement that a receiver be authorized to act in a case only when an appointment order has been entered in that specific action.

Finally, any suggestion that the *Park* order had legal effect in *Tibbs* must confront the reality that Cape has never appeared, never been served, and never consented to any receivership in this case. The Receiver cannot litigate in the name of a party who is not before the Court, based solely on an appointment order entered elsewhere. To hold otherwise would deprive Cape of the protections guaranteed by due process and the adversarial system. Indeed, prior to analyzing whether the appointment was appropriate in *Welch*, the Supreme Court first looked to whether the trial court has personal jurisdiction over Atlas Turner. *See Welch Decision*, at p. 10-11, 15-16. The Supreme Court went on to repeatedly reference the court's personal jurisdiction over Atlas Turner in connection with its ruling on the appointment order. Here, it is undisputed that Cape was never served with any pleadings such that the court had jurisdiction over Cape to appoint a receiver in *Tibbs*.

Furthermore, at the same time the Receiver claims that "filed" must mean that the Supreme Court only requires that someone place a receivership appointment order on the docket, the Receiver wholly ignores other words in the very same sentence. In particular, the Receiver ignores the Supreme Court's requirement that the Receiver "***has been authorized***" to conduct its work. Based on the plain meaning of the words, the only way any prior conduct can have "been authorized" is if the authorization was given prior to the work being conducted. Here, no such authorization, either through an actual appointment order in *Tibbs* or through the submission of the *Park* appointment order on the *Tibbs* docket, was given in advance of the Receiver's work in *Tibbs*. Instead, the Receiver improperly accepted service of the *Tibbs* complaint on behalf of Cape, answered, and then filed a Third-Party Complaint admitting massive liability on the part of Cape (without Cape's consent to do so) and asserted third-party claims wholly premised on the admissions made by the Receiver. And the Receiver did all of these things without any receivership

order from any case whatsoever filed with the Court.⁸ As the Supreme Court unequivocally stated, given that there was absolutely no receivership order in the *Tibbs* case, whether a *Tibbs* appointment or a *Park* appointment order, the Receiver was not “authorized to conduct work” in *Tibbs* when it accepted service on Cape’s behalf and filed the Third-Party Complaint.

In sum, the *Park* order is not a *Tibbs* order. It does not authorize action in this case. Its filing in *Tibbs* was procedurally meaningless. Only a *Tibbs*-specific appointment, supported by factual findings and entered by this Court, could provide the legal foundation necessary for the Receiver to act. That never happened. The Motion must therefore be denied.

II. The *Park* Appointment Order Is Improper And Cannot Be Relied Upon.

Furthermore, the Motion is improper as the motion to appoint a receiver in *Park*, the only support the Receiver uses to justify his work in *Tibbs*, was made by a plaintiff with no legal standing. Even if a *Park* plaintiff could retroactively come into existence as a legal entity and save the *Park* appointment—it cannot—and the *Park* appointment could extend to *Tibbs*—it cannot—the *Park* appointment itself exceeds the permissible scope of authority as set forth in *Welch*. For these additional, independent reasons, the Receiver cannot use the *Park* appointment to validate his actions in *Tibbs*.

A. The *Park* appointment is a nullity because no *Park* plaintiff was legally in existence when the receivership motion was made.

Unlike in every other case in which a receiver was appointed by this court, at the time the motion to appoint a receiver was brought in *Park*, the “party” bringing the motion had no standing

⁸ The first time even the *Park* appointment order appears on the *Tibbs* docket was not until August 21, 2023, in connection with a third-party defendants’ Motion to Dissolve the Receivership. This was after the Receiver agreed to accept service on Cape’s behalf; filed an Answer for Cape on June 29, 2023; filed a Third-party complaint on June 30, 2023; and sought entry of default against multiple third-party defendants starting around August 18, 2023.

to seek appointment of a receiver because the party did not legally exist. As discussed in (a) Third-Party Defendants Anglo American plc, De Beers plc, De Beers Consolidated Mines Proprietary Limited, De Beers UK Limited, and De Beers Centenary AG's Memorandum in Support of Motions to Dissolve Cape Receivership and to Dismiss Third-Party Plaintiff's Claims for Lack of Subject Matter Jurisdiction Filed Pursuant to Amended Notice of Hearing So-Ordered July 25, 2025, filed July 31, 2025; and (b) the "Response to the Court's First Report Regarding the Current Status of Park," filed on July 29, 2025, by Certain Underwriters at Lloyd's, Continental Casualty Company, and Liberty Mutual Insurance Company, as non-party objectors to subpoenas in the *Park* case, and by Altrad Third-Party Defendants in the *Tibbs* case, which are incorporated herein by reference, Keith Park was substituted in as the personal representative of Isabella Park after she passed away during the pendency of her lawsuit. After the Park case was "fully resolved," however, Mr. Park represented to the Spartanburg County Probate Court that Ms. Park's estate was fully settled and moved to terminate his appointment as personal representative, which the Court granted on August 26, 2022. Critically, the motion to appoint a receiver was not filed for more than six months after Mr. Park's authority to act as personal representative for Ms. Park's estate was terminated. In other words, when Mr. Park's purported counsel filed the motion to appoint a receiver, Mr. Park had no standing whatsoever to act on behalf of the estate, a fundamental failing that cannot be corrected retroactively—especially considering Mr. Park's knowledge of the *Park* action (and its purported claim against Cape) at the time he represented to the probate court the estate was fully settled. See *Glenn v. E. I. DuPont De Nemours & Co.*, 254 S.C. 128 (1970).

In *Glenn*, the South Carolina Supreme Court held an action by a former personal representative of an estate that had been closed (and who therefore lacked legal capacity to sue) was a nullity. The court ruled that such an action could not be retroactively validated by the

subsequent appointment of a personal representative or by amending the complaint to substitute another proper party. *Glenn*, 254 S.C. at 136 (“The allegation contained in the complaint that the respondent was the duly appointed administratrix of the estate of her deceased husband, was false and untrue, and it follows that there was no one qualified to bring suit under the wrongful death statute.”); *see also Com. & Sav. Bank of Lake City v. Ward*, 146 S.C. 77, 143 S.E. 546, 548 (1928) (“if there is a lack of legal entity, the whole action fails. *** If an action is brought in the name of that which under the Lex fori has no legal entity, it is as if there was no plaintiff in the record and therefore no action before the court; which presents an instance of want of jurisdiction.”).

Accordingly, when the Park estate was closed and Mr. Park’s capacity as personal representative of the estate was terminated, all controversies (especially those that were already pending) involving the estate ceased to exist; no plaintiff existed to pursue any claims in *Park*; no live dispute supported further judicial action or jurisdiction; and the *Park* case became moot as a matter of law.

B. The *Park* appointment does not pass muster under the Welch Decision.

Any attempt to utilize the *Park* appointment order to justify the Receiver’s conduct in Tibbs should be further rejected because, unlike the appointment order in *Welch*, which made findings of fact in the order itself regarding the purported moral fraud of Atlas Turner, the *Park* appointment does not contain a single finding of fact or conclusion regarding Cape’s purported moral fraud. Instead, the sole basis for appointing a receiver included in the order is 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. Counsel for the former *Park* plaintiffs (as the *Park* plaintiffs themselves no longer existed as a legal entity),

however, did not demonstrate that Cape had dissolved (it has not), forfeited its charter (it has not), or been served but failed to answer (there is no evidence that Cape was sufficiently served).

Furthermore, even if each of those things were true, the *Park* appointment order is devoid of any indication that it was “based on findings of fact sufficient under *Welch* to justify the order.” In the *Park* Motion to Appoint Receiver, Mr. Park’s counsel argued that a receiver was appropriate under South Carolina Code § 15-65-10(5) because of Cape’s decision to refuse to “appear or accept service in the United States after being faced with substantial asbestos-related liabilities.” *Park* Motion to Appoint Receiver, at p. 8. However, under *Welch*, this does not meet the requirements necessary to appoint a prejudgment receiver. As the Supreme Court pointed out, the “extreme power” to appoint a receiver before judgment “may only be used in extreme cases” and in the “rarest of cases.” *Welch* Decision, at p. 12. Indeed, it is an “extraordinary remedy reserved for the most extraordinary cases. It is not to be used in the typical default case.” *Welch* Decision, at p. 19. Importantly, the *Welch* Decision did not rely on Atlas Turner’s status as a defaulted party in *Welch* but instead looked to Atlas Turner’s conduct specifically in the *Welch* case to determine that Atlas Turner engaged in moral fraud sufficient to justify a prejudgment receiver. Specifically, the Supreme Court found that:

First, Atlas Turner's contemptuous disregard of the court's discovery orders and other conduct demonstrates it is seeking to evade its responsibilities as a civil litigant. There is evidence that Atlas Turner's corporate policy for responding to asbestos lawsuits is to adopt a “minimum defense posture” and incur default judgments. Atlas Turner followed that policy here. Second, Atlas Turner represented to the trial court that it had no Insurance Assets relevant to these cases. However, there is evidence Atlas Turner was involved in a transaction that may have compromised some of its potential insurance coverage. The record further discloses that Atlas Turner has refused to tender its policies to certain insurers for defense and indemnity.

Welch Decision, at p. 13-14. Indeed, the Supreme Court pointed out that the trial court “gave Atlas Turner many chances to comply and follow the rules like every other litigant.” *Id.*, at p. 19.

None of these things, or even anything remotely similar, occurred in *Park*. Rather, the *Park* record demonstrates that no Cape entity was served with a summons or complaint, made an appearance, or engaged in litigation. Indeed, the *Park* court did *not* make any findings that 1) Cape was properly served with service of process;⁹ 2) Cape refused (or failed) to comply with any court orders; 3) Cape was in default; 4) Cape engaged in moral fraud; 5) Cape was fraudulently concealing or disposing of assets that might be responsive to a later judgment; 6) there was a danger that Cape’s property would be materially injured before a judgment could be entered; 7) Cape was disobeying discovery orders; 8) Cape had made misrepresentations to the Court concerning the existence of assets that might cover the plaintiffs’ alleged injuries; or 9) Cape was otherwise engaged in active wrongdoing.

C. The Receiver misinterprets the limitations on a receiver’s authority applied in *Welch*.

Finally, the Motion’s position that the Welch Decision’s limitations on receiverships permit a receiver to “confess” decades of wrongdoing and fraud by the entity over which it has been appointed demonstrates a fundamental misunderstanding of the Welch Decision. The Receiver appears to argue that the Welch Decision’s limitations on the authority of a receiver should only be interpreted as clarifying that the specific *Park* receivership order only ever intended to apply to “*insurance assets*.” Motion, at p. 38. When the trial court filed the appointment order over Atlas Turner in *Welch*, however, the court included within its definition of “Insurance Assets” assets well

⁹ Such a finding would have been impossible considering that, prior to the *Park* appointment order, no certificate of service or other affidavit in support showing service on Cape was ever submitted to the Court for review.

beyond insurance policies, including any assets that are “related to, touch or are otherwise relevant to insurance.” The Receiver’s interpretation of *Welch* reads out or forgets that the appointment order did in fact originally grant the receiver authority over claims beyond just insurance policies.

The Supreme Court ultimately held that, even though the appointment order explicitly granted the Atlas Turner receiver control over “assets which are related to, touch or are otherwise relevant to such insurance,” that grant of authority exceeds what is allowed for a prejudgment receiver. The Supreme Court found that allowing a receiver control over those types of assets would “grant the Receiver entry into the Atlas Turner boardroom or some vague right to ‘take over’ operation of the company,” which is not permissible authority for a prejudgment receiver in South Carolina. Importantly, the Supreme Court in *Welch* did not just say the parties misunderstood or were clarifying the scope of authority given the receiver in the appointment order. Instead, the Supreme Court explicitly stated that they were “shrink[ing] the scope of the Receivership order.”

Despite the pronouncements in *Welch* and other cases, the Receiver continues to assert that the law authorizes receivers to take over operations of a functioning company and/or make boardroom level decisions on behalf of a company that already has an functioning and operating board so long as that authority is included in an appointment order. This position, however, is flatly contradicted by the Supreme Court in *Welch*. 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 scope of receivership delineated by *Welch*.

III. The Receiver Lacks Standing To Seek His Own Appointment, And The Motion Violates Basic Principles Of Equity.

Receivership is an equitable remedy that originates in the Court's inherent authority to preserve property or administer justice in extraordinary circumstances. But the power to appoint a receiver must be invoked by a party to the case, based on a concrete showing of necessity and supported by facts that meet statutory and constitutional requirements. The Receiver's attempt to circumvent this framework by filing a motion to confirm his own appointment—when no such appointment has ever occurred—is not only procedurally improper but fundamentally inconsistent with the nature of receiverships under South Carolina law.

As the South Carolina Supreme Court has long held, a receiver is not a party litigant. He is a disinterested officer of the court appointed to receive and manage property that is the subject of litigation. *See Peurifoy v. Gamble*, 145 S.C. 1, 142 S.E. 788, 790 (1928). The Court in *Peurifoy* emphasized that a receiver “has no personal interest in the property in his official character.” *Id.* The receiver is not a claimant. He is an arm of the court. As such, he cannot bootstrap his own authority into existence by filing a motion asking the court to ratify conduct undertaken without authorization.

Indeed, receivers are appointed—not self-appointed. The law contemplates that a party in the case, typically a plaintiff with a concrete interest in preserving assets or ensuring the fair administration of justice, will request appointment of a receiver by filing a motion supported by affidavits or evidence. *See* S.C. Code Ann. § 15-65-10(4), (5). That motion must allege one of the narrow statutory grounds for prejudgment receiverships—such as the risk of asset dissipation, fraud, or misconduct by an adverse party.

Here, no party in *Tibbs* ever filed such a motion. There is no record of any *Tibbs* plaintiff requesting the appointment of a receiver to represent Cape. Nor has this Court made any findings

that would support such relief under South Carolina law. The Motion is the first time anyone has formally asked this Court to appoint a receiver in *Tibbs*—but it comes not from a litigant, but from the Receiver himself.

This procedural flaw is not a technicality. It goes to the core of the Court's equitable authority. Courts do not grant extraordinary remedies on the basis of administrative convenience. The South Carolina Supreme Court reaffirmed this principle in *Welch*, holding that a prejudgment receiver should not be appointed except in the "rarest case" while relying on actual *evidence* to determine that Atlas Turner engaged in a moral fraud through its actions in *Welch* that were sufficient to warrant a prejudgment receiver. *See Welch Decision*, at 12-14. Those findings must precede, not follow, a receiver's involvement. Otherwise, the receiver becomes an independent litigant—a role fundamentally incompatible with his status as a neutral fiduciary.

Moreover, although the Receiver styles his request as a Motion to "Confirm Appointment," it is unclear what, precisely, the Receiver is asking the Court to confirm. Confirmation presupposes an antecedent action. One cannot confirm what never happened. The Receiver's use of the word "confirm" attempts to mask what is actually a request for an initial appointment. But it is being brought not by a party, but by the Receiver himself. And it lacks the evidentiary and procedural prerequisites for appointment under § 15-65-10 and *Welch*.

If the Receiver is seeking a new appointment order, then he must comply with the procedures for initial appointment—including a motion by an actual party, service on Cape, and evidentiary support. This Court cannot bypass those requirements merely by labeling the relief "confirmatory." But that is not what the Motion purports to do. To the contrary, what the Receiver now asks the Court to do is not to confirm a prior judicial act, but to retroactively authorize conduct that occurred without any such act. That request is fundamentally inconsistent with established

procedural norms and due process. Indeed, the judicial process does not allow litigants—or court-appointed officers—to retroactively cloak past unauthorized conduct in legitimacy.

Here, the Receiver acted for years without any *Tibbs*-specific authority. He accepted service, filed pleadings, opposed motions—all without an order from this Court authorizing him to do so. Now, instead of having a party seek appointment or a receiver through the appropriate channels, the Receiver asks the Court to “confirm” his status as though the requisite steps had already occurred. But the Court cannot and should not ratify acts that were ultra vires to begin with.

Accordingly, the Motion must be denied on this ground alone. A receiver cannot appoint himself. He cannot ratify his own conduct. He cannot substitute his own motion for the required pleading by a party. He cannot request extraordinary equitable relief based on filings in unrelated cases. The Court must preserve the integrity of its processes and deny the Receiver’s Motion in its entirety.

IV. The Receiver’s Proposed Findings of Fact Should be Soundly Rejected.

A. Proposed findings of fact are premature and contravene the Court’s direction that she will ask for an order after she makes an initial ruling.

As an initial matter, the Receiver’s attempt to submit proposed findings of fact before full briefing and argument on its motion was not authorized by the Court. In the Court’s Amended Notice of Hearing, filed July 25, 2025 (the “Amended Hearing Notice”), the Court set the Receiver’s Motion to Confirm Appointment of Receiver for a hearing to begin on August 12, 2025 and, consistent with the Court’s statements during the hearing on July 22, 2025, set a briefing schedule wherein the Receiver’s brief on the Motion was due by July 31, 2025. During the hearing on July 22, the Court specified that after she ruled, likely from the bench, then she would “ask the winner to draw an order.” Transcript of July 22, 2025 Hearing, at 184:6–8. The Receiver’s

presumptive preparation of a draft order for the Court to sign was neither asked for by the Court nor appropriate in these circumstances.

B. The documents cited by the Receiver are inadmissible according to the South Carolina Rules of Evidence and cannot be reasonably relied on to form “facts” sufficient to justify a prejudgment receiver.

The Receiver’s unproven allegations of wrongdoing are largely based on hearsay documents, such as assorted books and articles, that simply do not qualify as admissible evidence. Not only are the documents inadmissible under SCRE 802, but they also contain inadmissible hearsay within hearsay under SCRE 805. The Court should not consider or rely on the clearly inadmissible evidence when making any findings of fact.

C. The proposed findings of “fact” are based on theories of control that have been repeatedly rejected by courts.

The proposed findings of fact should also be rejected because the purported “facts” are 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. Additionally, in its recitation of the facts, the Receiver conflates Cape’s purported actions with other parties’ actions under the very same theories the Receiver seeks to prove in this litigation. However, these very same “facts” have been explicitly rejected by multiple courts in the United States and the United Kingdom. Indeed, the Receiver relies heavily on actions committed by NAAC, while attributing those actions to Cape. However, this would require the Court to pierce the corporate veil between Cape and NAAC or find that Cape is the alter ego of NAAC, both theories of which have been soundly rejected after an extensive 34-day trial and a subsequent 17-day appeal decades ago in the United Kingdom in *Adams v. Cape Industries plc* (1990) 1 Ch 433 (CA).

The Receiver further claims that “Anglo American, Charter, Central Mining, and De Beers were the nexus of control for all of the operating companies in the Oppenheimer Group, including Cape. The control was far beyond a stock ownership level of control, and its effect was complete.” Motion, Ex. A, at 4. Despite the Receiver’s assertion, without any actual citation to authority, that this control was “documented” by a U.S. federal court, the exact opposite is true.

For example, since the 1980s, courts across the United States, typically after trials or significant evidentiary submissions, have held that Charter is not the alter ego of Cape and therefore is not responsible for the asbestos liabilities of Cape or its subsidiaries. In *Craig v. Lake Asbestos of Quebec, Ltd.*, 843 F.2d 145 (3d. Cir. 1988), the Third Circuit found as a matter of law that Charter did not exercise a great enough degree of domination over Cape to hold Charter responsible for Cape’s asbestos liability.¹⁰ In reaching this determination, the Third Circuit relied on the full record from a two-day trial on the merits focused on the sole issue of whether Charter was the alter ego of Cape and found the evidence so compelling that it reversed the district court’s decision.¹¹

Similarly, in *In re Asbestos Litig. Venued in Middlesex Co.*, No. L-37243-79 (N.J. Super. Ct. July 10, 1987), after a bench trial on the merits as to whether Charter could be held responsible for Cape’s acts, Charter was determined not to be the alter ego of Cape. The court recognized that “whether *alter ego* liability will be imposed is ‘heavily fact specific’” and explained that in order for Charter to be liable to United States asbestos plaintiffs, the plaintiffs must “‘pierce the corporate veil’ twice: first Cape’s veil must be pierced to Charter, and second, Cape’s former subsidiaries in

¹⁰ *Craig*, 843 F.2d at 152.

¹¹ *See id.*

the asbestos business [i.e., NAAC] ‘veils’ must be pierced to get to Cape.”¹² Analyzing facts such as the number of Charter executives on Cape’s board and Charter’s majority ownership of Cape at certain times, the court determined that Charter did not exercise the requisite control over Cape to pierce Cape’s veil, given that, among other things, (a) “Cape’s finances were managed, and operated independently of Charter”; (b) “the companies have never integrated their offices, operations, or businesses”; (c) “Charter’s nominees to Cape’s Board lacked the expertise to manage Cape”; (d) “the Charter nominees have always been removed from the management structure of Cape because the Cape Board does not participate in the day-to-day business affairs of Cape or of any of Cape’s subsidiaries”; (e) “Cape’s management historically has been fiercely independent and has deliberately maintained an arm’s-length relationship with Charter”; and (f) “Charter and Cape have never had a business relationship, and have never engaged in a joint venture or consolidated any aspect of their respective operations or businesses.”¹³

Other courts have granted summary judgment in Charter’s favor on alter ego allegations involving Cape. In *In re Charter Defendants*, the court granted summary judgment and dismissed with prejudice hundreds of claims asserted against Charter in every asbestos action pending in the Eastern District of Pennsylvania, finding that “there are no genuine issues of material fact as to whether Charter is the *alter ego* of Cape and that the Charter defendants are entitled to judgment as a matter of law” on this point.¹⁴ Looking to *Craig* (“which definitively resolved the *alter ego* issue”), a multitude of other cases finding that Charter was not the alter ego of Cape, and additional

¹² *In re Asbestos Litig. Venued in Middlesex Co.*, No. L-37243-79, at Cape_Receiver_00002606–2607.

¹³ *In re Asbestos Litig. Venued in Middlesex Co.*, No. L-37243-79, at Cape_Receiver_00002629–2638.

¹⁴ 1989 U.S. Dist. LEXIS 15591, at *4, *15 (E.D. Pa. May 18, 1989).

evidence adduced by the plaintiffs, the court held that Charter could not be the alter ego of Cape. Multiple other courts across the United States have reached the same conclusion.¹⁵

D. The proposed findings of fact are insufficient to justify a prejudgment receiver under Welch.

Even assuming the facts outlined in the proposed findings of fact are true and based on admissible evidence—they are not—the “facts” are insufficient to warrant the appointment of a prejudgment receiver in *Tibbs*.

First, 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.

Second, 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 a prejudgment 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

¹⁵ *See, e.g., Barber v. Pittsburgh Corning Corp.*, No. GD79-21544 (Pa. C.P. Allegh. Co. Oct. 11, 1984) (granting Charter summary judgment as there was insufficient evidence to establish alter ego or veil-piercing liability with respect to Cape); *Culbreth v. Amosa (PTY) Ltd.*, 898 F.2d 13, 15 (3rd Cir. 1990) (affirming summary judgment in Charter’s favor as there was insufficient evidence to establish alter ego or veil-piercing liability with respect to asbestos marketed by NAAC).

active foreign entity. Instead, the Receiver focuses on allegations of “moral fraud” occurring decades ago. This position, however, 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 during Atlas Turner’s participation (or lack thereof) in *Welch*, including but not limited to making misrepresentations to the trial court and disregarding its orders. *Welch* Decision, at pp. 13-14. 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. Cape has not engaged in any misconduct in *Tibbs*; it has not even been served with process in the case.

Nothing in the Receiver’s proposed findings of fact changes the outcome—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.

V. The Receiver’s Motion To Amend The Complaint Should Be Denied.

The Court should deny the Receiver’s Amended Notice of Motion and Motion for Leave to Amend Third-Party Complaint on the grounds that such a request by the Receiver is not authorized and any amendment would clearly be futile. “Amendments of pleadings are controlled by Rule 15, SCRCP.” *Staubes v. City of Folly Beach*, 339 S.C. 406, 413, 529 S.E.2d 543, 546 (2000). While disposition of a motion to amend is within the sound discretion of the Court, *Kelly v. South Carolina Farm Bureau Mut. Ins. Co.*, 316 S.C. 319, 450 S.E.2d 59 (Ct. App. 1994), leave to amend should not be given when granting the party’s motion to amend would be futile. *Skydive Myrtle Beach, Inc. v. Horry Cty.*, 426 S.C. 175, 182, 826 S.E.2d 585, 588 (2019) (stating that a court “may deny a motion to amend if the amendment would be clearly futile”); *Coral Gables v. Palmetto Brick, Co.*, 183 S.C. 478, 191 S.E. 337, 341 (1937) (holding that an amendment to a

complaint asserting a cause of action which is barred by the statute of limitations is futile). Here, for the reasons discussed in this Opposition, as well as in Charter Third-Party Defendants' Opposition to Third-Party Plaintiff's Motion for Leave to Amend Third-Party Complaint filed with the Court on November 14, 2024, any amendment would be futile. The proposed amendments to the Third-Party Complaint are further futile because the Third-Party Complaint would remain subject to dismissal for failure to establish personal jurisdiction over the Charter Third-Party Defendants for the reasons set forth in the applicable 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, all of which are incorporated herein by reference.

CONCLUSION

The Motion is fundamentally improper. It has been brought by an individual with no legal authority to act in this case—effectively asking the Court to retroactively bless his self-appointed receivership and to disregard the clear, binding mandates of *Welch* and the June 26 Order, as well as long establish South Carolina receivership law in the process. That is not how receiverships work in this state, and it is not how courts are permitted to function under the rule of law.

Even if the Receiver had standing to bring the Motion—and he plainly does not—he has failed to establish any entitlement to the sweeping relief he seeks. Granting the Motion would directly contravene the June 26 Order and the Court's ruling in *Welch*, which do not permit the Receiver to act in *Tibbs* without having previously obtained a valid, case-specific appointment order prior to conducting work in *Tibbs*. There is no such order here. No party with standing has even moved for one. That omission alone compels denial of the Motion.

But even assuming, for the sake of argument, that a valid appointment order existed, the Receiver's Motion would still have to be denied. Neither *Welch* nor the June 26 Order authorizes a receiver to make board level decisions for a company such as instituting massive litigation on behalf of an entity—much less make sweeping admissions of liability on behalf of the company. Accordingly, the Charter Third-Party Defendants respectfully submit that the numerous procedural and substantive points described herein require denial of the Motion.

Dated: August 4, 2025

GORDON REES SCULLY MANSUKHANI LLP

By s/A. Victor Rawl, Jr.
A. Victor Rawl, Jr. (SC 9261)
Email: vrawl@grsm.com
677 King Street, Suite 450
Charleston, SC 29403
Telephone: (843) 278-5900
*Attorneys for Third-Party Defendants
Charter Consolidated Ltd., ESAB
Corporation, and Central Mining &
Investment Corporation Ltd*

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

ISABELLA PARK,

Plaintiff,

vs.

C/A No.: 2021-CP-40-01759

ARMSTRONG INTERNATIONAL, ET AL.,

Defendants.

(Caption continued on the following page.)

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

DATE TAKEN: Tuesday, August 12, 2025

TIME START: 9:24 a.m.

TIME END: 4:58 p.m.

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

REPORTED BY: Sheri L. Byers, RPR
Magna Legal Services
866.624.6221
www.MagnaLS.com

CAPTION CONTINUED:
JOHN A. TIBBS AND
MARGARITE B. TIBBS,

Plaintiffs,

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

3M COMPANY, ET AL.,

Defendants.

APPEARANCES CONTINUED:
ATTORNEYS FOR THE THIRD-PARTY DEFENDANTS
CHARTER ENTITIES, ESAB, AND
CENTRAL MINING:
GORDON REES SCULLY MANSUKHANI, LLP
BY: A. VICTOR RAWL, JR., ESQUIRE
40 Calhoun Street, Suite 350
Charleston, South Carolina 29401
843.714.2501
vrawl@grsm.com

ATTORNEYS FOR THE THIRD-PARTY DEFENDANTS
DE BEERS PLC AND ANGLO AMERICAN PLC:
HERBERT SMITH FREEHILLS KRAMER NEW YORK, LLP
BY: SCOTT BALBER, ESQUIRE
-and- CHRISTOPHER B. EMCH, ESQUIRE
-and- ELIZABETH KAMINSKI, ESQUIRE
200 Park Avenue, 16th Floor
New York, New York 10166
917.542.7600
scott.balber@hsfkramer.com
chris.emch@hsfkramer.com

ATTORNEYS FOR CERTAIN UNDERWRITERS AT
LLOYD'S LONDON, CONTINENTAL CASUALTY
COMPANY, AND LIBERTY MUTUAL INSURANCE
COMPANY (PARK v. CAPE):
MURPHY & GRANTLAND, P.A.
BY: WESLEY B. SAWYER, ESQUIRE
4406-B Forest Drive
Columbia, South Carolina 29206
803.782.4100
wsawyer@murphygrantland.com

APPEARANCES:
ATTORNEYS FOR THE PLAINTIFFS:
KASSEL MCVEY
BY: THEILE B. MCVEY, ESQUIRE
1330 Laurel Street
Columbia, South Carolina 29201
803.256.4242
tmcvey@kassellaw.com

ATTORNEYS FOR THE RECEIVER
PETER D. PROTOPAPAS:

SMITH ROBINSON HOLLER DUBOSE MORGAN, LLC
BY: SHANON N. PEAKE, ESQUIRE
3200 Devine Street
Columbia, South Carolina 29205
803.254.5445
shanon.peake@smithrobinsonlaw.com
-and-
GALLIVAN, WHITE & BOYD, P.A.
BY: JOHN T. LAY, ESQUIRE
-and- LINDSAY A. JOYNER, ESQUIRE
1201 Main Street, Suite 1200
Columbia, South Carolina 29201
803.779.1833
jlay@gwblawfirm.com
ljoyner@gwblawfirm.com

ATTORNEYS FOR THE THIRD-PARTY DEFENDANTS
ALTRAD INVESTMENT AUTHORITY AND MOHED ALTRAD:
WOMBLE BOND DICKINSON, LLC
BY: M. TODD CARROLL, ESQUIRE
1221 Main Street, Suite 1600
Columbia, South Carolina 29201
803.454.6504
todd.carroll@wbd-us.com

INDEX

	PAGE
Motions Before the Court Filed in Park	5
Motions Before the Court Filed in Tibbs	137
Certificate of Reporter	270

EXHIBITS

COURT'S	DESCRIPTION	MARKED
1	Cape Intermediate Holdings Limited House Register	156
2	Probate Documents	157

1 ---
2 P R O C E E D I N G S
3 ---

4 THE COURT: Preliminarily, let me give you
5 focus of how I'm looking at this melange of
6 things that have been sent to us for
7 adjudication.

8 I have been remanded seven cases which were
9 brought by defendants in the third-party action
10 in Tibbs as appeals of rulings that I made in
11 Tibbs some time ago. The Court of Appeals ruled
12 that those matters were not appealable, went up
13 to the Supreme Court.

14 In the meantime, the Welch matter was
15 decided and certain parties that are
16 participating in these matters filed material in
17 Welch, though they were not parties in Welch,
18 that looked kind of like a motion for
19 reconsideration and attempted to argue with the
20 Court about some of the conclusions it had made
21 about their clients in Tibbs in the course of
22 dealing with the matters at play in Welch.

23 So to that end, when the Supreme Court
24 finally decided it wasn't going to fool with
25 these things anymore and didn't like the

1 repetitive nature of the filings and the
2 negative nature of some of what was contained in
3 the filings, they sent the matters back to me
4 with some instructions on remand.

5 And those instructions included some
6 questions about the Park case and the validity
7 of the appointment of the receiver for Cape in
8 the Park case and the validity of or the status
9 of the Park case and what -- in terms of what it
10 was acting.

11 But they also asked me to rule on
12 everything that was outstanding in Parks, any
13 motions. And it also said with respect to all
14 the other receiverships, tell us what is going
15 on, tell us what's still outstanding in these
16 cases and if you haven't ruled on them, tell us
17 why.

18 So I have a huge plate of things that
19 involve kind of moving a target as to who the
20 parties are at play in the various buckets of
21 things that I have to deal with. And I have
22 tried to iron that out the best way I can. I
23 don't just speak from the thrown to the Court
24 about kind of my general opinions about
25 everything. I make rulings in cases that are

1 before me and make a record and then the
2 appellate process takes place.

3 And in addition to that, in these
4 particular matters, I am required to give a
5 report every 30 days to the Court that is a
6 procedural report about what's taking place.

7 But it is not a report that involves
8 anything that needs to be ruled on as a
9 contested matter by the Court. It's simply a
10 report. The parties' ability to engage about
11 the merits of things takes place within the
12 course of the cases that are pending in front of
13 me.

14 That's the only way I have any business
15 ruling about anything that has to do with
16 matters is in the posture of ruling on matters
17 that are before me and the cases that are before
18 me.

19 To that end, the two cases that we are
20 dealing with today, as promised, are Park and
21 Tibbs. And in each case, what I attempted to do
22 was, first of all, identify any outstanding
23 motions in Park and in both cases identify
24 anything that dealt with the legitimacy and
25 status of the receiver appointed for Cape in

1 Park and participating as receiver for Cape in
2 Tibbs.

3 So the way I propose to move forward with
4 this thing, I've listed everything that I think
5 is pending. I might say to begin with that
6 there are certain things that I think were
7 referred to perhaps in what the Court was asking
8 about in Park that are no longer pending.

9 The only outstanding motion I had before I
10 started looking at this thing in any great
11 detail was Locke Lord's motion to dismiss
12 third-party complaint for lack of jurisdiction
13 and for stay of discovery. And that was filed
14 by Locke Lord on September the 15, 2023.

15 On July the 10th, 2025, Locke Lord was
16 dismissed with prejudice by means of a
17 stipulation entered into by attorneys for
18 Locke Lord, Womble Bond & Dixon, Turner Padgett
19 Graham & Laney, and Harling & West and attorneys
20 for the receiver or for this third claimant
21 Harling & West and Rikard & Protopapas.

22 So that's no longer outstanding and I know
23 regarding something I need to deal with. So I
24 just mention that, that part of my report will
25 be to say that that motion has been -- will not

1 be acted on by me by reason of the fact that the
2 entire matter with regard to Locke Lord has been
3 stipulated as dismissed.

4 That would leave in the Park case,
5 Plaintiff's brief about the status of the Park
6 case, which was filed on August the 4th. The
7 receiver's Motion to Compel Certain Underwriters
8 of Lloyd's filed in June of 2025. Certain
9 Insurers' Motion in Opposition to this Motion to
10 Compel. That's Mr. Sawyer.

11 Certain Insurers, Continental Casualty
12 Return to the Bench Brief. That's again
13 Mr. Sawyer. And then nonparty Travelers motion,
14 Memo in Opposition, I guess, to what was said in
15 the bench memo by me to the Court.

16 I do not regard nonparty Travelers as
17 having any status in Park. But after I finish
18 hearing from those that do have status in Park,
19 before I leave Park, I will ask any comments
20 that nonparty Travelers wishes to make.

21 Also, filed in Tibbs are some other matters
22 that relate to the current status of Park, and
23 they are filed by entities that are not
24 defendants in Park. They are defendants --
25 third-party defendants in Tibbs.

1 So I don't regard them as having any status
2 in Park to say anything. But I'm not going to
3 preclude them from putting on the record what
4 they would like to put on the record. I regard
5 the parties that I need to hear from in Park as
6 the plaintiff, the receiver, and Mr. Sawyer on
7 behalf of Certain Insurers and Continental
8 Casualty. So that's how I'm going to start Park
9 now.

10 With respect to the Tibbs matter, I have
11 outlined as best I can everything I think is
12 pending on the subject of the legitimacy of the
13 Cape receivership, and that takes the form of
14 many filings by Anglo, De Beers, and others
15 asking that the Cape receivership be
16 dismissed -- be dissolved and the third-party
17 complainant dismissed. Receiver's opposition to
18 those things.

19 And also the receiver's motion to confirm
20 the appointment of receiver. That kind of puts
21 out of the picture. Along with others'
22 objection and opposition to the submissions of
23 the receiver as well as motion to dismiss,
24 strike all filings and so forth and so on. I
25 will in due time get to those as well.

1 That is how I'm going to set the hearing
2 up. And so I would call on Ms. McVey to begin
3 with.

4 MS. MCVEY: Thank you, Your Honor.

5 And just for clarity's sake as we argue,
6 one of the things the Supreme Court has to do is
7 ensure, as you recall, our motion to appoint a
8 receiver over Cape was filed in Park. And one
9 of the things that the Supreme Court has to do
10 is ensure that the order is based on findings of
11 fact sufficient under Welch to justify the
12 order.

13 So with your permission, because the motion
14 was filed in Park, I would like to argue the
15 personal representative issue as well as to go
16 into the basis of the Park motion to appoint the
17 receiver.

18 THE COURT: Here's what I would like for
19 you to do before you do that as a preliminary
20 matter.

21 MS. MCVEY: Yes, ma'am.

22 THE COURT: I would like for you to discuss
23 the status of the Park case because that's to be
24 attached, much of it made by people who are not
25 in Park, so I don't think they have much status

1 to raise those issues in Park.

2 But Park does form the basis of the
3 appointment of the receiver, and they make
4 certain contentions that they say invalidate the
5 activity in appointing the receiver apart from
6 all the other things they say are wrong in the
7 receivership.

8 And they revolve around whether they think
9 Park is still alive and well, whether the
10 personal representative had authority, et
11 cetera. So I would like for you to first cover
12 those matters.

13 MS. MCVEY: Absolutely. Happy to do that
14 this morning.

15 Your Honor, just by way of background with
16 the Park case, the Park case, when Mrs. Park was
17 still alive, was filed on July 4th of 2021.
18 Mrs. Park died from her mesothelioma, and we
19 allege as a result of her exposure to asbestos
20 imported by Cape and incorporated into hundreds
21 of miles of insulation at the Celanese facility
22 where her husband worked.

23 THE COURT: Let me stop you right there.
24 When Park was first filed, was Cape a defendant
25 in the case?

1 MS. MCVEY: A Cape entity was named as a
2 defendant in the case.

3 THE COURT: All right. It was named in the
4 caption, right?

5 MS. MCVEY: And in the body of the
6 complaint.

7 THE COURT: And in the body of the
8 complaint.

9 MS. MCVEY: Right.

10 THE COURT: And what was that entity?

11 MS. MCVEY: I think it just was Cape. I
12 don't think we had the right name.

13 THE COURT: Well, something that called
14 itself Cape or Cape PLC was named --

15 MS. MCVEY: Yes, ma'am.

16 THE COURT: -- in the caption of the case
17 and in a paragraph in the case.

18 MS. MCVEY: That's right.

19 THE COURT: All right.

20 MS. MCVEY: That's right. On August 4th,
21 after Mrs. Park died, Keith Park was appointed
22 as a personal representative of the estate. On
23 December 21st of 2021, Keith Park filed his
24 second amended complaint naming Cape PLC and
25 Cape Intermediate Holdings.

1 THE COURT: That date is what?

2 MS. MCVEY: December 23rd, 2021.

3 THE COURT: All right.

4 MS. MCVEY: Mr. Park was still the personal
5 representative.

6 THE COURT: Is that when he filed the
7 complaint?

8 MS. MCVEY: Yes. And then the complaint
9 was served on the Cape defendants on March 8th,
10 2022. Keith Park was still the personal
11 representative.

12 THE COURT: And that was the service --
13 that service was filed at some later time, but
14 the service itself was made then?

15 MS. MCVEY: Absolutely. And you have
16 already ruled in a prior motion that that was
17 proper service.

18 THE COURT: That's correct.

19 MS. MCVEY: On August 26th, 2022,
20 unbeknownst to us, the probate court closed the
21 estate. Now the case remained open and you have
22 seen on the Common Pleas docket the Park case
23 remains open. As soon as we found out about
24 this, we moved to reopen the estate and the
25 estate is now currently open.

1 THE COURT: When did you move to reopen?

2 MS. MCVEY: We moved it the day after they
3 filed their pleading. It's reopened on
4 July 30th. Or filed it on July 30th. I may
5 have my dates wrong a little bit. But the
6 complaint has been -- I mean, that I think we
7 filed the motion to reopen the estate on
8 July 30th and it has since been reopened.

9 THE COURT: What is your position with
10 respect to whether Keith Park had the
11 authority -- whether the -- on the impact of the
12 closing of estate on August the 6th, 2022?

13 MS. MCVEY: Okay. So here's my -- at the
14 time that Cape was -- the complaint was filed
15 against Cape, at the time that Cape was served,
16 at the time that Cape's answer was due, Mr. Park
17 was the personal representative.

18 THE COURT: Right.

19 MS. MCVEY: Okay. And so what the
20 defendants argue is that the closing of the
21 estate -- by the way, an honest mistake -- was
22 jurisdictional. And they point to three
23 different cases.

24 Those cases deal with when a complaint is
25 filed whether or not the personal representative

1 had jurisdiction, had authority to bring the
2 case. In this case we know Mr. Park absolutely
3 had authority to deal with it.

4 So what do we look to if some mistake
5 happens in the interim? There's three places
6 that you can look. The first one is a probate
7 Section 62-3-701, and that provides the duties
8 and powers of a personal representative commence
9 upon his appointment.

10 The powers of a personal representative
11 relate back in time to give acts by the person
12 appointed, which are beneficial to the estate,
13 occurring prior to the appointment, the same
14 effect of those occurring after.

15 A personal representative may ratify and
16 accept acts on behalf of the estate done by the
17 others where the acts would have been proper for
18 the personal representative.

19 So that's the first thing.

20 The second thing is Rule 17(a), and that
21 requires ratification, joinder substitution, and
22 it gives the abilities for an -- in this case
23 for Mr. Park to cure what happened with the
24 probate case.

25 And we know that because there's a Fisher

1 case, and it's called Fisher versus Huckabee,
2 and it discusses Rule 17(a). Fisher is a
3 Supreme Court case, South Carolina Supreme Court
4 case from 2018.

5 And in discussing Rule 17(a), which says no
6 action shall be dismissed on the ground that is
7 not prosecuted in the name of the real party in
8 interest until a reasonable time has been
9 allowed, after objection, for ratification or
10 commencement of the action or joinder. And such
11 ratification shall be -- and it goes on.

12 The last sentence according to the notes of
13 17(a) is intended to prevent a forfeiture in
14 those cases in which there's been a
15 determination that the party -- the proper party
16 to sue is difficult for where there's been an
17 honest mistake.

18 And the Fisher case, the Supreme Court, and
19 I have that case if Your Honor would like a copy
20 of it.

21 THE COURT: I would.

22 Thank you.

23 MS. MCVEY: Thank you.

24 The Fisher case makes it -- the Court
25 doesn't have discretion not to allow us a chance

1 to cure this. What the Fisher case says is that
2 if they -- Ms. Fisher had asked to cure the
3 defect from the probate court, the Court would
4 have had to allow her to do that.

5 So this isn't a case where when we filed
6 the complaint there wasn't a personal
7 representative. This isn't a case where that
8 when Cape was sued, we didn't have a personal
9 representative. It's not a case when Cape was
10 served that we didn't have a personal
11 representative.

12 Simply what happened is when he filed an
13 ancillary motion to the case, the estate had
14 been closed. That's an honest mistake, and the
15 rules allow us to cure it. We have since cured
16 it. And so we believe the motion was proper and
17 that Mr. Park had the authority to bring that
18 motion.

19 The cases that they cite, including a
20 New York case -- they cite three cases. The
21 first is the Glenn case, the second is the
22 McCullar case.

23 And in McCullar, what the Court said there
24 is the question of whether at the time the suit
25 was commenced there existed a judicial entity

1 known as the estate of, is the question before
2 the Court. And the Court held undisputed estate
3 was closed before the action was commenced. The
4 answer is no.

5 Same thing with Glenn.

6 In the New York case that they cite
7 litigation was ongoing, the estate was closed,
8 but what happened is the defendant wanted to
9 bring counterclaims. That's the same thing.
10 That's a jurisdictional issue.

11 We don't have a jurisdictional issue here.
12 We simply have an opportunity under 17(a) to
13 correct an honest mistake. And that's what has
14 been done here. And there's certainly no
15 prejudice to any party here.

16 And I'll just note that Cape never appeared
17 to contest any of this. And still hasn't. Cape
18 is not in this courtroom, if you ask any of
19 these guys.

20 So, Your Honor, we believe under the
21 preliminary basis, we have absolutely authority
22 to bring the motion.

23 THE COURT: All right.

24 MS. MCVEY: I'm happy to roll into the
25 moral fraud on the basis of our motion.

1 THE COURT: Yes, I'm going to let you be
2 heard on everything, and we'll move from there.

3 MS. MCVEY: Okay. Your Honor, I wanted to
4 hand up, because it was so long ago. This was
5 our original motion to appoint a receiver in the
6 Park case over Cape. If I could hand that to
7 you.

8 And in it, it contained 35 exhibits which
9 outlined at length the moral fraud of Cape. And
10 let me remind you of how we got here in Cape.
11 You've already found that Cape was sued and
12 served with the complaint. You have found that
13 service of that complaint was proper. They did
14 not appear at all for well over a year. And we
15 moved to have a receiver appointed outlining the
16 moral fraud contained in that original motion
17 along with exhibits.

18 Not only did we serve the complaint on
19 them, we also served that motion to appoint the
20 receiver. They got actual notice of our motion
21 to appoint a receiver. And what did Cape do?
22 Nothing. They didn't appear because that's what
23 they do.

24 And I'm going to outline it for you if
25 you'll give me just a few minutes to outline

1 because the moral fraud here, what the Supreme
2 Court told you to do was look at Welch and to
3 say does the moral fraud of Welch rise to the
4 level? Does Cape rise to that level? I would
5 represent to you that this moral fraud is like
6 Atlas Turner on steroids. And let me go through
7 it in just a moment.

8 But they have never appeared to dispute
9 this appointment of the receiver. Ever.

10 They've never disputed that they engaged in
11 moral fraud. They never filed an answer.

12 And just a reminder that in the Welch and
13 Tibbs case, Atlas Turner was the one that came
14 in and disputed the appointment of the receiver.
15 It was Atlas Turner the company. Cape has never
16 done that and still hasn't done it two years
17 after appointment.

18 To emphasize and to establish the moral
19 fraud of Cape, I do want to emphasize my
20 brethren on the other side keeps saying the
21 moral fraud of any of Cape was in the past.
22 It's not ongoing. What you see is that not only
23 is it ongoing, it's been ongoing for decades.
24 And we know it because they didn't show up in
25 the Park case despite being properly served.

1 At the last hearing I heard counsel say
2 this is not about whether or not Cape is a bad
3 company or engaged in moral fraud. It
4 absolutely is about whether Cape did that.

5 At the time that you appointed this
6 receiver, you had that notebook, you had 35
7 exhibits. And so just briefly, I'd like to go
8 through the allegations of the moral fraud that
9 are really undisputed in this case.

10 As you know, Cape was organized and
11 existing under the laws of the United Kingdom.
12 They bind thousands of tons of raw asbestos
13 fibers in South Africa. And they admit they
14 sold most of the blue and brown asbestos
15 products into the United States. That, as you
16 know, is the crocidolite and the amosite. The
17 most deadly types of asbestos.

18 We cited to you a case, Hammond versus
19 Northern American Asbestos Court, 454 Minnesota
20 East 2d -- I'm sorry, I had that wrong.
21 Southeastern -- it's an Illinois case from 1983.
22 In that case the court confirmed that Cape
23 asbestos supplied 90 percent of the world's
24 amosite and was virtually the sole supplier of
25 the longer fiber grades.

1 It's undisputed that Cape knew about the
2 dangers of asbestos and sought to hide those
3 dangers. And the scene is outlined in their own
4 documents and they wrote it down. Cape said,
5 and I quote, It had no moral responsibility to
6 the end users of asbestos.

7 Since the 1970s, it's refused to appear in
8 any litigation to defend its conduct. Instead,
9 what Cape decided to do is accept default
10 judgments in asbestos lawsuits because they
11 couldn't be collected in the UK or South Africa.

12 Now, that sounds very familiar to what
13 Atlas Turner was doing about Canadian default
14 judgments. That continues today, as you know,
15 from the Park case. And ultimately what Cape
16 decided to do is dissolve, to liquidate its
17 North American arm so that it couldn't be
18 touched in the United States.

19 But first what Cape did to make as much
20 money off their asbestos products selling it to
21 the United States is they established an
22 American presence through the NAAC, who you've
23 heard about.

24 And the purpose of establishing the NAAC
25 was to expedite and facilitate the movement of

1 asbestos from the South African mines into North
2 America. That was established October 14th,
3 1953. And that is a direct subsidiary that was
4 part of Cape Mining's division that was
5 domiciled in Illinois. That's Exhibit 2 to our
6 motion.

7 NAAC had both marketing and distribution
8 roles. NAAC was Cape's sole agency in the
9 United States with the sole authority to offer
10 Cape products. It was responsible for
11 transmitting information about customer needs to
12 Cape mines.

13 The goal, as stated in their own documents,
14 was to make sure that shipments from Africa made
15 it, and I quote, all the way through to the
16 customer's plant. And that's Exhibit A to our
17 original motion.

18 They intended to, and I quote, put the
19 mines, South African mines at every U.S. port.
20 That's Exhibit 5 to our original motion.

21 By 1970, NAAC was the largest U.S. importer
22 of amphibole fibers, which were redistributed
23 from warehouse locations on the East Coast, the
24 Gulf Coast, and West Coast ports. That's
25 Exhibit 6 to our original motion.

1 NAAC described itself as essentially a one
2 man in motion, a one-man operation. But they
3 were overseen -- this is important -- they were
4 overseen by a board of directors made up of
5 largely company lawyers or other Cape executives
6 until all Cape officials resigned in 1975, and I
7 quote, as a simple precaution in light of U.S.
8 litigation.

9 That's Exhibit 6 to our original motion.

10 In coordination with Cape, NAAC sold
11 asbestos to Cape's numerous American-based
12 clients, including the U.S. government, King
13 Corp, Carey Fiber Board, Owens Corning,
14 Johns-Manville and Pittsburgh Corning.

15 That was Exhibit 7 to our original motion.

16 And we know these companies, because you've
17 seen them in many trials, were all over
18 South Carolina and supplied asbestos insulation
19 to industrial facilities all over this state and
20 of course others.

21 They didn't stop there. Cape and NAAC
22 tried to influence public and corporate opinion
23 about the safety of asbestos by rebutting
24 emerging medical critiques of the safety.

25 We have seen testimony from a chemist,

1 Dr. Gaze, who is a Cape chemist employee. And
2 he said since 1961, he continually discussed
3 health hazards that neither Cape nor the NAAC
4 had never placed warning labels on asbestos
5 bags.

6 Exhibit 13 to our original motion is a 1977
7 document from Cape prioritizing the efforts,
8 their efforts, to, and I quote, It is clear to
9 me that one of our first tasks must be to try to
10 organize a body of medical opinion that is
11 prepared to stand up to Dr. Selikoff.

12 And this Court knows very well who
13 Dr. Selikoff was. He was one of the first
14 American scientists to really sound the alarm
15 about how hazardous asbestos was on human
16 health.

17 So what did Cape do in response to that?
18 They didn't say, hey, we're going to look at
19 what Dr. Selikoff is saying. Instead what they
20 decided to do is fund their own science.

21 Anthony Mendell, who was the plant manager
22 for Cape from 1956 to 1968, admits that its
23 workers were dying of mesothelioma by the late
24 1950s. He admits that Cape knew that amosite
25 caused the disease, and they closed the Barker

1 plant -- the Barking plant.

2 There was a Gaze memo, that's the chemist
3 that we mentioned earlier, dated July 24th,
4 1964. And it gives an internal warning that
5 asbestos conditions are dangerous. But guess
6 what? Cape keeps that in house and doesn't tell
7 anyone else.

8 And they even reached out to North American
9 customers. Cape did. How do we know that?
10 Pittsburgh Corning contacted Cape and said, hey,
11 we're seeing some stuff about asbestos being
12 dangerous for workers. We're worried about
13 that. What do you think, Cape?

14 And Dr. Gaze, the chemist again, he wrote
15 to Pittsburgh Corning on March 22, 1966, and he
16 tells Pittsburgh Corning, and I quote, No
17 mesothelioma has ever been linked to amosite.

18 And we know that the customers rely because
19 when what happened? It's Pittsburgh Corning
20 wrote back to Cape after receiving that letter.
21 And at that -- and what Pittsburgh Corning says
22 back to Cape, and I quote, At this point from
23 your letter, I am assured that no customers'
24 worker need to be concerned about mesothelioma.

25 That's Pittsburgh Corning relying on what

1 Cape has told them. And guess what? Cape
2 wasn't just saying that to North American
3 customers, they're saying it internally.

4 And in an August 19th, 1966, memo, Cape
5 circulated the same false claim to the entire
6 company saying that no mesothelioma had ever
7 been linked to amosite.

8 And so they have Dr. Selikoff out there.
9 They have Dr. Wagner's study, who you've heard
10 about in many of these cases, and they know that
11 the science is turning against them.

12 And so what they did, November 29th, 1960,
13 they come up with a study proposal. In that,
14 Cape agrees to fund the study in order to gain
15 access to the interim results.

16 April 30th, 1962, that interim study finds
17 alarmingly high mesothelioma in miners and not
18 just in the miners but also in nearby residents.

19 August 30th, 1962, it's the Smither report
20 to Cape. This Cape doctor admits that the
21 findings are alarming but urges no other survey,
22 suggest moving patients hundreds of miles away
23 to hide cases.

24 Cape threatened -- and you have heard this
25 in other cases, to threaten and ruin a local

1 doctor's practice if he kept raising a
2 mesothelioma alarm. And that's from a 1996
3 deposition of a Dr. Van Rooyen, who was a
4 South African physician.

5 And we know while all of that is going on,
6 Cape is also dominating what NAAC is doing in
7 the United States. For example -- and this is
8 Exhibit 14 to our original motion. NAAC was
9 unable to borrow one dollar without Cape's
10 approval.

11 NAAC routinely forced to withdraw cash from
12 the United States to pay dividends to Cape
13 Asbestos minimizing the assets on NAAC's balance
14 sheets.

15 That's Exhibit 16 to our original motion.

16 And we know that to keep the scheme going,
17 as they called it, Cape handpicked personnel for
18 NAAC that would go along with its scheme.

19 Exhibit 15 to our original motion suggests
20 that Cape was extremely cautious in picking NAAC
21 personnel who would, and I quote, fit into the
22 company's scheme of things without causing
23 embarrassment all around.

24 NAAC understood that it had to subordinate
25 its own interest to its master, which was Cape.

1 Then Cape decides to accept default
2 judgments. What happens is they're sued and
3 they think we're going to be fine. There's no
4 personal jurisdiction, and then they get hit and
5 they have to settle a case.

6 So after the onset of asbestos-related
7 product liability claims in 1970, Cape becomes
8 really concerned with its own liabilities. And
9 we see from Exhibit 18 to our original motion,
10 the 1975 letter referring to the attempts -- and
11 I'm quoting here, attempt to limit NAAC's and
12 Cape's exposure to future U.S. litigation.

13 So Cape went through all those machinations
14 to make it appear that it was reducing its
15 oversight of NAAC. But in reality, NAAC
16 continued to operate as a mere division or
17 instrumentality under Cape. How do we know
18 that?

19 Exhibit 19 in our original motion. This is
20 a Cape document. And it's NAAC discouraging
21 Cape visits to the U.S. in 1978, or else that
22 may, and I quote, Negate maneuvers related to
23 continuing problems with product liability
24 litigation.

25 Don't come to the U.S. or people might find

1 out that you're still running NAAC, and you'll
2 be responsible.

3 Exhibit 20 to our original motion is a 1975
4 letter from Cape suggesting that the parent
5 company disassociate as fully as possible from
6 the other companies.

7 And then that letter goes on to say this:
8 And this letter should not appear in the office
9 files. We don't want anyone to know what we're
10 doing, so I'm sending it to your home address.

11 Who talks like that? Cape.

12 Exhibit 21 to our original motion is a 1975
13 letter raising whether to do something, and I'm
14 quoting here, whether to, quote, do something to
15 change the identity of NAAC in order to avoid
16 exposing the company unnecessarily while doing
17 everything possible to maintain its successful
18 selling operation in the United States.

19 We want to limit our liability. We're
20 going to do everything we can to do that. We're
21 going to hide it. We've got to keep making this
22 money off our sales in the United States.

23 Exhibit 9 to our original motion is a
24 1975 -- I'm sorry, Exhibit 22 to our original
25 motion is a 1974 NAAC letter suggesting, and I

1 quote, No one from Cape to be an officer of NAAC
2 since we want it to be as independent as
3 possible in order to avoid the contention that
4 it's the alter ego of Cape and that Cape is
5 doing business in the United States.

6 Exhibit 9 to our original motion is a 1975
7 Cape asbestos letter stating that it would be,
8 and I'm quoting, It would be a sensible
9 precaution against Cape's involvement in any
10 future proceedings for Cape's personnel to
11 resign from the NAAC boards. And in closing the
12 resignation letter.

13 They decide to dissolve NAAC and after
14 NAAC's debts were paid, of course not to any
15 claimant, the remaining assets were transferred
16 upstream to NAAC's direct parent company at that
17 time Cape Industries oversees. That is a UK
18 entity that was wholly-owned by Cape Industries.
19 And that's at Exhibit 27.

20 And then Cape does what it's continuing to
21 do today. Cape began to emerge in a campaign of
22 litigation avoidance by refusing to accept
23 process of service or appear at any U.S.
24 proceedings in the United States. And that
25 moral fraud continues today, and it continued in

1 the Park case.

2 Cape actually wrote down in 1977, and I'm
3 quoting, We really cannot be said to have a
4 moral responsibility to respond to suits and are
5 simply victims of a U.S. product liability cult.

6 That's Exhibit 25 to our original motion
7 from Cape's counsel.

8 The Cape board formally authorized its
9 withdrawal from the U.S. litigation and relied
10 on the inability of any default judgment to be
11 collected in the United Kingdom.

12 That was written down in November 1, 1977,
13 minutes, and it was confirmed in Exhibit 23 to
14 our original motion with NAAC personnel opining
15 that it's most unlikely that any plaintiff would
16 bother to pursue collection of any default
17 judgment against Cape.

18 Exhibit 24 to our original motion. NAAC's
19 counsel in 1979 confirming correspondence that
20 you UK -- they got advice from United Kingdom
21 and South African lawyers, and that they
22 confirmed any resulting judgments would not be
23 enforceable again Cape UK and South African
24 assets. And I quote, The potential loss of all
25 of NAAC's outstanding assets is not material in

1 the Cape group context.

2 They had already liquidated NAAC. To avoid
3 paying damages to workers to whom they made
4 sick, Cape resolved to liquidate NAAC. And
5 that's exactly what they did.

6 Exhibit 26. Just one more thing on that
7 with an April 1978 letter noting the liquidation
8 and requesting that Cape asbestos officials stop
9 sending accounting memorandum to NAAC officials,
10 quote, for safety's sake.

11 And NAAC's liquidation was central to
12 Cape's litigation avoidance strategy. They had
13 to get rid of their North American presence.
14 And that was based on legal advice they had
15 gotten, talking about default judgments. That's
16 exhibits 28, 29, and 30, outlining their
17 litigation strategy.

18 But Cape continued to kind of play schemes
19 to facilitate the sale of its asbestos to U.S.
20 customers while minimizing its product liability
21 risk. So what they decided to do is we're going
22 to liquidate NAAC. Because that's too
23 intertwined with Cape. And we're going to start
24 a new company. But guess what? It's going to
25 be in the same building and same office. It's

1 going to have the same phone numbers.

2 But don't worry, Exhibit 31 to our original
3 motion is a 1977 meeting memorandum to discuss
4 liquidation of NAAC and formation of a new
5 offshore company to service North American
6 companies.

7 For example, Continental Products
8 Corporation is using the same address as NAAC in
9 Chicago. Formed, and I quote, to act as a
10 commission agent for future sales of asbestos
11 from South Africa to the U.S. with South African
12 mines selling to a new Liechtenstein subsidiary
13 called Associated Mines Company. Which in turn
14 sold asbestos to the U.S. under its invoices.

15 And that's exhibits 32 and 33 to our
16 original motion.

17 The express purpose of this deal, and I'm
18 quoting, The purpose of this corporate
19 arrangement was to eliminate or reduce as much
20 as possible the exposure in the U.S. of
21 South African Mining Companies to lawsuits
22 brought against it under areas of strict
23 liability concerning products liability on the
24 sale of asbestos to you in the U.S.

25 That's Exhibit 34 to our original motion.

1 As noted in our motion to appoint the
2 receiver over Cape, the moral fraud is simply
3 overwhelming. It is way more extensive than any
4 of the allegations that we made against Atlas
5 Turner in the Welch. Cape knew of the dangers
6 of asbestos in 1950. They publicly denied the
7 dangers. They had extensive sales, and they
8 took a no-moral-responsibility stance.

9 And while they were trying to hide
10 themselves and protect themselves, they
11 continued to profit off of sales into the United
12 States. There's no higher moral fraud.

13 And the Welch court talked a lot about how
14 Atlas Turner was thumbing its nose at the
15 courts, at claimants. Atlas Turner, I mean, if
16 you want to give them credit for anything, you
17 can say they showed up and filed a personal
18 jurisdiction motion and then they fought the
19 receivership and they filed an appeal and they
20 did it fairly.

21 Cape hasn't even done that here. They are
22 not going to show up. They have never shown up
23 since the late 1970s.

24 THE COURT: Ms. McVey, let me ask you this:
25 The order appointing Mr. Protopapas' receiver

1 for Cape -- for Cape, which was filed March the
2 17th, 2023, is heavily criticized by nonparties
3 in this case, but by parties in Tibbs and by
4 others who aren't even parties in Tibbs but have
5 filed claims, because it doesn't recite what you
6 just recited.

7 There's no question that all of that was
8 before the Court. All those materials were
9 filed on March 6th, 2023, and were before the
10 Court when the Court issued the appointment
11 order.

12 But the details were not recited in the
13 order, and this is viewed as a problem with not
14 reciting reasons for the appointment.

15 Also, recited in the order is Cape or the
16 company have dissolved and Cape, a foreign
17 corporation, has forfeited its chart and further
18 failed to answer in this case. They don't
19 contest that Cape failed to answer, although
20 they say it's defective that no default was
21 filed.

22 But it concentrates its criticism on the
23 recitation that Cape was dissolved. What was
24 meant by that and what is the status of Cape?

25 MS. MCVEY: So that's a good question. I

1 in Park was made to the appointment of a
2 receiver that Cape had dissolved.

3 MS. MCVEY: Yes, ma'am.

4 THE COURT: What was the basis for that at
5 the time?

6 MS. MCVEY: We did not know exactly the
7 status of Cape. I have to go back and remember
8 now what that was. Because they had not
9 appeared in any litigation, they had not shown
10 up. I think we had a good faith basis to assert
11 that they had dissolved or were insolvent. And
12 that is the insolvency or dissolve defunct,
13 that's the Section 4. And then the moral fraud
14 is the Section 5.

15 THE COURT: Section 5. I get that.

16 MS. MCVEY: So those are the two different
17 bases that we had a good faith to believe. And
18 now, they never came in to dispute that.

19 THE COURT: Second area that they fuss
20 about, and this, again, may be something for the
21 receiver to make a presentation on, is the
22 breadth of the order that the receiver was
23 empowered to administer all of the assets of
24 Cape and not just to pursue the insurance
25 matters.

1 think Receiver's counsel could probably dig into
2 a little bit more because they had -- at the
3 time that we filed that, we were unsure whether
4 or not they had resolved or were insolvent
5 because they had not participated in anything
6 going on. So that's the first.

7 THE COURT: You did recite in your papers
8 that they had dissolved.

9 MS. MCVEY: Yes.

10 THE COURT: And it's on that basis the
11 Court put that in the order.

12 MS. MCVEY: Absolutely.

13 THE COURT: It wasn't in your filing about
14 it.

15 MS. MCVEY: That's right. So the Court
16 relied on our filing.

17 THE COURT: Right.

18 MS. MCVEY: Which recited all the basis for
19 the moral fraud, number one. And that's
20 important because the moral fraud that we talk
21 about --

22 THE COURT: Right. I'm not talking about
23 the moral fraud right now. I'm just talking
24 about the recitation they had dissolved. It was
25 contended by the plaintiff when the application

1 The order does say that the Court expects
2 the receiver to investigate the existence of all
3 insurance coverages potentially available to the
4 company in receivership, but the appointment
5 piece of it is broader than that.

6 What do you say that the contentions are?
7 You can defer to the receiver if you want to,
8 but somebody's going to have to answer the
9 question of whether that's appropriate. And if
10 it's not appropriate, whether that defeats the
11 whole order or whether that can be cured by some
12 kind of amendment to the order.

13 MS. MCVEY: So two things are true. The
14 receiver only had the ability to collect assets
15 that are within the state of South Carolina.
16 Right.

17 THE COURT: Right.

18 MS. MCVEY: Those can be intangible assets
19 which may not physically be here but may be --

20 THE COURT: We know from several decisions
21 of the Court that insurance that covers torts
22 committed in South Carolina is regarded as an
23 asset present in South Carolina.

24 MS. MCVEY: Right. But it also goes
25 further than that. In Welch, you see when they

1 go through the history of receiverships, they
2 talk about bank accounts in another state. They
3 talk about a horse getting moved from one state
4 to another state. You're not limited to just
5 insurance.

6 Now, Welch was a little bit different
7 because the receivership order itself limited
8 just to insurance. We don't know, and the
9 receiver can probably speak more to this, about
10 whether or not there's insurance here for Cape
11 even more.

12 But that order was broader than it needed
13 to be. It still is in the parameters of the
14 receivership statute because he only has the
15 authority to collect the assets that are
16 within --

17 THE COURT: Within the state.

18 MS. MCVEY: That's right.

19 THE COURT: Right.

20 MS. MCVEY: And those assets don't have to
21 be physically located here. But I don't think
22 anybody is saying they are going to go to Cape
23 and run the board room just as anybody else is
24 saying.

25 THE COURT: Right.

1 MS. MCVEY: As to your contention about --
2 or your point, not your contention, your point
3 about whether the recitation of the factual
4 basis for the moral fraud in the order should be
5 in there or not, I think that's easily solved.

6 And, in fact, the Supreme Court kind of
7 instructs us, you know, if we haven't outlined
8 the facts, that's an easy fix, we can do that.
9 So certainly that's an order that can be
10 supplemented to outline the ongoing.

11 And, look, we gave you more than enough, we
12 believe, in the original appointment. I think
13 you saw that, too. There's even more now that
14 has been discovered. You know, one thing I
15 wanted to mention, and maybe this is
16 appropriate, you know, there's been a lot of --
17 how should I say this? -- what I would deem as
18 intimidation or attempted intimidation of the
19 receiver and his lawyers and to some extent the
20 Court.

21 And this is a book -- I only have one copy,
22 but it's called In a Rain of Dust. And it
23 really involves a plaintiff's lawyer who kind of
24 went after Cape. And there's a chapter in this
25 book, and I would just note it for the Court and

1 for others, where they personally went after --
2 as a strategic litigation strategy to go after
3 this lawyer himself to try to ruin his
4 reputation while he was fighting Cape.

5 That is, to me, evidence of a continuing
6 ongoing fraud, that it is a litigation strategy
7 to try to go after anybody who's trying to hold
8 Cape accountable.

9 So, Your Honor, this is not bad stuff that
10 Cape has done in the past, and, oh, well, it's
11 just a typical product liability case. No, this
12 is ongoing, and it hasn't stopped.

13 So I'm happy to answer any other questions
14 about the original motion to appoint a receiver
15 or anything else.

16 THE COURT: And so your -- and then the
17 final thing is this.

18 MS. MCVEY: Yes, ma'am.

19 THE COURT: This case appears as an open
20 case on my docket.

21 MS. MCVEY: Yes.

22 THE COURT: On my asbestos docket. What do
23 you plaintiffs regard as the status of this
24 case?

25 MS. MCVEY: That we have the Cape

1 defendants remaining in the case, and that when
2 we get to the point where we feel like we could
3 try a case against Cape, it would move to have
4 you set a trial on those issues.

5 We haven't had any discovery, obviously,
6 from Cape. They haven't appeared. And so we
7 could certainly move, I assume, for a default
8 judgment or do something of that type. But we
9 haven't done that yet.

10 THE COURT: And you stated when we were in
11 court on our status conference that was held
12 recently in early June, following the issuance
13 of the Court's remand order in Tibbs, you stated
14 that with regard to Park, you had a tolling
15 agreement.

16 MS. MCVEY: That's correct.

17 THE COURT: Tell the Court what is the
18 situation about that.

19 MS. MCVEY: We entered into a tolling
20 agreement with the receiver for Cape. In order
21 to allow -- as you know, they keep telling this
22 court and they told the federal court this, too,
23 that I said the Park case had been fully
24 resolved.

25 And what I meant by that is it was totally

1 over. And you know the context of that was
2 simply that the Park case was up for trial and
3 all the trial defendants had resolved.

4 We later entered into a tolling agreement
5 because we weren't ready to try the Cape case
6 yet. And so we entered into a tolling agreement
7 with the receiver to allow us to do that at a
8 certain point going forward.

9 THE COURT: All right. And that tolling
10 agreement is still in existence?

11 MS. MCVEY: Yes, ma'am.

12 THE COURT: And your contention is that the
13 tolling agreement, although signed at the time
14 when the estate was closed, that the
15 reinstatement of the estate ratifies the
16 authority that was given by Mr. Park to his
17 attorneys to sign a tolling agreement.

18 MS. MCVEY: Absolutely. And, in fact, the
19 case law on the statute mandates that the court
20 allow us to cure that and those acts can be
21 ratified. Which we believe we've done.

22 THE COURT: All right. All right. I think
23 I've got what you can supply me with. Is there
24 any presentation that --

25 MS. MCVEY: The receiver may want to.

1 THE COURT: -- that receiver -- what I have
2 listed is open for the receiver is the Motion to
3 Compel Certain Underwrites of Lloyd's. And I
4 want to cover that because that's one of the
5 outstanding -- that's the only other outstanding
6 motion that I see in Park. So I want to cover
7 that.

8 Certain Insurers, this is Mr. Sawyer, will
9 then have the ability to come and argue against
10 that.

11 So that's where I am in the process. So
12 who will speak for the receiver in connection
13 with the Motion to Compel Certain Underwriters
14 of Lloyd?

15 MR. LAY: Mr. Protopapas is going to be
16 dealing with that motion.

17 THE COURT: Yes, sir.

18 MR. LAY: Do you want me to -- I do have
19 some things to add to some of the comments made
20 by Ms. McVey.

21 THE COURT: They need to be brief. I think
22 I got -- I think I have the status of the Park
23 case well in mind --

24 MR. LAY: Okay.

25 THE COURT: -- Mr. Lay. If you wish to

1 make some brief comments, that's fine. But I
2 think I understand from Plaintiff's counsel
3 where that is. Your status in the case is
4 you're the attorney for the receiver?

5 MR. LAY: The receiver.

6 THE COURT: Right.

7 MR. LAY: Yes, ma'am.

8 THE COURT: Right. So right now my main
9 concentration is on the open motion. But if
10 you've got something that you want to add
11 briefly, I'll be glad to hear from you.

12 MR. LAY: Okay. Very briefly. I just
13 wanted to add just a little bit.

14 THE COURT: This is John T. Lay for the
15 receiver.

16 MR. LAY: Your Honor, one of the things
17 that the Welch case delineated is what was
18 required as it relates to bad conduct or fraud
19 for someone that's going into a receivership
20 under Subsection 5 of the receivership statute.

21 And in that, it states very clearly that if
22 there is some sort of fraud or if there is some
23 sort of indication that if there is an attempt
24 to avoid paying that for being responsible,
25 being held account for whatever acts have been

1 done by that party, that is a basis for the
2 appointment of a receiver.

3 And it gave an example as someone that's
4 currently trying to move assets. That was an
5 example. But the fraud itself can exist over a
6 period of time. Which is what concerns me, as
7 Receiver for Cape is going to have to defend
8 these cases down the road but also trying to
9 figure out a way to hold other parties
10 responsible for what happened with Cape. I've
11 got to deal with some of the things that have
12 occurred over that 30-year period of time.

13 And what has been clear and we're looking
14 at others as being responsible for what happened
15 over the 30 years, but there's an ongoing
16 attempt to create issues in litigation by Cape
17 that is continuing and it's active.

18 We have seen it during the life of this
19 case. And I think what is important to
20 recognize is that Cape now is completely and
21 utterly controlled by Altrad. How do we know
22 that? We know that because Altrad is paying
23 Cape's bills and litigation that's being done in
24 the UK.

25 We have gotten that information. We

1 received that information. We know that the
2 Altrad lawyers were involved with the UK
3 litigation. We also know what's going on in the
4 litigation, the UK litigation, and what has been
5 filed there. This is ongoing.

6 What has been filed in the UK litigation,
7 there are many misstatements, misrepresentations
8 that were made to the UK court about what is
9 going on in this courtroom.

10 For example, taking comments that you made
11 from the bench, transcripts to suggest that
12 you're trying to take over the company. Making
13 suggestions that you and Mr. Protopapas have
14 some sort of connection because he clerked for
15 you and he couldn't be fair. But that's not
16 true.

17 THE COURT: That's not true.

18 MR. LAY: Yeah, that's not true.

19 They made comments about what the Barton
20 doctrine was, and it was completely wrong about
21 what the Barton was.

22 THE COURT: Well, Mr. Lay, I don't think we
23 need to get very far into that. All that's in
24 the record. The federal courts have dealt with
25 the Barton doctrine. Much of what is said in

1 the UK court, from what little I have been
2 exposed to, is not correct.

3 But the bottom line is, what you simply say
4 is that the moral fraud is ongoing via attempts
5 to avoid responsibility. But in the end, your
6 role is about finding assets that can stand good
7 for the responsibility of Cape in this
8 particular matter. The Park matter.

9 MR. LAY: And really, I think it's twofold.
10 It's making sure that Cape is protected by
11 looking at others that could have caused what is
12 going on here. The moral fraud.

13 THE COURT: That's something that would
14 occur if this case is tried, but --

15 MR. LAY: That's right.

16 THE COURT: -- one thing you contend is
17 that Altrad is really the controller of Cape.

18 MR. LAY: Yes, ma'am.

19 THE COURT: Has Altrad been made a party in
20 Park?

21 MR. LAY: Not yet. Altrad was made a party
22 in the Tibbs case.

23 THE COURT: Right. But Altrad is not a
24 party at the present time in this case; is that
25 correct?

1 MR. LAY: Yes, ma'am. That is correct.

2 THE COURT: All right. Okay. Now,
3 Mr. Protopapas, on the question of the Motion to
4 Compel.

5 MR. PROTOPAPAS: Thank you, Your Honor.

6 Peter Protopapas. Your Honor, when faced
7 with the appointment order as receiver, one of
8 the first things we do is we try to identify the
9 insurance assets of the entity.

10 And to that end, NAAC, which was dissolved,
11 which was one of these companies that -- it was
12 the company in the United States that Ms. McVey
13 was detailing to the Court. That company did
14 dissolve and forfeit its charter. And it was no
15 daylight between Cape and NAAC.

16 So we sent out subpoenas to begin with.
17 And as the Court knows, how you ask questions to
18 the carriers will dictate the response. We've
19 had many examples in this court of a subpoena
20 going out, no insurance is available, and then
21 we find, oh, wait a minute, there's an
22 additional insurer and there's significant
23 amounts of insuring assets.

24 So it is a learning curve for me to figure
25 out how to write the right question to my

1 friends in the insurance group.

2 So on April 28, 2025, I took another stab
3 at trying to write the right question. I tried
4 to write a simple subpoena, sent eight of them
5 out, Your Honor. And unbeknownst to me, on
6 May 7th of 2025 -- so the subpoenas go out on
7 April 28th -- on May 7th of 2025, a gentleman
8 named Ran Oren.

9 Now, Mr. Oren is the director of Cape
10 Intermediate Holdings, the director of Cape PLC,
11 the group CO of Altrad Group, and he is the
12 director of other Cape entities. That's how he
13 describes himself. Those are his positions.

14 So on May 7th, he writes a letter to at
15 least four of those eight carriers saying "Do
16 not give any information to the receiver." That
17 is attached to our motion, Your Honor.

18 Now, Hartford went ahead and did a search,
19 Your Honor, and they found nothing. I have
20 reached an agreement with my friends at
21 Travelers. And so --

22 THE COURT: Wait a minute. Hartford was
23 one of the companies you moved to compel in the
24 Park case, correct?

25 MR. PROTOPAPAS: Yes, Your Honor. I did

1 not have to compel them because they complied
2 with the subpoena. Whether they got the
3 letter --

4 THE COURT: Hartford, you subpoenaed them.
5 Hartford, you subpoenaed them in --

6 MR. PROTOPAPAS: Park.

7 THE COURT: The Park case?

8 MR. PROTOPAPAS: Yes, Your Honor, and they
9 complied.

10 THE COURT: And Hartford complied and gave
11 you information about coverage of NAAC/Cape.

12 MR. PROTOPAPAS: Yes, Your Honor.

13 THE COURT: All right. And then you
14 mentioned Travelers.

15 MR. PROTOPAPAS: Yes, Your Honor.
16 Travelers originally refused in Park based on
17 Mr. Oren's letter. But we have reached an
18 agreement with them, and so I have no motion. I
19 withdraw that relief I was seeking against
20 Travelers.

21 THE COURT: So Hartford and Travelers has
22 complied.

23 Any other information about your subpoenas
24 and whether others have complied?

25 MR. PROTOPAPAS: Allianz and I have reached

1 an agreement of a company -- an insurance
2 company controlled by Allianz.

3 THE COURT: That's Allianz, the one with
4 the Z at the end?

5 MR. PROTOPAPAS: Yes, Your Honor.

6 THE COURT: So you reached an agreement
7 with them with regard to information about
8 insurance or NAAC/Cape that would -- or Cape
9 entities that might respond in the Park case,
10 right?

11 MR. PROTOPAPAS: That's correct, Your
12 Honor. And specific subsidiary's name is
13 Interstate Fire & Casualty Company, which is on
14 the first page of my Motion to Compel. And they
15 had received -- my understanding is they may
16 have received a letter from Mr. Oren.

17 THE COURT: All right.

18 MR. PROTOPAPAS: Now, the three that are
19 still remaining on the compel are what we call
20 the Resolute administered insurers, which are
21 Liberty, Lloyd's, Continental Casualty.

22 THE COURT: And just to complete the
23 record, we all know what we're talking about
24 here, just to complete the record, Resolute is a
25 company we've seen many times in many asbestos

1 litigation cases. It is a company that manages
2 insurance assets for various companies and in
3 the asbestos world manages insurance assets for
4 various companies that have policies that might
5 respond to some particular -- this is in the
6 industrial world -- industrial asbestos claims,
7 correct?

8 MR. PROTOPAPAS: Correct, Your Honor.

9 THE COURT: And in that connection, the
10 negotiation is generally with Resolute, but it's
11 Resolute on behalf of Liberty, Continental, and
12 Lloyd's, right?

13 MR. PROTOPAPAS: You're correct, Your
14 Honor.

15 THE COURT: All right. And so they --
16 there are remaining discussions, I guess, taking
17 place, but this Motion to Compel has not been
18 resolved.

19 MR. PROTOPAPAS: Correct, Your Honor.

20 THE COURT: All right. So that's still
21 outstanding?

22 MR. PROTOPAPAS: Yes, your honor.

23 THE COURT: All right.

24 MR. PROTOPAPAS: And so, Your Honor,
25 Resolute retained my friends at Murphy &

1 Grantland. They wrote me a letter on May 15th
2 on behalf of those three entities. And, Your
3 Honor, it's a curious letter in this sense: The
4 letter, of course, mentions they do not want to
5 comply because Mr. Oren has told them do not
6 give Mr. Protopapas any information.

7 But also, Your Honor, the very end, there's
8 this curious statement from Underwriters of
9 Lloyd's, it states, "Underwriters also do not
10 consider the subpoena or any of the above-stated
11 objections to constitute evidence of a tender of
12 any claim to underwriters nor evidence of any
13 notice pursuant to the terms and conditions of
14 any insurance policy."

15 And I get a lot of letters telling me I'm
16 not -- we're not giving you something. Rarely
17 does it talk about tender, really it's to talk
18 about underlying insurance policies, if any.
19 So, Your Honor, what is curious about it, and
20 this goes as well for Continental and Liberty,
21 but in particular as it pertains to my friends
22 at Lloyd's.

23 And if I may hand up two copies to the
24 Court.

25 So, Your Honor, what I've handed up to you

1 is something that Aon had produced to me.
2 Your Honor, Aon is an entity that brokers
3 insurance for various entities. They're a
4 well-known broker of insurance.

5 And, Your Honor, in the Aon production on
6 page 1, you will see an inception date of an
7 insurance policy of October of 2009 to September
8 of 2010.

9 THE COURT: Right.

10 MR. PROTOPAPAS: And then, Your Honor, if
11 you go to page 2 of the production, it
12 identifies the insured. And there's been lots
13 of name games that go on in this process. I
14 don't mean name games pejoratively. I mean, are
15 you asking the right question?

16 On page 2 of the production, it states
17 insured is Cape PLC, Cape Industrial Services
18 Division Limited and/or its associated and/or
19 its subsidiary companies and/or Cape Industrial
20 Services Limited and its agent subsidiary
21 companies, and/or Cape Limited and/or its
22 associated or subsidiary companies. And it goes
23 on.

24 So it doesn't identify all the additional
25 insureds, but it identifies all their

1 subsidiaries, all their associated entities, and
2 it's a very broad insured definition.

3 And, Your Honor, if you were to go to page
4 3, and it talks about business on page 3 that
5 they're insuring.

6 THE COURT: Looking right at it.

7 MR. PROTOPAPAS: It says insulation. And
8 under business, first paragraph, last sentence,
9 "Manufacturers of fire retardant products and
10 insulation materials."

11 Now, Your Honor, if you go further down,
12 the limit of liability is 50 million pounds.
13 What grabbed my attention even more so,
14 Your Honor, is on page 4. On page 4,
15 Your Honor, at line 13 appears the word
16 asbestos. And it says asbestos total buyback to
17 GP, which I believe sterling is pounds --
18 50 million pounds or 10 million pounds -- as per
19 policy endorsement CCLATV011107-V1.

20 So I have a suspicion that my friends at
21 Lloyd's may have issued insurance to cover Cape
22 and the subsidiaries. I have not properly asked
23 the question apparently before April of 2025. I
24 asked the question. Mr. Oren immediately jumps
25 up and says -- told Lloyd's -- not to me but to

1 Lloyd's --

2 THE COURT: He mentions on down in this
3 thing, I notice it mentions Lloyd's, Aon,
4 others.

5 MR. PROTOPAPAS: And so this is a
6 Lloyd's -- my understanding is this is a summary
7 of a Lloyd's policy. And you're correct, Your
8 Honor, on page 5 it talks about -- the line the
9 terms of trade agreement of Lloyd's.

10 THE COURT: Right. I notice that as well.

11 MR. PROTOPAPAS: So I have been struggling
12 to find the insurance in this receivership, but
13 maybe I haven't asked the right question. But
14 maybe I asked the right question in April of
15 2025, which we got a response from Mr. Oren
16 telling Lloyd's do not comply.

17 And perhaps, Your Honor, when Lloyd's
18 writes to me and says we're not accepting it as
19 a tender, perhaps there is an insurance policy
20 that I should be tendering to. But in order for
21 me to do that, I need a little bit of assistance
22 from my friends at Lloyd's. I need them to tell
23 me is there an insurance policy which would
24 cover the Park claim.

25 THE COURT: This document would certainly

1 suggest that.

2 MR. PROTOPAPAS: It does. And, Your Honor,
3 Continental and Liberty had insuring
4 relationships either through workers' comp or
5 otherwise with other entities affiliated with
6 Cape.

7 So I sent out eight what I thought were
8 going to be targeted subpoenas in an effort to
9 unwind. I'd be remiss not to tell the Court
10 that I'm familiar with a fund in Great Britain
11 to pay British folks who have felt the effects
12 of Cape asbestos. That fund has over
13 170 million pounds in it, to my understanding.
14 Perhaps these policies were all liquidated and
15 put into that fund. I don't know.

16 But when we think about the assets or
17 within the context of South Carolina, certainly
18 I'd ask my friends at Lloyd's, Continental, and
19 Liberty to go ahead and search for and produce
20 to me those policies which may be responsive.

21 Your Honor --

22 THE COURT: Now, this policy you've
23 described in this material from 2009 to -- 2009
24 to 2010 would be within the period of exposure
25 in the Park case, would it not?

MR. PROTOPAPAS: Yes, Your Honor. And, Your Honor, I may have not crafted questions artfully enough for my friends at Lloyd's, but what I would like from Lloyd's is their Cape file. I would like to know what insurance they sold to Cape. I would like to know if it had been liquidated, what those agreements look like. And is there an opportunity to tap into that.

I will say, Your Honor, it is hard to defend Cape in the Park case like a traditional defendant because I don't have a depository of documents that have been easily given to me to provide the defense.

THE COURT: Yeah, Cape is taking the position you are not in any way authorized and they have this order from England that takes that position, and yet you have insurance that covers matters in the United States apparently --

MR. PROTOPAPAS: Yes, Your Honor, I believe --

THE COURT: -- of companies that are well-known to South Carolina.

MR. PROTOPAPAS: That's right, Your Honor.

And to the extent they don't cover the claim, an explanation in the policy itself so I can make a determination and report to the Court.

I will say, Your Honor, that a lot of the policies we found from various periods of time for NAAC, carriers gave me proper documentation of exhaustion. And so there has --

THE COURT: So you know there's some that are exhausted, no good, do not cover anything. And that's what you're seeking to find in this particular situation?

MR. PROTOPAPAS: Yes, Your Honor.

THE COURT: Thank you.

MR. PROTOPAPAS: Thank you, Your Honor.

THE COURT: Okay. Now, we have nonparty Travelers who sent a memorandum filed July 18th, 2025, in opposition. And we have a party -- a subpoenaed entity, Continental, which has filed a reply and a return along with Certain Insurers.

So what I'm going to do now is turn to Mr. Wes Sawyer, your motion -- your opposition to the motion by Mr. Protopapas' receiver to compel.

MR. PROTOPAPAS: Your Honor, as it pertains

to Travelers, Mr. Conor Brady, a lawyer for Travelers, we have reached agreement on his position pertaining to that subpoena. And I have withdrawn my request for relief to compel Travelers.

THE COURT: All that's left is the Certain Insurers of Lloyd's, Resolute -- what you say are the Resolute managed three claims.

MR. PROTOPAPAS: Yes, Your Honor.

THE COURT: All right. Mr. Sawyer. And you know, Mr. Sawyer, before you get started, it's 20 minutes until 11. I should have some mercy on the court reporter. So let me turn to you, Madam Court Reporter, a short break?

THE COURT REPORTER: Yes. Thank you.

THE COURT: Very good. Why don't we take -- let's be back at 5 of. I just don't want to have to interrupt you after you get started, Mr. Sawyer.

MR. SAWYER: I understand, Your Honor. Thank you.

THE COURT: Thank you, sir.

The Court will be in recess.

(A recess transpired.)

THE COURT: The Court will resume, and we'll hear now from Mr. Wesley Sawyer on behalf of Certain Insurers as we kind of have colloquially referred to them, a group of the insurers who oppose the Motion to Compel.

MR. SAWYER: Thank you, Your Honor.

Good morning. Wesley Sawyer. I represent Continental Casualty Company, Liberty Mutual insurance Company, and Certain Underwriters at Lloyd's of London.

Before I get started, Your Honor, to be clear, my clients are not parties in this case. I think the Court -- Your Honor acknowledged that.

THE COURT: I do. You are not parties of this case in any way. This is a subpoena of a nonparty to the case. And I'm sure you will have some certain arguments about the presence and whether it can be subpoenaed and so forth and so on, which I certainly will be glad to listen to. But they are not parties.

MR. SAWYER: Thank you, Your Honor.

Also, we raise personal jurisdiction. I will get to that in time. I think the order of

1 presentation the Court has heard, it makes sense
2 to start with the procedure and then work our
3 way up to that and we get to the Motion to
4 Compel, if that pleases Your Honor.

5 THE COURT: Yes, sir.

6 MR. SAWYER: Your Honor, let's start with
7 procedure. And to be quite blunt, everything
8 that's happened in this case since the estate
9 was closed, after this Court was told the case
10 was fully resolved, has been a nullity. And
11 that's nothing of the Court's fault. That's a
12 matter of fundamental rules of the Court's
13 jurisdiction.

14 In June of 2022, this case was set up and
15 was for trial and about three weeks before
16 trial, this Court receives an email from
17 Plaintiff's counsel stating that this case is,
18 quote, fully resolved.

19 And, Your Honor, today that was presented
20 as a -- you know, just a mere mistake, an honest
21 mistake. But Mr. Parks' actions at that time
22 confirm there was absolutely no mistake.
23 Because that email came to the court on a
24 Friday.

25 On Monday, the following business day,

1 Mr. Park, who had just represented to you, this
2 court, that the case was fully resolved, went to
3 the probate court in Spartanburg County, that
4 had given him authority to act as a personal
5 representative, and represented to that court
6 under oath that the case was fully resolved.

7 He stated that he had done all the work
8 required of him as a personal representative of
9 the estate. He filed for a settlement of the
10 estate and asked to be relieved, terminated is
11 the statutory term, as a personal representative
12 of the estate.

13 So it was not an honest mistake telling
14 this court that the case was fully resolved, not
15 partially resolved, because Mr. Park's conduct
16 the following Monday confirmed his intent.
17 Which was this case is done. Because if the
18 case was not done, the estate would not be ready
19 to close. Because he had asserted a survival
20 and wrongful death claim.

21 As Your Honor knows by statute and your own
22 case law you've written, only a personal
23 representative can pursue a wrongful death and
24 survival claim, other than a rare exception for
25 a special personal administrator, which is not

1 an issue here.

2 So after telling this court the case is
3 fully resolved, he tells the probate court the
4 case is fully resolved. And both courts relied
5 upon that representation in 2022.

6 This court relied upon that representation
7 by taking the case off the trial docket. And we
8 all know when a case is up for trial, the
9 plaintiff has to be ready to try against all
10 parties. If there's a party in default, then
11 their job is to move for default and proceed on
12 default judgment because the case is up, and
13 it's not unusual for a court to dismiss a party
14 that hasn't been reserved once trial comes up
15 for failure to prosecute.

16 But the court didn't get that information
17 presented to it. The court was told the case is
18 fully resolved, and the court relied upon that.

19 The probate court, considering the
20 application of Mr. Keith Park to close the
21 estate, granted the relief he requested. This
22 is not some administrative closing of the estate
23 because a certain amount of time had passed by.
24 No. He affirmatively went to the court, signing
25 under oath that the estate was ready to close.

1 And particularly, Your Honor, with that
2 submission, he submitted waivers and releases
3 from all the heirs of the estate saying we
4 release all claims of the estate. And he filed
5 that support of asking the probate court to
6 close the estate. And the probate court granted
7 that relief in reliance upon those
8 representations made under oath to the probate
9 court.

10 It entered two orders. It entered one
11 order closing the estate, and it entered a
12 second order terminating Mr. Park's authority,
13 his appointment as a personal representative of
14 the estate.

15 And that has significant statutory
16 implications under the probate code. Section
17 608 of the probate code says that upon
18 termination, the personal representative cannot
19 act any further on behalf of the estate in any,
20 quote, pending or future litigation.

21 So as of August 2022, by his own request,
22 which is not an honest mistake, he signed an
23 affidavit, said Court do this for me. Mr. Park
24 was terminated, and very importantly the estate
25 closed. Those have two independent, legally

1 significant impacts.

2 Mr. Park's termination as the personal
3 representative goes to standing. It goes to his
4 authority to act. In March of 2023, when he
5 approached this court, they'll tell, Your Honor,
6 that he had been terminated at his own request,
7 and that the estate has been closed at his
8 request, and ask Your Honor to appoint a
9 receiver without letting you know that he had
10 taken the steps in another court and made those
11 representations to another judge and got relief
12 based on those representations.

13 It also has significance that the estate
14 was closed. And that goes to the most
15 fundamental rule for our adversarial judicial
16 system. Which is you have to have a party with
17 a legitimate issue on both sides of the beat.
18 Courts don't sit over and give advisory opinions
19 to individuals who may have quandaries before
20 the court. You have to have an adversarial
21 situation. Plaintiff versus defendant.

22 And when the estate was closed, there was
23 no longer a -- the Supreme Court uses the term
24 juridical entity, known as the estate. There
25 was no plaintiff on that side of the beat.

1 And that was as of August 2022. So when
2 this court heard a motion in 2023 to appoint a
3 receiver, again, this wasn't told to Your Honor,
4 so it's not a matter of the court making an
5 error, but it is a matter of the court's
6 jurisdiction, which is what the Supreme Court
7 says in the McCullar case that Ms. McVey
8 referenced.

9 In that case, what the Court said, and this
10 was a situation where there was no defendant, as
11 opposed to no plaintiff. They cite old case law
12 dealing with a lack of a plaintiff. So they
13 appealed it on both sides of the beat. Is this
14 gets to something even more fundamental than the
15 phrase we use for subject matter jurisdiction.
16 It's just fundamental jurisdiction.

17 And if you don't have a party on each side
18 of the beat, there is no case for the court to
19 preside over.

20 In fact, Your Honor, you were on that panel
21 for that decision. And interestingly in a
22 footnote at the end of that sentence, procurance
23 so we don't know who actually penned it.

24 But at the footnote, at the end of that
25 decision, the Court says, you know, we hesitate

1 to even call this a dismissal because there was
2 never a defendant in the case. There simply was
3 no case. So they called it a dismissal because
4 in our lingo in courts, that's the best that
5 they could come up with. But they said we
6 really hesitate to even use that. There was no
7 case at all.

8 And if there's no case, there can be no
9 motion to appoint a receiver. There certainly
10 can be no order to appoint a receiver.

11 And the case law is very clear. That a
12 court that acts without jurisdiction, whether it
13 knows it or not, any order from that court is a
14 nullity for its lawyer. Depending on which case
15 you read. But the case law is very consistent.
16 When a court has no jurisdiction, any order
17 entered is a void order.

18 Again, this is because of what was
19 presented to the court. The court relied upon
20 what was presented to it. But the reality is
21 there was no plaintiff to move for appointment
22 of a receiver and, therefore, no basis to
23 appoint a receiver in 2023.

24 And Mr. Park did go in 2025, two years
25 later, and file a motion for a subsequent

1 administration. That's a second administration,
2 a new administration of an estate. It's not a
3 reopening of the original estate. It's called a
4 subsequent administration.

5 And, Judge, that motion, which is filed by
6 the plaintiff, is quite interesting for a few
7 reasons. One, even now in this new filing to
8 the probate court, when they state the basis for
9 the subsequent administration, they put the
10 reason is possible civil litigation.

11 Not, hey, Probate Judge, we've had this
12 case pending for years. We've been filing
13 motions. We've taken action. It's possible
14 civil litigation.

15 And in reliance upon that, the probate
16 judge did a new estate. A subsequent
17 administration. In fact, if you look at the
18 case number for the probate for the subsequent
19 administration, it's dash 2. It's not the
20 original administration. It's a subsequent
21 administration. And that, also, Your Honor, has
22 a significance from a probate code statutory
23 perspective. That's Section 62-3-1008.

24 And the last sentence of that, which is the
25 subsequent administration statute, states that

1 if a new appointment is made, unless an order is
2 otherwise, the provisions of this code applies
3 appropriate. But here's the kicker: But no
4 claim previously barred may be asserted in the
5 subsequent administration.

6 This is not a savings clause for plaintiffs
7 that should have been brought with the first
8 estate. It's not a saving clause for a case
9 that was fully dissolved, their language, and
10 represented to the probate court as done and
11 ready to close. It's for future claims. New
12 claims. Which is not what is before the court
13 today. There's no new summons and complaint.
14 There's no new allegation. It would be barred
15 by the statute of limitations, of course.

16 The case was represented to the court in
17 2022 as fully resolved. And that's what it was.
18 And all of the conduct of Mr. Park close in time
19 to that representation to this court, including
20 his representations to the probate court,
21 confirmed all of that.

22 So then what's the case law saying? In
23 addition to the McCullar case, which is
24 fundamental jurisdiction, you have the Lennon
25 case from the Court of Appeals, which I also

1 cited in our brief, that deals with standing.
2 Another subject matter jurisdiction issue.

3 And it also said that when you don't have
4 the authority to speak on behalf of someone
5 else, there's no standing. And that's the issue
6 here because there was no estate to speak on
7 behalf of.

8 And by statute, under 608, once terminated,
9 which, again, Mr. Park was terminated from the
10 first estate, which was the plaintiff, in August
11 of 2022. And noted no one in this room disputes
12 that he was still terminated in March '23 when
13 he moved to appoint receiver and continued to be
14 terminated all the way up until the filing for
15 the subsequent administration, which again we
16 note is not the original estate. It's a new
17 one.

18 The statute at 608 -- 62-3-608, the last
19 sentence says this: Termination does not affect
20 the jurisdiction of the court or the personal
21 representative, but terminates his authority to
22 represent the estate in any pending or future
23 proceeding.

24 He sought the termination. He got the
25 termination. He had no authority to represent

1 the estate in pending or future litigation,
2 including in 2023 when they moved for the
3 appointment of a receiver.

4 These are statutory boundaries on a
5 personal representative's conduct. Not judge
6 made; they're statutory. We all have to follow
7 them, including Mr. Park. He has to honor what
8 he has told this court.

9 And, Your Honor, you did pen this decision,
10 adopting judicial estoppel in South Carolina,
11 and it's a good rule. It's a rule often used in
12 other cases. And what it says is that when you
13 represent to a court a fact and the court relies
14 upon it, you're bound by that. You can't take
15 off that fact later on whenever it suits you.

16 Well, Mr. Park represented to two courts
17 the fact that the case was fully resolved.
18 Quote, fully resolved for this court and in his
19 motion to close the estate in the probate court.

20 And, again, it's not just a motion to close
21 the estate and terminate himself and say I've
22 done all I'm supposed to do. He got releases
23 from the heirs of the estate that he filed in
24 support for that motion.

25 So multiple people rely upon that

1 representation, and the probate certainly does
2 because it grants the relief he asked for based
3 upon those representations. That's judicial
4 estoppel. The foundational rule of judicial
5 estoppel. You can't tell a court something,
6 expect the court to rely upon it, have the court
7 rely upon it, and then when it doesn't suit you
8 later on, say, you know what, honest mistake,
9 you know. But it wasn't.

10 Now, a friend of Ms. McVey may not have
11 known. I don't know what communications took
12 place between her and the probate lawyer. But
13 Mr. Park, who is actually the party to this, or
14 at least the estate and is the PR, certainly.
15 And his conduct in time, a Friday email to this
16 court, a Monday filing to the probate court,
17 leaves no room for doubt about his intentions in
18 2022. They were very, very clear.

19 So, Your Honor, there was reference made to
20 the Fisher case. That case, Your Honor is a --

21 THE COURT: Which case?

22 MR. SAWYER: The Fisher case.

23 THE COURT: Yes.

24 MR. SAWYER: Judge, that case is about real
25 party in interest. That's a whole different

1 issue. I agree real party in interest is not a
2 jurisdictional issue. The court has made that
3 very clear.

4 And, in fact, the McCullar decision I cite
5 from the Supreme Court, it notes that the issue
6 dealing with the McCullar about the existence of
7 the estate is not a real party in interest
8 issue. It's in a more fundamental issue.

9 And the Lennon case, from the Court of
10 Appeals, says standing is not real party in
11 issue. It's more fundamental.

12 So that's what the cases say. It's why
13 Fisher doesn't meet anything for this case.
14 Because we're not arguing real party interest.
15 We're arguing that when the estate closed, after
16 telling this court the case was fully resolved,
17 there was no party, there was no plaintiff,
18 which means there was no case for the court to
19 preside over. And that cannot be remedied
20 because it goes to fundamental existence of the
21 case.

22 THE COURT: What do you do with Section
23 62-3-701, which is sometimes termed the relation
24 fact section, and with Rule 17(a) that discusses
25 ratification? How do they affect, if they do,

1 this case?

2 MR. SAWYER: That's a great question,
3 Your Honor, and the argument they try to hang
4 their hat on. 17 -- or the Fisher cases say how
5 that rule works. It's a real party at issue
6 that's -- when there's an estate, you file a
7 claim, but you haven't gotten properly appointed
8 as the PR for whatever reason, then they can go
9 and use Rule 17 to fix that sort of situation.
10 It deals with -- and by the statutory term, the
11 commencement of the personal representative's
12 authority.

13 608, which is what we relied upon, deals
14 with the termination of that authority. And all
15 the conduct we're talking about is after the
16 termination order, not before the appointment
17 order.

18 So they're looking at the wrong statute.
19 And the statute can't fix a fundamental problem
20 on the lack of plaintiff, which is what the
21 McCullar case is. And the McCullar case, again,
22 is after the estate closed. I'm sorry, I
23 misstated. Not the McCullar case. I'll get to
24 the case that deals with when the estate closes.

25 THE COURT: Yeah.

1 MR. SAWYER: And that case is the New York
2 appellate division case. And while we're
3 talking about a New York appellate division
4 case, it's applying South Carolina probate law.
5 And I think that's important. This is not some
6 court talking about a similarly adopted uniform
7 probate code. They're actually looking at the
8 South Carolina probate code.

9 And in that case, when the complaint was
10 brought, there was an active estate. And then
11 the estate closed. The PR was terminated.
12 Asserted a counterclaim, which is just like
13 filing a motion in a case. It's something you
14 do during the life of a case. They moved in the
15 case to assert a counterclaim. Which the court
16 at that point granted, I believe.

17 But what they didn't tell the court
18 anymore, just like they didn't tell Your Honor
19 when they moved to appoint a receiver is,
20 actually I've been terminated as the PR. The
21 estate has been closed.

22 So when the plaintiff in that case learned
23 about it, near the end of the life of the case,
24 they raised that issue. And just like what
25 Ms. McVey did, they went to the probate court,

1 got the estate reopened -- or actually, excuse
2 me, got the probate court to issue a subsequent
3 administration of the estate, and appoint the
4 same person as the PR again.

5 And they said, hey, this fixes all the
6 problems. It cures everything. Same argument
7 that's been presented to you today.

8 And the appellate division said, no, it
9 does not. And, in fact, what they said was that
10 the reappointment in the context of a subsequent
11 administration constitutes a subsequent
12 administration, which has no nunc pro tunc
13 effect, and does not relay back to the initial
14 appointment and, therefore, the counterclaim was
15 dead and dismissed.

16 THE COURT: Did the New York opinion
17 discuss Rule 17(a) ratification rule at all?

18 MR. SAWYER: It did not talk about real
19 party in interest. It talked about the fact
20 that -- but it does cite 608, which I think is
21 critical. The impact of a termination of a
22 personal representative. Because the statute
23 itself says you can't work an opinion case. And
24 ratification can't fix something when you're
25 violating a statute. It makes no sense.

1 The code sections are in the same probate
2 code. The drafters understood those two rules.
3 And what they said is, yes, 701 is going to deal
4 with the creation, the appointment, the
5 commencement of the PR's authority.

6 608 deals with something different. That
7 is, when you ask to get terminated or the court
8 terminates you, what's the consequence? And all
9 the conduct we're talking about today is post
10 termination.

11 So that's the appropriate statute for this
12 court to look at and the lens through which it
13 should look at it.

14 Now, Your Honor, getting past that, I think
15 we've addressed it hopefully fairly completely.
16 We provided the full probate filing to you, at
17 least as July 25th. The subsequent filings for
18 the subsequent administration have been filed by
19 the plaintiffs. But we wanted you to have the
20 full probate file, at least as to the paper
21 copy, so you can see what was submitted to the
22 court.

23 There's a couple of other oddities there.
24 The application for the PR, there's two
25 questions in the probate form code or probate

1 form to be appointed to ask about the existence
2 of pending litigation. And are you being
3 appointed for pending litigation? That
4 application was made while this case was
5 pending. They didn't disclose to the probate
6 court the existence of this case.

7 That's an oddity. I don't think it matters
8 for today, but it is an oddity and a sworn
9 application. But ultimately, I don't think it
10 matters because when everything that took place
11 that we're dealing with today happened, not only
12 were they not a personal representative, so
13 Mr. Park had no authority to file, but there was
14 no estate so there was no case law. And that's
15 really where we sit today.

16 You can't fix that on the back end.

17 Dealing with other things that were tried
18 that -- there were attempts to fix on the back
19 end cannot be fixed.

20 Let's deal with service. The Court's heard
21 service but not in this case actually. I think
22 all the service arguments happen in Tibbs. So
23 it's worth going over that some.

24 The timeline is important here. There was
25 a question from Your Honor about the original

1 complaint. It never alleges a factual
2 allegation as to Cape. When it does the party
3 allegations about jurisdiction, Cape is not
4 listed in there. It is on the caption, but
5 there's no factual allegation about what Cape
6 did or did not do.

7 The First Amended Complaint does reference
8 Cape. And then in December -- on December 23rd
9 of 2021, I believe, and I'll check my time,
10 that's right. The second amended complaint is
11 file after a motion to Your Honor.

12 Shortly before that -- now I think what was
13 put on the record today is service was
14 accomplished in March of '22. Let's start with
15 that, if that's true. There's no affidavit to
16 this court about service in '22. That would
17 require service in the Second Amended Complaint
18 because that's the operative complaint as of
19 December of 2021. There's never been anything
20 filed with this court in terms of a proof of
21 service of the Second Amended Complaint. Ever.

22 So let's look at the First Amended
23 Complaint. There's an affirmation that's been
24 filed with Your Honor, in October of 2023, five
25 months after the order appointing the receiver,

1 but not at the time that the court appointed a
2 receiver, which is the first attempt to show
3 this Court that there was service on Cape.

4 So when the Court got the motion to appoint
5 a receiver, when it ordered it, there was
6 actually nothing in the file showing service on
7 Cape. No attempt to prove it. And to this day,
8 this is, I think, important, there's still is no
9 proof of service as to the motion to appoint a
10 receiver being served on Cape either. Three
11 years after the fact or two years after the
12 fact.

13 But what was filed in October of '23,
14 again, after the order appointing a receiver,
15 and apparently in response to challenges in the
16 Tibbs case, was an affirmation from a gentleman
17 who appears to be in the UK.

18 And, Your Honor, the problem with that
19 affirmation is that it says a few things. One,
20 it says that this was attempted in December of
21 2023 or 2021. December 16th is the day that he
22 states it would have been effective.

23 Well, a few days later, December 23rd, the
24 Second Amended Complaint is filed. Case law is
25 really clear. Any amended complaint renders the

1 prior complaint null. It's the operative
2 complaint. And, therefore, if you have to
3 serve, guess what you have to serve? You have
4 to serve the Second Amended Complaint. And
5 there's no affidavit as to service of the Second
6 Amended Complaint.

7 But if you actually look at the
8 affirmation, it is deficient under Rule 3 for
9 service. Because Rule 3 says you have to serve
10 two things: Summons and a complaint.
11 Foundational rules of South Carolina Civil
12 Procedure.

13 So what did the person signing the
14 affirmation state that he served? I'm reading
15 from paragraph 6 of that. On December 14, 2021,
16 I did serve copies of the First Amended Summons
17 in the matter on Cape PLC and Cape Intermediate
18 Holdings Limited at the aforementioned address,
19 and I did so rural mail, first class post.

20 He doesn't say he served the complaint.
21 But that's not the only document we have from
22 his affirmation to rely upon that. Your Honor,
23 then he attaches an exhibit, cover letters for
24 service that he used. We enclose herewith by
25 way of service the First Amended Summons in this

1 matter. Again, no reference to the complaint.

2 And then in the enclosures, guess what's in
3 the enclosures? You guessed it. First Amended
4 Summons. The list of enclosures doesn't include
5 the complaint. So this affirmation under
6 South Carolina's simple rules, which you have
7 the service of a summons and complaint, is
8 defective in and of itself.

9 Judge, I'd also note that he says he served
10 it first class mail. The stamp on the picture
11 -- we took a picture of the envelope was one
12 pound. And I don't think that you find, if you
13 did some research on the postal rates of the
14 mail during 2021, that a pound would be
15 sufficient for a packet of this size of the
16 summons and complaint in this case.

17 So there's no evidence of service on the
18 complaint before the court today. And certainly
19 there wasn't even that filing with the court
20 when they moved to appoint the receiver.

21 So there's no proper reason for appointment
22 of the receiver on the record. That means, of
23 course, the Motion to Compel is a moot point
24 because the receiver's appointment is a nullity
25 and everything else falls from that, that

1 defect. But it's a critical issue in terms of a
2 procedure, of course, that would be the first
3 step, not the only step, but it's a necessary
4 step for establishing personal jurisdiction over
5 a defendant.

6 They also have to be properly subject to
7 the court's jurisdiction for a slew of other
8 reasons. Right? But service is a foundational
9 first step to trying to establish personal
10 jurisdiction of a defendant.

11 And the argument is, well, Cape has never
12 appeared, Cape has never fought this, Cape's
13 never done this, Cape's never done that. I
14 can't speak for Cape, but what I can say is,
15 well, if they weren't served, maybe that's why
16 they haven't responded.

17 I don't know. I know that their position
18 is Cape never answers anything in any
19 litigation. I don't have any facts on that. I
20 don't think that's been submitted to the court
21 in terms of admissible evidence. But it really
22 is neither here nor there. Here there's no
23 evidence of proper service of the complaint of
24 this case at all.

25 And I would note there have been multiple

1 times when filings have been submitted to this
2 court to correct the record. This affirmation
3 filed after the fact was an omitted exhibit, is
4 what it was labeled as when it was filed.

5 Then after he pointed out the personal
6 representative issue, he stated you get a
7 subsequent administration. They file to this
8 court to correct the record.

9 The defects in service have been raised, at
10 least in the Tibbs case, for almost two years.
11 I think that if he had served a complaint after
12 two years, you probably would have gotten an
13 affidavit saying that. I think it's a fair
14 assumption since they've certainly taken steps
15 to fix other parts of the record. Why hasn't
16 that been fixed?

17 But it really doesn't matter because the
18 issue is the record doesn't support service at
19 this point as we sit here today, which is a
20 necessary first step to everything else they're
21 wanting to do in this case.

22 So, Your Honor, those are the procedural
23 defects. That's the case law on the procedural
24 defects. And if you have questions, I'm happy
25 to deal with those and then move on to the

1 motion to compel or I can just move on to the
2 Motion to Compel.

3 THE COURT: You can move on.

4 MR. SAWYER: Thank you, Your Honor.

5 Judge, on the Motion to Compel, the
6 receiver's only focus is on, well, I sent them a
7 subpoena and I want a response. And,
8 Your Honor, you have our brief. We raise a lot
9 of very serious issues about the process for the
10 subpoena, the scope of the subpoena.

11 And, again, all of this is moot if the
12 receivership is improper. An improperly
13 appointed receiver, again, if the court lacked
14 jurisdiction when it appointed a receiver, that
15 order is null. Simple as that. Which means a
16 subpoena from the receiver is null. That's not
17 a slight on the receiver; it's just a reality of
18 how the law works.

19 But for purposes of this argument, assuming
20 the court finds all of those other defects are
21 not a problem and that there was a proper
22 appointment in 2023 so the subpoena is proper in
23 2025, and all the other things, let's get to the
24 Motion to Compel issue.

25 So first of all, let's deal with the issue

1 of the court's subpoena power. The reason I
2 want to start there is because you're on really,
3 really, really solid ground here. We're not
4 dealing with something from some esoteric
5 location. We're dealing with a Supreme Court
6 decision from the South Carolina Supreme Court
7 and then repeated Supreme Court decisions from
8 courts all over the country dealing with the
9 issue of the scope and jurisdiction of court
10 subpoena power.

11 And when I talk about courts, I'm talking
12 about Supreme Court, state highest appellate
13 courts of Virginia, Florida, Mississippi,
14 Colorado, Alabama, Louisiana, Nevada, the 11th
15 Circuit, and the New Jersey Superior Court. Not
16 the highest court but the another appellate
17 court in New Jersey.

18 And, Judge, that's not even me doing an
19 exhaustive search. I can't represent to you
20 that that's all the cases because I didn't do an
21 exhaustive search. Those are the ones I came up
22 with in the time that I had allowed to oppose
23 the Motion to Compel.

24 And, Judge, every one of those
25 jurisdictions has held unequivocally that the

1 court's subpoena power does not give the court
2 power to subpoena a nonparty, nonresident to go
3 and search for documents or produce documents
4 outside the jurisdiction.

5 And this court knows that that's been in
6 the rule for forever because that's why we have
7 letters derogatory. And that's why courts issue
8 writs of commission, to go to the jurisdiction
9 where defendants are located to seek discovery.

10 And courts, through comity, historically
11 and much more recently through the Uniform
12 Interstate Depositions and Discovery Act have
13 recognized those things. But the recognition is
14 that the authority stops at the borders.

15 And the courts over the party where that
16 party is located have an interest in protecting
17 that party from overreaching, abusive, improper
18 discovery from another jurisdiction.

19 Now, they still often entertain that for an
20 act of comity or now statutory comity, which is
21 the UIDDA. But the reason the General Assembly
22 and 48 general assemblies across the country
23 enacted the UIDDA is because they all recognize
24 that the subpoena power of the court doesn't go
25 beyond its borders.

1 And importantly, Your Honor, it's
2 oftentimes that people mix up personal
3 jurisdiction and the court's subpoena power,
4 which is understandable. But multiple of these
5 cases that I've cited to, Your Honor,
6 specifically and explicitly state that those two
7 things are not the same.

8 Yes, you need personal jurisdiction to be
9 able to enforce a subpoena over a nonparty, but
10 that's not enough. Even if you had personal
11 jurisdiction, you still have to have subpoena
12 power over what you're asking them to do. It
13 has to be something within the borders of the
14 state.

15 And the Supreme Court's decision in the
16 John Deere case is a real good example. In that
17 case, it was really interesting that they were
18 trying to garnish wages from a family court
19 matter. The family court judge tried to get
20 creative and use essentially subpoena to garnish
21 wages from another jurisdiction. And the
22 Supreme Court said despite the desire, despite
23 the novel way the court was trying to do it, we
24 don't have authority to do that because the
25 party is not here.

1 THE COURT: Mr. Sawyer, insurance companies
2 are very different in that regard. And all
3 three of these insurance companies have done a
4 lot of business in South Carolina over the
5 years. I don't understand the concept that
6 something like a Lloyd's or Liberty or
7 Continental doesn't have enough presence in
8 South Carolina when they write -- each of those
9 companies writes a lot of business in
10 South Carolina.

11 I do not understand the concept that they
12 are not subject to the subpoena power of the
13 courts of this state. How about educating me
14 about that.

15 MR. SAWYER: I would be happy to,
16 Your Honor. First of all, that question --

17 THE COURT: The John Deere case and some of
18 the rest of them, I get that. But this is --
19 insurance companies are very different and
20 insurance companies that do business in this
21 state are subject to the courts of this state,
22 the jurisdiction of the courts of this state,
23 the subpoena power and everything else about it.

24 MR. SAWYER: So a few things --

25 THE COURT: And if they don't respond, the

1 insurance commission, whether it licenses them
2 specifically or not, can accept service for
3 them.

4 MR. SAWYER: I will get to that because
5 that's another argument we raised that I think
6 is very important. But let me focus on what
7 you're focused on, which is presence through
8 activities in the state is enough.

9 First of all, John Deere. John Deere did a
10 lot of business in South Carolina. Certainly
11 did a lot of business at the time of the John
12 Deere --

13 THE COURT: Right. The insurance industry
14 has a bunch of material that's specific to the
15 insurance companies that talks about this.

16 MR. SAWYER: But so does John Deere
17 certainly has all of those things.

18 THE COURT: It's not even in the same
19 hemisphere with a regulated industry like an
20 insurance industry.

21 MR. SAWYER: I certainly disagree with
22 that -- the idea that some presence for one
23 business isn't a similar presence or another
24 business.

25 THE COURT: We'll agree to disagree. I

1 want to hear you specifically as applies to
2 insurance company.

3 MR. SAWYER: Certainly. So the
4 North Carolina court that we cite, which is from
5 Judge Diaz, when he was on the business court, a
6 very respected court in North Carolina. Of
7 course, Judge Diaz went from that court to the
8 Fourth Circuit, obviously respected not just in
9 North Carolina but on a broader scale, dealt
10 with the issues of subpoenas to an insurance
11 company in North Carolina, served through the
12 North Carolina Department of Insurance, through
13 their substitute service statute, and said the
14 fact that you can serve them or could isn't
15 enough, although that service wasn't proper. He
16 said both.

17 And I'll deal with again the service issue
18 later, but he said that that's not enough.

19 There's also the Cuomo case that we cited.
20 I think it's NRA v. Cuomo. That's the Board of
21 New York case, federal case. That similarly
22 said you can't serve through this. If you want
23 to do it, you have got to go through it the
24 proper way. And that was Lloyd's. And said go
25 after it, if you need.

1 So there are courts that have dealt with
2 this in the insurance context and said that's
3 not enough. And then all of these cases that we
4 cite from other jurisdictions have entities with
5 varying degrees of interaction with the state.
6 In many of those cases, service was done through
7 a registered agent for service in the state
8 because they were licensed to do business in the
9 state.

10 And what the subpoenaing parties move to
11 compel in those cases argue is, look, they
12 submitted to the jurisdiction of the state.
13 They're allowed to be served here. They've got
14 a registered agent. We serve a registered
15 agent. That's enough.

16 And the courts repeatedly say, no, personal
17 jurisdiction is not the same as the court's
18 subpoena power. And here, Judge, we submit --

19 THE COURT: Wait a minute. We're not
20 talking about -- we are talking about the
21 ability to subpoena the records of an insurance
22 company that does business in the state and
23 writes policies in the state pertaining to those
24 policies.

25 MR. SAWYER: Well, except -- let's be clear

1 here. Pertaining to policies allegedly or
2 potentially issued to an entity of the UK. I
3 don't think we can ignore that that's what these
4 subpoenas are supposed to be.

5 THE COURT: I don't see that. The question
6 is whether they've got insurance that covers
7 torts committed in this state.

8 MR. SAWYER: Well, Judge, in terms of
9 activity, I don't think that's all that we look
10 at. And obviously, Your Honor, you and I have
11 mentioned this repeatedly about insurance
12 policies in the state. I'd be remiss if I
13 didn't mention Howard v. Allen. I know we have
14 a disagreement on --

15 THE COURT: I understand.

16 MR. SAWYER: But I have a strong, strong
17 belief on what Howard v. Allen says. So I'll
18 note that, preserve that. We've noted it in our
19 brief as well.

20 So we'll obviously always disagree on
21 whether liability policies are properly issued
22 within the state -- or issued out of the state.
23 I understand that. I don't want to hammer that
24 whole point. We have a disagreement. Maybe one
25 day I'll get fortunate enough to get the

1 appellate courts to find out if I'm wrong. I
2 might find out I'm wrong. Who knows. But for
3 now, we'll leave it at that.

4 Your Honor, these courts -- all of these
5 courts we cite, seven state supreme courts say
6 that presence is not enough. Again,
7 North Carolina, doesn't matter if it's an
8 insurance company. Because the documents aren't
9 there, the people aren't there. And we provide
10 you affidavits in our opposition for Liberty,
11 for Certain Underwriters of Lloyd's, for
12 Continental, that tells you that the people who
13 do this search are not located in
14 South Carolina. The people who do the search
15 are over where the home offices are or in Boston
16 or for Lloyd's of London.

17 So you'd be subpoenaing persons to go to a
18 search that are not inside the state. And
19 that's what the recognition was from all of
20 these jurisdictions. From the Yelp decision,
21 which is California but a Virginia case. Yelp
22 is everywhere. It's ubiquitous. It reviews
23 everybody.

24 But the Virginia court said we can't go and
25 tell Yelp, whose personnel who do this search

1 are located in California, we can't tell those
2 people to do that search in California just
3 because Yelp can be served here or does business
4 here. Even if they're ubiquitous there.

5 Poultry Growers Association, case in
6 Alabama, is the same. All the cases we site are
7 the same.

8 And, Judge, this is not a
9 you-have-no-solution problem. Before the UIDDA,
10 you could issue a writ of commission. They
11 could take it to these places and get a court
12 there, if the court found it appropriate to
13 issue a subpoena and enforce that subpoena. The
14 UIDDA just makes it that much easier because the
15 UIDDA codifies the process for doing that.

16 What's interesting is 48 states have
17 adopted the UIDDA. And the UIDDA says what
18 court controls that subpoena and controls the
19 motion to compel and an order compliant with
20 that subpoena. It's the discovery state. It's
21 the state where the party being subpoenaed is.
22 Because those courts have an interest in
23 protecting the people in those states or the
24 businesses in those states.

25 And the General Assembly of South Carolina

1 has obviously adopted the UIDDA.

2 And what the Virginia Supreme Court says is
3 the General Assembly's adoption of this is its
4 recognition of this important principle and its
5 adoption of this principle. And, in fact, the
6 UIDDA, South Carolina's version, as well as the
7 others, say that the statute is supposed to be
8 construed uniformly amongst the states that have
9 adopted this uniform act.

10 It's a comity. And if states treat it
11 differently from one state to the next, it
12 erodes the usefulness of that act as other
13 states may choose to do the same.

14 So the Virginia court said this is evidence
15 of the state General Assembly's intent because
16 they adopted it. South Carolina adopted it.
17 Same thing.

18 And there's a solution to do this. If they
19 believe the subpoenas are proper, they can go
20 serve the subpoenas where they are supposed to
21 be done via the proper process, whether that be
22 UIDDA or writ of commission. And then if
23 there's a fight over the propriety or scope of
24 the subpoena, the court in those jurisdictions
25 can hear that and say, hey, Continental, comply

1 fully, or it can say, hey, this is too broad,
2 here's what you have to comply with, or it can
3 say, hey, this is all improper. No.

4 But that's the Court's job where the
5 discovery state is and as established by the
6 UIDDA adopted by South Carolina and 47 other
7 jurisdictions.

8 THE COURT: Well, assume for a minute the
9 court would have submitted to it something like
10 Mr. Protopapas submitted to us in the argument
11 he just made, that indicates the issuance of a
12 policy by Lloyd's for the years 2009 to 2010
13 that covers Cape for asbestos liability,
14 wherever Cape incurs that kind of liability.

15 You're telling me that under that set of
16 circumstances those records could not be
17 subpoenaed by a South Carolina subpoena?

18 MR. SAWYER: Let me answer two things.
19 First of all, just a note. The court gave us a
20 briefing schedule. Gave the reply deadline.
21 Mr. Protopapas never submitted this in reply or
22 response -- I'm bringing up today, I know
23 nothing about it is my point.

24 THE COURT: Well, that's fine.

25 MR. SAWYER: So I think asking some

1 questions about, you know what, I've had
2 forewarning submitted, you know, in accordance
3 with the court's briefing schedule, I could know
4 something about this maybe today. I don't.

5 THE COURT: If we've got to do something
6 about that, we will, Mr. Sawyer. The question
7 I'm asking is simply this: If it can be shown
8 that there's a policy of insurance or the
9 possibility that there's a policy of insurance
10 that actually covers a defendant that has
11 refused to cooperate with this court, that has
12 been sued in this court, let's just put aside
13 for a moment all the squabble we've got going
14 about how they were served and so forth.

15 But we've got a foreign defendant who,
16 evidence would show, has some insurance to cover
17 torts that it has alleged that foreign entity
18 caused to occur in the state of South Carolina
19 that were written by a Lloyd's, for example,
20 you're telling me that we couldn't subpoena that
21 information?

22 MR. SAWYER: So I'm saying that a
23 South Carolina court cannot issue the subpoena.
24 Not that it cannot be subpoenaed. And that's an
25 important distinction. What I'm saying is the

1 subpoena has to be served where it's supposed to
2 be served.

3 THE COURT: Where would that be in this
4 case?

5 MR. SAWYER: Yeah, so --

6 THE COURT: Where would that be in this
7 case?

8 MR. SAWYER: It's where these insurance
9 companies are located, which they're in the
10 affidavits that I provided to the court.

11 THE COURT: Well --

12 MR. SAWYER: I don't have them.

13 THE COURT: So that would be in the UK?

14 MR. SAWYER: I think one is Boston, one is
15 Illinois, and one is UK. That's what seven
16 state supreme courts have held. That's what the
17 UIDDA recognizes. I'm not going out on a limb
18 saying that.

19 And it's not anything to degrade or dismiss
20 this court because this court will receive
21 subpoenas under the UIDDA from all over the
22 country. And it follows the UIDDA just the same
23 way to protect the citizens of South Carolina.
24 So it's not a matter of can it be subpoenaed,
25 it's matter of what court decides about the

1 subpoena and where the subpoena is issued from.

2 And this case, the subpoenas have to be
3 issued. And, again, I apologize, I'll mix up if
4 I say where Liberty is versus where Continental
5 is. We know Lloyd's operates out of London.

6 THE COURT: All right. I understand the
7 argument you're making.

8 MR. SAWYER: Sure. And, Your Honor, I
9 would note, it's significant on Bates number Aon
10 8, page 15, of what was handed up. Again, from
11 looking at this for a matter of minutes, the
12 country of origin, United Kingdom. There's
13 nothing here that said this was issued in
14 South Carolina, and nobody would think that a
15 policy issued to Cape, a UK entity, would be in
16 South Carolina. Plus, we're dealing with the
17 2009 policy.

18 But, Your Honor, those are all extra
19 points. I don't want to get bogged down on
20 that. Let's deal with service.

21 I know the Court has looked at this --
22 actually, I don't think the Court has ever
23 looked at this issue. I note that I wanted to
24 raise it for many years, and I never had the
25 chance. So I've got my chance. I'm a little

1 excited. If I get over my skis a little bit,
2 back me off a little bit. How about that?

3 There are two substitute service statutes
4 that authorize the Department of Insurance to
5 accept service for insurance companies. They
6 actually fit hand in hand. One says, To
7 operate, the insurer shall give the Department
8 of Insurance certain authority. And the other
9 one says summons shall be done in this way. So
10 they're really dovetailing each other for a
11 complete picture.

12 And, Judge, I'll start with Section
13 15-9-270. This is the statute that's titled
14 Service on Insurance Companies. And it says at
15 the beginning, The summons and any other legal
16 process and any action or proceeding against it
17 must be served on an insurance company as
18 defined in the statute ... through Department of
19 Insurance.

20 Summons and any other legal process and any
21 action or proceeding against it is important
22 language. You have the same language in the
23 appointment statute which it says that insurance
24 companies have to appoint the Department of
25 Insurance to be able to do this. And that's

1 Section 38-5-70. Every insurer shall, before
2 being licensed, skip a little ahead, designate
3 the director of successors as the lawful
4 attorney upon whom all legal process in any
5 action or proceeding against it must be served.
6 An action or proceeding against the insurance
7 company.

8 And, Your Honor, a subpoena to a nonparty
9 is not an action or proceeding against a
10 nonparty. This is for case initiating
11 documents, for documents that are bringing
12 actions or proceedings against an insurance
13 company.

14 THE COURT: Well, then what would the
15 meaning of nonparty be?

16 MR. SAWYER: Excuse me. What do you mean
17 by meaning of nonparty?

18 THE COURT: You're saying that this doesn't
19 include a proceeding against a nonparty.

20 MR. SAWYER: Well, no, what I'm saying
21 is -- no, what I'm saying is that there's no
22 proceeding against the insurance company because
23 the subpoena is not a proceeding against an
24 insurance company. It's a request for
25 documents. There's no summons and complaint.

1 There's no assertion of claims against an
2 insurance company.

3 THE COURT: So the word proceeding, in your
4 view, is a -- the initiation of a lawsuit
5 against the person being subpoenaed. That means
6 nobody else but the people that are sued could
7 ever be subpoenaed.

8 MR. SAWYER: No. What I'm saying is that
9 the service statute is only for actions or
10 proceedings against the insurance company. A
11 subpoena to a nonparty is not action or
12 proceeding against an insurance company.

13 THE COURT: So you're saying that the
14 substituted service provisions in the Department
15 of Insurance cover only initiation of summons
16 and complaint against an insurance company?

17 MR. SAWYER: Or a similar thing. That it's
18 a proceeding against the insurance company.

19 THE COURT: What else would a proceeding --

20 MR. SAWYER: There may be administrative
21 proceedings that I'm not aware of, so I don't
22 want to -- I don't want to be more narrow than
23 what the statute is, but I certainly don't think
24 the statute permits any interpretation that a
25 subpoena to a nonparty is an actual proceeding

1 against it.

2 And I'm not getting that out of thin air.
3 That's what Judge Diaz said. He actually puts
4 an emphasis against it or against the insurance
5 company. And the quote in his decision, and we
6 quote to you in the brief. Because he says,
7 yes, I have no problem with the idea that a
8 subpoena is processed. That's not shocking to
9 the court. But it's not an act or proceeding
10 against an insurance company.

11 And the statute is a little bit different.
12 He actually uses the phrase against the
13 insurance company, I think. He emphasizes it.
14 Which is significant. He says it's not a
15 proceeding against them. The statute's for
16 case-initiating-type proceedings, not for
17 subpoena. And that's why he says the service
18 through the part of insurance in North Carolina
19 was improper for a subpoena.

20 And the NRA v. Cuomo case, their statute
21 again, a little bit different, but same result.
22 It's not a proper basis for the department to
23 accept service on.

24 Again, this doesn't mean a subpoena can't
25 be done. It emphasizes the subpoena has to be

1 done in the right place. This makes sure that
 2 the insurance company, when it's getting sued in
 3 South Carolina for something, whether it should
 4 be sued in South Carolina, that the plaintiff
 5 can serve the Department of Insurance and
 6 doesn't have to find out where Progressive
 7 Direct versus Progressive Northern versus
 8 Progressive Home may be located and serve the
 9 right entity.

10 It doesn't say, hey, this is a one all, you
 11 can serve them with anything you want no matter
 12 what. It says action or proceeding against it.

13 And, Your Honor, this is important because
 14 in South Carolina substitute service statutes
 15 are deemed in contradiction of the common law
 16 and must be narrowly construed. That's been the
 17 law in South Carolina for many, many years. The
 18 South Carolina Supreme Court held that in
 19 Seubert versus Buchanan at 250 S.C. 140. It's a
 20 1967 Supreme Court case. That notes the
 21 derogation of common law.

22 It says, quote, Substituted service must
 23 conform to the statute which authorized it.

24 Justice Kittredge, just as early as two
 25 years ago in the Denson case, reiterated that,

1 moreover legislation and derogation of common
 2 law must be strictly construed under several
 3 principles enunciated by this court.

4 And you, Your Honor, wrote, when you were I
 5 think at the time acting Chief Justice in the
 6 Gilfillin case in 2001, that statutes in
 7 derogation of common law must be strictly
 8 construed, and I'll quote, We will not extend
 9 the application of a statute beyond the clear
 10 legislative intent.

11 And, Your Honor, Judge Diaz, in his order,
 12 notes that substitute services in derogation of
 13 common law and says it has to be strictly
 14 construed. That was part of his reasoning in
 15 that decision. The same rule applies here.
 16 Strictly construed what is an action or
 17 proceeding against the insurance company.

18 THE COURT: I think I get this argument.

19 MR. SAWYER: That's fine, Your Honor.
 20 Sorry for beating a dead horse. I've wanted to
 21 raise it for a long time. Thank you for letting
 22 me.

23 THE COURT: I know. Yes, sir.

24 MR. SAWYER: Your Honor, I guess let me
 25 look at my notes before I get off of the Motion

1 to Compel issue because we'll deal with the
 2 moral fraud issue, which I know will be more
 3 fully fleshed out in Tibbs. But since it's
 4 being brought up now, I will also deal with it
 5 now.

6 Again, Your Honor, just one other note.
 7 The John Deere case is a South Carolina case.
 8 And then Florida, Virginia, Alabama, and
 9 Eleventh Circuit cases all dealt with services
 10 of subpoena in the state through registered
 11 agents for service process. All those courts
 12 held that wasn't enough to give the court
 13 subpoena power. So well established in that
 14 regard as well.

15 We talked about lack of personal
 16 jurisdiction. There's obviously a general
 17 jurisdiction. Specific jurisdictions, your
 18 actual connection with this matter. There's no
 19 allegation of issuing of a policy in
 20 South Carolina.

21 In fact, here the claim would be policies,
 22 if they exist, would be in the UK. So I don't
 23 think there's a basis for specific jurisdiction.
 24 But again, even if you have personal
 25 jurisdiction over the insurance company, that's

1 not the same as the court's subpoena power. And
 2 all those cases that we just talked about deal
 3 with that.

4 Service is improper. I'm raising the AARP
 5 case, that's Judge Diaz. The NRA v. Cuomo,
 6 that's New York. Talk about the rules of
 7 construction. Let me get to Rule 45, subpoenas,
 8 and burden and that sort of thing, because
 9 there's also issues with that, Your Honor. If
 10 we get to that point, I've lost the war and
 11 maybe I can keep a couple of strongholds,
 12 Your Honor.

13 Your Honor, we've also raised the fact that
 14 the subpoena is overbroad, burdensome. One of
 15 the most obvious ones is one that you have ruled
 16 on multiple times in the past, which is the
 17 subpoena asked for additional insured
 18 information. And there's no information
 19 provided in connection with that.

20 It says Cape and its affiliates and all the
 21 other terms they use to say anybody who ever may
 22 have been somewhat affiliated with Cape. We
 23 don't have a list of what those other entities
 24 are, so we're left to guess. Or my clients are
 25 left to guess, I should say.

1 So there's those problems in terms of just
2 the simple fact that it's impossible to comply
3 with the subpoena as written in a way that we
4 could say, hey, we have given you everything.
5 We can try to, but there's going to be a lot of
6 question marks. And that can be dealt with
7 through, you know, properly extrajudicial what --
8 who made the requirement to name Cape as an
9 additional insurer.

10 I can't imagine who that would be, frankly,
11 but I'm not that creative. So maybe there's a
12 very reasonable thing to list that.

13 What it can be is a list of 10,000 entities
14 or a thousand entities that creates a burden
15 that again violates Rule 45. Because Rule 45
16 expressly states as to nonparties, the party
17 issuing the subpoena has a duty to avoid
18 creating undue burden. Baked into Rule 45 to
19 protect nonparty recipients of subpoenas for
20 good reason. They're not in litigation. They
21 can't seek costs at the end of the day. So
22 they're protected by Rule 45.

23 Your Honor, there's privilege issues. They
24 ask for claims, underwriting files, things like
25 that that are likely to have privileged

1 communications. Especially when you're dealing
2 with potentially policies that aren't issued to
3 CIHL, or whatever may be the actual entity and
4 receivership.

5 THE COURT: This whole issue would be
6 something you get to with a lot more showings
7 than have been made now because this is not the
8 centerpiece of the discussion now. It's the
9 validity of the service, et al. You know, I've
10 read your material. I know what it says. But I
11 don't think that's a key issue right now.

12 MR. SAWYER: I don't think it's a key
13 issue, but I do think that if the Court ends up
14 ruling that the subpoena is properly served,
15 enforceable, and enters an order enforcing the
16 subpoena, I've got to raise the problems of --

17 THE COURT: I understand all that. I think
18 you've raise it adequately.

19 MR. SAWYER: One other thing on burden
20 before I get to everything else. And I realize
21 this is touchy subject, but I also cannot ignore
22 the existence of the subject, and that is the
23 existence of this UK high order.

24 And I know what the Supreme Court has
25 indicated in Welch. I know what this court

1 thinks about it. But I also know that one of my
2 clients in this subpoena issue is Certain
3 Underwriters at Lloyd's London. They're not a
4 party in Welch. They're not a party in Tibbs.
5 They're not a party here. But they operate out
6 of London and there's a UK high court order
7 saying something about the receiver's
8 authorities.

9 And a nonparty is put in a really
10 difficult --

11 THE COURT: I don't see the bind you're put
12 in at all in that regard. I really don't.
13 There's no suggestion that even in the very
14 broad parameters of the order of the British
15 court that its reach would extend to voluntary
16 cooperation or to any other kind of cooperation
17 processes in this country. So we don't need to
18 spend a lot of time on that.

19 MR. SAWYER: Just to note on the record, I
20 think my client has a significant concern.

21 THE COURT: I know that. The Supreme Court
22 is the arbiter of that, not me. So that's just
23 not an argument that I think is something I need
24 to be getting into.

25 MR. SAWYER: I'll put on the record and

1 I'll move on because I understand Your Honor.

2 THE COURT: It's on the record.

3 MR. SAWYER: I'll be very quick. Which is
4 just Rule 45, again, baked in, cannot put an
5 undue burden. And for Lloyd's in particular,
6 that is a significant burden to have two courts
7 saying two different things. And they are not
8 in a position --

9 THE COURT: My friend, that happens all the
10 time state to state and country to country.
11 That's not something that somebody in my
12 position in the chain of authority is going to
13 need to worry about.

14 MR. SAWYER: Okay. Well, unfortunately, my
15 client is worried about it.

16 THE COURT: Well, that's fine. I'm not the
17 person that's going to give them much relief in
18 that regard.

19 MR. SAWYER: And, Judge, the only other
20 thing in terms of scope, Ms. Park's complaint
21 says she was exposed, again, in the mid 1960s.
22 The subpoena asks beginning in the 1930s.
23 Welch -- I think one thing Welch was clear about
24 was that the property that's subject to the
25 receivership or the receiver's scope is limited

1 to the assets that could be responsive to the
2 claim of the party that sought the appointment.
3 In that case, Welch.

4 If her exposure begins in 1960, then the
5 subpoena should be limited to 1960. Shouldn't
6 date back to 1930 or earlier because those
7 policies could be not responsive to somebody
8 that wasn't exposed until the 1960s.

9 THE COURT: Well, as we know, there's a
10 whole other dimension to this thing. You are
11 going after things that are so far away from the
12 main argument, I'm not going to entertain too
13 much more of this.

14 MR. SAWYER: That was actually my last
15 point on this.

16 THE COURT: Well, the reason that you put
17 stuff like that in these kind of documents is
18 because some of those policies are written in
19 the old fashioned way, where they are per
20 occurrence policy. Mesothelioma is a disease
21 with a long tail of between exposure and
22 disclosure or discovery.

23 And for that reason, some of these
24 policies -- some of those subpoenas and other
25 discovery requests in these mesothelioma cases

1 go way back before the exposure takes place
2 because there are some policies that would still
3 be viable depending on how they are written in
4 terms of exposure.

5 So I'm not going to pick down to a granular
6 level like that. Thanks for that argument.
7 It's noted.

8 MR. SAWYER: All right. I'll move on then
9 to the Cape moral fraud issue, which, again, as
10 was noticed before we came in today, my
11 understanding was that that issue was going to
12 dealt with in Tibbs, frankly to be dealt with
13 first.

14 So I may be a bit of a fish out of water on
15 that being a nonparty subpoena opposer having to
16 deal with that weight. But I will do my best to
17 at least address it. Others can do it much
18 better.

19 THE COURT: I don't think you can add much
20 to what your brothers on your side of the fence
21 are going to say about this, Mr. Sawyer.

22 MR. SAWYER: They have raised it quite
23 well.

24 THE COURT: Briefly.

25 MR. SAWYER: Briefly. Thank you,

1 Your Honor.

2 First, Welch dealt with current activity to
3 avoid or hideaway assets. The claim at least by
4 the Supreme Court, their finding was that Atlas
5 had recently or actively tried to enter
6 agreements that could highway insurance and it
7 represented to the court there was no insurance.

8 That's active attempts to hide assets.

9 THE COURT: That was part of it, but Welch
10 covered a lot of other things.

11 MR. SAWYER: At of things they did in your
12 case, that they were accused of disregarding
13 your orders in that case.

14 THE COURT: I'm just saying that's not
15 dispositive based on the other things that
16 happened in Welch. Welch has had that dimension
17 to it but also had a long history. ACL had a
18 long history in that regard.

19 MR. SAWYER: I think the Supreme Court had
20 two bases that it stated for a point of
21 receiver. One was the active litigation conduct
22 in your court; and two was that issue about the
23 insurance and the risk of those assets that was
24 a current risk.

25 THE COURT: Its analysis of moral fraud did

1 not just cover the time parameters when I got
2 this case, it was a broader analysis than that.

3 MR. SAWYER: I will note Virginia Chemical
4 case, which is one of the receiver's favorite
5 cases to cite. Same thing. The defendant there
6 was actively signing away land, deeding away
7 land to family members to avoid his liabilities,
8 including the fact that he had just been charged
9 with manslaughter -- convicted of manslaughter.

10 Sounds a lot like Murdaugh, which, by the
11 way, the evidence in the motion to appoint a
12 receiver for Murdaugh was replete with evidence
13 of him trying to squander his assets away to his
14 family to protect it from predators.

15 THE COURT: We have no averment about that
16 here that involves the continuing activity of
17 the company. You know, that's away, away from
18 what you need to be arguing on behalf of your
19 insurance clients. So others will cover that,
20 but I don't think I need to plow that ground a
21 whole bunch of times.

22 MR. SAWYER: I'll try to be quick. There's
23 a few more points. One in terms of active
24 versus past. I listened to all the dates that
25 Ms. McVey listed in her recitation of the moral

1 fraud activities of Cape. All of them are 1977,
2 1978, or long before that. Fifty years ago.

3 There's no asset they're alleging currently
4 is being squandered away by Cape. Not alleged,
5 not in a motion that's before you. It's not in
6 a file that's before you in the Park case.
7 There's nothing that says there's an active
8 thing. There wouldn't be if this was done 50
9 years ago. I should say I wouldn't expect there
10 to be. I don't know.

11 THE COURT: Mr. Sawyer, again, the clash of
12 that is going to be the clash of people other
13 than yourself. Their allegation is that Cape's
14 legacy is the activity of folks that now own it,
15 and it is an unbroken series of activities in
16 aid of not living up to their responsibility
17 about these torts.

18 So that's not something you need to get
19 into. There are other people who are going to
20 argue to me. You've had a good, long time at
21 the podium.

22 MR. SAWYER: As long as I can adopt
23 whatever they argue at the end of it, we're
24 good.

25 THE COURT: That's what you always do.

1 That's not going to change. That's already been
2 done in your pleadings.

3 MR. SAWYER: Well, I haven't adopted all of
4 their pleadings. As long as I'm able to do that
5 at the end, I'm happy to sit down. I think I've
6 said my part. If I'm allowed to do that again.

7 THE COURT: Yes, sir.

8 MR. SAWYER: Thank you, Your Honor.

9 THE COURT: All right.

10 All right. Now, the question is what to do
11 now, whether to go back to Ms. McVey and the
12 receiver, which is what I'm inclined to do. But
13 I have this nonparty Travelers memo in
14 opposition.

15 Travelers, as I understand it, is not a
16 party in Tibbs. Am I right about that?

17 MR. PROTOPAPAS: You are correct,
18 Your Honor. And we have reached resolution.
19 And that opposition memo does not need to be
20 considered, is my understanding.

21 THE COURT: All right. So I can strike
22 that off the list of things I need to take into
23 account.

24 MR. PROTOPAPAS: Yes, Your Honor.

25 THE COURT: Travelers?

1 MR. CARROLL: Yes, ma'am. Your Honor, Todd
2 Carroll with Travelers. I'm joined by Connor
3 Reed.

4 THE COURT: Well, who is really the author
5 or what we're talking about right here?

6 MR. CARROLL: Well, Your Honor, I'm the one
7 who signed the document. But when you were
8 reciting the agenda this morning, when you got
9 to that, you seemed to indicate that you thought
10 it was about the bench brief. It's not. It was
11 a -- it was the same motion that Mr. Sawyer --

12 THE COURT: It's the same motion that
13 Wesley Sawyer is making. I understand that now.

14 MR. CARROLL: Correct. And it's been
15 withdrawn.

16 THE COURT: And it's been withdrawn.

17 MR. CARROLL: Yes, ma'am.

18 THE COURT: All I need to do is strike that
19 off?

20 MR. CARROLL: Yes, ma'am.

21 THE COURT: Okay. We got it.

22 All right. Very briefly, my friends, in
23 reply, and then we're going to shut this down
24 and go to lunch and come back and hopefully do
25 the rest of this today. At least that would be

1 my desire.

2 All right. Mr. Protopapas.

3 MR. PROTOPAPAS: Your Honor, just very
4 briefly cause it's the tail end of Mr. Sawyer's
5 argument so I'll do three things very quickly.

6 One, just to refresh the Court's
7 recollection, you did indeed rule on these
8 service issues before with Lloyd's. But
9 Mr. Sawyer was not the lawyer for Lloyd's at
10 that time. At that time I believe it was
11 Mr. Rawl.

12 THE COURT: That's correct.

13 MR. PROTOPAPAS: You issued an order on
14 March 22nd of 2024 in regards to ACL and Lloyd's
15 compelling Certain Underwriters of Lloyd's,
16 Resolute, Lloyd's of London, and so forth, where
17 they raised those similar type arguments.
18 That's one.

19 Two, I note to the Court that Ran Oren,
20 which is attached to my motion to compel,
21 Mr. Oren's letter of May 7th telling Lloyd's do
22 not cooperate with the receiver in his attempt
23 to find assets as a part of this continuing
24 pattern.

25 And finally, Your Honor, I will

reference -- I will reference the Welch opinion, Your Honor, which I thought was a complete victory and a complete affirmation of this Court's proceeding when it says, "We hold any insurance assets owned by Atlas Turner that may cover Mr. Welch's injuries are properly within the receivership estate, meaning those insurance assets are within South Carolina's exclusive jurisdiction."

They have an asset that's in the exclusive jurisdiction of this Court. And I just raise those three points briefly, Your Honor.

Thank you so much.

THE COURT: Hang on for a minute. He's got a little bit of a -- kind of sideways approach to that subject. He doesn't argue at all about the asset in its presence here. What he argues instead is the only service requirements with regard to the nonparty subpoenas, much like Judge Diaz talked about in the North Carolina case, the typical, more usual subpoenas to insurance companies for information about policies.

Tell me why it's different here in the light of what's said in Welch and otherwise.

MR. PROTOPAPAS: Yes, Your Honor. So our Code 38-5-70 and 15-9-270 work together to appoint the Department of the Director of Insurance to accept summons and other process.

And as the Court knows, the commencement of the civil action is by summons and complaint, they could have said summons and complaint. It said process. And it is to allow people like South Carolinians, who are looking to recover for a personal injury, to find out what asset is there.

It could be Rule 33, our standard interrogatories. It could be through these two statutes. This insurance is properly before the court to address a South Carolinian's injury. And so 38-5-70, all legal process.

THE COURT: What do you do with the UIDDA and the decisions like the North Carolina decision Diaz authored?

MR. PROTOPAPAS: I think you can utilize that tool if the entity is not registered with our Department of Insurance. But once they register with our Department of Insurance, they subject themselves, and that's what our case law references. It is giving our courts -- the

procedures were intended by the legislature to be methods of obtaining jurisdiction over a foreign insurance company. That's Equilease Corp v. Weathers, 272 S.E.2d 789.

So if they're not registered to do business, and many insurance companies are not registered to do business in this state. I can certainly go through that other format. But our courts and our statutes and our legislatures say all process.

And so we are attempting to find an asset that is within the exclusive jurisdiction of this Court. And this Court addressed these issues with ACL and Atlas Turner where we ended up finding, if you ask the right question, there's a billion dollars of insurance for ACL.

And so the question -- I've been trying to ask the right question over and over again. I think I finally asked the right question.

And so in my mind, Your Honor, when I look at the statutory provisions, and our case law, all process can be accepted by the Department of Insurance, and I must serve it on the insurance company. I did that. I must deliver two copies. I did that. And these procedures then

are intended to bring them before this Court.

THE COURT: They got a whole lot of other questions about what you did in that regard, but we're concentrating right now on the service on the Department of the Insurance. And tell me again, what you mean by registered with the Department of Insurance.

Are you taking the position that Lloyd's, Liberty, and Continental are certainly -- well, those three companies that Mr. Sawyer represented have some different status because they are registered in South Carolina?

MR. PROTOPAPAS: Yes, Your Honor. Every insurer shall, before being licensed, appoint in writing the director and its successors in office --

THE COURT: And are those three companies registered in South Carolina?

MR. PROTOPAPAS: I attached a response from the Department of Insurance --

THE COURT: I think the answer is yes.

MR. PROTOPAPAS: Yes. I believe the answer is yes. I'm pulling up the letter from the Department of Insurance, which was Exhibit B in my motion. And they forward those to

1 continental Casualty. They forward them to
2 Liberty Mutual Insurance Company. And they
3 forward them to underwriters at Lloyd's of
4 London.

5 So I served the Department of Insurance
6 Exhibit B to my motion is the South Carolina
7 Department of Insurance acceptance and
8 forwarding of that process. And so I believe
9 the Department of Insurance did what it's
10 supposed to, forward it on. And if the asset is
11 there, and they're not willy-nilly subpoenas, I
12 understand the additional insured is a tricky
13 question.

14 All I can tell Your Honor is I have reason
15 for it, which was the Aon paragraph of how they
16 define their own insureds. I'm trying to use
17 their words to them. I'm trying to get -- ask
18 the right question. If I ask the right
19 question, perhaps I find the 50 million pounds
20 insurance policy capable of covering Ms. Park's
21 injuries.

22 THE COURT: Now, what do you say to the
23 argument that going back to the 1930s is way,
24 way over reaching?

25 MR. PROTOPAPAS: Your Honor, on that

1 specific issue, I'm more than happy to reform it
2 to the 1960s to present. That's perfectly fine
3 with me. It's just what the hope was if they
4 find it -- if somebody calls me and says we
5 can't go back that far, Peter. Fair enough.

6 But if they can, and if they can give me --
7 unlock another piece of information and another
8 piece of information.

9 And I would give the Court the example of
10 ACL. Where 46 times somebody represented to you
11 there's no insurance to tender to. And that
12 representation obviously, I guess it was '23
13 now, if you go by the named insured on the
14 policy was adequate.

15 But if you go by the additional insured or
16 if you keep asking the question in a way -- you
17 know, the 2009 policy is now -- maybe it opens
18 up ten years of historical coverage or people
19 tend large --

20 THE COURT: I understand that, but, you
21 know, when you go back way beyond what the --
22 you know, back years before this exposure took
23 place, you don't really have much of an argument
24 that there's a high probability that you're
25 going to find something that covers something

1 that's 20 years or 30 years pre the exposure.

2 MR. PROTOPAPAS: And I'm fine with
3 reforming the subpoena to be post 1960 policies.

4 THE COURT: Okay. What else?

5 MR. PROTOPAPAS: That is it, Your Honor.

6 THE COURT: All right. Ms. McVey, I
7 hesitate to call on you.

8 MS. MCVEY: I'm happy to even not stand up,
9 but I didn't know if you wanted me to respond to
10 a few of his arguments or not.

11 THE COURT: Well, I'm covering all my
12 bases, but I'm not begging you to.

13 MS. MCVEY: The only thing I will say is
14 you have ruled about the service on the Park
15 case was proper in Cape. You had a day-long
16 hearing. You issued an 80-page order. That
17 issue is done, as far as I'm concerned.

18 I have walked you through why the cases
19 that Mr. Sawyer and others rely on about the
20 closing of the estate. It's not applicable
21 here. The cases they rely on talk about
22 jurisdiction at the beginning of a case when a
23 case is filed. We have had that here. We had
24 jurisdiction. There was a mistake. The estate
25 was closed. We reopened it. It can be ratified

1 again. Otherwise, the statute 701 makes no
2 sense, nor does 17(a), nor does Fisher, which
3 tells you you have no discretion but to allow us
4 to cure it.

5 THE COURT: So in sum, all right, kind of
6 heart and soul of that is we sued Cape before he
7 got -- before this estate was closed?

8 MS. MCVEY: Sued and served.

9 THE COURT: And served --

10 MS. MCVEY: Yes, ma'am.

11 THE COURT: -- before the estate was
12 closed. That's your argument. And so beyond
13 anything else, the action commenced at a time
14 when there wasn't any question but what he had
15 the authority to commence.

16 MS. MCVEY: Absolutely. And while he was
17 still PR, Cape's answer was due. Okay. Which
18 they never have responded to and still haven't.
19 So I don't even think they have standing to
20 raise these issues, but if they do, then we have
21 statutes and case law that protect us on it and
22 allows us to correct it, which is what the court
23 has directed us to do. There's no prejudice to
24 anybody here with that.

25 THE COURT: One thing I never did ask, and

1 I don't want to open a whole can of worms. It
2 will be explored when we get to the bigger
3 question of Tibbs anyway, and that is this: Why
4 did you never put them in -- ask for an order of
5 default?

6 MS. MCVEY: So that's a valid question, and
7 that is a thought that we had had based on past
8 cases. What I don't ever want to do is get a
9 default judgment that I can't do anything with.
10 And that becomes the dilemma. So we wait for
11 them to come in, see what we can do.

12 And then is there a reason to appoint a
13 receiver here? Let me go look. Because if
14 there's insurance and I have a default judgment
15 and now it gets tendered to the insurance
16 carrier, what is the insurance carrier going to
17 say? You can't collect it. You can't do
18 anything with it because we have noncooperation.
19 That's why we didn't do it.

20 And Welch says, you know, look, this
21 shouldn't be used in a typical default case.

22 THE COURT: What you're saying is they let
23 themselves go into default, then the insurance
24 company comes out from under them and says, hey,
25 that was noncooperation by our insured so we're

1 THE COURT: Yeah. I'm not -- listen here,
2 you all have handled things with great respect
3 and economy of motions so far, and I appreciate
4 that very much. And so I'm just kind of trying
5 to plan a little bit.

6 MR. CARROLL: Yes, ma'am. I can't envision
7 any reason why we can't be done today. I don't
8 speak for everybody.

9 THE COURT: I get it.

10 Anybody else got any thoughts about it?

11 MR. RAWL: Mr. Carroll can speak for me.

12 MR. CARROLL: No, thank you.

13 THE COURT: Ms. McVey.

14 MS. MCVEY: I think that's fine. And I
15 know Mr. Carroll said in his briefing, he made a
16 lot of his arguments last time so I don't know
17 how much more he's going to do.

18 THE COURT: Well, I'm not going to restrict
19 him. So, you know, we want this record to be
20 kind of a freestanding, complete picture on
21 everything, so ...

22 All right. Come back at quarter of 2.

23 MR. CARROLL: Thank you.

24 THE COURT: The court will be in recess.
25 - - -

1 sorry, Plaintiff, but you don't get anything.

2 MS. MCVEY: Absolutely.

3 THE COURT: So that's the rationale. I
4 understand it now. I'm not saying agree,
5 disagree, or anything else --

6 MR. PROTOPAPAS: I understand.

7 THE COURT: -- but I wanted to have the
8 record clear about why you all didn't do that.

9 MS. MCVEY: So that's why we didn't do it.
10 I'm not getting into the moral fraud argument
11 again. I think you've heard enough about that
12 unless you want me to respond to --

13 THE COURT: No, I think that's on the
14 record by both sides.

15 MS. MCVEY: Okay. Anything else I can
16 answer?

17 THE COURT: That's it.

18 All right. Now, it's 12:10. Okay. Guys,
19 if we do it at quarter of 2, will we have time
20 to finish today? I'm not pressing anybody. I
21 know you all got many, many things to say on the
22 bigger question of the receivership in Tibbs.

23 MR. CARROLL: Your Honor, Todd Carroll for
24 the Altrad defendants. I think so. If we come
25 back at 1:45. Is that your question?

1 (A lunch recess transpired.)
2 - - -

3 MR. BALBER: All right. Ladies and
4 gentlemen, come to order.

5 Let me ask you this. You know, we've done
6 that first part of the agenda on the Isabella
7 Park matter, and I just put that note that there
8 were things filed in Tibbs that related to the
9 Isabella Park case. That's because the
10 contentions of Altrad and certain others about
11 the receiverships tee off of Park and then, of
12 course, also have some other arguments that are
13 pertinent to Tibbs itself.

14 So I'm assuming that you're going to cover
15 those things in your presentation in Tibbs; am I
16 right?

17 MR. CARROLL: Your Honor, yeah, we're going
18 to cover all the Park issues and the Tibbs
19 issues at once.

20 THE COURT: Good.

21 MR. CARROLL: If that's okay with you.

22 THE COURT: Sure. Absolutely. All right.
23 I kind of was hoping that's the way it would go.
24 It just works a little bit better that way.

25 Let me just say to begin with, if the

1 parities feel that they need more time than what
2 is this day, I'm certainly willing to come back.
3 So please don't feel like you have got to be
4 rushed in making the kind of record you want.

5 We know we're making a record that won't
6 stop with me. So I want to be sure that you
7 have in the record the things that you would
8 like to have there.

9 Whether or not I agree with the pertinence,
10 or whether or not I agree with your status as an
11 entitled party or whatnot, I want everybody to
12 be able to get in the record what they want to
13 get in. So please understand I'm not
14 restricting you at all in that regard.

15 All right. So we look at the first thing
16 in the Tibbs, and it's Anglo American, De Beers,
17 et cetera's, Motion to Dismiss for Lack of
18 Subject Matter Jurisdiction, the Receiver's
19 Memorandum in Opposition, Anglo American support
20 or the memos in support of motions to dissolve
21 the Cape receivership and dismiss the
22 third-party plaintiff, Receiver's opposition,
23 and then of course replies.

24 So, to me, there's not a whole lot of
25 difference between dismissing the receivership

1 and the third-party complaint and dissolving the
2 receivership and dismissing the third-party
3 plaintiff's claims, but you all decide how you
4 want to do that. So with that.

5 MR. BALBER: It's up to you, Your Honor.
6 But I'm happy to go first on behalf of Anglo
7 American and De Beers.

8 THE COURT: Certainly. Certainly. In any
9 event, you do that. I'm just trying to figure
10 out whether both of those things mirror parts of
11 each other. So I'm not restricting you if you
12 want to cover both of them. However you want to
13 do it is what I'm saying.

14 MR. BALBER: Thank you, Judge. I think
15 they are all intertwined, and I will address all
16 of my points at least at one time. So thank
17 you.

18 THE COURT: For the record, introduce
19 yourself.

20 MR. BALBER: Yes, of course, Your Honor.
21 Scott Balber on behalf of the Anglo
22 American and De Beers defendants.

23 As a threshold matter, Your Honor, I just
24 want to thank you for adjourning from yesterday
25 to today so I could have the extra vacation day.

1 My wife is a little suspicious as to why I came
2 to visit with you instead of being on vacation,
3 but she'll get over it, Judge.

4 THE COURT: She will. Even husbands get
5 over it sometimes.

6 MR. BALBER: So first of all, Your Honor, I
7 just want to refresh on who we are, who my
8 clients are. I feel I need to do that because
9 there have been some allusions to these parties
10 and these guys, I just want to refresh on who we
11 actually are.

12 So we are a publicly-traded company in the
13 United Kingdom. My clients mine diamonds,
14 platinum, and copper. We're not an insurance
15 company. We've never mined or sold asbestos in
16 South Carolina or anywhere else.

17 We are in this case, I believe, because at
18 one point in time, a number of decades ago, one
19 of my client entities was a minority shareholder
20 in Charter, which was a minority shareholder in
21 Cape.

22 And that's our nexus to these facts. Never
23 a majority interest, only a minority interest.
24 We've cooperated fully in discovery. We
25 produced documents. We provided witnesses for

1 depositions. Already have proffered three
2 senior executives for depositions in this case.

3 And, again, just to distinguish ourselves,
4 we have not been part of any UK litigation, and
5 I certainly don't believe we've made any attacks
6 on plaintiffs or Mr. Protopapas or plaintiff's
7 counsel. I just wanted to clear all that up
8 first.

9 So moving to why we're here today,
10 Your Honor, and the Supreme Court's June 26th
11 order and Welch.

12 One principle, which I think is crystal
13 clear, is there must be an appointment order for
14 the receiver entered in this case. And I know
15 that we collectively did something
16 unprecedented, which is we broke the electronic
17 docket with the number of filings in this case.

18 And you know what you will not find in that
19 massive, broken electronic docket? You will not
20 find the entry of an appointment order vis-a-vis
21 the receiver in this case. It did not happen.

22 And therefore, there could be and have not
23 been -- could not have been and were not any
24 specific findings of fact or conclusions of law
25 about the appropriateness of a receivership

1 being entered in this case.

2 There is no evidence that Cape was
3 dissolved, and, in fact, we know Cape was not
4 dissolved. Cape continues to be an active,
5 living company in the United Kingdom. And I
6 know Ms. McVey said that in her good faith
7 belief when she sought the Park appointment
8 order was that Cape was defunct and had been
9 dissolved.

10 All I had to do, Your Honor, is go on the
11 company's house register in the UK, publicly
12 available, and search for Cape. And I found
13 sure enough, Cape remains a viable company today
14 and was so in 2024, 2023, 2022 and 2021.

15 We have a copy of the printout from the
16 Cape Intermediate Holdings Company house
17 register in the UK. I'm happy to share it with
18 counsel and the court.

19 THE COURT: Certainly. That would be well.

20 MR. BALBER: I will do that, Your Honor.

21 There's also no evidence that Cape is now
22 or has been insolvent. And we know that from
23 the receiver's own filings.

24 I believe it was Exhibit 24 of the
25 receiver's filings in which the receiver -- I'm

1 sorry, the receiver's Motion to Confirm, Exhibit
2 24, page 2, reflects that for the fiscal year
3 ending in August 2025, I believe -- I'm sorry,
4 August 2024, Cape had a profit of more than
5 25 million pounds. Not insolvent, not
6 dissolved, still in existence.

7 There's also no evidence of any in-state,
8 South Carolina assets that may be dissipated.
9 In fact, again, the receiver has stated that any
10 insurance that Cape may have had in
11 South Carolina or elsewhere was exhausted in
12 1978. That was in his report to the court from
13 a number of weeks ago.

14 Now, there's also no evidence of any
15 misconduct in this litigation before this court
16 by Cape.

17 Now, I heard Ms. McVey and Mr. Lay talk
18 about the things that Cape may have done
19 historically, and I can't really comment on that
20 except to say there was no admissible evidence.
21 They're from many decades ago. It was triple
22 levels of hearsay. And none of the things that
23 Ms. McVey or Mr. Lay claim that Cape did was
24 done before this court in this case. Unlike
25 what happened with regard to Atlas Turner and

1 Welch.

2 Now, the absence of an appointment order in
3 this case, vis-a-vis the receiver, means that
4 Cape was never served with the complaint. No
5 dispute about that. We know that
6 Mr. Protopapas, in his capacity as receiver for
7 Cape, accepted service of the complaint. That
8 deprived Cape of service and therefore due
9 process.

10 Now, I get that everybody is of the belief,
11 and it may be true, that Cape has engaged in all
12 this misconduct and has repeatedly defaulted for
13 many years and many jurisdictions and the like.
14 It doesn't deprive them of due process
15 entitlement to be served.

16 I said this last time and I'm going to say
17 it again, both because I like it and because
18 it's true, but due process is not reserved for
19 the good guys. You get due process whether
20 you're a good guy, a bad guy, or something else.
21 And Cape was deprived of due process in this
22 case because it was not served.

23 Now, that is not curable, Judge, because
24 everything that happened since then is a nullity
25 since Cape was not given due process and the

1 opportunity to respond.

2 And I analogize it to a criminal defendant
3 who has engaged in many crimes over many years.
4 Do they still get a trial? Yes, they do.

5 It's not good enough to say Mr. Jones or
6 Ms. Smith did bad things for many years and,
7 therefore, why bother giving them a trial? Due
8 process demands they get a trial in the case at
9 issue, and Cape was entitled to be served in
10 this case. They were not.

11 Now, to the extent the receiver and
12 Plaintiff's counsel are relying on the Park
13 order, I am not going to reiterate Mr. Sawyer's
14 points. I will incorporate them by reference,
15 if that's okay with Your Honor, and we certainly
16 agree with them.

17 Because the problems with Park, to the
18 extent Park is being relied on here, bleed into
19 this case. Not only were there all of these
20 incurable infirmities in the Park order, again,
21 that Mr. Sawyer alluded to, and I believe
22 Mr. Carroll will address as well, and, again,
23 which we incorporate by reference.

24 The order itself is grossly overbroad. It
25 does not comply with what the Supreme Court has

1 said is required under Welch. It allowed the
2 receiver in this case, in the Tibbs case, to
3 take action that is not permissible. And
4 there's a long list of things that have happened
5 in this case that the receiver has done because
6 of the breadth of the Park order that he's
7 relying upon that are improper.

8 And I'm going to list the laundry list of
9 things that happen, which in our view intrude
10 upon the purview of Cape's board, invade the
11 board room, and therefore are improper under
12 Welch.

13 He accepted service of the Tibbs lawsuit
14 against Cape. The receiver filed an answer on
15 behalf of Cape. The receiver waived Cape's
16 jurisdictional and merit defenses. The receiver
17 confessed Cape's liability. The receiver
18 entered into a tolling agreement with
19 Plaintiff's counsel. He sought to pierce the
20 corporate veil of Cape. He asserted third-party
21 claims.

22 He deprived Cape's documents. Many of
23 the documents that Ms. McVey alluded to, that
24 were part of her submission in Park, are
25 deprived Cape documents where the

1 attorney-client privilege was waived.

2 They have taken the position they're in a
3 common interest with their litigation
4 adversaries, the plaintiffs in Tibbs and the
5 plaintiffs in Park. They have appointed counsel
6 on Cape's behalf, and they sought the removal of
7 and sanctions of Cape's own lawyers.

8 These things are all things that are
9 reserved exclusively for the board of directors
10 and management of Cape, which, again, remains an
11 operative entity.

12 Now, one thing that struck me when we were
13 in front of Your Honor a couple of weeks ago,
14 which I want to come back to. And I don't
15 purport to know what Your Honor was thinking,
16 but I would like to take a guess and try to
17 address it.

18 Your Honor knows far more about
19 receiverships on this asbestos docket than I
20 will ever know and I could possibly learn. Let
21 me accept that fact. And I know Your Honor has
22 been instrumental in orchestrating the effective
23 use of receiverships on this docket for many
24 years.

25 And I think, again, not to be presumptuous,

1 that Your Honor had some discomfort with some of
2 the arguments that the defendants were making.
3 And I think, and Your Honor suggested this on
4 several occasions, that you stated and believed
5 this has worked for many years in these
6 receiverships.

7 Why is what we're doing now different?
8 What is problematic about this receivership in
9 Tibbs that has been sustained by the Supreme
10 Court, recognized by this court, repeatedly for
11 many years?

12 So what I did, my team did, I should say,
13 I'm not going to take credit for it, we looked
14 back and we tried to identify all of the
15 receiverships on the asbestos docket. We
16 believe there have been 21 of them. And I'd
17 like to explain why those 21 are different than
18 this one and why this one, the Tibbs
19 receivership, is unprecedented, and I
20 respectfully submit in a fundamentally flawed
21 way.

22 So 18 -- and I'm going to give you the list
23 after I make the point, if that's okay.

24 THE COURT: I'm aware.

25 MR. BALBER: I'm sure you can cite them

1 chapter and verse. But I will do it anyway for
2 the record, if that's okay, Your Honor.

3 THE COURT: It's perfectly okay, but I'm
4 tracking.

5 MR. BALBER: Thank you, Judge.

6 So 18 of the 21 receiverships on the docket
7 involve dissolved or defunct entities. Again,
8 not Cape. As I said a few minutes ago, Cape was
9 at the time the Park order was entered, at the
10 time that Tibbs case was initiated, and today, a
11 living, breathing entity, continues to be
12 registered in the UK corporate system. Not
13 dissolved or defunct.

14 The other three, which, again, I'll
15 enumerate in a second, the other three
16 receiverships on the asbestos docket involve
17 entities that were solvent, that were still in
18 existence, but for which there was evidence of a
19 risk of dissipating in-state assets. Neither of
20 those situations is applicable to Tibbs or, I
21 would submit, Park.

22 Let me read for the record the 18 that
23 involve the dissolved defunct entities. If I
24 missed one, I have no doubt Your Honor will
25 correct me. And if I misstated it, I say the

1 same thing. I'll do it quickly just for sake of
2 brevity.

3 The first one is Beaty Investments, Inc.,
4 formerly known as Guy Beaty Inc., B-E-A-T-Y.

5 THE COURT: Beaty.

6 MR. BALBER: Beaty. I knew it, Judge.
7 Thank you. I knew you would correct me if I was
8 wrong. I appreciate.

9 Covil Corporation, C-O-V-I-L; Davis
10 Mechanical Contractors, Inc.; Flame Refractories
11 Inc./United Construction Company of Rome, Inc.;
12 General Boiler Casing Company, Inc.; Great
13 Barrier Insulation Company; Heat and Frost
14 Insulation Company, Inc.; Hefco, H-E-F-C-O,
15 Inc.; J&L Insulation, Inc.; J.R. Deans Company,
16 Inc.; Payne & Keller Company; Piedmont
17 Insulation, Inc.; Pipe and Boiler Insulation,
18 Inc., formerly known as Carolina Industrial
19 Insulating Company, I'm sorry, Windup Limited.

20 Presnell, P-R-E-S-N-E-L-L, Insulation
21 Company, Inc.; Southern Insulation, Inc.;
22 Stafford Insulation Company; Standard Insulation
23 Company of North Carolina, Inc.; and Starr Davis
24 Company, Inc., and Starr Davis Company of
25 South Carolina, Inc.

1 Those are the 18 that were defunct or
2 dissolved at the time the receivership was
3 formed.

4 The three involving viable companies with
5 risk of dissipation of in-state assets were
6 Asbestos Corporation Limited, Atlas Turner,
7 Whittaker Clark & Daniel. And the last one, by
8 the way, Whittaker Clark & Daniel was a post
9 judgment receivership appointment, but I
10 included it anyway.

11 Those are the 21, Judge. Not one of them
12 involved a viable, vibrant corporation that
13 lacked, A, in-state South Carolina assets, let
14 alone in-state South Carolina assets that were
15 at risk of being dissipated and the process
16 being dissipated.

17 So this is a unique situation where,
18 Your Honor, we've heard quite a bit today
19 already. You'll hear some more about why this
20 is a failed receivership. Why this should not
21 be recognized.

22 And I believe Your Honor can continue to
23 utilize the receivership process in the way
24 you've done it in the past 21 receiverships and
25 in the future receiverships where you have,

1 again, either defunct entity or a risk of
2 dissipation -- a material risk of dissipation of
3 in-state assets.

4 That's all I have, Your Honor. Happy to
5 answer any questions.

6 THE COURT: Thank you, Mr. Balber. That's
7 a good summary.

8 Let me ask you this: Just put yourself in
9 the Court's shoes for a minute. If you got a
10 defendant who won't answer, not even to say what
11 many people say, what other folks in this case
12 have said, which is my answer is I'm not subject
13 to your jurisdiction, or my answer is I'm not
14 appropriately in this case because the plaintiff
15 has no valid claim against me or a myriad of
16 things that indicate a challenge to the Court's
17 authority to have that entity appear.

18 Then, of course, the Court knows what it's
19 dealing with. How does the Court respond when
20 you've got a company that absolutely defies and
21 instructs even its insureds to defy the Court's
22 authority?

23 And I'm not asking you to give away
24 anything or concede to anything. I understand
25 your position, and it's a well-presented one and

1 an honestly held view on the part of your
2 client. But what does a Court do in that
3 situation?

4 MR. BALBER: Thank you for the question,
5 Your Honor. I'll put it this way. Step one --
6 and I'm going to lay it out how I see it if I
7 were in your shoes, which I am not and will
8 never be.

9 Step one, the plaintiff in the lawsuit, the
10 injured plaintiff, files the complaint and
11 serves the defendant. Step one. That step has
12 not happened.

13 Step two, that defendant either appears or
14 not. I know in your hypothetical, Judge, that
15 defendant does not appear and they default.

16 Step three, the plaintiff, then, either
17 seeks a default judgment. And that's clean and
18 that's easy. We all know how that works. I
19 know Ms. McVey articulated an insurance-related
20 reason why not to do that. But that is
21 certainly inevitable. Obtain a default
22 judgment, have a receiver appointed post
23 judgment, very frequent, very common, and have
24 that post judgment appointed receiver seek to
25 enforce the judgment and collect assets on

1 behalf of the plaintiff.

2 Alternative is the plaintiff, again, in
3 this case with Mr. Tibbs, Mr. and Mrs. Tibbs,
4 they then come to Your Honor. Your Honor, I
5 served Cape, or whoever the defendant may be,
6 they have not appeared. Now I'm Mr. Tibbs and
7 making a motion to you, Your Honor, to appoint a
8 receiver.

9 Your Honor then follows through with a
10 proper finding of facts and conclusions of law.
11 Your Honor appoints a receiver in accordance
12 with the statute. That imposes certain
13 obligations on to Tibbs, as Your Honor is aware,
14 post a bond, be liable if it's determined that
15 there's no receivership, and you're off to the
16 races.

17 But none of that happened here, Your Honor.
18 So I am not suggesting, and I would not suggest,
19 that there is no mechanism for an injured party
20 or an aggrieved court that feels like somebody
21 is thumbing their nose at the court to find a
22 remedy. But it has to be done the right way.
23 And what I've articulated is the only right way
24 to do it.

25 Again, Mr. Sawyer said this, and I'm going

1 to reiterate it, it's not Your Honor's fault
2 that we are where we are. I think Your Honor
3 relied on statements that were I think made in
4 good faith but end up being wrong about certain
5 aspects of the court receivership.

6 And now we're at a Tibbs situation that is
7 impregnated by the Park situation. It's the
8 fruit of the poisonous tree. And now the whole
9 thing is flawed and we have to go back to the
10 beginning or not.

11 But what's happened here is not sustainable
12 because it is not abided by due process or the
13 receivership rules or what I understand the
14 Supreme Court to have asked to be done.

15 I'm happy to answer any more questions.

16 THE COURT: Very good. Thank you, sir.

17 MR. BALBER: Thank you for your time,
18 Your Honor. And I do have the company house
19 listing, which I don't know how you would like
20 me to offer it. May I approach and give you
21 that?

22 THE COURT: Yes, of course.

23 And, Madam Court Reporter, Mr. Balber is
24 giving the other side a copy.

25 And if you will give the court reporter a

1 copy and that will be Court's Exhibit 1. It's
2 in the record.

3 MR. BALBER: Thank you, Your Honor.

4 - - -

5 (COURT'S EXHIBIT NUMBER 1, Cape
6 Intermediate Holdings Limited House Register,
7 was marked for identification.)

8 - - -

9 THE COURT: Now, what's going to happen
10 next? Do you want to continue your side?

11 MR. CARROLL: Do you want to finish us off?

12 THE COURT: I think that's an excellent --
13 let's get the complete argument out there, and
14 then I will turn it to the other side.

15 MR. CARROLL: Yes, ma'am. Thank you.
16 Good afternoon, Chief Justice Toal.

17 THE COURT: Yes, sir.

18 MR. CARROLL: May it please the Court.
19 Todd Carroll on behalf of the Altrad defendants
20 in the Tibbs case.

21 Your Honor, I appreciate you giving us some
22 time. I appreciate the way you're
23 systematically working through this.

24 I do not intend to replot all of the ground
25 that my friends on the -- Mr. Sawyer and

1 Mr. Balber, I don't intend the replot all that
2 ground. I do want to incorporate by reference
3 what Mr. Sawyer said with regard to the myriad
4 of problems with the Park receivership
5 appointment. And I want the record to be
6 crystal clear on this.

7 At the time the appointment was entered, it
8 was a nullity. The estate was closed. There's
9 no dispute about that. There did not exist an
10 entity that could have even asked for that order
11 to be entered.

12 I want -- I do diverge with Mr. Sawyer on
13 one point, and I want to make sure this is in
14 the record. So, Your Honor, if I may approach,
15 this is a compilation of some exhibits that
16 we've already filed. But I want to mark, Your
17 Honor, do this a little systematically just so
18 it's clear what we're talking about.

19 - - -

20 (COURT'S EXHIBIT NUMBER 2,
21 DESCRIPTION , was marked for
22 identification.)

23 - - -

24 THE COURT: Mr. Carroll hands to the Court
25 an order on Plaintiff's Motion to Appoint

1 Receiver.

2 MR. CARROLL: Well, this isn't an order,
3 Your Honor. This is Mr. Park's application to
4 open the estate.

5 THE COURT: Well, I was trying to read all
6 these documents at one time.

7 MR. CARROLL: Yes, ma'am, of course.

8 THE COURT: Let me put them in order here.

9 Mr. Carroll hands up Plaintiff's Motion for
10 the Appointment of a Receiver. July the 28th,
11 2023.

12 MR. CARROLL: No, ma'am.

13 THE COURT: Oh, it's these packets?

14 I'm sorry, Mr. Carroll. You're handing me
15 something that I've seen before, of course.
16 This was an exhibit to your argument regarding
17 this matter, and it is represented to be a copy
18 of the estate file in Park. It ends with a
19 document filed March of 2022.

20 There has, of course, been other activity
21 in the file since then, but this represents the
22 activity from June 2021, when the estate was
23 filed, until --

24 MR. CARROLL: Yes, ma'am.

25 THE COURT: -- March of '22. March 18,

1 2022, when the estate was closed.

2 MR. CARROLL: That's right. Your Honor,
3 there is one document in there that has my name
4 at the top that's not yet in the record. It is
5 now, and we'll file it later on in the public
6 index. It's a calendar appointment for
7 mediation in the Park case. It should be the
8 third stapled document.

9 It looks like this.

10 THE COURT: I have it. I have it.

11 MR. CARROLL: No, ma'am.

12 THE COURT: Not yet. Yes. All right.

13 Mr. Carroll is drawing my attention to a
14 document labeled Todd Carroll dated May the
15 24th, 2022.

16 MR. CARROLL: Yes, ma'am.

17 THE COURT: And it is memorandum of a Zoom
18 conversation.

19 MR. CARROLL: Well, it's a calendar
20 appointment for a Zoom conference.

21 And, Your Honor, let me walk you through
22 these documents.

23 THE COURT: All right. Okay. I've got
24 them in the order you gave them to me.

25 MR. CARROLL: The top document is what

1 Mr. Sawyer referred to as an oddity. And this
2 is where he and I diverge a little bit because
3 Mr. Sawyer talked about he gave Your Honor a big
4 argument about judicial estoppel.

5 And he said, Look, Mr. Park has made
6 representations to multiple courts. His counsel
7 told this court in June of '22 that his case was
8 fully resolved. He went to the probate court
9 the next business day, told probate Judge
10 Caldwell that his time as a personal
11 representative should come to an end because he
12 had done all of his work. And he asked Judge
13 Caldwell to terminate his appointment and close
14 the estate.

15 And Judge Caldwell did. She took him at
16 his word and she granted his motion.

17 Mr. Sawyer pointed out that when Mr. Park
18 opened the estate, he filled out this document.
19 And on the third page, questions 11C and 11D
20 asks specifically, "Are you seeking appointment
21 as personal representative in order to pursue
22 civil litigation on behalf of the decedent's
23 estate? Is there a civil litigation attorney?"

24 And of course at the time that he answered
25 this question, the Park case already existed.

1 It had already been filed in Your Honor's court.
2 Yet Mr. Park told the probate court no.

3 Question 11D: "At the time of decedent's
4 death was he or she involved in any pending
5 civil litigation? Is there a civil litigation
6 attorney?"

7 Again, we know the answer is yes because
8 the Park case already existed in front of
9 Your Honor. Yet Mr. Park told the probate court
10 and the creditors of the estate and his
11 co-beneficiaries and presumably his probate
12 attorney, he told them no.

13 Then that was in June of '21. Mr. Park
14 then gets his personal representative
15 appointment from the probate court, and he comes
16 back to your court.

17 He then, in May, there were three -- there
18 were three beneficiaries of this estate,
19 Your Honor. There's Keith Park, who became the
20 personal representative. He had two siblings,
21 Alistair and Fiona. One of them lives in
22 Greenville. The other lives in Texas.

23 On May 21st, Fiona, Fiona Wiley, signs a
24 receipt and release. It's witnessed. She
25 acknowledges that she has received all she's

1 supposed to get from the estate, and she
2 releases -- quote, releases and forever
3 discharges the estate and the personal
4 representative from any and all rights and
5 claims which the undersigned may have relating
6 to the estate. Ms. Wiley signed that on
7 May 21st, 2022.

8 The brother, Alistair Park, signs the exact
9 same form, making the exact same
10 representations, containing the exact same
11 releases on May 22nd of 2022.

12 Now let me tell you why that strikes me as
13 something that ought to be a concern for the
14 court in the context of judicial estoppel.

15 Keith Park went to the probate court in
16 Spartanburg and told that judge, I need you to
17 open this estate, but I'm not looking to get
18 involved in any civil litigation. And, in fact,
19 there isn't any civil litigation regarding the
20 decedent.

21 That's not true. But that was his
22 representation to that court. And anybody else
23 who looked at the probate file, including
24 creditors of the estate, potential creditors of
25 the estate, and his co-beneficiaries.

1 In May of '22, May 21st and 22nd of '22,
2 the two other co-beneficiaries executed releases
3 that were witnessed that forever released any
4 claim they might ever have against the estate or
5 against the personal representative.

6 Then -- and this is the new document that
7 I've added, that I was trying to get Your Honor
8 to find in the packet -- the Park case is
9 mediated with Tom Wills, who is the regular
10 mediator for these asbestos cases. Mr. Wills
11 mediated the Park case on May 24th of 2022.

12 And that's what this Zoom meeting
13 appointment is that I put in the record.

14 That time -- the date and time of that
15 meeting -- of the mediation was announced on May
16 the 19th of 2022.

17 So between May 19th, when the mediation was
18 announced, and May 24th, when the mediation
19 actually took place, Mr. Park's two
20 co-beneficiaries released any interest they may
21 ever have in this estate, and they released any
22 claim they may ever have against the personal
23 representative.

24 Then the case is mediated. And then the
25 story picks up, Your Honor. You know on June

1 the 3rd, Ms. McVey represented to the court that
2 the Park case and the Garrin case were both
3 fully resolved.

4 THE COURT: Well, Mr. Park himself, also on
5 June 6th, 2022, signed a release, correct?

6 MR. CARROLL: Yes, ma'am. Yes, he signed a
7 release as well.

8 THE COURT: This is not something he pulled
9 over on them. All three of them signed a
10 release that was filed with the estate papers.

11 MR. CARROLL: All three filed the release,
12 but, Your Honor, the timing, again, we're
13 talking about judicial estoppel, the timing
14 matters. The co-beneficiaries, who, I don't
15 know if Alistair Park and Fiona Wiley even know
16 this case exists. They certainly wouldn't learn
17 of it by looking at the probate file because
18 their brother, when he applied to open the
19 estate and be named as the personal
20 representative, told the Spartanburg probate
21 court --

22 THE COURT: I get that already.

23 MR. CARROLL: I understand. But the timing
24 of them releasing their claims comes right
25 before the money actually comes in for the case.

1 They release it days before the mediation.

2 Then he -- Mr. Keith Park releases his
3 future interest in the estate after the
4 mediation. And that he releases his the same
5 time he goes back to the Spartanburg County
6 probate court and says terminate my appointment,
7 close the estate, my work here is done.

8 And the last document in that packet that I
9 handed up, Your Honor, as far as we can tell,
10 the only inventory that was filed with the
11 probate court, it does not appear to make any
12 mention of this case in Richland County.

13 There is a Tab C.

14 THE COURT: Spartanburg County.

15 MR. CARROLL: No -- yes, ma'am. What I'm
16 saying is there's no filing in the probate court
17 in Spartanburg that in any way references the
18 Richland County wrongful death/survival act.

19 THE COURT: Yeah.

20 MR. CARROLL: Even category C, which is on
21 page 2 of the inventory, is called -- the
22 heading says Cash, Bank Accounts, Notes
23 Receivable. But then in the non-bold type it
24 lists what you're supposed to put in there and
25 that includes Survival Action Proceeds.

1 And all Mr. Park represented to the probate
2 court was that there a little less than \$28,000
3 cash on hand. He doesn't reference anything
4 about survival action proceeds. And this was
5 filed in March of '22 before the Park case was
6 mediated.

7 So, again, if we're talking about judicial
8 estoppel, I want the record to be crystal clear
9 on this, because the Supreme Court has
10 specifically asked what's going on in Park? So
11 if the Supreme Court ever reads this record, I
12 want them to know loud and clear, there's not
13 one document filed in the Spartanburg County
14 probate court that in any way references this
15 case in Richland County -- this tort case in
16 Richland County.

17 South Carolina Code 15-51-42 puts it on the
18 personal representative to tell the probate
19 court about the survival -- survival actions and
20 survival settlements. There's nothing in the
21 probate court about it.

22 And as Mr. Sawyer mentioned when Mr. Park's
23 probate attorney, which is not Ms. McVey, a
24 different lawyer up in Spartanburg, when
25 Mr. Park's probate lawyer filed a motion to have

1 him reappointed and have a new estate created to
2 be administered, they didn't mention in that
3 filing the Park case in Richland County. They
4 said meet Mr. Park, representative. I want to
5 be reappointed for possible litigation or
6 potential civil litigation. Again, not
7 referencing this case.

8 THE COURT: Let me see if I understand what
9 your argument is. You're arguing that the --
10 what took place in the estate case operates as a
11 judicial estoppel against what?

12 MR. CARROLL: Well, I think that
13 Mr. Park -- I'm not sure Mr. Park had authority
14 to be the personal representative in the tort
15 case that was in front of you in the first
16 place. Because his appointment out of
17 Spartanburg came based on a statement to the
18 Spartanburg County probate court that he was not
19 going to try to get involved in any civil
20 litigation on behalf of the decedent because
21 there was no civil litigation on behalf of the
22 decedent.

23 Now, I'm not trying to undo any kind of
24 settlements that he's entered or any dismissals
25 that may have already taken place.

1 THE COURT: You could have fooled me.
2 Arguing judicial estoppel. But I'm listening.

3 MR. CARROLL: Well, but what I am saying is
4 not only are the legal impediments of the
5 action -- the receivership order was a nullity
6 when it was entered. And that is an incurable
7 problem because you can't -- the Rule 17 --

8 THE COURT: I understand what you're
9 arguing with respect to the receivership. But
10 when you start arguing judicial estoppel with
11 respect to the estate, that's where I'm wanting
12 to understand what you're arguing there.

13 What does the activity in the estate, how
14 does it judicially estop something? And what is
15 the something it judicially estops?

16 MR. CARROLL: As I understand it, from the
17 receiver and from Ms. McVey, they want
18 Your Honor to say what happened in March of 2023
19 in this court was just fine. They want -- they
20 want to nunc pro tunc all of the many, many
21 flaws and all of the jurisdictional defects by
22 saying, well, he got reappointed so it's all
23 good.

24 And what I'm saying is his initial
25 appointment all the way to the current

1 reappointment of a new estate never mentions
2 this case.

3 THE COURT: I'm asking a real simple
4 question, Mr. Carroll, and that is are you
5 claiming that -- that, A, you've got the
6 standing? And B, are making the argument that
7 this estate is somehow judicially estopped from
8 being created and moving forward?

9 MR. CARROLL: I'm saying that I think --

10 THE COURT: Just answer me that question
11 first. I don't mind whatever else you say. I
12 want to know, first of all, whether what you're
13 arguing now is an -- is a direct attack on the
14 existence of the estate from the git-go and its
15 operation.

16 MR. CARROLL: I'm not attacking the estate.
17 What I'm saying is that the punitive personal
18 representative's behavior in front of this court
19 should be judicially estopped because --

20 THE COURT: Well, what is the behavior of
21 his you want to be judicially estopped?

22 MR. CARROLL: The attempt -- the attempt to
23 stand here in August of 2025 and say, well,
24 whatever happened in March of '23 was okay.

25 THE COURT: Why does that concern you?

1 What you are really trying to do is say he
2 didn't have the authority or the lawsuit didn't
3 have the existence to allow the appointment of
4 the receiver. I get that argument.

5 MR. CARROLL: Sure.

6 THE COURT: But what I'm very concerned
7 about is this broader argument you're making
8 that this whole estate is somehow or another
9 acting ultra vires or is not properly in
10 existence. I don't think you've got the
11 standing to make that argument to begin with
12 because it has --

13 MR. CARROLL: That's right.

14 THE COURT: -- the broader issue of the
15 estate, how it operated, how it received,
16 whatever it received, whether those funds went
17 directly to beneficiaries or anything else about
18 it is not Altrad's concern.

19 MR. CARROLL: You're right, Your Honor.

20 THE COURT: That's all I want to do. I
21 want to stay within my lanes. I'm not a probate
22 judge either. Ponda is the probate judge up
23 there, and she can make the decisions if there's
24 some challenge in the probate court to his
25 authority.

1 But up here, all I've got is documents that
2 indicate the authority and then a claim that
3 stands on its own by you that the receiver was
4 not properly appointed.

5 I am -- I've got heartburn about you all
6 wanting to attack the whole operation of this
7 estate. I don't know how it was operated and
8 whether everything it did satisfied every nicety
9 of the law. But that's not something that's
10 before me right now. All I've got is a very
11 narrow question about the legitimacy of the
12 appointment of the receiver.

13 MR. CARROLL: Yes, ma'am.

14 THE COURT: And I want to keep it on that
15 basis. That's plenty enough to digest all by
16 itself.

17 MR. CARROLL: Understood. Yes, ma'am.

18 THE COURT: I'm not saying this in a
19 hostile way, but what I want to be sure we all
20 understand is there is nothing that's being
21 argued here in front of me today by you,
22 Mr. Balber, or anybody else that requests that
23 some action be taken with respect to the
24 legitimacy of this estate.

25 MR. CARROLL: No, ma'am. I'm simply

1 extrapolating on Mr. Sawyer talking about
2 judicial estoppel.

3 THE COURT: I know I had some heartburn
4 about that too. But I decided in light of all
5 the other things he was talking about, that
6 really that's a tangential issue to what he's
7 really saying.

8 MR. CARROLL: Sure.

9 THE COURT: Judicial estoppel is a loaded
10 term, a complex term, that can encompass a lot
11 of different things. And I certainly don't want
12 to get off on that tangent.

13 MR. CARROLL: Yes, ma'am.

14 THE COURT: Articles by me to the contrary
15 notwithstanding, I don't want to get into all of
16 that. That's way above my pay grade now.

17 MR. CARROLL: Oh, Your Honor, judicial
18 estoppel is not above your pay grade. You wrote
19 the opinion.

20 THE COURT: I've written a lot of opinions
21 and articles and everything else. I don't want
22 that to infect the legitimacy of this estate, is
23 what I'm telling you.

24 MR. CARROLL: I understand.

25 THE COURT: And I'm saying that unless I

1 hear differently, there's nothing I have heard
2 so far or have read in all of the many filings
3 that I have studied closely that would lead me
4 to believe that it is necessary to make any kind
5 of judgment about the legitimacy of this estate.
6 And I'm not going to do that.

7 MR. CARROLL: Your Honor, I'm not
8 challenging the legitimacy of the estate.

9 THE COURT: We're on the same page.

10 MR. CARROLL: What I am saying is that when
11 Mr. Park drives down I-26 from Spartanburg to
12 Richland County and comes in this court and
13 says, oh, yeah, the estate was closed in 2022,
14 and then my lawyer filed for a receivership in
15 2023, and I wasn't the PR, and the estate was
16 closed. And now I'm going to go back to
17 Spartanburg and get a new appointment --

18 THE COURT: We'll make -- we can make
19 decisions about what the effect is of reopening
20 the estate. I get that. But that's something
21 that's a very narrow issue, and I'm hearing both
22 sides of that.

23 MR. CARROLL: Yes, ma'am.

24 THE COURT: And I very open-minded about
25 it.

1 MR. CARROLL: I just think he's estopped
2 from going back up there, getting another order,
3 and coming down here saying whatever happened in
4 '23 --

5 THE COURT: That's where I cannot follow
6 that argument. The idea that a person who has
7 formerly been the administrator or the executor
8 of an estate is estopped to go back to the
9 probate court and request an opening of the
10 estate, I don't think it's in front of me. I
11 don't think it's appropriate that I rule on
12 that.

13 And I don't think that's -- you can attack
14 this with all the legitimacy on the basis of
15 good arguments you make about the order
16 appointing and whether it gets into Park or if
17 it's to be recognized in the subsequent Tibbs
18 suit. I get that.

19 MR. CARROLL: Sure.

20 THE COURT: That's all fair game. But I
21 can tell you that I'm very resistant to the idea
22 of characterizing anything that Mr. Park did to
23 reopen this estate or open it to begin with and
24 answer the questions in a way that doesn't
25 comport with the way we view it here as anything

1 that I need to review.

2 And I certainly do not think that I would
3 have the ability to rule that an individual who
4 was the former executor or personal
5 representative of an estate in Spartanburg is
6 estopped by anything from going back and
7 reopening. And I'm not going to do that.

8 MR. CARROLL: Very good, Your Honor. I
9 just want -- because the Supreme Court has asked
10 what is going on in Park? I want the record to
11 be clear on that.

12 THE COURT: That ain't going on in Park in
13 my view. I can answer a whole lot of other
14 questions about what's going on in Park, but I
15 am not disposed one bit to say that activity in
16 this case somehow estops what the probate judge
17 did in reopening this estate. That's an
18 argument --

19 MR. CARROLL: Your Honor --

20 THE COURT: The legitimacy of the reopening
21 of the estate or how it affects your case is
22 something you can argue. But the concept that
23 anything that was done in this case estops
24 someone from going to a duly authorized probate
25 judge and making showings to that probate judge

1 and reopening the estate, I don't see judicial
2 estoppel as being something I would rule on in
3 that.

4 MR. CARROLL: Your Honor, so I'm actually
5 arguing the exact opposite. I'm not arguing
6 anything happened here that should estop
7 Mr. Park in Spartanburg. I'm arguing the exact
8 opposite. I'm saying what he told the judge in
9 Spartanburg --

10 THE COURT: And I'm saying I don't have any
11 business in that judge's court and in that
12 judge's determination. That would be completely
13 wrong for me to sit here and say with the
14 advantage of what I know, Judge, he was estopped
15 from coming before you. That would be something
16 that judge could decide.

17 MR. CARROLL: Yes, ma'am. I understand.
18 And that's not my argument. But the simple fact
19 is, is that everything that's happening in the
20 Park case only -- can only happen if there was
21 actually any authority for Mr. Park and the
22 creation of the estate that comes out of
23 Spartanburg.

24 THE COURT: I can rule on the authority
25 thing, but I'm not going to rule on it on the

1 basis of judicial estoppel.

2 MR. CARROLL: Very good. Thank you for
3 letting me make my points on that.

4 THE COURT: Yes, sir. All right.

5 MR. CARROLL: I will also join I think
6 Mr. Balber and Mr. Sawyer on the service issues
7 with Cape. I know that the common retort to
8 that has been we've already decided that. Well,
9 Your Honor, the facts remain the same. There's
10 a single affidavit in the file that didn't exist
11 in March of '23 when the receivership
12 appointment order was entered.

13 That affidavit says I served the first
14 amended summons. And that's -- and then the
15 affiant shows us his cover letter. And the
16 cover letter says enclosed herewith is the First
17 Amended Summons. Full stop. And then it says
18 enclosures. And the only thing it says for
19 enclosures is First Amended Summons.

20 I understand when Ms. McVey was up here,
21 she was saying that, well, Mr. Park had
22 authority and the estate was still open when
23 Cape's answer was due. But what she didn't tell
24 you is when was Cape's answer due? And the
25 reason she didn't tell you is because there is

1 no date that Cape's was due.

2 It was never served -- there are three
3 complaints in this case. She can't tell you
4 which of those complaints were ever sent to any
5 Cape entity because the record is totally silent
6 on that.

7 The guy who did the service didn't identify
8 any pleading that he sent to any Cape entity.
9 And I understand that they say, well,
10 Your Honor, you've already decided that. You
11 know Rule 54 pointblank says until an order is
12 up on appeal, you can correct it.

13 And I would urge Your Honor to look
14 carefully at the evidence on this issue because
15 it is a -- without service, there's no personal
16 jurisdiction. You know, I don't know, I'm still
17 kind of puzzled why a South Carolina trial
18 court -- why the plaintiffs and the receiver are
19 insisting that a South Carolina trial court just
20 seize assets of a UK company for which there is
21 no evidence it has any personal jurisdiction
22 here in the first place.

23 But notwithstanding is the lack of
24 personal jurisdiction for Cape in
25 South Carolina, you can't even get to that

1 analysis without first having legitimate service
2 of process. The record is devoid of that
3 threshold point.

4 I know you've heard these arguments. I
5 want to remind you Rule 54 gives you the chance
6 to fix that. And that's the easiest rebuttal I
7 can think of to my friends on the other side's
8 retort that, well, you've already ruled on that.

9 THE COURT: Right.

10 MR. CARROLL: Your Honor, I feel like I
11 need to address some of the -- some of the
12 so-called moral fraud points.

13 THE COURT: Certainly.

14 MR. CARROLL: Ms. McVey gave you a pretty
15 fulsome presentation on that. I haven't heard
16 anybody really respond to the actual merits. I
17 will point out, as I frequently do, my clients
18 are Mr. Altrad and Altrad Investment Authority.

19 My clients, Altrad Investment Authority,
20 bought shares of Cape in 2017. They were
21 publicly available shares. Everything you've
22 heard about moral fraud and what was going on
23 with NAAC was all from the 1970s. So 40 years
24 before my client even had an ownership interest
25 in Cape.

1 Cape is a stand-alone company. There is
2 certainly no -- there's nothing in the record to
3 suggest otherwise.

4 But I want to address the moral fraud
5 points in two ways: First, Mr. Balber pointed
6 this out, and I would be remiss if I don't
7 reiterate. The Welch court specifically says
8 that the moral fraud that formed the basis of
9 the receivership appointment order that it
10 approved there was internal to the litigation in
11 South Carolina.

12 And I know Your Honor earlier this morning
13 said, well, yeah, but it was really looking at
14 the whole history -- the whole history. I
15 disagree. I disagree because -- and I'm looking
16 at my dog-eared copy of the advance sheets. I'm
17 sorry, I don't have the South Carolina Reporter
18 citation. I have the old fashioned -- the old
19 fashioned document.

20 THE COURT: So have I.

21 MR. CARROLL: But on page 25, Justice Hill
22 writes, "We conclude Atlas Turner conduct
23 justified the appointment of a receiver before
24 judgment."

25 Then he says, "First, Atlas Turner's

1 disregard of this court's discovery orders."
2 That was his first point. Your Honor issued
3 discovery orders. Atlas Turner didn't do
4 anything in response. Justice Hill and his
5 colleagues on the Supreme Court did not care for
6 that.

7 Then about halfway down the paragraph, it
8 says, second, Atlas Turner represented to the
9 trial court that it had no insurance assets in
10 the case. And Your Honor thought otherwise.
11 The Supreme Court thought otherwise.

12 It was the Atlas Turner's active --
13 seemingly active hiding of insurance in response
14 to the request to produce it. And it said I
15 don't have it. And the Supreme Court said that
16 that was -- that was the second point of moral
17 fraud.

18 What it didn't say is Atlas Turner sold
19 asbestos, and Atlas Turner is a foreign company.
20 It didn't say that that was moral fraud. It
21 said that the way that that company acted when
22 interacting with Your Honor was the proof of its
23 moral fraud.

24 There is, of course, nothing like that with
25 respect to Cape. Not in Park, not in Tibbs.

1 Cape was never served in Park. You just
2 heard me argue about that. And we definitely
3 know that Cape was never served in Tibbs because
4 the receiver filed -- Ms. McVey, at our last
5 hearing, said we served Cape through the
6 receiver in Tibbs.

7 And then in one of the receiver's filings
8 since that last hearing, he said that's a
9 nonissue. I accepted service on behalf of Cape.
10 Well, he's a nullity. He doesn't exist in
11 Tibbs.

12 The Supreme Court's order in Tibbs is
13 crystal clear on this. He can't be authorized
14 to do work outside the case in which an
15 appointment order is filed. There is no such
16 order in Tibbs. Without such an order, he
17 doesn't exist as a legal entity. How could he
18 possibly accept service of a complaint when he
19 doesn't exist in the first place?

20 Mr. Balber made that point, and I think it
21 is one worth reiterating.

22 Your Honor, the Welch case makes it clear
23 that basically everything that Ms. McVey and the
24 receiver presented as, quote, unquote, moral
25 fraud is simply not relevant to any analysis

1 that our Supreme Court has cosigned on. But I
2 will address their points head-on because what
3 they're doing is giving Your Honor a -- they're
4 giving you little drips and drabs of the
5 evidence that was presented to the courts in
6 England at trial in 1988 and again on appeal in
7 1990 in the Adams case.

8 Ms. McVey told you there was -- the moral
9 fraud in part was the Cape controlled NAAC's
10 finances. You heard that throughout her -- she
11 gave a presentation about half an hour. One her
12 main things over and over again, Cape controlled
13 NAAC's finances.

14 Well, the English Court of Appeals
15 issued -- they had -- they issued a lengthy
16 order rejecting all these arguments, but they
17 also had opinions with their order that
18 addressed these exact same factual allegations.

19 And in point 5 in the appendix, the English
20 Court of Appeals explained that NAAC carried on
21 its own business. It was its own thing. It
22 wasn't this puppet of Cape. NAAC ran its own
23 business.

24 In point 7, the Court said, quote, Each
25 corporate member was carrying out its own

1 well-defined commercial function for serving the
2 overall commercial purpose of mining and
3 marketing asbestos.

4 Point 13 is actually specific to this
5 notion of Cape controlled -- Cape controlled
6 NAAC's finances.

7 In point 13, the Court said Cape did not
8 interfere with day-to-day expenditures or with
9 particular borrowings by NAAC.

10 That's not me making it up. That's not me
11 cherry-picking some random document from 1978.
12 This is a court reviewing the evidence after a
13 34-day-long trial and 17-day-long appeal that
14 was highly adversarial. The receiver talks
15 about Adams. They blow off the Adams case by
16 acting like Cape went and just got that order.

17 Cape was the defendant. The plaintiff was
18 a group of 200 Americans who had default
19 judgments against Cape. And they had gone to
20 the United Kingdom to enforce those judgments.
21 And Cape said I wasn't in the United States.
22 Those judgments aren't enforceable against me.

23 They had this lengthy trial about is NAAC
24 the alter ego of Cape? Because NAAC is in the
25 United States. That's what that trial was

1 about. Because if -- and maybe in his most
2 recent filing, the receiver has this kind of
3 casual sentence that says in England they never
4 pierce the corporate veil. The principal always
5 stands apart from its subsidiary. That its law
6 is completely different than South Carolina.

7 Well, that's not true. We've given you the
8 Adams case. It's in the file. There's a
9 five-page discussion on page 539 through 544 of
10 the Adams case where they talk about English
11 corporate veil piercing, and it sounds
12 remarkably similar to ours in South Carolina and
13 just about every other western country and
14 jurisdictions that uses western jurisprudence.

15 Before Ms. McVey also said in addition to
16 controlling NAAC's finances, she said, hey, Cape
17 control NAAC's day-to-day operations. That's
18 all part of the moral fraud because Cape sold --
19 Cape mined asbestos and put asbestos in the
20 market, and it controlled NAAC, so moral fraud.

21 Well, that's point 11 of the English
22 appellate court's ruling.

23 And this is after -- after reviewing the
24 evidence, this is what the English appellate
25 court said. Nor did Dr. Gaze or any

1 representative of Cape, quote, run NAAC, close
2 quote, with reference to the internal affairs of
3 NAAC.

4 Such as -- pardon me, lower case i,
5 staff -- they did not run -- they did not
6 have -- run the internal affairs of NAAC, such
7 as the staff dealing with direct customers and
8 its own source of supply, such as U.S.
9 government stocks.

10 Roman numeral lower case ii, they did not
11 run NAAC's own office premises and warehouse
12 premises.

13 Iii, NAAC's arrangements for insurance.

14 Iv, NAAC's pension scheme.

15 V, formulation of NAAC's accounts.

16 And vi, NAAC's payment of U.S. taxes on
17 NAAC's profits.

18 This idea that Cape ran the day-to-day of
19 NAAC and therefore Cape was in the United
20 States, the Adams courts took the evidence that
21 Ms. McVey has given you and all the other
22 evidence before it, heard from witnesses
23 contemporaneous with all of this -- these goings
24 on and said, no, NAAC was a -- it was a
25 stand-alone subsidiary. It ran its own

1 business. It had its own contract. It paid its
2 own taxes. It had its own employees, had its
3 pension system. It had its own office space.
4 Had its own equipment. It's its own company.

5 That's the same analysis that a
6 South Carolina court would do here.

7 But my point is in Welch, in Tibbs, in
8 dozens of other cases from the South Carolina
9 Supreme Court, the Court hammers home the point
10 that receivers are rare and reserved for the
11 most extraordinary circumstances.

12 What the plaintiffs have brought to you and
13 the receiver has brought to you is their version
14 of a story that has been flatly rejected by a
15 trial court and an appellate court from 40 years
16 ago who heard the witnesses and reviewed the
17 evidence that they're asking you to review. And
18 they're asking you to just say, I don't care, I
19 don't care what this court said, I'm just going
20 to find that the evidence is what they are
21 trying to present it to you as.

22 I would suggest that that would be an
23 unprecedented departure from any kind of
24 receivership law. In particular, in light of
25 the Supreme Court's order in Welch and Tibbs to

1 reserve such an extraordinary remedy. And
2 again, the remedy they're asking you to do is to
3 put into receivership a company in the
4 United Kingdom that has no connection to
5 South Carolina. They don't have -- they can't
6 tell you a connection to South Carolina. Other
7 than they'll try to tell you there's NAAC.

8 But that ship has sailed. The train has
9 left the station. Those facts, that argument
10 has been thoroughly vetted and rejected.

11 And, you know, I've said this a couple of
12 times. I don't want this point to get lost in
13 my restitution of Adams. The people that are
14 making these arguments that I'm rebutting, they
15 didn't exist as a jural entity to even be making
16 these arguments.

17 The receiver doesn't exist in Tibbs. How
18 can he possibly come to this court and say moral
19 fraud, appoint me as a receiver in Tibbs. He
20 doesn't exist in Tibbs. Everything he says is a
21 brutum fulmen. He has -- he can't say anything
22 here because it doesn't exist here.

23 Cape can't be put in a receivership in
24 Tibbs because Cape hasn't been served with
25 anything in Tibbs. The Tibbs plaintiffs haven't

1 even tried to serve Cape in Tibbs. They named
2 Cape in their -- it's not in their caption, but
3 in the body of their pleading, they say Cape
4 or -- yeah, Cape PLC is a European entity and
5 its receiver is located at Beltline Boulevard in
6 Columbia, South Carolina. They identify Cape as
7 if it is the receiver in the body of their
8 pleadings. And they certainly haven't even made
9 CIHL a defendant in the Tibbs case.

10 So again, Your Honor, I made a lot of these
11 arguments last time. I'm going to sit down.
12 Unless Your Honor has any questions. But I do
13 want to address one thing that Ms. McVey pointed
14 out. She came up here, she had a color copy of
15 a book and said, oh, there goes Cape,
16 intimidating lawyers. Can you believe these
17 guys? Cape intimidates lawyers.

18 I have stood at this podium a half dozen
19 times, maybe more, in the five and a half years
20 since these receiverships have been existing in
21 these asbestos dockets, where I've had to
22 defend, myself, my colleagues, my clients
23 against sanctions motions that get filed against
24 me, my colleagues, and my clients for simply
25 arguing the law.

1 The Supreme Court still has another
2 sanctions motion against me and my clients that
3 it has not yet ruled on that the receiver has
4 brought against us. But my clients and my law
5 firm are not alone in this. Your Honor knows.

6 They have sued -- the receiver has sued
7 Winston and Strawn. They sued Locke Lord. You
8 mentioned it earlier. They sued Robert
9 Thackston, a lawyer at Nelson Mullins. The sued
10 the Fox Rothschild's firm. They got a
11 malpractice settlement from their own lawyer's
12 law firm now.

13 Your Honor, will recall back in Covil days,
14 Mr. Lay's firm was within the receiver's
15 crosshairs. This idea that the receiver is
16 being somehow intimidated by Cape is just
17 inconsistent with the record and inconsistent
18 went his consistent behavior over the last
19 five-plus years.

20 So I didn't --

21 THE COURT: There's been -- there's been a
22 lot of activity on both sides. I am still, as
23 the Supreme Court is, appalled at the English
24 court's imposition of over a million-dollar
25 award against the receiver in this case for

1 doing nothing more than being the receiver.

2 So there's a lot of excess on all sides in
3 this thing. And I think that's what the Supreme
4 Court wants to avoid in talking about these
5 matters on the merits.

6 MR. CARROLL: Sure. Yes, ma'am.

7 THE COURT: My heart does not bleed too
8 much for anybody in this case because there
9 isn't anybody that's gotten that kind of
10 judgment against them. Mr. Protopapas can't go
11 abroad at the present time because of these
12 filings, not just in England, but in France and
13 other places. So, you know, don't talk to me
14 about excessive conduct. I'm horrified about
15 any kind of attempt to attack lawyers
16 individually.

17 MR. CARROLL: I don't think anybody is --

18 THE COURT: Not just you and others, but it
19 goes very much for these rogue orders that
20 attempt to impose that kind of financial burden
21 on someone who has done nothing but try to be a
22 receiver but is taking actions they don't agree
23 with legally. There's a way to address that
24 without trying to imperil somebody financially.

25 MR. CARROLL: Your Honor, I think he's done

1 a whole lot more than just act as a receiver.
2 He has filed a complaint in which he is
3 pretending to be Cape PLC and is trying to
4 commit corporate sabotage as that company by
5 engaging in some self-piercing exercise.

6 THE COURT: That's a pejorative way of
7 characterizing it and another way of
8 characterizing it is he is acting per the orders
9 of this court appointing him as the receiver.
10 And if there's something wrong with that, this
11 court and the -- what I'm engaged in right now
12 is the perfect way to repair that.

13 MR. CARROLL: Yes, ma'am.

14 THE COURT: Because that deals with legal
15 issues that I can deal with, which is whether
16 the receiver was properly appointed. And I'm
17 going to decide those things on their merits.

18 But this idea that your status for your
19 client is somehow enhanced because you all have
20 been unfairly attacked and other lawyers in your
21 position have been unfairly attacked, I don't
22 like that on any side. Not on your side and
23 certainly not against Mr. Protopapas.

24 These issues are legal issues that can be
25 argued on the basis of who's right and who's

1 wrong about the law. But trying to punish the
2 lawyers or the receiver is, I think, way out of
3 bounds.

4 MR. CARROLL: Well, Your Honor, you will
5 note that we haven't filed a single thing in
6 this court asking for sanctions on anything in
7 the five-plus years we've been dealing with
8 this. I want that to be clear.

9 Also, with respect to whatever cost order
10 the court in England issued pursuing its loss,
11 the receiver was served with pleadings in that
12 case. He chose not to respond.

13 Now, they come to this court and say if
14 somebody behaves like that, that's moral fraud
15 and you should appoint a receiver over them.
16 But when they had a chance to appear in front of
17 a court and if the situation is as simple as
18 Your Honor says and they could have just gone
19 and said, look, I have this order. I'm doing
20 what I've been authorized to do. Well, he sure
21 should have said that, but he didn't. He
22 instead ignored it. And now there's a cost
23 order consistent with that country's loss.

24 THE COURT: All of that the pretty doggone
25 irrelevant to what I'm deciding.

MR. CARROLL: I agree.

THE COURT: And what I'm telling -- and I tell Mr. Protopapas and Ms. McVey and everybody else the same thing is I'm like the Supreme Court, I'm fed up with this idea that we ought to take into the account the injured feelings of anybody in this case about so-called personal attacks. What we ought to do is stay away from that.

MR. CARROLL: Your Honor, I could not agree more. And the only reason I brought it up was because this morning Ms. McVey was waving around a book and said that apparently she feels intimidated by Cape or somebody feels intimidated by Cape.

THE COURT: Well, let's move on to merits.

MR. CARROLL: Yes, ma'am. Well, I've said what I need to say on the merits. Unless you have any more questions, I'll have a seat.

THE COURT: I don't.

MR. CARROLL: Thank you, Judge.

THE COURT: Mr. Rawl.

MR. RAWL: Your Honor. May it please the Court.

I represent Charter, Consolidated Mining,

and ESAB Group. And, Your Honor, if I may, I would like to join the arguments that have been made today by Mr. Sawyer.

THE COURT: What he means is E-S-A-B.

MR. RAWL: I would like to join in the arguments that Mr. Sawyer made this morning in regard to the Park arguments and with regard to the Altrad counsel and the Anglo counsel that Your Honor just heard. That will shorten my comments substantially.

Initially, I wanted to ensure that my client is standing on personal jurisdiction and I make these arguments and do not intend to waive any personal jurisdiction.

And I apologize, I'm going to make a couple of points, you know, but not try to go through, you know, the whole arguments all over again.

With regard to the errors or the problems with the face of the Park appointment order, one thing I would like to add is that the Park order does not have on its face the amount of a bond that should be required to be paid should any of the entities for which the receiver is seeking their assets would be able to pay in order to terminate the receivership.

I cite all this in the brief, but the Supreme Court case states that that bond is -- the amount of that bond is not in the face of the order and that the order is aware of that issue.

THE COURT: And tell me a little bit more about what you all's argument is about a bond and how that bond works and what kind of -- what setting an amount of a bond would depend on. Nobody has argued that before me, yet you bring it up, so I want to hear from you on it.

MR. RAWL: I appreciate that. I have argued this before, Your Honor.

THE COURT: I'm talking about today in this proceeding.

MR. RAWL: Yes, Your Honor. The receivership statutes, the Section 10 talks about the different reasons why a receiver can be appointed. And in Section 20 and 30 it says who has to get notice of the receiver.

And then you get to Sections 50 and 60, ones which says that if the party that's holding the assets that are being sought to be put into the receivership pays a bond to the court of I believe it's two times the amount of the asset.

Then the receiver -- the order appointing receiver will not be entered or may not be entered.

The next section states that if before any receiver may be appointed under this statute, that the amount of a bond would have to be put into the order such that, you know, the parties could pay the bond at any time prior to prejudgment.

THE COURT: How is that going to practically work in a case like this? You've got an entity that's been served and won't respond. A receiver's been appointed. Let's not get into the intricacies about this, but in some kind of normal case, there's no attempt to attack the concept of using a receiver as a general matter specific to what happened in this particular case.

But let's say the receiver is regularly appointed. And what the receiver is appointed for is to look for potential insurance assets.

How in the heck -- and you've got insurance companies that say you don't have any ability to even serve a subpoena on me. I'm not telling you anything. Or I've been told by my company

1 not to even respond to you.

2 So how is a bond supposed to be set when
3 the receiver has not yet gotten information
4 about the assets available? And particularly
5 when there are insurance assets, which is the
6 main thing that is mostly sought in
7 receiverships is insurance assets. I mean, that
8 doesn't make any sense to me that an insurance
9 company can just never respond, hide behind the
10 idea that they don't have to respond or that
11 their information is not even subpoenaable in
12 this case, and yet a bond is supposed to be set?
13 You tell me how that works.

14 MR. RAWL: Yes, Your Honor. So initially
15 the bond would be --

16 THE COURT: Because you're saying the
17 receiver can't even be appointed until the bond
18 is set, and yet you hold the key as insurance
19 companies as to what the assets might be, you
20 sit there and say, oh, I can't possibly be
21 involved in this. So how does the bond work in
22 that kind of situation?

23 MR. RAWL: Your Honor, in this case, I do
24 not represent insurance carriers. I
25 represent -- this is a case where I represent

1 ESAB, Charter, and Central Mining. You know,
2 they're not --

3 THE COURT: Well, it's the same kind of
4 concept. You all are not going to be
5 forthcoming about anything.

6 MR. RAWL: I just want to be clear who I
7 represent in this case.

8 THE COURT: Same thing as the example I
9 gave with insurance assets. If those assets are
10 sought in aid of trying to establish a pool for
11 the payment of claims made in this case, you
12 know, you sit on your thing of this whole thing
13 is illegal therefore I don't have to respond;
14 but by the way, you can't be appointed as a
15 receiver until you know how much assets I have
16 that might be applicable to this situation.

17 What kind of argument is that?

18 MR. RAWL: I'll be happy to explain,
19 Your Honor. So my reading of the statute is
20 that, you know, the person -- the plaintiff in
21 the cause -- the plaintiff in the case where the
22 receiver is being sought, that person, when
23 making the -- an appointment, making a motion to
24 appointment a receiver, you know, normally says
25 there are some type of assets that are at risk

1 of dissipation and those assets would be
2 identified, you know, by the plaintiff.

3 THE COURT: How are they going to identify
4 them when you won't even respond to their
5 request for discovery?

6 MR. RAWL: Again, Your Honor, I represent
7 three entities that have been sued by a receiver
8 in a case other than the one in which he was
9 appointed.

10 THE COURT: I get all those arguments, but
11 let's get beyond the legitimacy of the
12 appointment for a minute. You're making a very
13 specific argument about another reason that the
14 receivership fails is because they haven't set a
15 bond. And I just want to know in practical
16 terms how that bond is supposed to be set. It
17 has nothing to do with whether the receiver can
18 be appointed, the Park versus Tibbs thing.

19 You say that the bond requirement is there
20 even if you have an otherwise legitimate
21 appointment of a receiver. And I want to know
22 how that would work in a situation like this.
23 And so far I'm not hearing you address that at
24 all other than to say, hey, I'm not what you
25 think I am.

1 MR. RAWL: I apologize. I'll do my best to
2 describe my position. My position is that,
3 Your Honor, the receiver cannot be appointed.
4 No appointment order can be issued without a --
5 without the amount that is at issue, you know,
6 that the plaintiff is seeking from the
7 defendant, that is seeking to put that
8 defendant's assets into the receiver's hands.

9 So before -- and I'm not making this up.
10 This is what the statute says.

11 THE COURT: Let me tell you something,
12 Mr. Rawl. Most receiverships could never be
13 started if you had to identify the specific
14 asset and its value before the receiver was
15 appointed. That is often why the receiver is
16 appointed because there is an entity that has
17 assets but you're not sure of the amount of them
18 or whether they've been dissipated or just what
19 has happened.

20 And the entity won't respond otherwise to
21 the suit. So you appoint a receiver to try to
22 find out what kind of assets they have. That
23 receiver -- you're saying the receivers could
24 never be appointed in that situation, as I
25 understand it.

1 MR. RAWL: I understand that a receiver
2 should not be appointed prejudgment on their --
3 the receivership's --

4 THE COURT: That's yet another argument and
5 prejudgment that that -- that is not an argument
6 that's going to prevail in this court. The
7 Supreme Court has already said that, yes, there
8 are times when prejudgment a receiver can be
9 appointed. They are rare but, yes, there are
10 times when that can happen. You all have
11 already lost that. And I'm going to go by what
12 the court has said so far in that regard.

13 MR. RAWL: I'm not arguing there's no such
14 thing as a proper prejudgment appointment of a
15 receiver. That's not what I'm here to argue.

16 THE COURT: What is your argument?

17 MR. RAWL: My argument is that in order to
18 appoint a prejudgment receiver, the court has to
19 follow the receivership statutes. Which one of
20 the requirements, it says before an appointment
21 may be entered, the amount of the bond has to be
22 on the face of the order.

23 And so I didn't write the statute. That's
24 what the statute says. And so -- and then the
25 Supreme Court has interpreted that statute to

1 say if there is no amount on the face of the
2 order of the bond, then the order is void
3 ab initio.

4 And the Welch opinion, actually the last
5 line of the sentence says, And the -- you know,
6 and the entity receivership can always pay the
7 bond if they want to get rid of the
8 receivership.

9 So the Welch opinion actually referenced
10 the bond statute. It wasn't raised in the Welch
11 matter by any of the parties. However, the
12 Supreme Court sua sponte raised the issue of
13 this bond protection. And the bond protection
14 that is in the underlying statute says that the
15 amount of the bond needs to be on the face of
16 the order so that the implicated parties could
17 pay the bond in that case because the
18 receivership statute makes it very clear the
19 receiver is only to act in the case in which he
20 was appointed. In that cause, if they pay the
21 amount of the bond prejudgment, then the
22 receiver is to be terminated.

23 So, Your Honor, I've made this argument
24 before. I apologize if I'm being wordy, but I
25 just want to make sure that I'm pointing out

1 that another defect on the face of the actual
2 Park appointment order is it does not have --
3 does not reference the bond or the amount of the
4 bond that would need to be paid in order to
5 terminate any existence of the receiver.

6 THE COURT: I understand your argument.

7 MR. RAWL: Thank you, Your Honor.

8 THE COURT: I hear your argument. I don't
9 think I understand it yet.

10 MR. RAWL: So I apologize for jumping
11 around. My client also agrees that in the Park
12 case at the time when Keith Park went and filed
13 the application to close the estate and to
14 terminate his receivership, that that -- at that
15 point there no longer existed a plaintiff in the
16 case and that that case was abated. And that
17 that case at this time no longer exists.

18 And interestingly, the plaintiff's bench
19 brief concedes that, you know -- you know, what
20 she states is each of Mr. Park's actions taken
21 in the interim period will relate back thus
22 rendering them proper and valid, including the
23 appointment of the receiver.

24 You know, what she's saying is that she
25 acknowledges that at the time of the appointment

1 there was no plaintiff, and that the appointment
2 of receiver was void or a nullity.

3 What I think the argument is, is that Park
4 can do something now or later in order to
5 somehow ratify or relate back or, you know, to
6 make the appointment order not a nullity.

7 And, Your Honor, my client respectfully
8 disagrees with that because you can't go back
9 and reinvent subject matter jurisdiction or a
10 capacity when there was none at the time that
11 the motion was filed or considered.

12 And frankly, my client's position is that
13 everything that was filed, you know, in the name
14 of the Park plaintiff after the estate was
15 closed and there existed -- there no longer
16 existed a plaintiff much less a PR that could
17 act on behalf of the plaintiff is a nullity and
18 should not be considered.

19 And to take that one step further, I heard
20 the plaintiff, and I think I believe even
21 Your Honor said it at one point that Mr. Park
22 sought a reopening of the estate. And I just
23 want to be clear what Mr. Park sought was
24 subsequent administration, which is different
25 than going back and reopening the same estate.

1 A subsequent, you know, administration --

2 THE COURT: Well, is there such a thing in
3 your mind as reopening an estate?

4 MR. RAWL: I mean, it could be done.

5 THE COURT: What's the basis for it?

6 MR. RAWL: They would have to --

7 THE COURT: Is there a statutory provision
8 that talks about that as opposed to
9 subsequent -- what are you basing that on? Is
10 subsequent administration something that's found
11 in the Uniform Probate Code?

12 MR. RAWL: It is. It's under 1008.

13 THE COURT: Exactly.

14 MR. RAWL: And it's also reference -- you
15 know, it says it's not retroactive. It's, you
16 know, a -- a subsequent administration and it's
17 done when additional assets are found and need
18 to be dealt with under the estate. And not what
19 we have here.

20 What Ms. McVey argued is that she made a
21 mistake, did not understand that the estate had
22 been closed at the time the motion to appoint
23 was made. And so then went back --

24 THE COURT: I'm saying it sounds to me like
25 it's more a quibble about verbiage than it is

1 something real because of the interaction of the
2 statutory provisions about what happens when you
3 have a subsequent administration or a reopening
4 of the estate, whatever you want to call it, it
5 sounds like we are quibbling about words rather
6 than talking about what the probate court means
7 and what the rule means.

8 MR. RAWL: Well, what the rule means or
9 what the rule says is that if additional assets
10 are found that were not dealt with in the
11 original estate, then an interested party can
12 make a petition for a subsequent administration,
13 which opens a new estate. Even when you look at
14 the numbers, they don't go back to the same
15 numbers.

16 THE COURT: They go back to the very same
17 number, they just call it 2. They add the
18 number 2 to it. So it is a part -- it's not
19 something that stands completely unrelated to
20 the other estate.

21 MR. RAWL: Well, the original PR --

22 THE COURT: There's no sense in quibbling
23 about it.

24 MR. RAWL: I mean, my understanding of the
25 probate code in some of the cases that have

1 discussed these issues is that when an estate is
2 closed, that estate is forever closed. Unless
3 somebody goes back and shows some kind of fraud
4 to get -- you know, to get nunc pro tunc
5 reopened. That would be the reopening of an
6 estate, you know.

7 With regard to subsequent administration,
8 there must be something different in the new
9 estate in order --

10 THE COURT: And from what do you derive
11 that understanding?

12 MR. RAWL: From the statute itself.

13 THE COURT: Is there case law on that?

14 MR. RAWL: There are a couple of cases.
15 Some of the cases that have been cited already
16 in the briefs suggest like the Glenn v. DuPont
17 case, 254 S.C. 128.

18 Also, the principal is in the McNair v.
19 Howle case, 123 S.C. 252.

20 In that matter, the court emphasized that
21 the appointment of an administrator de bonis
22 non, which is a successor administrator, you
23 know, is not a revocation of prior orders and
24 does not infer a retroactive authority but
25 instead that the appointment process itself is

1 new and that the authority starts at that time
2 and goes forward as opposed to retroactive.

3 But my point, Your Honor, is that at this
4 time, the only plaintiff even listed on the
5 caption is still the original PR and the
6 original estate in which --

7 THE COURT: Well, the name is the same name
8 as the PR that's also just been appointed in
9 subsequent administration, correct?

10 MR. RAWL: The PR had -- the same person
11 was appointed the PR in subsequent
12 administration. However, it is a different
13 estate, so it is a different entity.

14 THE COURT: I don't see any case that says
15 that and certainly not under the Uniform Probate
16 Code. Some of the -- McNair, for example, is a
17 very old case. And I started practicing when
18 you still had to appoint administrators or
19 executors to de bonis non. But the Uniform
20 Probate Code is a different kettle of fish in
21 terms of regularizing all of that.

22 MR. RAWL: Your Honor, I understand, but
23 the process didn't change. I mean, from a
24 standpoint of the probate court's appointing of
25 a -- and now is of course a PR.

1 But what Mr. Park did is he said he went to
2 the probate court three days after Ms. McVey
3 emailed that the case was fully resolved. And
4 at that time, when he filed with the probate
5 court his sworn statement saying that everything
6 needed to be done in that estate had been
7 completed --

8 THE COURT: I understand that argument.

9 MR. RAWL: And also he filed not only the
10 release from his siblings, but also his own
11 release. So at that time when the estate was
12 closed, not only did no party have any interest
13 in the estate whatsoever, the estate was closed.

14 And even Mr. Park's coming back and opening
15 the subsequent administration. What I, Your
16 Honor, would respectfully the new estate. What
17 he again said was that that was for potential
18 litigation. Which what that suggests,
19 Your Honor, is that there is concern that
20 they -- the estate will be sued, not that the
21 estate is going to bring litigation.

22 Because at the time they closed the
23 original estate, Mr. Park, of course, was well
24 aware of his litigation that he had just settled
25 and told the court that that matter was over.

1 So anyway, Your Honor, my slightly subtle
2 difference than what my colleagues have argued
3 is that at this time in the Park case nothing
4 has been done or filed to show that there is
5 some new party or new estate that has intervened
6 in or substituted in, in order to try to do any
7 type of Rule 17 or Rule 25 or some type of
8 ratification.

9 At this point, it still shows the same
10 original estate, the same original PR, both of
11 which we know are nullities.

12 And so as we stand here now, you know,
13 frankly, Plaintiff's counsel in Park haven't had
14 a client with regard to the original estate
15 since that estate was terminated. So everything
16 that was filed after that was done with no
17 client and is a nullity.

18 At this point, my client's position is that
19 counsel may represent Mr. Park in his new
20 appointment as PR for the subsequent estate, but
21 that is different than -- that does not allow
22 counsel to go back and make arguments again on
23 behalf of the original state or claim to
24 represent the original estate. You can't get
25 rid of that gap where there was no estate and no

1 standing of the court and no capacity.

2 THE COURT: I understand your argument.

3 MR. RAWL: And because of those same
4 issues, of course the receivership appointed is
5 a nullity, is void. And my client would object
6 to any arguments being considered at this point
7 by the receiver or by counsel because they don't
8 have the authority or standing to make any of
9 the arguments.

10 And lastly, to the extent that the
11 receiver's, you know, appointment was not void,
12 the arguments being made now are in furtherance
13 of his own jurisdiction. And an arm of the
14 court, I don't think that the receiver is meant
15 to be an adversarial party arguing, you know, on
16 behalf of Park as to what Park should have
17 ordered in order to get a receiver, or in Tibbs
18 on behalf of, you know, himself in order to
19 support an appointment of his own receiver or
20 his own authority to act in Tibbs.

21 You know, Your Honor, with regard to Park,
22 the only party that would be improper to argue
23 about the propriety of the underlying motion to
24 appoint the receiver would be the original
25 estate and Mr. Park as PR of the original

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

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

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

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

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

16 Thank you, Your Honor.

17 THE COURT: All right, sir.

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

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

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

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

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

18 Who's going to make those arguments?

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

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

1 ---
2 (A recess transpired.)
3 ---

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

10 You may proceed.

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

13 THE COURT: Yes, sir.

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

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

1 going to talk through that.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 umbrella, and that there was one decision maker.

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

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

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

25 They also had clearinghouses where they

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 new NAAC overnight.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 And that is our defense to the overwhelming

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 mines to U.S. based litigation.

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

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

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

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

1 and in that order it said insurance assets.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 THE COURT: I'm familiar with that.

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

20 But what is important --

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Ms. Park.

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

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

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

1 MR. LAY: That is the basis.

2 THE COURT: Well ...

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

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

7 MR. LAY: Yes, ma'am.

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

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

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

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

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

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

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

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

1 that statement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 THE COURT: All right, sir.

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

15 THE COURT: All right. Ms. McVey.

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

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

1 receiverships.

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

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

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

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

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

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

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

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

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

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

20 MR. BALBER: No.

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

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

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

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

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

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

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

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

10 MS. PEAKE: Thank you, Your Honor.

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

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

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

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

23 MS. PEAKE: Yes, Your Honor.

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

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

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

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

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

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

14 MS. PEAKE: Yes, Your Honor.

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

19 MS. PEAKE: Yes, Your Honor.

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

25 THE COURT: Oh, those letters that came

1 in --

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

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

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

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

22 MS. PEAKE: Yes, Your Honor.

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

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

1 basis as the Barton doctrine.

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

4 Okay. Ms. McVey.

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

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

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

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

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

1 protecting Cape from a default.

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

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

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

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

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

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

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

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

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

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

14 THE COURT: Yeah, tell me about it.

15 MR. PROTOPAPAS: Thank you, Your Honor.

16 THE COURT: Okay.

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

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

1 an interesting dichotomy.

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

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

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

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

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

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

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

22 THE COURT: Right.

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

1 THE COURT: No.

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

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

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

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

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

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

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

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

5 And I'm going to do that without regard to
6 how I end up ruling in this case. I don't think
7 I've got to right now answer every other
8 question that was raised in the order remanding
9 Tibbs. And I don't think the court expects
10 that. There are too many other complexities in
11 these other receiverships and interrelationships
12 between some of them that are on a request for
13 certiorari of the Supreme Court.

14 My kind of gross view of the thing is that
15 I don't know how long it's going to take to
16 straighten everything out, but I think finally
17 both the Court of Appeals and the Supreme Court
18 have got a pretty good grasp on what ought to be
19 appealed to them and what not ought to be
20 appealed to them.

21 Certain orders are not immediately
22 appealable. And I think that both courts, by
23 their rulings and by their opinions and by the
24 directives to me, have made it crystal clear
25 that they don't want to deal with these appeals

1 of nonappealable matters. They don't want to
2 handle these big issues in that way. Rather,
3 they want to handle them in a normal way that
4 appeals are handled. The final rulings are made
5 and then appeals are made and you go from there.
6 And I'm trying to fit myself within that
7 context.

8 Now, you know, I may very well end up
9 saying, yeah, Cape is a one-off and that one is
10 different and here's what I think needs to be
11 done with Cape.

12 But I simply reiterate that the concept of
13 every time something is done here on an interim
14 basis within the context of a piece of
15 legislation, that there's an immediate appeal of
16 that up to the Court of Appeals or a request
17 that the Supreme Court somehow or another have
18 filed with it reports and other things that I'm
19 doing to respond to the orders that they gave me
20 in Tibbs. That's frustrating to me. And I
21 don't intend to deal with the case that way.

22 I think the court -- both appellate courts
23 are very well aware of what our appellate rules
24 are and how matters proceed with the court. And
25 this additional information in the remand order

1 to me, in Tibbs, is not some kind of open-ended
2 license to start plowing yet again more stuff at
3 the Supreme Court level that I'm supposed to
4 somehow take notice of in connection with the
5 decisions I'm making in the cases that are
6 before me.

7 And that is why I am trying to fit this
8 thing into some kind of procedural posture where
9 I decide the things before me. I fit them into
10 the bigger context of where these cases stand
11 now. And then when I made final decisions on
12 everything, they go to the court. And the
13 courts -- the appellate courts can make
14 decisions on the merits of these matters.

15 That's what I'm still going to try to do.
16 But the defense has raised some issues that need
17 more thoughtful attention than I am capable of
18 providing off the bench at this moment about
19 procedurally how these receiverships work. And
20 I'm going to give that my attention and let you
21 all know something. And it may take one or two
22 forms.

23 I may either be completely resolved as to
24 how I want to handle these things and give
25 instructions to whoever the prevailing party is

1 and then the other parties will -- or party will
2 have a chance to respond. Or I may ask for
3 competing orders. I just can't quite decide
4 that. These are some very interesting and
5 technical matters about how things work
6 procedurally.

7 So beyond just the fussing about all the
8 kind of out-of-the-box things that are taking
9 place about going constantly to the appellate
10 courts I'm thinking about as opposed to a
11 hearing.

12 When you get past that and look at what's
13 now before me at this moment, your presentations
14 have been your usual, amazing, fine job. This
15 is a very sophisticated bar that practices in
16 these asbestos cases, and there's some very
17 serious issues raised on each side. And I'm
18 going to give it my very best shot at being
19 attentive and giving you some directions that I
20 think may move this thing on forward and
21 hopefully past me.

22 Thank you very much. Court is adjourned.

23 MR. SAWYER: Just one point that I noted
24 earlier I wanted to at the end adopt arguments.
25 That's all I want to do real quickly. If I may

1 adopt Mr. Carroll's arguments and adopt the
2 argument that we need to -- there should be a
3 bond. That's all I wanted to do, Your Honor.

4 THE COURT: Madam Court Reporter, do you
5 have that?

6 THE COURT REPORTER: I do.

7 THE COURT: On the record, Mr. Sawyer.
8 Thank you so much.

9 MR. SAWYER: Thank you so much.

10 ---

11 (The hearing concluded at 4:58 p.m.)

12 ---

CERTIFICATE OF REPORTER

I, Sheri L. Byers, Registered
Professional Reporter and Notary Public of the State
of South Carolina at Large, do hereby certify:

That the foregoing proceedings were
taken before me on the date and at the time mentioned
on page 1 and the proceedings were recorded
stenographically by me and were thereafter transcribed
under my direction; that the foregoing transcript as
typed is a true, accurate and complete record of the
proceedings to the best of my ability.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 14th day of August,
2024, at Lexington, Lexington County, South Carolina.

Sheri L. Byers,
Registered Professional Reporter,
Notary Public
State of South Carolina at Large
My Commission expires:
November 1, 2033



The Supreme Court of South Carolina

JEAN HOEFER TOAL
CHIEF JUSTICE, RETIRED
SENIOR ACTIVE JUDGE

1220 SENATE STREET (ZIP CODE 29201)
P.O. BOX 12456
COLUMBIA, S.C. 29211
TELEPHONE (803) 734-1584
FAX (803) 734-1047
E-MAIL: jtoal@sccourts.org

August 13, 2025

To: All Counsel

Re: Isabella Park v. Armstrong International, et al., C/A No. 2021-CP-40-02727 and
John Tibbs and Margaret Tibbs v. 3M Company, et al., C/A No. 2023-CP-40-01759

Dear Counsel,

Yesterday, this Court heard a challenge to the viability of the Park v. Armstrong International, et al., case. In connection with the Receiver's attempts to locate potential insurance covering the Park claims against Cape, the Receiver for Defendant and Third-Party Plaintiff Cape made a Motion to Compel production against Certain Underwriter's at Lloyd's London, Continental Casualty Company, and Liberty Mutual Insurance Company (collectively "Insurers"). These potential Insurers opposed the Motion to Compel on the grounds that the Park Estate had been closed, the Park case settled, and therefore Receiver for Cape in the Park case had no authority to compel production from Insurers of Cape. Additionally, certain Third-Party Complaint Defendants in Tibbs v. 3M Company, et al., also filed pleadings challenging the validity of the appointment of the Receiver in Park and the validity of any activity taking place in Park after the Park Estate was originally closed on August 6, 2022.

With regard to the status of the Park Estate, I will rule that the Estate was validly reopened on July 30, 2025, and that pursuant to South Carolina Probate Code Section 62-3-701, the authority of the Personal Representative relates "back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter." Additionally, I will rule that a personal representative, pursuant to the Act, "may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative." *Id.* And finally, I will cite the reporter's comments to S.C. Code § 62-3-701 which observes that "the authority of the personal representative relates back to death and stems from appointment and that the personal representative may ratify acts done by others prior to the appointment." Therefore, I will rule that all actions taken by or on behalf of the Personal Representative for the Park Estate in the Park matter are valid.

I will deny the Insurers' Opposition to the Motion to Compel Production from them based on their contention that the subpoenas requiring production were invalid. I will rule that sections

15-9-270 and 38-5-70 allow subpoenas to be served upon them by service on the State of South Carolina Department of Insurance, as the Insurers' statutory agent for service and process. I will rely on the Opinion of the Attorney General, issued November 1, 2022, to Gwendolyn Fuller McGriff, Deputy Director and General Counsel of the South Carolina Department of Insurance, regarding this issue, filed by John Chandler of Rikard & Protopapas this morning, and the Response emailed to me by Wesley Sawyer earlier today.

Of course, Defendants in Cape and Park also contend that the appointment of the Receiver in Park was invalid, and the subpoenaed Insurers as well as other non-parties in Tibbs join in that motion.

I will analyze this issue in connection with the hearing in Tibbs.

Two motions were heard in Tibbs. All of the Tibbs motions heard relate to the validity of the Receiver for Cape's activities in Tibbs. These matters include Defendants Anglo DeBeers and others Motion to Dissolve the Cape Receivership and Dismiss the Third-Party Complaint, as well as Receiver's Motion to Confirm the Appointment of the Receiver. I have previously issued, in Tibbs, on December 6, 2023, a seventy-three-page order denying Certain Third-Party Defendants' Motion to Dissolve the Cape Receivership and the Dismiss the Third-Party Complaint for lack of personal jurisdiction.

Additionally, the instructions of the South Carolina Supreme Court in its Remand of Tibbs to me, also raise issues with respect to the application of the Opinion in Welch v Atlas Turner to the Circuit Court's jurisdiction and authority to appoint a Receiver and certain directives relating thereto.

I propose to issue an Order Denying this latest Motion to Dissolve the Receivership and to Dismiss the Third-Party Complaint, filed June 24, 2025, and to grant the Receiver's Motion to Confirm the Appointment of the Receiver.

In connection therewith, I intend to repeat my ruling confirming the ongoing validity of the Park Estate as well as the ongoing validity of the appointment of the Receiver for Cape and its authority to bring the third-party action in Tibbs. I will include in that ruling an analysis of alleged moral fraud of behalf of Cape as support for the validity of the appointment of a Receiver for Cape, and I will confirm the authority of the Receiver for Cape to act in the Tibbs case. I would ask that Ms. Theile McVey, in collaboration with Mr. Peter D. Protopapas, Receiver, and Mr. John T. Lay, Attorney for the Receiver, draft orders in Park and in Tibbs reflecting my directives herein. I would appreciate making these focused orders, and I direct that the drafts be submitted to me by August 20, 2025. I would direct that Defendants represented by Mr. Wesley B. Sawyer, Mr. Todd Carroll, and Mr. Scott Balber, along with others they may wish to include, to collaborate on commentary to those proposed orders and propose counter orders if they wish, and have those materials to me by August 27, 2025.

Finally, in connection with my continuing obligation to the South Carolina Supreme Court in connection with its Remand Order in Tibbs, I would like for all parties to advise me as to what you consider to be any current outstanding motions which need attention in either Park or Tibbs.

Thanks to each counsel in these complex matters for your high degree of professionalism and many kindnesses to me.

With My Best Regards, I am,

Sincerely yours,


Chief Justice (Ret.) Jean Hoefer Toal

CC via email to:

Theile McVey	tmcvey@kassellaw.com
Peter D. Protopapas	pdp@rplegalgroup.com
John T. Lay	jlay@gwblawfirm.com
Wesley B. Sawyer	wsawyer@murphygrantland.com
Todd Carroll	todd.carroll@wbd-us.com
Scott Balber	scott.balber@hsfkramer.com
John Chandler	jchandler@rplegalgroup.com
Jon Robinson	jon.robinson@smithrobinsonlaw.com
A. Vic Rawl	vrawl@grsm.com
Elizabeth O'Neill	elizabeth.oneill@wbd-us.com
Harry Lee	hlee@steptoe.com
Kevin K. Bell	kbell@robinsongray.com
Trey Branham	tbranham@dobslegal.com
Cameron Berthelsen	cberthelsen@richardsonplowden.com
James Elliott	jelliott@richardsonplowden.com
Benjamin Rubinstein	benjamin.rubinstein@hsfkramer.com
Maxwell Herman	Maxwell.Herman@hsf.com
Lindsay Joyner	ljoyner@gwblawfirm.com
Olesya Bracey	obracey@gwblawfirm.com
Shanon Peake	shanon.peake@smithrobinsonlaw.com
Dot Faulkenberry	dot@smithrobinsonlaw.com
Paul A. Scrudato	paul.scrudato@morganlewis.com
Andrew Melling	amelling@burr.com
Elizabeth Kaminski	elizabeth.kaminski@hsfkramer.com
Gray Culbreath	gculbreath@gwblawfirm.com

John A. Tibbs and Margaret B. Tibbs,) Civil Action No. 2023-CP-40-01759

Plaintiffs,

VS.

3M Company, *et al.*,

Defendants.

ALTRAD DEFENDANTS’
OBJECTIONS TO THE COURT’S
LETTER RULING AND
SUBSEQUENT PROPOSED ORDERS

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.

Keith W. Park, individually and as the
personal representative of the Estate of
Isabella Park,

Plaintiff,

VS.

Armstrong International, Inc., *et al.*,

Defendants.

Civil Action No. 2021-CP-40-02727

The Court’s August 13, 2025 letter ruling to the parties is inconsistent with the Supreme Court’s holdings and instructions set forth in *Welch v. Advance Auto Parts, Inc.*, 916 S.E.2d 320 (S.C. 2025), and *Tibbs v. 3M Co.*, Appellate Case Nos. 2024-001423 *et al.* (S.C. June 26, 2025).

In *Welch*, the Supreme Court reversed this Court’s receivership appointment to the extent the scope of a receiver’s authority exceeded marshaling assets potentially needed to satisfy that specific plaintiff’s claim against Atlas Turner.

In *Tibbs*, the Supreme Court ordered that all existing and future receivership appointments in the Asbestos Docket had to meet *Welch*’s limitations. It expressly ended the practice of appointing a roving receiver who acts beyond the scope of the specific case in which he was appointed, the specific property for which he was appointed, and the specific plaintiff who sought the appointment.

The twin rulings in *Welch* and *Tibbs* gave this Court an unambiguous mandate regarding the law of receiverships. The principles affirmed in those cases—which are part of long-settled South Carolina statutory and case law regarding receiverships—include the following:

1. A receiver can only act in the case in which he is appointed and can only act to secure assets needed to pay the claim of the party responsible for seeking the appointment.
2. Receiverships are not to be used prejudgment absent extraordinary circumstances, such as a clear danger that property in dispute will be materially injured before the case can be determined, or when a defendant’s conduct demonstrates that it is fraudulently concealing or disposing of assets.
3. A court cannot appoint a receiver over any portion of a defendant’s assets without first having personal jurisdiction over that defendant.
4. Any receivership appointment must comport with *Welch* and the South Carolina receivership statutes.
5. A receiver cannot make “boardroom” decisions or be involved in the “business activities” of a company over whose assets he or she has been appointed.
6. Because the limited purpose of a receivership is to “receive” specific property and preserve it for the sole purpose of satisfying a judgment or protecting the property from being squandered or hidden during litigation, an order appointing a receiver must also set a bond sufficient to release that property from receivership.

The Court's August 13, 2025 letter ruling to the parties is inconsistent with all of these principles and the Supreme Court's unambiguous mandate. The Court should reconsider its ruling and, instead, dismiss all proceedings involving this Receiver as void and without jurisdiction.

August 13, 2025 Letter Ruling from this Court

In that August 13th ruling, the Court held that the March 2023 receivership appointment in the *Park* case is legitimate and valid even though (1) no such motion is pending, and the original appointment order was issued (2) in a case without a plaintiff; (3) without proof of service on any "Cape" entity of either a complaint or notice of the receivership request; (4) without any personal jurisdiction over any "Cape" entity; (5) without any claim against any "Cape" entity; (6) without any judgment against any "Cape" entity; (7) without an active case; and (8) without a setting bond.

The August 13th ruling also purported to transpose the void *Park* order into the *Tibbs* case and granted a motion by the Receiver—(1) himself a nonexistent entity in *Tibbs*—to "confirm" his own appointment. It does so despite (2) *Park* being a nullity, (3) the *Tibbs* plaintiffs never filing a motion seeking a receivership appointment; (4) no "Cape" entity ever being served in *Tibbs*; (5) no personal jurisdiction existing over any "Cape" entity; (6) no judgment existing against any "Cape" entity in *Tibbs*; (7) no property identified as being in need of a receiver (and certainly no in-state property of any "Cape" entity, as there is none); (8) no factual basis that could support a receivership appointment (in fact, the purported basis has already been considered and conclusively rejected by multiple courts after full trials and appeals with actual witnesses and evidence, rather than the Receiver's selective internet research); (9) the Receiver seeks boardroom authority to bring claims against third-party defendants that not only have no basis in law or fact, but which also (a) have no connection to South Carolina and (b) have been released by the actual directors of Cape Intermediate Holdings Limited; and (10) again without setting a bond.

There is no way to square the Supreme Court’s clear instructions in *Welch* and *Tibbs*, the long-settled receivership law upon which those cases are based, and hornbook jurisdictional law with the Court’s August 13th letter ruling. Perhaps worse, the *Park* Plaintiff’s and *Tibbs* Receiver’s proposed orders ask the Court to endorse a fictional narrative that makes conclusions that a basic review of the Public Index reveals to be demonstrably false. Objections to both orders follow.

Park Proposed Order

No Motion and No Notice: This order is particularly puzzling because it claims to be granting a motion to enforce an improperly-served subpoena, but it has the effect of being a new receivership-appointment order. There is no such motion pending, and no such statutorily-required notice of a receivership request has been served. S.C. Code Ann. §§ 15-65-20 & -30. This proposed order is facially improper.

No Jurisdiction: Everything that has purportedly happened in *Park* after the Plaintiff’s lawyers reported to the Court that the case was “fully resolved” on June 3, 2022, has been done without any jurisdiction (as well as without any litigants) and continues to be a legal nullity.

Litigation involving a closed estate is a “nullity.” *See McCullar v. Estate of Campbell*, 381 S.C. 205, 207, 672 S.E.2d 784, 785 (2009) (holding that once an estate is closed, it no longer exists as a legal entity, and a case lacking a legal entity as a party is a “nullity”). The Probate Court closed the Park Estate on August 26, 2022—six months before the putative receivership appointment.

Once Mr. Park’s status as personal representative of Ms. Park’s estate terminated, he lacked standing to do anything, so everything allegedly done before this Court in his name post-termination is “void.” *See 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”). The Probate Court terminated Mr. Park’s appointment as personal representative on August 26, 2022, at his request and based on his sworn testimony.

A “nullity” cannot be cured through *post hoc* activities. See *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.***”) (emphasis added); *Bargil Assocs., LLC v. Crites*, 135 A.D.3d 676, 677–78 (N.Y. App. Div. 2016) (“Although the South Carolina probate court reappointed the defendant as the personal representative of the decedent’s estate after the plaintiff made its present motion to dismiss the counterclaims and before the defendant submitted her opposition papers, such reappointment constituted a subsequent administration, ***which has no nunc pro tunc effect and does not relate back to the initial appointment.***”) (applying South Carolina law, emphasis added); see also S.C. Code Ann. § 62-3-608 (providing that once a personal representative’s appointment is terminated, he loses all “authority to represent the estate in any pending or future proceeding”).

Rule 17, SCRCPP, is meaningless in this context, as it only applies to the “commencement” of an action when “the proper party to sue” was not initially involved. The efforts to fix this unfixable three-year-old problem have nothing to do with the “commencement” of the *Park* case, and the correct party was involved as the plaintiff—right up until Mr. Park’s lawyer told this Court that the case was “fully resolved” and he swore under oath that the estate should be closed and his appointment as a personal representative should be terminated, a motion that the Probate Court granted.

No Evidence: Even if any of the filings allegedly made on behalf of Mr. Park as the personal representative of Ms. Park’s estate could be ratified (they can’t), and even if the Court

excuses the fact that Mr. Park appears to have withheld all information regarding the *Park* tort case from his co-beneficiaries, potential creditors, and the Probate Court (it shouldn't), there remains a complete absence of evidence in the record to support any the following contentions that appear in the *Park* Plaintiff's proposed order:

1. That any "Cape" entity was ever served with a summons and complaint in *Park*, a statement that has been repeatedly made but for which there is no proof at all.
2. That any "Cape" entity was ever served with notice of a motion to appoint a receiver in *Park*.
3. That there is any basis for the Court to exercise personal jurisdiction over any "Cape" entity in *Park*.
4. That any "Cape" entity has ever owed anything to the Park Estate; there are no judgments, no defaults, nothing in the record suggesting that any "Cape" entity owes anything at all to the Park Estate.
5. That the Park Estate has been "validly reopened."
6. That Mr. Park has ever even attempted to "ratify" the acts that were allegedly undertaken in *Park* after the Park Estate was closed at Mr. Park's sworn request.¹

No "Moral Fraud": *Welch* made clear that the notion of "moral fraud" that could give rise to a receivership appointment under South Carolina Code § 15-65-10(5) must involve alleged in-litigation deception. 916 S.E.2d at 331–32. This has always been the law. *See, e.g., Va.-Carolina Chem. Co. v. Hunter*, 84 S.C. 214, 221–23, 66 S.E. 177, 179–80 (1909) (finding that the defendant's and his sister's sworn statements as to the defendant's finances gave rise to an "inference that there has been a fraudulent disposition of the property" justifying a receiver).

¹ To be clear, South Carolina Code § 62-3-608 controls, and Mr. Park cannot "ratify" anything that was allegedly undertaken after the Probate Court terminated his appointment as personal representative and closed the Park Estate. But to the extent the proposed order suggests that such a "ratification" is even possible as a legal matter (it isn't), nothing in the record indicates that Mr. Park has actually attempted to "ratify" anything. In fact, his filings with the Probate Court suggest just the opposite, as he sought a re-appointment as a personal representative for "possible" litigation, not to ratify litigation activities that happened years ago.

There is no such in-litigation behavior here, as no “Cape” entity was ever served with process in the first place. Without service, there is no reason for any “Cape” entity to respond to a pleading, and certainly not in a case that was reported as “fully resolved” in June 2022 and that has lacked a plaintiff since August 2022.

In addition to lacking evidence of any such “moral fraud,” the proposed order devotes Pages 7 through 27 and 31 through 36 to presenting a historical narrative that wrongly suggests that a “Cape” entity was present in the United States and was operating through shell companies—first through NAAC, and then through CPC. The proposed order even uses “Cape” and “NAAC” interchangeably throughout, even though they are separate companies.

This is precisely the narrative that was tried, appealed, and twice rejected by *Adams v. Cape Industries plc* (1990) 1 Ch 433 (CA). The only explanations proffered by either the *Park* Plaintiff or *Tibbs* Receiver for why the Court should endorse their false narrative and not abide by *Adams* is that *Adams* was “preinternet” and that “the law on alter ego, the law on successor liability is different in the UK.” (Ex. A, Hr’g Tr. 225:15, 21–22 (Aug. 12, 2025) (statement of Mr. Lay).)² Not only does the proposed order fail to address the actual requirements of a conscious effort to deceptively defeat creditors, but it would require “Cape” to ignore decades-old settled law from its home jurisdiction in favor of complying with orders from a court in South Carolina that has no jurisdiction over it in a case in which it was never served with process.

² At the August 12, 2025 hearing, this Court expressed disbelief that an English court would take any position regarding this Court’s efforts to appoint a South Carolina-based receiver over an active English or Jersey company. (Ex. A, Hr’g Tr. 190:21–191:1 (Aug. 12, 2025).) Respectfully, by even attempting to appoint a receiver in this case, this Court is flatly disregarding findings and rulings made by English trial and appellate courts that resulted from over 50 days of in-court testimony and arguments. Comity must be a two-way street—particularly since South Carolina law demands honoring English common law, S.C. Code Ann. § 14-1-50—and *Adams* is entitled to full deference and acceptance by this Court despite the Receiver’s request for this Court to ignore *Adams* because of the “internet.”

As to the former argument, the fact that the internet did not exist when *Adams* was decided is meaningless; the actual witnesses (none of whom are now alive as far as the Altrad Defendants are aware) and the whole of the actual evidence were presented for the trial and subsequent appeal, which is obviously more meaningful than the Receiver's curated sliver of "facts" pulled off the internet decades after the issue was finally settled.

As to the latter, the suggestion that English law regarding alter ego and successor liability is materially different than South Carolina's is simply false. The Altrad Defendants presented actual English authorities regarding this point, demonstrating that English law and South Carolina law regarding these concepts are aligned; the Receiver put forth nothing to the contrary besides unsupported statements of counsel in briefs and at oral argument, which are irrelevant. *See* S.C. Code Ann. §§ 19-3-160 to -170 (explaining the requirements for proving foreign law in a South Carolina court, which the Receiver wholly ignored).

Pages 27 through 31 of the *Park* Plaintiff's proposed order suggests that "activities parallel to this action demonstrate continued moral fraud," but this argument is similarly incorrect. Everything that CIHL did in the United Kingdom was aimed at getting this Receiver to cease pretending to operate CIHL and engaging in litigation activities (including purporting to accept service, purporting to answer complaints, and purporting to assert claims) in CIHL's name. Requiring the Receiver to answer for his *ultra vires* conduct is nothing more than a company defending itself and vindicating its rights, including in a manner specifically endorsed by *Barton v. Barbour*, 104 U.S. 126 (1881).³

³ Notably, the Receiver was properly served with process of that litigation, and in response he took three actions: (1) he sued CIHL's lawyers in South Carolina, forcing them to withdraw from that representation; (2) he blanketed Chief Judge Wilkins with aggressive subpoenas, forcing His Honor to reiterate that his expert opinion was only about the law itself; and (3) he wrote a letter outlining the Receiver's position in the case, requested that it be presented to the judge, but refused

The proposed order's recitation of the proceedings in the United Kingdom are further errant. The March 17, 2023 order that appointed a receiver in *Park* (an order that is void *ab initio* due to, at least, the lack of a plaintiff, the lack of a defendant, the lack of an actual case, the lack of any notice of a receivership, and the lack of any *Welch*-required findings) purported to give the Receiver authority to collect all of Cape plc's accounts receivable, cash all checks and negotiable instruments payable to Cape plc, and "obtain from any financial institution, bank, credit union, saving and loan or title company, credit bureau or any other third party, any financial records belonging to or pertaining to" Cape plc. (*Park* Appointment Order at 2 (clauses (1), (4), and (8) (Mar. 17, 2023).) So when Mr. Oren told the English court that the appointment order authorized the Receiver to "make direct contracts with the Claimants' bankers. That could cause disruption and interference in the Claimants' relationships with their banks, as it would be very difficult to control how that information was used by the Receiver.", he was being fully truthful and accurate about the status of proceedings here in South Carolina, and the proposed order's multi-page discussion (Pages 27 through 30) about that aspect of Mr. Oren's testimony is simply untrue.

Pages 30 and 31 are likewise misleading. They argue that the English order and injunction have been used to "intimidate the Receiver" and to "threaten" insurance carriers; this is false. The English injunction says what it says, and it simply prevents the Receiver from taking any more of his beyond-the-pale litigation tactics while engaging in corporate sabotage of CIHL. And the insurance carriers have not indicated that they feel "threatened" by the English order; instead, they have come to this Court and asked it to stop authorizing the oppressive and overreaching efforts by the Receiver himself.

to appear before the English court to defend his actions. This is the exact same litigation-avoidance behavior the Receiver and the *Park* Plaintiff claim to be evidence of "moral fraud."

In short, nothing in this record supports any notion of “moral fraud” or that could justify a receivership over any assets of Cape plc or CIHL.

No “Insolvency”: The *Park* proposed order concludes with the suggestion that a receivership could be proper under South Carolina Code § 15-65-10(4)—an issue that has been abandoned by the Court once before (Dec. 6, 2023 Order at 25 n.16). The proposed order states that “CIHL is in imminent danger of insolvency,” but there is nothing in the record to support such a speculative statement. And, in fact, the order admits as much, citing only speculation as to what “could” happen.⁴ There is no way to conform such baseless speculation with the actual words of Section 15-65-10(4) or the Supreme Court’s warning to stop appointing receivers except in extreme circumstances.

And even if Section 15-65-10(4) could somehow apply here (it doesn’t), it would only apply to in-state assets of CIHL, of which there are exactly zero. This entire discussion in the *Park* proposed order is a red herring.

No Bond: The South Carolina Code requires a receivership appointment order to set a bond in order to release the property placed in receivership. S.C. Code Ann. §§ 15-65-50 & -60. So does *Welch*. 916 S.E.2d at 335. The proposed order continues to ignore this statutory requirement.

* * * * *

The Supreme Court’s *Tibbs* Order specifically inquired about “the current status of *Park*.” Instead of reporting that *Park* is “fully resolved” and has been since the *Park* Plaintiff’s counsel made that representation to the Court over three years ago in June 2022, and instead of reporting that everything that has supposedly happened in *Park* since that point has been undertaken without

⁴ Puzzlingly, Page 37 of the *Park* proposed order cites CIHL’s regularly distribution of dividends from profits as proof of imminent insolvency.

a plaintiff or defendant, the *Park* Plaintiff's proposed order shields practically all material facts and all controlling law from the Supreme Court's view and invites this Court to commit numerous and obvious jurisdictional errors adverse to an active international company that has nothing to do with South Carolina (a ruling that itself runs afoul of, at least, the Commerce Clause and numerous other constitutional provisions that have been enumerated in the Altrad Defendants' filings with this Court, as a state court cannot interfere with interstate or international commerce or otherwise reach beyond its borders). The Court should reject it.

Tibbs Proposed Order

The *Tibbs* proposed order suffers from all of the same defects as the *Park* proposed order—indeed, *Tibbs* is rooted in the purported legitimacy of *Park*, which is a false premise. Accordingly, the Altrad Defendants incorporate all of their objections above to the *Park* proposed order into their objections to the *Tibbs* proposed order, and add the following:

No Standing: The errors in the *Tibbs* proposed order begin in its caption. Only the Tibbs Plaintiffs can move to appoint a receiver in their case. S.C. Code Ann. § 15-65-90; *see White v. Britton*, 72 S.C. 175, 179, 51 S.E. 547, 548 (1905) (vacating an order appointing a receiver where the order was entered “by the Circuit Judge on his own motion” and “no application by either party was made for such appointment”). But they have never done so.

Instead, the Receiver himself has moved to “confirm” his own appointment from *Park*—a motion he had no standing to even make, as the Receiver does not exist as a jural entity outside of *Park* (as confirmed by Paragraph A(1) of the *Tibbs* Supreme Court Order)—and the Tibbs Plaintiffs have simply joined the Receiver's void filing. The Tibbs Plaintiffs have made no motion of their own, which would require proof that the Tibbs Plaintiffs have served the appropriate “Cape” entity with process (which they have not), they have served the appropriate “Cape” entity

with notice of a motion to appoint a receiver (which they have not), they have identified specific property that is in peril for which a receiver is necessary in order to pay their claim (which they have not), and they have come forward with evidence that would be sufficient to appoint a receiver under South Carolina law (which they have not). The Tibbs Plaintiffs have made no effort at all to address any of these fundamental issues.

But the caption of the proposed order tries to mask this threshold problem by stating that the order grants “The Receiver’s and Tibbs Plaintiffs’ Motions to Confirm the Appointment of the Receiver.” There is no such motion from the Tibbs Plaintiffs, and the fact that the Receiver is inviting the Court to make an obvious misstatement in the caption suggests the Receiver recognizes that the Court cannot do what he alone has asked it to do: appoint a receiver in *Tibbs*, a request for which the Receiver himself has no standing to make. Without standing, there is no motion for the Court to grant, and there is nothing for the Court to do but deem the Receiver’s filing void *ab initio*.

No Defendant: The proposed order ends with an enumerated list, of which Point 1 reads as follows: “The Court clarifies that the entity in receivership is ‘Cape Intermediate Holdings Limited, formerly known as Cape plc from 1989-2011, Cape Industries Limited from 1974 to 1989, and Cape Asbestos Company Ltd. from 1893 to 1974.’” There are numerous, incurable problems with this.

First, CIHL is not even a defendant in the *Tibbs* case. It cannot possibly comport with Due Process for the Court to issue an order that applies to an active international company that is not even a party to the case and over which the Court has no jurisdiction.

Second, the actual entity identified in the caption of the complaint—Cape plc—is identified in the complaint as being affiliated with the Receiver, even though there is no order entered in this case (or even requested by the Tibbs Plaintiffs) that would allow for such an affiliation.

Third, the Tibbs Plaintiffs have confirmed for the Court that they haven't even tried to serve Cape plc in this case, but instead have only sent their pleadings to the Receiver who was never authorized to do anything at all with respect to the Tibbs Plaintiffs. (Ex. B, Hr'g Tr. 156:23–24 (July 22, 2025) (statement of Ms. McVey).)

Fourth, even if either entity is ever properly named in a pleading and properly served with process, there is nothing at all to suggest that Cape plc (or non-party CIHL) would ever be subject to personal jurisdiction in South Carolina, as neither has anything to do with this state, and neither owns any property here. Again, there is nothing in this record that could support the Court exercising jurisdiction over either of these foreign companies.

Fifth, indicative of the pervasive problem with Asbestos Docket receiverships that the Supreme Court rebuked in *Welch* and *Tibbs*, a receivership is not designed to apply to an “entity,” but instead applies only to specifically-identified property—property that is nowhere identified in this proposed order, as neither Cape plc nor CIHL has any property in South Carolina.

No Boardroom Activity: *Welch* was clear that a receiver must stay out of a company's “boardroom” activities when marshaling an asset. Yet, that is all that the Receiver is purporting to do with respect to CIHL by claiming to accept service of pleadings, answer complaints, assert third-party claims (that the actual CIHL directors have released), ignore releases executed by CIHL's directors, and enter into contracts with the lawyers responsible for his serial appointments to suspend indefinitely the limitations period of claims against CIHL—quintessential “boardroom” decisions. *See generally* S.C. Code Ann. § 33-3-102(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.* § 33-3-102(7) (providing “make contracts” as a “general power” of a 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”); *contra* Ex. C, Putative “Tolling Agreement” (confidentiality waived as of August 25, 2025).

No Appointment Order in This Case: In *Tibbs*, the Supreme Court was unequivocal: “The receiver is not to be authorized to conduct work as to a case in which no receiver appointment order has been filed.” *Tibbs* ¶ A(1). The proposed order treats this command as if it can be passively complied with by simply filing in a second case an order from a different case involving a different claimant and different property; in other words, the Receiver treats *Tibbs* as if he can authorize himself to appear in any case he wishes by simply noting the existence of a receivership order from any other case. (*Tibbs* Proposed Order at 42–44.)

This is obviously not what the Supreme Court intended with its remand instructions in *Tibbs*. Instead, just as the receivership statute commands (S.C. Code Ann. § 15-65-90) and the Supreme Court explained in *Welch*, a receivership order must be narrowly cabined only to the “party” who sought the order, and no further. The Court cannot meet the statutory limitation, the Supreme Court’s enforcement of it in *Welch*, and the reiteration of it in *Tibbs* by simply allowing the Receiver or a different plaintiff to recycle a receivership order from one case by attaching it as an exhibit in another. Each case is unique, and a receiver can only be appointed if there is a judgment or property identified as being in need of a receiver, and if the facts specific to each case merit such an extraordinary remedy.

No Insurance: On Pages 44 through 46 of the *Park* proposed order, the Receiver writes that the third-party defendants have argued that a receivership can only ever apply to insurance assets, and he then invites the Court to reject that argument. This is a strawman; the Altrad Defendants have never made such an argument, and they specifically rejected such a suggestion when this Court tried to attribute such an argument to them. And, in fact, per the Receiver’s prior filings and statements to the Court, there is no insurance at issue in this litigation, rendering the entire discussion irrelevant.

False Statements: “Clarification” Point 2 states that CIHL “failed to answer the *Park* case.” This is false; CIHL was never served in *Park*, and there isn’t anything in the record in *Tibbs*, *Park*, or any other case to demonstrate otherwise.

“Clarification” Points 3 and 4 state that the Court is “adopt[ing] all findings of fact” that would support “the appropriateness of the Receiver” under South Carolina Code §§ 15-65-10(4) and (5) that are contained in the *Park* case. But there are no “findings of fact.” Instead, there are statements that are directly contrary to *Adams* and wholesale speculation, none of which amount to “findings of fact.”

“Clarification” Point 5 again ignores *Welch*’s direct instructions to limit a receivership appointment strictly to the plaintiff who seeks the appointment. Here, there is no such plaintiff. But even worse, the proposed order says that the appointment applies to any “asbestos personal injury” claim brought in South Carolina—a flagrant disregard of the very point on which the *Welch* Court reversed this Court’s appointment in that case. This point also says that “Cape” “made direct sales of asbestos fiber into South Carolina”—this is untrue, and there is not one piece of evidence in the record that supports it.

“Clarification” Point 6 ignores *Tibbs*’s direct prohibition on a receiver operating outside of the case in which he was appointed and *Welch*’s direct prohibition on a receiver making “boardroom” decisions. Given these restrictions, there is no way that the Receiver could have been lawfully permitted in *Park* (again, through an order that itself is a nullity) to accept service of a complaint filed by a totally different plaintiff.

“Clarification” Point 7 stunningly attempts to waive CIHL’s attorney-client privilege. The Court cannot lawfully seize CIHL’s attorney-client privilege and give it to the Receiver.

“Clarification” Point 8 is a direct rebuke to the Supreme Court’s myriad restrictions and limitations on receiverships outlined in *Welch* and *Tibbs* and reflects a complete disregard of the Supreme Court’s mandate to this Court.

No Bond: The South Carolina Code requires a receivership appointment order to set a bond in order to release the property placed in receivership. S.C. Code Ann. §§ 15-65-50 & -60. So does *Welch*. 916 S.E.2d at 335. As with the *Park* proposed order, the *Tibbs* proposed order continues to ignore this statutory requirement.

* * * * *

The Altrad Defendants respectfully explained to the Court that the Supreme Court has given it a very clear, simple route for putting an end to this purported receivership. The mandate in *Tibbs*, the principles of *Welch*, the plain language of the receivership statute, a century’s worth of South Carolina case law narrowly restricting the circumstances in which a receiver can be appointed, and hornbook law regarding fundamental jurisdictional issues all lead to an inescapable conclusion: this receivership is void, it has been from the outset, and everything that has purportedly happened regarding this receivership in both *Park* and *Tibbs* are nullities that cannot be cured.

Second Report to the Supreme Court

In its most recent Second Report to the Supreme Court (filed August 26, 2025), this Court reported that *Park* “continues to be an open case on my asbestos docket,” which appears to be inconsistent with the *Park* Plaintiff’s counsel’s unambiguous statement to the Court more than three years ago that the case was “fully resolved” and myriad other filings in the case.

Additionally, the Court reported that “[t]he Park Estate was originally closed on August 6, 2022, due to a miscommunication between attorneys for Isabella Park in the asbestos case and attorneys handling the probate of Isabella Park’s Estate.” There is nothing in the record to support this statement. It appears to be contrary to the actual filings in the Probate Court, which have been filed in full in this case, and the *Park* Plaintiff’s counsel’s representations to this Court.

This Court also reported that “[o]n July 30, 2025, the Park Estate was validly reopened by Order of the Probate Judge for Spartanburg County.” There is nothing in the record to support this statement.

The Altrad Defendants and other litigants have diligently supplied this Court with full and accurate information regarding the filings in the Probate Court and how they are fundamentally inconsistent with the *Park* Plaintiff’s statements to this Court and to the above-listed statements in the Court’s Second Report. The Altrad Defendants respectfully request that the Court rescind its Second Report and reissue it with the complete statement of the chronology of the *Park* proceedings both before this Court and the Spartanburg County Probate Court. The chronology reveals how everything that has purportedly happened in the *Park* tort case has been a nullity for more than three years.

Conclusion

The Court should reject the proposed orders that have been submitted by the plaintiff in *Park* and the Receiver in *Tibbs*, it should rescind its August 13th letter ruling, and it should declare all litigation activities in *Park* and *Tibbs* involving the purported Receiver to be void *ab initio*.⁵

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: /s/ M. Todd Carroll

S.C. Bar No. 74000

todd.carroll@wbd-us.com

Kevin A. Hall

S.C. Bar No. 15063

kevin.hall@wbd-us.com

M. Elizabeth O'Neill

S.C. Bar No. 104013

elizabeth.oneill@wbd-us.com

1221 Main Street, Suite 1600

Columbia, SC 29201

(803) 454-6504

*Attorneys for Mohed Altrad and Altrad Investment
Authority SAS*

August 27, 2025

⁵ As always, the Altrad Defendants expressly preserve all of their objections, including to personal jurisdiction, that have appeared in their filings to this Court and to the appellate courts. They also join and incorporate by reference all arguments contained in any filing made by the Altrad Defendants, any other third-party defendant in *Tibbs*, or any nonparty opposing the Receiver in *Park* that is not inconsistent with this filing.

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., 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

**THIRD-PARTY DEFENDANTS CHARTER CONSOLIDATED LTD., ESAB
CORPORATION, AND CENTRAL MINING AND INVESTMENT CORPORATION
LTD.'S OBJECTION TO PROPOSED ORDER ON ANGLO AMERICAN AND DE
BEERS' MOTION TO DISSOLVE THE CAPE RECEIVERSHIP AND DISMISS THE
THIRD-PARTY COMPLAINT, 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 AND THE RECEIVER'S AND TIBBS PLAINTIFFS'
MOTIONS TO CONFIRM THE APPOINTMENT OF THE RECEIVER**

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, respectfully submit this objection (“the Objection”) to the Court’s August 13, 2025 Letter Ruling (“Letter Ruling”) and the Proposed Order submitted by the purported receiver for Cape PLC (“Receiver”) on August 20, 2025, related to: (i) Anglo American and De Beers’ Motion to Dissolve the Cape Receivership and Dismiss the Third-Party Complaint; (ii) 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; and (iii) the Receiver for Cape and the Tibbs Plaintiffs’ Motion to Confirm the Appointment of the Receiver (the “Proposed Order”).¹ Although the Objection is submitted pursuant to the Court’s request in the Letter Ruling as an objection to the Proposed Order, the arguments discussed herein apply equally to the Court’s decision as outlined in the Letter Ruling.

¹ By filing this Objection, 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. Charter Third-Party Defendants also join and incorporate by reference all arguments contained in any filing made by any other third-party defendant in Tibbs opposing or objecting to the Letter Ruling or the proposed orders submitted per its instruction that are not inconsistent with this filing.

I. INTRODUCTION

The Proposed Order purporting to confirm the Receiver's appointment must be rejected because a court cannot confirm that which does not exist. It is undisputed that no receiver was ever appointed over any Cape entity in *Tibbs v. 3M*, C/A No. 2023-CP-40-01759 ("*Tibbs*"). As a result, the South Carolina Supreme Court's explicit directive in *Tibbs v. 3M Co.*, Appellate Case No. 2024-001423 (S.C. June 26, 2025) ("June 26 Order")—prohibiting the Receiver from conducting work in a case lacking a receivership appointment order—mandates the Court's rejection of the Proposed Order.

Although the Court's inquiry could and should stop there, an examination of the Receiver's "origin story" reveals a foundation so flawed that it cannot even support a receivership appointment in *Park v. Armstrong*, C/A No. 2021-CP-40-02727 ("*Park*"), the case in which the Receiver's purported appointment order was issued and filed. Although the *Park* receivership motion indicates it was made by the "Park Estate," it has since come to light that by the Park Estate's own request, the estate had been closed and its personal representative terminated long before the motion to appoint the Receiver was filed. Accordingly, no juridical entity known as the Park Estate existed at the time the receivership application was made. Thus, there could be no *Park* action (and indeed, the *Park* plaintiff's counsel had previously informed the Court that *Park* was fully resolved), no valid motion to appoint a receiver in such an action, and no valid receivership. The Receiver's appointment was void *ab initio* and therefore cannot have any effect in *Park*, let alone extend to *Tibbs*. This would be true even without the June 26 Order's prohibition on omnibus, cross-action receivership appointments.

Moreover, even if the Receiver's appointment order issued in *Park* were not void (which it is), it does not pass muster under the heightened requirements for the extreme remedy of prejudgment receivership set by the South Carolina Supreme Court in *Welch v. Advance Auto*

Parts, Inc., Op. No. 28284 (S.C. May 21, 2025) (“Welch Decision” or “*Welch*”) and reiterated in the June 26 Order. The Supreme Court made crystal clear that any prejudgment receivership appointment order must be accompanied by findings of fact supporting this “extraordinary remedy reserved for the most extraordinary cases.” No such findings of fact are in the *Park* receivership appointment order. Instead, that order simply finds that the request for appointment is “meritorious” because Cape had been dissolved, forfeited its charter, and failed to answer in *Park*. Even if true, these findings would be insufficient under *Welch* and the June 26 Order to warrant the prejudgment appointment of a receiver – but they are false. All parties agree that Cape has neither been dissolved nor has forfeited its charter, and there is no proof in the *Park* record that Cape was ever served (and thus Cape cannot have failed to answer). This too renders the Receiver’s appointment void *ab initio*, especially pursuant to the mandate of the June 26 Order.

None of these fatal flaws can be cured retroactively. Petitioning the Probate Court for subsequent administration and obtaining a second Park Estate for “Potential Civil Litigation” three years after the original Park Estate was closed does not create a time machine in which a personal representative for the second Park Estate can travel back to 2023 to remedy the lack of plaintiff, standing, subject matter jurisdiction, and the requisite findings of fact. Likewise, the Proposed Order cannot now vest the Receiver with *ex post facto* authority for years of actions he has taken in Cape’s name, over Cape’s protest. The Receiver was not properly appointed and has never been authorized to act for Cape, which renders everything he has done in Cape’s name to date null and void.

Thus, what the Proposed Order truly seeks to do is to create a receivership in *Tibbs*, as no such receivership currently exists. However, the Proposed Order fails in that regard as well, as it does not satisfy *Welch*’s directive that the “extreme power” of prejudgment receivership be

reserved only for the “rarest” and most “extreme cases,” such as evidence of moral fraud in the action in which the receivership is sought. Indeed, even if the Receiver had standing to move for his own appointment – which he does not – the only proffered “evidence” of moral fraud by Cape is a narrative of conjecture and hearsay, none of which is alleged to have occurred in *Tibbs* and much of which supposedly took place many decades ago. Under *Welch*, no receivership appointment may be made absent a showing that Cape has engaged in misconduct *in this case*. There has been no such showing here.

Furthermore, the Proposed Order must also be rejected because its proposed scope far exceeds the permissible scope of a receiver’s work as set forth in *Welch* and as reiterated by the June 26 Order. In attempting to admit Cape’s liability over Cape’s objections, the Receiver is effectively trying to execute the very type of boardroom coup that *Welch* expressly prohibits. Under *Welch*, no findings of fact, let alone the hearsay and conjecture offered in the Proposed Order, could support that.

Finally, the June 26 Order mandated that if the Court chooses to authorize the Receiver to act outside of the parameters of *Welch*, it must justify this departure from the Supreme Court’s directives with specific findings of fact and conclusions of law. The Proposed Order does not do so, instead simply positing that *Welch* should not apply here because the scope of the purported *Park* receivership order is not limited to insurance assets.

For these reasons, and for the reasons set forth herein, the Proposed Order should be rejected in its entirety.

II. TRIAL COURT’S LIMITED JURISDICTION ON REMAND

On June 26, 2025, the South Carolina Supreme Court granted the Charter Third-Party Defendants’ and Altrad Third-Party Defendants’ Petitions for Writ of Certiorari (“Cert Petitions”) in *Tibbs*. The petitions challenged the propriety of the Cape receivership appointment order entered

in *Park* and argued that the South Carolina receivership statutes (S.C. Code Ann. 15-65-10 *et. seq.*) limit a pre-judgment receiver to acting in the case in which he is appointed. The petitions specifically argued that South Carolina law does not allow a receiver appointed in one case (*Park*) to act in another case (*Tibbs*). In granting the Cert Petitions, the Supreme Court specifically reiterated “that appointing a receiver before judgment is permissible only in the rarest and most extraordinary cases” and “direct[ed] 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.” June 26 Order, at p. 4. This directive is mandatory and absolute. The Supreme Court used imperative language—“is not to be authorized”—that forbids, rather than permits, judicial discretion.

The June 26 Order is a direct limitation on this Court’s jurisdiction and authority. This Court may take no action beyond or contrary to the Supreme Court’s mandate in the June 26 Order. *S.C. Dep’t of Soc. Servs. v. Basnight*, 346 S.C. 241, 551 S.E.2d 274 (Ct. App. 2001) (“[A] trial court has no authority to exceed the mandate of the appellate court on remand.”). Rather, this court has a duty to follow the Supreme Court’s directions on remand. *Milton P. Demetre Family Ltd. Partnership v. Beckmann*, 413 S.C. 38 (2014). Further, “[t]he mandate of the appellate court is jurisdictional. The trial court has a duty to follow the appellate court’s directions.” *Prince v. Beaufort Mem’l Hosp.*, 392 S.C. 599, 605, 709 S.E.2d 122, 125 (Ct. App. 2011) (“When we remand a case, the trial court has only the jurisdiction and authority mandated by this court.”). This limitation ensures that the lower court’s actions adhere strictly to the appellate court’s directions. Matters decided by the appellate court cannot be reheard, reconsidered, or relitigated by the trial

court, as the appellate court's decision is final regarding all questions decided. *Ackerman v. McMillan*, 324 S.C. 440 (1996).

The Supreme Court's mandate in *Tibbs* is clear: this Court only has jurisdiction to allow the Receiver to "conduct its work" in a case if there is "an order filed in the specific case as to which the work is to take place." And moreover, the Supreme Court's mandate does not provide this Court with jurisdiction to allow the Receiver to act in "a case in which no receiver appointment order has been filed." The Court does not have jurisdiction to "reconsider" the Supreme Court's directive.

Accordingly, in *Tibbs*, where no motion to appoint a receiver over any Cape entity has been filed or granted, this Court does not have authority or jurisdiction to allow the Receiver to act or conduct work in the *Tibbs* case (including, but not limited to pursuing his own motion to confirm his receivership appointment or to oppose the Anglo Third-Party Defendants' motion to dissolve/dismiss). Instead, once this Court determined that no receiver appointment order existed in *Tibbs*, its jurisdiction is limited to stopping the Receiver from acting and declaring his prior actions void.

As to situation in which a court has granted motions to appoint a receiver in a specific case, the Supreme Court also provided specific directions in the June 26 Order. In *Park* (and other asbestos cases where "an order [has been] filed in the specific case as to which the work is to take place"), the Supreme Court directed the Court to review each order appointing a receiver to ensure that it complies with the Supreme Court's rulings in *Welch*. Accordingly, in *Park*, with regard to the receiver appointment, this Court's jurisdiction is limited to a review of the face of the appointment order to determine whether it complies with *Welch*. If the Court determines that the *Park* appointment order does comply with *Welch*, then it may so state. If the Court determines that

the appointment order does not comply with *Welch*, then the Court’s jurisdiction is limited to voiding the order. The Supreme Court did not give the Court discretion or authority to modify existing appointment orders that violate *Welch*. Accordingly, in *Park*, where the receiver appointment order on its face fails to comply with *Welch* (as discussed further herein), the Court’s jurisdiction is limited to declaring the order void.

III. OBJECTIONS

A. The Proposed Order’s Decision On The Effect Of Mr. Park’s Reappointment As Personal Representative Of The Park Estate Ignores The Law And Must Be Rejected.

The Proposed Order incorrectly finds that Mr. Park’s reappointment as Personal Representative for the Park Estate retroactively validates all actions that were taken when there was no “Park Estate” in legal existence. This ignores the law in South Carolina that actions taken when an estate is closed—which is a fundamentally different posture than when a representative has not yet been appointed to represent an ongoing and active estate—are a nullity and void. *See McCullar v. Estate of Campbell*, 381 S.C. 205, 207, 672 S.E.2d 784, 785 (2009) (any alleged litigation by an estate after it is closed is a nullity because the estate ceases to be a legal entity).

The Proposed Order spends just four paragraphs attempting to sweep under the rug the fundamental flaws in the process of obtaining the *Park* Appointment Order, without actually analyzing any of the legal issues in dispute. Indeed, in an attempt to get around controlling Supreme Court precedent, the Receiver’s Proposed Order mischaracterizes the Probate Court’s intentional closing of the Park Estate as a mere “lapse” of the Park Estate. But the Park Estate did not “lapse.” Mr. Park represented to the probate court that he had collected and distributed all assets of the estate, and requested that the probate court close the estate and fully terminate him as

personal representative.² In reliance on those representations, the probate court did exactly that: it closed the Park Estate.³

Accordingly, at the moment the receivership motion was made in *Park*, there was no longer any estate in existence and no personal representative in existence. As a matter of law, no one had standing to bring any motion or claim against any party and the action was a complete nullity. *See McCullar*, 381 S.C. at 207; *Bargil Associates, LLC v. Crites*, 135 A.D.3d 676, 24 N.Y.S.3d 119 (2d Dep’t 2016) (finding that “pursuant to applicable South Carolina law, the defendant lacked the authority to assert the subject counterclaims . . . because, at the time the defendant successfully moved to amend her answer to assert the counterclaims, her appointment as the personal representative of the decedent’s estate had been terminated and the estate had been closed.”); *Glenn v. E. I. DuPont De Nemours & Co.*, 254 S.C. 128, 136 (1970) (finding that where estate was closed and administratrix of the estate had been discharged, a subsequent suit by the former administratrix was a nullity and her subsequent reappointment, and therefore reopening of the estate, could not

² A copy of the notarized Application for Settlement in Probate Court Case No. 2021-ES-42-01296 is attached to the Altrad Defendants’ Reply Regarding Report to the Supreme Court on “Current State of *Park*” and the Plaintiffs’ “Bench Brief,” on page 67.

³ Mr. Park should now be estopped from claiming that the *Park* case, including the estate’s claims against Cape, was not fully resolved in June 2022. “Judicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation.” *Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997) (Toal, A.C.J.). “When a party has formally asserted a certain version of the facts in litigation, he cannot latter change those facts when the initial version no longer suits him.” *Id.* Here, Mr. Park made certain representations to the probate court that were relied on by the probate court to close the estate—a situation that has significant legal ramifications to the estate’s beneficiaries and creditors. Mr. Park and Park Counsel are estopped from now taking a contrary position.

revitalize the suit).⁴ Standing involves subject matter jurisdiction and cannot be retroactively corrected by the subsequent re-opening of the Park Estate.⁵

The Proposed Order tries to go around the Supreme Court’s binding decision in *McCullar* by arguing that the *McCullar* decision merely had to do with whether a “wrongful death lawsuit” could move forward “when a personal representative of an estate had not been appointed.” But that ignores the very heart of the Supreme Court’s decision in *McCullar*. In that case, Dr. Campbell died in December 2001 and his estate remained opened, with a personal representative appointed, for several years until January 2004. *See McCullar v. Est. of Campbell*, No. 2006-UP-332, 2006 WL 7286778, at *1 (S.C. Ct. App. Sept. 20, 2006), rev’d, 381 S.C. 205, 672 S.E.2d 784 (2009). Months after the estate was closed, the McCullars filed a suit against Dr. Campbell’s estate. When the estate later moved to dismiss the action for lack of subject matter jurisdiction based on the earlier closure of the Campbell estate, the McCullars did exactly what Mr. Park did here—they petitioned the probate court, reopened the Campbell estate, and got a new personal representative

⁴ *See also Prickett v. Hot Spring Cnty. Med. Ctr.*, 2010 Ark. App. 282, 7, 373 S.W.3d 914, 919 (2010) (holding that an estate, through its representative, did not have standing to bring an action after the estate was closed); *Branch v. Cox*, No. 4:17CV00429 J LH, 2018 WL 468284, at *3–4 (E.D. Ark. Jan. 18, 2018), aff’d sub nom. *Branch v. Vural*, 742 F. App’x 158 (8th Cir. 2018) (holding that an order reopening an estate and reappointing the administrator did not retroactively confer standing that did not exist when the estate was closed and plaintiff had been discharged from being the administrator); *In re Est. of Martin*, 1979 WL 178108, at *2 (Del. Ch. Jan. 30, 1979) (finding that the former attorney for an estate had no standing to agree to certain relief on behalf of the estate since the estate was closed).

⁵ *See, e.g., Tyler House Apts., Ltd. v. United States*, 38 Fed. Cl. 1, 7 (1997); *see also, e.g., Paradise Creations, Inc.*, 315 F.3d 1304, 1308–09 (Fed. Cir. 2003) (rejecting argument that state corporate revival statute, which provided that the revived corporation’s “reinstatement related back to the date of dissolution,” could “retroactively confer standing in federal court” at the time the then-dissolved corporation filed suit, which deprived the court of subject matter jurisdiction); *USS Clamagore SS-343 Restoration and Maintenance Ass’n, Inc. v. Patriots Point Development Authority*, No. 2019-CP-10-1950, 2020 WL 1038741, at *8 (S.C. Com. Pl. Mar. 02, 2020) (“It is improper for a plaintiff to retroactively attempt to correct a standing defect by seeking substitution under Rule 17(a) of the Rules of Civil Procedure or by amending its pleading.”).

appointed, all before a motion to alter or amend the decision on the motion to dismiss was decided by the trial court. *Id.* The Court of Appeals relied on the fact that the estate was “reopened and the personal representative reappointed before the motion to dismiss was concluded in the circuit court” to reverse the circuit court’s dismissal of the action. *McCullar*, 2006 WL 7286778, at *3. The South Carolina Supreme Court, however, did not care that the estate had been successfully reopened and explicitly declared that this was not merely an issue of who was the “real party in interest” or had the capacity to sue. *McCullar*, 381 S.C. at 207. To the contrary, the “fundamental” question at issue was “whether, at the time the suit was purportedly commenced, there existed a juridical entity known as ‘Estate of Dr. William Cox Campbell.’” Because the answer was no—even if the estate was reopened before the motion to dismiss was ever decided by the circuit court—the entire case was a “nullity” such that there was “no action before the Court” to even be dismissed. *Id.*, at 208. Similarly, here, the fundamental question is at the time the receivership motion was made in *Park*, was there a “juridical entity” known as the “Estate of Isabella Park” in existence. The undisputed answer is no. Therefore, just like in *McCullar*, there could be “no action before the Court,” no valid motion to appoint a receiver, and no valid receivership appointment order. The moment the Park Estate was closed, the entire *Park* action became a nullity and ceased to exist before the Court.

The Proposed Order’s purported reliance on S.C. Code § 62-3-701 is similarly misplaced and does nothing to change the outcome under *McCullar*. Section 701 states that a personal representative may ratify acts “on behalf of the estate done by others where the acts would have been proper for a personal representative.” S.C. Code § 62-3-701. But at the time, there was no estate because Mr. Park had closed it (all while being fully aware of the estate’s purported claims against Cape). No one has standing to bring a claim or motion on behalf of an entity that does not

exist. *Com. & Sav. Bank of Lake City v. Ward*, 146 S.C. 77, 143 S.E. 546, 548 (1928) (“if there is a lack of legal entity, the whole action fails. *** If an action is brought in the name of that which under the Lex fori has no legal entity, it is as if there was no plaintiff in the record and therefore no action before the court; which presents an instance of want of jurisdiction.”). Given that it would not have been proper in March 2023 for any purported personal representative or lawyer to bring the receivership motion because the estate no longer existed, Section 701 does not and cannot grant Mr. Park authority to ratify the receivership motion and retroactively confer standing that did not originally exist. *See, e.g., Bargil Associates, LLC*, 135 A.D.3d 676. Indeed, Section 701 was already in place at the time *McCullar* was decided, yet the Supreme Court held that an action involving a closed estate was a “nullity” and did not exist, even if the estate was later reopened.

Accordingly, when the Park estate was closed and Mr. Park’s capacity as personal representative of the estate was terminated, all controversies (especially those that were already pending) involving the estate ceased to exist; no plaintiff existed to pursue any claims in *Park*; no live dispute supported further judicial action or jurisdiction; and the *Park* case became moot as a matter of law. Section 701 does not alter this result. Accordingly, the *Park* order appointing Mr. Protopapas as receiver over Cape is a nullity and cannot form the basis for Mr. Protopapas to act for Cape in *Park*, *Tibbs* or any other matter.

B. The Receiver’s Proposed Order Should Be Rejected Because The Receiver Is Not Authorized To Conduct Work In *Tibbs*.

A fundamental flaw in the Proposed Order is that it presupposes a receivership exists in *Tibbs*. It does not. The South Carolina Supreme Court explicitly held: “The receiver is not to be authorized to conduct work as to a case in which no receiver appointment order has been filed.” In his motion papers and at the hearings before this court, the Receiver conceded that no such order exists, and again conceded such in the Proposed Order. The Proposed Order nonetheless attempts

to sidestep this defect by suggesting that the *Park* appointment order applies in *Tibbs*—and therefore authorized the Receiver to conduct work in *Tibbs*, including accepting service and filing the Third-Party Complaint—simply because it was **referenced** in the Third-Party Complaint and, months later, was eventually filed by a party challenging the authority of the Receiver. This theory is legally baseless, unsupported by any precedent, and directly contrary to the Supreme Court’s directives in *Welch* and the June 26 Order.

Indeed, a receivership is an “extraordinary remedy” that displaces the rights of corporate entities and must be narrowly tailored, justified by competent factual findings, and strictly supervised by the appointing court. The Receiver’s Proposed Order flouts this requirement by asking the Court to confirm a receivership that was never ordered in *Tibbs*, supported by insufficient factual findings, and justified by no admissible evidence. This is not a mere procedural defect—it goes to the heart of the Court’s authority. Without a valid receivership order, the Receiver has no standing, no role, and no authority to act in *Tibbs*.

1. No receiver has been appointed in *Tibbs*, and the Supreme Court expressly forbid action without a case-specific appointment order

Receiverships are not self-executing. They cannot be created by filing an order from another proceeding in the docket of a different case. South Carolina law requires that a receivership be expressly appointed by the court in the case at issue, upon a motion properly before the court, supported by evidence, and memorialized in an order. None of those prerequisites occurred in *Tibbs*. Instead, the Receiver has tried to bootstrap his authority by pointing to an order from the *Park* case, which indisputably involved different parties, different facts, and different procedural posture (and, as discussed further herein, was in and of itself completely invalid). The Supreme Court’s June 26 Order makes clear that this approach is impermissible.

Indeed, the June 26 Order leaves no room for ambiguity: “The receiver is not to be authorized to conduct work as to a case in which no receiver appointment order has been filed.” This language is neither permissive nor conditional. It imposes a categorical limitation on the Receiver’s authority—one that applies with full force in this case.

The problem for the Receiver is straightforward: there is no prejudgment receivership appointment order in *Tibbs*. The Proposed Order does not identify one because none exists. Indeed, the Court’s docket contains no motion from the *Tibbs* plaintiffs seeking such an appointment,⁶ no evidentiary submissions to support the appointment of a prejudgment receiver, and no findings by the Court that would satisfy the statutory prerequisites for prejudgment receivership under S.C. Code Ann. § 15-65-10(4) or (5). Critically, this is the threshold inquiry mandated by the South Carolina Supreme Court, and because there is no receiver appointment order in *Tibbs*, the Court should not and cannot find that the Receiver’s actions in *Tibbs* were authorized.

The Proposed Order does not even attempt to point to any specific language in the *Tibbs* record that would constitute a valid appointment order. Instead, the Proposed Order asserts that the *Park* appointment order was “referenced” multiple times in *Tibbs* by the Receiver, including in the Receiver’s Third-Party Complaint. Proposed Order, at p. 43. Then, only after several months of litigating (including seeking default judgments), the “parties filed the Cape Receiver Appointment Order” in *Tibbs*—when the parties contested the Receiver’s authority to act in *Tibbs*. *Id.*

Pursuant to the June 26 Order, neither referencing an order from another case nor submitting a copy of the order while challenging a receiver’s authority to act constitutes an

⁶ Although John A. Tibbs and Margaret B. Tibbs (the “Tibbs”) filed a Joinder to Receiver’s Motion to Confirm Appointment of Receiver on July 18, 2025, that single sentence filing is not the equivalent of the Tibbs filing a motion to appoint a receiver over Cape. This is especially true considering that no such filing would be appropriate given there has never been a default by Cape in the *Tibbs* action (nor has Cape even been served).

“appointment order” sufficient to authorize the Receiver to have committed its prior actions in *Tibbs*. The Supreme Court’s remand made clear that authority for a prejudgment receivership must be established on a case-by-case basis, with evidence and findings that apply to the particular litigation at hand. This makes sense, of course, given the Supreme Court’s emphasis in *Welch* that a prejudgment receiver can only marshal assets to cover the injuries of the specific plaintiff that sought the receiver’s appointment.⁷ The limitations expressed in *Welch* are particularly critical here given the Receiver’s own conduct—namely, initiating a third-party action that, as a matter of law, must be derivative of the Tibbs’ alleged injuries.⁸ Yet, based on the clear holdings in *Welch*, the very order the Receiver relies on to justify his authority must be limited to marshaling assets solely to satisfy Ms. Park’s injuries (not the Tibbs’ injuries).

Thus, the Receiver’s entire litigation activity in *Tibbs*—from accepting service to filing pleadings and motions—was conducted without jurisdiction. The Court has no discretion to retroactively validate such conduct. The absence of a receiver appointment order is not a technical defect—it is a jurisdictional failure. By drafting a Proposed Order that confirms his “appointment” in *Tibbs*, the Receiver seeks to retroactively create jurisdiction where none existed. But jurisdiction cannot be supplied by retroactive ratification. Either a receivership was appointed in *Tibbs*, or it was not. The record is clear that it was not. The Receiver’s attempt to rewrite history through the

⁷ The Supreme Court repeated over and over again that the receiver over Atlas Turner only had power and control over the assets to “cover Mr. Welch’s injuries.” Under South Carolina law, a prejudgment receiver simply does not have the authority to pursue claims to marshal assets to generically “address the liabilities for injured South Carolinians,” as the Receiver now requests in his Motion to Confirm Appointment. Such an appointment order runs afoul of the clear mandate from the Supreme Court in *Welch* that a receiver be appointed only to marshal assets sufficient to cover a particular plaintiff’s injury.

⁸ The Charter Third-Party Defendants incorporate by reference the arguments regarding the necessity that a third-party claim be derivative of the underlying plaintiff’s liability, which were made in the Charter Third-Party Defendants’ Memorandum in Opposition to Cape PLC’s Motion for Sanctions, filed on April 23, 2024.

Proposed Order represents a direct affront to both the Supreme Court's authority and the integrity of these proceedings. Accordingly, the Proposed Order must be rejected because the Receiver lacked standing and his filings are void.

2. The *Park* appointment order, even if filed in *Tibbs*, is not a substitute for a case-specific receiver appointment

The Proposed Order further improperly ignores the mandate in the June 26 Order because it finds that referencing and filing the *Park* order equates to an appointment order in *Tibbs*. This strained interpretation of the June 26 Order is incorrect and ignores the underpinning of both the June 26 Order and *Welch*. Importantly, the June 26 Order contemplates a discrete, case-specific appointment order. It is not satisfied by the administrative act of attaching or cross-filing a receivership order from a different action, much less one that involves different parties, different factual records, and different procedural postures. Critically, the filing of the *Park* order in *Tibbs* may have placed that document in the *Tibbs* record, but it did not—and could not—convert it into an order of appointment in *Tibbs*. The *Park* receivership should have been created based on circumstances specific to that case—circumstances that, even if presumed to be true, are not automatically transferable to this case. And those circumstances were never tested against the requirements of S.C. Code Ann. § 15-65-10 as applied to *Tibbs*. Indeed, the Court has never adopted or ratified the *Park* findings (which, as discussed below, do not meet the standards outlined in *Welch*) for purposes of *Tibbs*. No motion was heard, no findings made, and no authority granted in *Tibbs*. The *Park* appointment order is, by every meaningful measure, a separate judicial act—one with no operative effect here.

Any suggestion that the *Park* order had legal effect in *Tibbs* must confront the reality that Cape has never appeared, never been served, and never consented to any receivership in this case. The Receiver cannot litigate in the name of a party who is not before the Court, based solely on an

appointment order entered elsewhere. To hold otherwise would deprive Cape of the protections guaranteed by due process and the adversarial system. Indeed, prior to analyzing whether the appointment was appropriate in *Welch*, the Supreme Court first looked to whether the trial court has personal jurisdiction over Atlas Turner. *See Welch Decision*, at p. 10-11, 15-16. The Supreme Court went on to repeatedly reference the court's personal jurisdiction over Atlas Turner in connection with its ruling on the appointment order. Here, it is undisputed that Cape was never served with any pleadings such that the court had jurisdiction over Cape to appoint a receiver in *Tibbs*.

Furthermore, the Proposed Order ignores the Supreme Court's requirement in the June 26 Order that the Receiver "***has been authorized***" to conduct its work by an appointment order in *Tibbs*. Based on the plain meaning of the words, the only way any prior conduct can have "been authorized" is if the authorization was given *prior to* the work being conducted. Here, no such authorization, either through an actual appointment order in *Tibbs* or through the submission of the *Park* appointment order on the *Tibbs* docket, was given in advance of the Receiver's work in *Tibbs*. Instead, the Receiver improperly accepted service of the *Tibbs* complaint on behalf of Cape, answered, and then filed a Third-Party Complaint admitting massive liability on the part of Cape (without Cape's consent to do so) and asserted third-party claims wholly premised on the admissions made by the Receiver. And the Receiver did all of these things without any receivership order from any case whatsoever filed with the Court.⁹ As the Supreme Court unequivocally stated, given that there was absolutely no receivership order in the *Tibbs* case, whether a *Tibbs*

⁹ The first time the *Park* appointment order appears on the *Tibbs* docket was not until August 21, 2023, in connection with a third-party defendants' Motion to Dissolve the Receivership. This was after the Receiver agreed to accept service on Cape's behalf; filed an Answer for Cape on June 29, 2023; filed a Third-party complaint on June 30, 2023; and sought entry of default against multiple third-party defendants starting around August 18, 2023.

appointment or a *Park* appointment order, the Receiver was not “authorized to conduct work” in *Tibbs* when it accepted service on Cape’s behalf and filed the Third-Party Complaint. The Proposed Order’s reliance on a mere “reference” to the appointment order cannot meet the criteria mandated by the Supreme Court.

In sum, the *Park* order is not a *Tibbs* order. It does not authorize action in this case. Its reference and filing in *Tibbs* was procedurally meaningless. Only a *Tibbs*-specific appointment, supported by factual findings and entered by this Court, could provide the legal foundation necessary for the Receiver to act. That never happened. Therefore, the Court should reject the Receiver’s Proposed Order.

3. The *Park* appointment does not pass muster under the Welch Decision.

Furthermore, even if a *Park* plaintiff could retroactively come into existence as a legal entity and save the *Park* appointment—it cannot—and if the *Park* appointment order could somehow extend to *Tibbs*—it cannot—the *Park* appointment itself exceeds the permissible scope of authority as set forth in *Welch*. The Proposed Order fails to address that the second prong of Part A of the June 26 Order requiring the circuit court to determine that the original appointment order that allegedly justified the receiver’s conduct in *Tibbs* was “based on findings of fact sufficient under *Welch* to justify the order.” But the *Park* appointment order simply does not meet the standards outlined in *Welch*.

In *Welch*, the circuit court made findings of fact in the appointment order itself regarding the purported moral fraud of Atlas Turner. The *Park* appointment, on the other hand, does not contain a single finding of fact or conclusion regarding Cape’s purported moral fraud. Instead, the sole basis for appointing a receiver included in the order is 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. Counsel for the former *Park* plaintiffs (as the *Park* plaintiffs themselves no longer existed as a legal entity), however, did not demonstrate that Cape had dissolved (it has not), forfeited its charter (it has not), or been served but failed to answer (there is no evidence that Cape was sufficiently served).

Furthermore, even if each of those things were true, the *Park* appointment order is devoid of any indication that it was “based on findings of fact sufficient under *Welch* to justify the order.” In the *Park* Motion to Appoint Receiver, Mr. Park’s counsel argued that a receiver was appropriate under South Carolina Code § 15-65-10(5) because of Cape’s decision to refuse to “appear or accept service in the United States after being faced with substantial asbestos-related liabilities.” *Park* Motion to Appoint Receiver, at p. 8. However, under *Welch*, this does not meet the requirements necessary to appoint a prejudgment receiver. As the Supreme Court pointed out, the “extreme power” to appoint a receiver before judgment “may only be used in extreme cases” and in the “rarest of cases.” *Welch* Decision, at p. 12. Indeed, it is an “extraordinary remedy reserved for the most extraordinary cases. It is not to be used in the typical default case.” *Welch* Decision, at p. 19. Importantly, the *Welch* Decision did not rely on Atlas Turner’s status as a defaulted party in *Welch* but instead looked to Atlas Turner’s conduct specifically in the *Welch* case to determine that Atlas Turner engaged in moral fraud sufficient to justify a prejudgment receiver. Specifically, the Supreme Court found that:

First, Atlas Turner's contemptuous disregard of the court's discovery orders and other conduct demonstrates it is seeking to evade its responsibilities as a civil litigant. There is evidence that Atlas Turner's corporate policy for responding to asbestos lawsuits is to adopt a “minimum defense posture” and incur default judgments. Atlas Turner followed that policy here. Second, Atlas Turner represented to the trial court that it had no Insurance Assets relevant to these cases. However, there is evidence Atlas Turner was involved

in a transaction that may have compromised some of its potential insurance coverage. The record further discloses that Atlas Turner has refused to tender its policies to certain insurers for defense and indemnity.

Welch Decision, at p. 13-14. Indeed, the Supreme Court pointed out that the trial court “gave Atlas Turner many chances to comply and follow the rules like every other litigant.” *Id.*, at p. 19.

None of these things, or even anything remotely similar, occurred in *Park*. Rather, the *Park* record demonstrates that no Cape entity was served with a summons or complaint, made an appearance, or engaged in litigation. Indeed, the *Park* court did *not* make any findings that 1) Cape was properly served with service of process;¹⁰ 2) Cape refused (or failed) to comply with any court orders; 3) Cape was in default; 4) Cape engaged in moral fraud; 5) Cape was fraudulently concealing or disposing of assets that might be responsive to a later judgment; 6) there was a danger that Cape’s property would be materially injured before a judgment could be entered; 7) Cape was disobeying discovery orders; 8) Cape had made misrepresentations to the Court concerning the existence of assets that might cover the plaintiffs’ alleged injuries; or 9) Cape was otherwise engaged in active wrongdoing.

The Proposed Order disregards the facts, the law, and the Supreme Court’s explicit mandate in the June 26 Order. The Supreme Court made clear that any appointment order authorizing a receiver to act in *Tibbs*—which necessarily means it must have been filed *before* the receiver undertook his actions—had to be based on findings of facts meeting the strict requirements of *Welch*. The *Park* appointment order was not based on any such findings of fact and certainly did not “limit” the receiver’s authority “as set forth in *Welch*.” The Court should therefore reject the

¹⁰ Such a finding would have been impossible considering that, prior to the *Park* appointment order, no certificate of service or other affidavit in support showing service on Cape was ever submitted to the Court for review.

Proposed Order as it is an improper effort to repurpose the *Park* order to retroactively justify actions that were ultra vires from the start.

C. The Receiver's Proposed Order Should Be Rejected Because It Fails To Satisfy The Strict Requirements of *Welch*.

Even if one were to set aside the threshold jurisdictional flaw that no receivership was ever entered in *Tibbs*, the Receiver's Proposed Order still collapses under *Welch* and the June 26 Order. The Supreme Court mandated that, if the circuit court wanted to authorize future 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" to justify the circuit court's action. June 26 Order, at p. 4. Here, the Proposed Order clearly authorizes the Receiver to conduct its work based on facts not found sufficient in *Welch*, and is authorizing the Receiver to take control of Cape's board level decisions, an action specifically disallowed by the Supreme Court in *Welch*. The Proposed Order, however, fails to make findings of fact and conclusions of law that justify these departures from *Welch*.

1. The "evidence" included in the Proposed Order is inadmissible according to the South Carolina Rules of Evidence and cannot be reasonably relied on to form "facts" sufficient to justify a prejudgment receiver.

The Court should reject the Proposed Order because it rests on improper hearsay materials. The Proposed Order relies upon documents that consist of unsworn statements, unauthenticated exhibits, and out-of-court assertions offered for the truth of the matters asserted. Not only are the documents inadmissible under SCRE 802, but they also contain inadmissible hearsay within hearsay under SCRE 805. These documents are not competent evidence and should not lawfully support the extraordinary remedy of receivership.

2. The Proposed Order improperly conflates Cape with NAAC, a legal theory that has been soundly rejected after an extensive trial on the merits.

The Proposed Order improperly conflates Cape’s purported actions with other parties’ actions under the very same theories the Receiver seeks to prove in this litigation. Specifically, the Proposed Order improperly relies on documents from other parties, such as NAAC, and conflates NAAC’s conduct with that of Cape. For example, when justifying its purported “jurisdiction” over Cape, the Proposed Order cites to documents showing that NAAC sold asbestos into South Carolina. *See, e.g.*, Proposed Order, at p. 37. However, in order to attribute NAAC’s conduct to Cape, the Court would need to first pierce the corporate veil between Cape and NAAC or find that Cape is the alter ego of NAAC, both theories of which have been soundly rejected after an extensive 34-day trial and a subsequent 17-day appeal decades ago in the United Kingdom in *Adams v. Cape Industries plc* (1990) 1 Ch 433 (CA). The Receiver (purportedly standing in the shoes of Cape) is bound by and is estopped from taking action inconsistent with and inapposite to *Adams* and from seeking to undermine and overturn its conclusive findings made in favor of the entity over which the Receiver should—and is required, by South Carolina law, to—be protecting

3. The basis for appointing a receiving in the Proposed Order is not sufficient under *Welch*.

Even assuming the facts outlined in the Proposed Order are true and based on admissible evidence—they are not—the “facts” used to justify Cape’s purported “moral fraud” and “insolvency” are insufficient to warrant the appointment of a prejudgment receiver in *Tibbs*.

First, although the Proposed Order finds that a receivership is warranted under S.C. Code § 15-65-10(4) because CIHL (not a party in *Tibbs*) is allegedly in danger of insolvency, the “evidence” of such danger cited in the Proposed Order amounts to nothing more than conjecture. The Proposed Order speculates that because CIHL is a non-operating shell 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, and not US-based claimants, this must mean there is “danger of imminent insolvency for CIHL.” Proposed Order, at 42. None of this constitutes evidence that CIHL is in immediate danger of becoming insolvent such that the drastic remedy of receivership should be implemented. Indeed, the very features the Proposed Order relies on are nothing more than the ordinary hallmarks of a holding company. To treat those characteristics as proof of insolvency would turn South Carolina law on its head. It would mean that every holding company—simply by virtue of its structure—could be subjected to the drastic remedy of a prejudgment receivership. That result is flatly inconsistent with the Supreme Court’s directive that a prejudgment receivership is an “extreme power,” reserved only for the “rarest” and most “extreme cases.”

Second, although the Proposed Order finds that a receivership is also warranted under S.C. Code § 15-65-10(5), the Proposed Order does not identify any moral fraud committed by any Cape entity in the *Tibbs* case that could support the extraordinary remedy of appointing a prejudgment receivership over an active foreign entity. Indeed, no Cape entity has been served with a summons and complaint in *Tibbs*, nor has any Cape entity taken any action whatsoever in *Tibbs*. Instead, the Proposed Order focuses on the Receiver’s allegations that Cape committed “moral fraud” decades ago. This position, however, 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 the *Welch* case and related to Atlas Turner’s actions in *Welch*, including but not limited to making misrepresentations to the trial court and disregarding its orders. *Welch* Decision, at pp. 13-14. In contrast, the alleged “moral fraud” identified in the Proposed Order 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 purported lack of answer in the *Park* case. Cape has not engaged in any misconduct in *Tibbs*; it has not even been served with process in the case.

Nothing in the Proposed Order changes what the outcome should be—there has been no showing of “moral fraud” by Cape in the *Tibbs* case and no showing of “insolvency” that could support appointment of a receiver over any Cape entity in *Tibbs*.

4. The authority given the Receiver under the Proposed Order would improperly exceed the scope of work authorized by *Welch*.

Even as modified in the Proposed Order, the Receiver's scope of work authorized under the Proposed Order still exceeds the permissible scope of work as set forth in *Welch*. The Proposed Order demonstrates a fundamental misunderstanding of the Welch Decision's limitations on receiverships. Indeed, the Proposed Order's conclusion that there is nothing in the Welch Decision that would require its receivership limitations be applied to any other South Carolina receivership (*see* Proposed Order, at p. 46) is strictly belied by the June 26 Order wherein the Supreme Court mandated the circuit court “[e]nsure” that the Receiver's “scope of authority is limited as set forth in *Welch*.” If the Supreme Court believed those limitations did not apply in *Tibbs*, it would have had no reason to impose that explicit mandate. The June 26 Order makes clear beyond dispute that the restrictions announced in *Welch* govern here, and the Proposed Order's contrary position cannot be reconciled with that directive.

Furthermore, any conclusion that the Welch Decision's limitations on the authority of a receiver should only be interpreted as clarifying the definition of an “insurance asset” and not actually limiting a receiver's authority is an inaccurate reading of the Welch Decision. When the circuit court filed the appointment order over Atlas Turner in *Welch*, the court specifically included non-insurance assets within the scope of the receivership by including any assets that were “related to, touch or are otherwise relevant to insurance.” The Supreme Court ultimately held that, even

though the appointment order explicitly granted the Atlas Turner receiver control over the non-insurance assets, that grant of authority exceeds what is allowed for a prejudgment receiver. The Supreme Court found that allowing a receiver control over those types of assets would “grant the Receiver entry into the Atlas Turner boardroom or some vague right to ‘take over’ operation of the company,” which is not permissible authority for a prejudgment receiver in South Carolina. Importantly, the Supreme Court in *Welch* did not just say the parties misunderstood or were clarifying the scope of authority given the receiver in the appointment order. Instead, the Supreme Court explicitly stated that they were “shrink[ing] the scope of the Receivership order.”

Nevertheless, the Proposed Order omits the fact the Atlas Turner appointment order did in fact originally grant the receiver authority over claims beyond just insurance policies. The Proposed Order instead asserts that the law authorizes receivers to take over operations of a functioning company and/or make boardroom level decisions on behalf of a company that already has a functioning and operating board so long as that authority is included in an appointment order. This position, however, was flatly rejected by the Supreme Court in *Welch*. 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 scope of receivership delineated by *Welch*.

5. The Proposed Order’s findings of facts and conclusions of law are insufficient to justify exceeding South Carolina law as outlined in *Welch*.

For the reasons discussed throughout this Objection, the Proposed Order does not contain sufficient findings of facts, based on competent evidence, or conclusions of law that would warrant the “extraordinary” remedy of a prejudgment receivership over any Cape entity in the *Tibbs* action.

Under South Carolina law, a prejudgment receivership may only be imposed here upon a clear, case-specific showing of necessity, supported by evidence and findings in the record, including but not limited to that Cape committed a “moral fraud” in connection with the *Tibbs* litigation. Only upon such a showing may a court consider the extraordinary step of appointing a receiver. This is not optional. It is the legal prerequisite that ensures a receivership is used as a narrowly tailored remedy, not a shortcut for litigants who are dissatisfied with more traditional legal avenues or cannot legitimately obtain personal jurisdiction over the entity.

Implicitly acknowledging there were errors with the scope of authority given the receiver in the *Park* appointment order, the Proposed Order seeks to modify and expand the scope of the Park appointment order.¹¹ See Proposed Order, at p. 46-48. Even with these modifications, however, the findings of fact and conclusions of law are simply insufficient to justify exceeding South Carolina law as set forth in *Welch* and the June 26 Order. Importantly, the third prong of the June 26 Order required the circuit court to justify, by specific findings of fact and conclusions of law, any receivership appointment that is based on facts not found sufficient in *Welch*, or to authorize a scope of work not approved in *Welch*. The Proposed Order makes no attempt to do so. Indeed, instead of complying with the Supreme Court’s mandate, the Proposed Order simply makes the bald (and incorrect) conclusion that *Welch* does not apply to any receivership beyond a

¹¹ The modifications to the Park appointment order include (a) changing the entity in receivership; (b) revising the earlier (inaccurate) findings that CHIL was dissolved and forfeited its charter; (c) authorizing the receiver to “administer the assets of Cape responsive asbestos personal injury claims”; (d) granting the receiver authority to conduct work in any case by accepting service on behalf of Cape, even if no appointment order was filed in that case; and (e) giving the receiver the power to “obtain from any third party copies of any records belonging or pertaining to the assets of Cape . . . including prior legal representation of Cape.” Prior to these modifications, the *Park* appointment order did not authorize the receiver to obtain “any records” from any third party that relate to any asset of Cape, including waiving Cape’s attorney client privilege with its former counsel.

receivership expressly limited to only insurance assets (even though the appointment order in *Welch* originally exceeded insurance assets).

The extraordinary relief of a receiver should not rest on presumptions, assumptions, or conjecture. There must be evidence—current, case-specific, and admissible—establishing that Cape is insolvent today, is in “imminent danger of insolvency,” or engaged in a moral fraud in connection with *Tibbs* action. The Receiver has not supplied such evidence (nor has any *Tibbs* plaintiff), and the Proposed Order does not pretend otherwise. By not providing any justification or explanation of why the circuit court can exceed the strictures in *Welch*, the Proposed Order ignores the strict mandate handed down by the Supreme Court in the June 26 Order and, therefore, must be rejected.

D. The Proposed Order Improperly Grants The Receiver’s Motion To Confirm Appointment Even Though He Lacks Standing To Seek His Own Appointment.

The Proposed Order should be rejected because it grants the Receiver’s motion to confirm his own appointment, which the Receiver had no standing to bring. Receivership is an equitable remedy that originates in the Court’s inherent authority to preserve property or administer justice in extraordinary circumstances. But the power to appoint a receiver must be invoked by a party to the case, based on a concrete showing of necessity and supported by facts that meet statutory and constitutional requirements. The Receiver’s attempt to circumvent this framework by filing a motion to confirm his own appointment—when no such appointment has ever occurred—is not only procedurally improper but fundamentally inconsistent with the nature of receiverships under South Carolina law.

As the South Carolina Supreme Court has long held, a receiver is not a party litigant. He is a disinterested officer of the court appointed to receive and manage property that is the subject of litigation. *See Peurifoy v. Gamble*, 145 S.C. 1, 142 S.E. 788, 790 (1928). The Court in *Peurifoy*

emphasized that a receiver “has no personal interest in the property in his official character.” *Id.* The receiver is not a claimant. He is an arm of the court. As such, he cannot bootstrap his own authority into existence by filing a motion asking the court to ratify conduct undertaken without authorization.

Indeed, receivers are appointed—not self-appointed. The law contemplates that a party in the case, typically a plaintiff with a concrete interest in preserving assets or ensuring the fair administration of justice, will request appointment of a receiver by filing a motion supported by affidavits or evidence. *See* S.C. Code Ann. § 15-65-10(4), (5). That motion must allege one of the narrow statutory grounds for prejudgment receiverships—such as the risk of asset dissipation, fraud, or misconduct by an adverse party.

Here, no party in *Tibbs* ever filed such a motion. There is no record of any *Tibbs* plaintiff requesting the appointment of a receiver to represent Cape. Nor has this Court made any findings that would support such relief under South Carolina law. The Proposed Order is the first time this Court would appoint a receiver in *Tibbs*—but it comes from a motion not from a party, but from the Receiver himself.

This procedural flaw is not a technicality. It goes to the core of the Court’s equitable authority. Courts do not grant extraordinary remedies on the basis of administrative convenience. The South Carolina Supreme Court reaffirmed this principle in *Welch*, holding that a prejudgment receiver should not be appointed except in the “rarest case” while relying on actual *evidence* to determine that Atlas Turner engaged in a moral fraud through its actions in *Welch* that were sufficient to warrant a prejudgment receiver. *See Welch Decision*, at 12-14. Those findings must precede, not follow, a receiver’s involvement (and should not rely on “facts” presented by the very

receiver the order would theoretically appoint). Otherwise, the receiver becomes an independent litigant—a role fundamentally incompatible with his status as a neutral fiduciary.

Moreover, although the Receiver styled his request as a Motion to “Confirm Appointment,” there is no appointment order in *Tibbs* to *confirm*. Confirmation presupposes an antecedent action. One cannot confirm what never happened. The Proposed Order’s use of the word “confirm” attempts to mask what is actually a request for an initial appointment. But it is being brought not by a party, but by the Receiver himself. And it lacks the evidentiary and procedural prerequisites for appointment under § 15-65-10 and *Welch*.

Here, the Receiver has acted for years without any authority in *Tibbs*. He accepted service, filed pleadings, made admissions of fact, pursued Capes purported legal rights, and opposed motions—all without an appointment order from the *Tibbs* Court authorizing him to do so. Now, instead of the *Tibbs* plaintiffs making a motion to appoint a receiver over a Cape entity (and accepting the statutory liability that comes with such a request), the Proposed Order “confirms” the Receiver’s request as to his own status as though the requisite steps had already occurred. But the Court cannot and should not ratify acts that were ultra vires to begin with.

IV. CONCLUSION

The Proposed Order is fundamentally improper. It was drafted by a Receiver who was never validly appointed in *Tibbs*, and retroactively provides authority that has never existed. The Receiver had no standing to submit the Proposed Order, nor did he have standing to make his self-appointing motion to “confirm” an appointment that never existed.

Even if a valid appointment order in *Tibbs* existed—and plainly it does not—the Proposed Order still could not stand. As written, the Proposed Order directly contravenes the June 26 Order and the Court’s ruling in *Welch*, which do not permit the Receiver to act in *Tibbs* without having previously obtained a valid, case-specific appointment order prior to conducting work in *Tibbs*.

There is no such order here. No party with standing has even moved for one. That omission alone compels rejection of the Proposed Order.

But even indulging the fiction that such an appointment order was in place, the Proposed Order is still defective. The Proposed Order grants extraordinary relief on the basis of speculation and mischaracterization, rather than admissible evidence and proper findings, and grants a receiver powers beyond that which were approved in *Welch*. Indeed, neither *Welch* nor the June 26 Order authorizes a receiver to make board level decisions for a company such as instituting massive litigation on behalf of an entity—much less make sweeping admissions of liability on behalf of the company. Accordingly, the Charter Third-Party Defendants respectfully submit that both the procedural and substantive flaws described herein compel the Court to reject the Proposed Order in its entirety.

Dated: August 27, 2025

GORDON REES SCULLY MANSUKHANI LLP

By s/A. Victor Rawl, Jr.

A. Victor Rawl, Jr. (SC 9261)

Email: vrawl@grsm.com

677 King Street, Suite 450

Charleston, SC 29403

Telephone: (843) 278-5900

*Attorneys for Third-Party Defendants
Charter Consolidated Ltd., ESAB
Corporation, and Central Mining &
Investment Corporation Ltd.*

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

JOHN A. TIBBS AND

MARGARITE B. TIBBS,

Plaintiff,

vs.

C/A No.: 2023-CP-40-01759

3M COMPANY, ET AL.,

Defendants.

(Caption continued on the following page.)

H E A R I N G

BEFORE THE HONORABLE

CHIEF JUSTICE (RET.) JEAN TOAL

DATE TAKEN: Monday, October 6, 2025

TIME START: 11:33 a.m.

TIME END: 1:04 p.m.

LOCATION: Richland County Judicial Center

1701 Main Street

Columbia, South Carolina

REPORTED BY: Sheri L. Byers, RPR

Magna Legal Services

866.624.6221

www.MagnaLS.com

CAPTION CONTINUED:

CAPE PLC, INDIVIDUALLY AND AS
SUCCESSOR IN INTEREST TO CAPE
ASBESTOS COMPANY LIMITED, BY
AND THROUGH ITS DULY APPOINTED
RECEIVER PETER D. PROTOPAPAS,

Third-Party Plaintiff,

v.

ANGLO AMERICAN PLC, INDIVIDUALLY
AND AS SUCCESSOR IN INTEREST TO
ANGLO AMERICAN CORPORATION OF
SOUTH AFRICA LTD., ET AL.,

Third-Party Defendants.

APPEARANCES:

ATTORNEYS FOR THE PLAINTIFFS:

KASSEL MCVEY

BY: THEILE B. MCVEY, ESQUIRE
1330 Laurel Street
Columbia, South Carolina 29201
803.256.4242
tmcvey@kassellaw.com

ATTORNEYS FOR THE RECEIVER:

SMITH ROBINSON HOLLER DUBOSE MORGAN, LLC
BY: JONATHAN M. ROBINSON, ESQUIRE
3200 Devine Street
Columbia, South Carolina 29205
803.254.5445
jon@smithrobinsonlaw.com

-and-

GALLIVAN, WHITE & BOYD, P.A.

BY: JOHN T. LAY, ESQUIRE
-and- LINDSAY A. JOYNER, ESQUIRE
1201 Main Street, Suite 1200
Columbia, South Carolina 29201
803.779.1833
jlay@gwblawfirm.com
ljoyner@gwblawfirm.com

ATTORNEYS FOR THE DEFENDANTS

ALTRAD INVESTMENT AUTHORITY AND MOHED ALTRAD:

WOMBLE BOND DICKINSON, LLC

BY: M. TODD CARROLL, ESQUIRE
1221 Main Street, Suite 1600
Columbia, South Carolina 29201
803.454.6504
todd.carroll@wbd-us.com

APPEARANCES CONTINUED:

ATTORNEYS FOR THE DEFENDANTS

CHARTER ENTITIES, ESAB, AND
CENTRAL MINING:

GORDON REES SCULLY MANSUKHANI, LLP
BY: A. VICTOR RAWL, ESQUIRE
40 Calhoun Street, Suite 350
Charleston, South Carolina 29401
843.714.2501
vrawl@grsm.com

ATTORNEYS FOR THE DEFENDANTS

DE BEERS PLC AND ANGLO AMERICAN PLC:
HERBERT SMITH FREEHILLS KRAMER NEW YORK, LLP
BY: SCOTT BALBER, ESQUIRE
-and- CHRISTOPHER B. EMCH, ESQUIRE
200 Park Avenue, 16th Floor
New York, New York 10166
917.542.7600
scott.balber@hsfkramer.com
chris.emch@hsfkramer.com

I N D E X

	PAGE
Motions Before the Court	6
Certificate of Reporter	85

E X H I B I T S

(None were proffered.)

1 - - -

2 P R O C E E D I N G S

3 - - -

4 THE COURT: All right. I've got an agenda
5 here which is a slight redo of the one Ms. Valek
6 sent me at the end of last week. Does that
7 fairly reflect what we're going to do today?

8 Mr. Protopapas?

9 MR. PROTOPAPAS: Your Honor, Peter
10 Protopapas as receiver. There is a substantial
11 change to the agenda.

12 THE COURT: Well, I hope that's good news.

13 MR. PROTOPAPAS: I believe it's good news.

14 As the Court may recall, there are three
15 categories of defendants before you in this
16 matter. I categorize them into three groups.
17 One is titled the Anglo defendants consisting of
18 Anglo American, PLC; De Beers, PLC; De Beers
19 Consolidated Mining Properties Limited; De
20 Beers, UK Limited; De Beers Centenary AG.

21 That's category one. I'll call them the
22 Anglo Group, Your Honor.

23 Category two -- and they're represented by
24 our friends Mr. Elliott and Mr. Balber.

25 Category two is ESAB, Charter, and Central

1 Mining represented by Mr. Rawl.

2 Category 3 is Altrad and Altrad SAS
3 represented by Mr. Carroll.

4 Those are the three categories, Your Honor.

5 The Anglo defendants, of course as
6 Your Honor knows, has been participating in this
7 case in discovery and motions practice. ESAB
8 and Altrad have not.

9 We have reached a settlement with our
10 friends at Anglo. And, Your Honor, after a lot
11 of hard work over the weekend through this
12 morning, Mr. Balber and I and members of his
13 team and of my team have reached a settlement,
14 which we will be presenting to the Court.

15 It will be a confidential settlement. We
16 will be filing it as we have traditionally in
17 other receiverships. It will create a qualified
18 settlement fund in proceeding as this Court is
19 so familiar.

20 And as a result, Your Honor, numbers 2, 3,
21 and 4 of the pretrial hearing agenda need not be
22 heard.

23 I know the Court read everything over the
24 weekend. I apologize we didn't get it done
25 sooner. And I understand that falls on me, Your

1 Honor. And I apologize, Your Honor.

2 THE COURT: That's all right. Let's hear
3 it. I'd read ten times that if it resulted in
4 what you're bringing me today.

5 MR. PROTOPAPAS: Also, Your Honor, I
6 believe the Court had submitted a third report
7 to the South Carolina Supreme Court. There are
8 two proposed orders that were hotly contested.
9 We will need to modify one of those two orders
10 to take into account that our friends at Anglo
11 are no longer defendants in this case and have
12 been fighting vociferously and partly before
13 this Court.

14 So we will be putting together a modified
15 proposal, of course, circulating it to all
16 concerned and giving it to the Court.

17 And the second proposed order which was on
18 a Motion to Compel in Park, this weekend,
19 Your Honor, of course late in the game, and I'll
20 take the blame for that, I have submitted a
21 proposal in an attempt to resolve that motion.
22 Mr. Sawyer just got it and he is going to check
23 with his clients to see if that proposal would
24 it resolve. And I apologize that was not done
25 sooner.

1 But we will be submitting in light of the
2 settlement and Mr. Balber is here and he and his
3 team deserve all the accolades for working
4 through incredibly sticky issues. And I don't
5 believe his -- no further order of this court
6 should impact anything for the Anglos as they
7 are buying their peace.

8 THE COURT: Wow. Well, do you propose to
9 proceed by placing it on the record now, or how
10 do you want to proceed?

11 MR. PROTOPAPAS: I think Mr. Balber is in a
12 position to acknowledge the settlement and then
13 to allow us to give you this fulsome settlement
14 proposal for the Court to review in camera.

15 And so if what we could do, Your Honor, is
16 I think our preference is not to put details of
17 it currently before this Court and in the
18 record, but to acknowledge the settlement and
19 then to present to the Court to final product of
20 the settlement.

21 THE COURT: What's your timeline on that?
22 I know that there are very many complexities
23 involved in this, Mr. Balber. I will say more
24 about you in a few minutes, but I know how
25 sophisticated this discussion has been and how

1 complex these documents are going to be. And we
2 want them to be right and particularly in
3 lightly of the fact that there still remain
4 those who are not -- whose controversies are not
5 composed, it's all the more important to have
6 these materials correct and able to stand alone.

7 MR. PROTOPAPAS: Your Honor, we'll have
8 signature-worthy documents by Thursday of this
9 week was the hope. I think we were talking.
10 But we would actually be able to sign or be in a
11 position to sign a final-final then. But we can
12 submit in camera to the Court a -- sooner than
13 that if the Court wants, but we will be working
14 on nonmaterial terms to the resolution.

15 THE COURT: Whatever you think will help
16 educate me the quickest about being able to
17 execute this. I think it would be well to have
18 in my hands the nonfinal confidential materials
19 that I can look at and be prepared to look at
20 the more fulsome documents if you think that's
21 wise.

22 MR. BALBER: With Your Honor's permission,
23 if you can give us maybe one more day.

24 THE COURT: Sure.

25 MR. BALBER: We've been working very hard.

1 THE COURT: Sure.

2 MR. BALBER: Incredibly collaborative. We
3 are there. I just have a lot of stakeholders I
4 need to ...

5 THE COURT: Sure. Understood. Understood.

6 Well, the arrangement will be, at least as
7 we sit here today, that Mr. Protopapas has made
8 certain representations. I want you to -- you
9 have made for the record the representation of
10 the categories of things that are potentially
11 resolved by this agreement to be forthcoming.

12 I'm going to ask Mr. Balber in a minute to
13 put something general on the record
14 acknowledging where we are. And then the time
15 frame would be Thursday for finalized documents
16 to come to me. And before that, if possible,
17 some kind of in-camera submission, but that's
18 not necessary.

19 I'll read everything when I get it and try
20 to make some determinations about what may need
21 more revision, what to sign and so forth as soon
22 as I receive the materials.

23 MR. PROTOPAPAS: Yes, Your Honor. We will
24 work to get you by close of business tomorrow a
25 preview or a -- something that can help to begin

1 the process of really learning.

2 THE COURT: Sure.

3 MR. PROTOPAPAS: And then signature worthy
4 in short order thereafter.

5 THE COURT: Right.

6 MR. PROTOPAPAS: Your Honor, I do believe
7 it appropriate for me to say categorically it
8 would resolve all disputes between Anglo. It
9 does resolve all disputes between the Anglo
10 parties, the receivership, creates a qualified
11 settlement fund for South Carolina claims, and
12 it complies with the orders of this Court and
13 our appellate courts.

14 And it will require, of course, the
15 appropriate orders from this Court to enforce
16 and to bring forward, but we're there. So I
17 appreciate the Court's indulgence in this matter
18 overall.

19 I appreciate the Court recognizing that for
20 purposes of today, that, one, the motions that
21 are on the pretrial hearing agenda, numbers 2,
22 3, 4, which were either us versus Anglo or Anglo
23 versus us no longer need to occupy this Court's
24 time.

25 THE COURT: All right. Mr. Balber, I call

1 on you now.

2 MR. BALBER: Yes, Your Honor. So
3 Mr. Protopapas has accurately described the
4 state of play. We have an agreement. We've
5 spent quite a lot of time working through, as
6 Your Honor knows, complex issues and we are
7 there. So as Mr. Protopapas represented, we
8 expect to be able to get you a signed agreement
9 by Thursday.

10 THE COURT: Well, I understand quite well
11 that the devil is in the details and you have
12 quite a few parties of interest in this
13 constellation of documents that will compose the
14 qualified settlement fund and the resolution of
15 all matters involving Anglo. So I just can't
16 tell you how much I appreciate your leadership
17 in particular, Mr. Balber, with respect to this
18 matter and of course local counsel.

19 It's good to have James Elliott back in
20 play now. And I appreciate so much, James, your
21 ability to jump right into this matter
22 immediately and keep us going.

23 MR. ELLIOTT: They all decided it was
24 better that I was gone for two months and got it
25 worked out apparently while I was gone.

1 MR. PROTOPAPAS: Your Honor, I have a
2 document I could hand up to the Court. The one
3 I'm handing the Court, Your Honor, is
4 unredacted. I would ask the Court to hold it in
5 camera until the appropriate motions.

6 THE COURT: All right. This is a document
7 with the caption Tibbs versus 3M and the Park
8 versus Armstrong, 2023-CP-40-01759. That's the
9 Tibbs litigation. And 2021-CP-40-02727, that is
10 the Park versus Armstrong litigation.

11 These are stipulations between the receiver
12 for Cape, who was appointed in the Park case,
13 and whose authority then spread to the other
14 cases in which Cape was involved as receiver,
15 including his activities as receiver and his
16 activities in connection with the third-party
17 litigation.

18 MR. PROTOPAPAS: Your Honor, on page 2,
19 paragraph 1, an amount should be redacted in
20 anything in the public record. I just
21 caution -- I just want to caution the Court that
22 I do have --

23 THE COURT: Right. I realize that the
24 amount is confidential at this time, but it's a
25 settlement stipulation pursuant to Rule 43(k) of

1 the South Carolina Rules of Civil Procedure and
2 this is simply a placeholder for documents that
3 will be submitted later in the week which will
4 flesh out the announcement of this stipulation.

5 So I will hold it in camera --

6 MR. PROTOPAPAS: Thank you.

7 THE COURT: -- awaiting the rest of the
8 documents. I think there are other things that
9 should be done ancillary to this, and I'll
10 discuss the posture of those in a minute, but
11 they deal with the Supreme Court's order asking
12 that I make certain findings and take certain
13 actions with respect to the receiverships.

14 And I intend to do that, and I want to talk
15 about that today in a limited sort of way
16 because I'm sure that will be satisfactory to
17 some and unsatisfactory to others. But everyone
18 needs to understand what my thinking is about
19 how to move forward with these receiverships.

20 Now, all that said, Mr. Protopapas, what
21 happens with number 1?

22 MR. PROTOPAPAS: Number 1, Your Honor, as
23 we have two categories of defendants who are
24 nonparticipating and I don't believe can oppose
25 the motion.

1 THE COURT: Right. We'll put that on the
2 record in a minute. This is with respect to
3 agenda items 2, 3, and 4, correct?

4 MR. PROTOPAPAS: They are resolved,
5 Your Honor.

6 THE COURT: And we still have number 5.

7 MR. PROTOPAPAS: Which I don't believe is a
8 motion that bears any weight for our purposes
9 today.

10 THE COURT: All right.

11 MR. PROTOPAPAS: I leave that to Ms. Joyner
12 and my team to argue. Mr. Lay is prepared to
13 talk about the motion to amend.

14 THE COURT: Right. That needs to be done,
15 and I'll ask you and Mr. Lay to give some
16 further attention to discussing the pendency of
17 the trial and what you envision that to involve,
18 if it takes place.

19 MR. PROTOPAPAS: Yes, Your Honor.

20 THE COURT: All right, sir.

21 So Mr. Lay.

22 MR. LAY: Yes, ma'am.

23 THE COURT: On item number 1.

24 MR. LAY: Motion to amend.

25 THE COURT: Yes, sir.

1 MR. LAY: All right. So we filed a motion
2 to amend in November.

3 THE COURT: I've seen the filing. I've
4 read the very voluminous materials.

5 MR. LAY: That's right. It was a
6 modification to the motion to amend where there
7 was a supplement in June of this year to
8 accommodate the rulings from the June order we
9 got from the Supreme Court. So there were
10 further modifications, but it's still
11 essentially the same thing.

12 It's specifically pleading an amalgamation
13 cause of action. Even though amalgamation was
14 in the complaint 13 times, just wanted to very
15 specifically plead the amalgamation theory,
16 adding some facts that have been obtained as we
17 have gone through this litigation so as to
18 conform to the evidence.

19 There is no one to oppose this that is
20 involved with this litigation or active in the
21 litigation. There's no prejudice involved in
22 any of this.

23 In fact, with the motion to amend that was
24 filed in October of last year, even the summary
25 judgments accounted for the amalgamation theory

1 that was in our motion for relief to amend.

2 Obviously under 15(a), that amendment is
3 going to be freely granted. So we would ask
4 that the motion be amended, the motion as
5 presented in our complaint with the supplemental
6 pleading and the supplemental motion, we would
7 ask that that be granted so we can move forward.

8 THE COURT: All right. Now, I have
9 Third-party Defendants Charter and Central
10 Mining Supplemental Objection and Opposition to
11 Receiver's Motion to Confirm the Appointment and
12 Amended Motion for Leave filed in the
13 Third-party Complaint.

14 And before I turn to recognize whoever is
15 going to make any kind of presentation regarding
16 this motion, I ask you, Mr. Lay, what is the
17 posture of the third-party defendants that make
18 this motion in your -- what is the position of
19 the receiver with respect to these third-party
20 defendants and this filing?

21 MR. LAY: Yes, ma'am. So the Anglo
22 third-party defendants, we've got a settlement
23 so they don't have a position on the motion to
24 amend. Any sort of -- these people, the Altrad
25 defendants and the ESAB defendants, or the

1 Charter defendants, they either need to
2 participate or not participate.

3 They haven't participated in two years.
4 They cannot come in here now, the eleventh hour,
5 after they haven't and they've refused to
6 provide any sort of discovery responses.
7 They've refused to present anyone for a
8 deposition. That's 30(b)(6) notices. They've
9 been completely nonparticipatory.

10 If they're taking that position, they're
11 taking that position, but they cannot weave in
12 and out of this litigation and make objections
13 or argue against a motion to amend without it
14 being participation.

15 So, you know, consider beware, I would say
16 to them, if they're going to try to participate,
17 in my view, that is participation if they're
18 coming in here to oppose this motion for leave
19 to amend. I object to that at this eleventh
20 hour. But certainly any of their arguments that
21 they're making, they shouldn't do this pursuant
22 to Rule 205 or some sort of personal
23 jurisdiction issue. I mean, we're on top of
24 waiver, if they're going to participate, and try
25 to make an argument against it.

1 But at this point they shouldn't be
2 arguing. This is an unopposed motion by the
3 people who have been participating in this
4 litigation. We ask that it be granted.

5 THE COURT: All right. Mr. Lay, with
6 respect to the nonparticipating parties, we will
7 call them, I take it that they have not filed
8 any responsive pleadings in this matter; am I
9 correct?

10 MR. LAY: That's right.

11 THE COURT: I take it that they are in
12 default.

13 MR. LAY: They filed initially a responsive
14 pleading and then once they brought the
15 interlocutory appeals, they stopped
16 participating. So there was initial filing of
17 the response. They had a motion to dismiss, for
18 example.

19 THE COURT: Right. And that motion to
20 dismiss was filed in what, 2023, 2024?

21 MR. LAY: 2023, yes, ma'am.

22 THE COURT: Yeah. And what happened with
23 it?

24 MR. LAY: You denied the motion.

25 THE COURT: I denied the motion. I

1 received orders, and I haven't filed anything
2 further on it; isn't that correct?

3 MR. LAY: Say that again, Your Honor.

4 THE COURT: I granted -- I denied the
5 motion to dismiss.

6 MR. LAY: That's correct.

7 THE COURT: Then many proposed orders went
8 back and forth about this and other matters in
9 connection with the nonparticipating parties.

10 MR. LAY: Yes, ma'am.

11 THE COURT: And nothing has been filed
12 about that, correct?

13 MR. PROTOPAPAS: Your Honor, the original
14 motion to dismiss was denied in December of
15 2023.

16 THE COURT: '3, that's correct. And
17 then -- and that denial is on the record.

18 MR. PROTOPAPAS: Yes, Your Honor.

19 THE COURT: Then what I'm asking about is
20 what occurred subsequently?

21 MR. LAY: They appealed the denial of the
22 motion to dismiss.

23 THE COURT: Right. The nonappealable ...

24 MR. LAY: And they filed it. And they did
25 file a responsive pleading as well while that

1 was --

2 THE COURT: Okay. That's what I'm getting
3 at. That's what I thought was the case, but I
4 want to be sure that that's on the record. They
5 have responsive pleadings filed, which then
6 would have imposed upon them the requirement of
7 participation in these proceedings by discovery
8 and other pretrial matters. Correct?

9 MR. LAY: Yes, ma'am.

10 THE COURT: They appealed and that brought
11 things to a halt as far as they were concerned.
12 They didn't participate anymore.

13 MR. LAY: That's right.

14 THE COURT: But those appeals have now been
15 dealt with.

16 MR. LAY: That's right. And we have
17 reached out to them to ask them --

18 THE COURT: And they have declined to
19 participate further, correct?

20 MR. LAY: That's right.

21 THE COURT: I mean, they filed a lot of
22 things about objecting to and saying the
23 signature is no good and so on and so on. But
24 in terms of any participation in this
25 litigation, in the normal pretrial activities of

1 responding defendant, they have not participated
2 beyond the initial responsive pleadings and then
3 the appeal, right?

4 MR. LAY: That's right, Your Honor.

5 Including after the June remand of all thing --
6 all matters back to you from the Supreme Court,
7 we reached out to both the Charter defendants
8 and to the Altrad defendants and asked them if
9 they were going to participate now that we have
10 received this order from the Supreme Court and
11 both said no. I mean, unambiguously said, no,
12 we're not participating.

13 THE COURT: And the litigation that they
14 filed with the Court of Appeals and then with
15 the Supreme Court about trying to continue the
16 appellate posture of this matter, all that
17 complex of matters were remanded back to this
18 court.

19 MR. LAY: That's correct, Your Honor.

20 THE COURT: And since that time, that's
21 June, there have been no responsive pleadings or
22 other participation in discovery, other kinds of
23 pretrial matters, correct?

24 MR. LAY: That's right, Your Honor.

25 THE COURT: So that the posture of the

1 matter is set for trial is the matters they
2 have -- they have made an initial response to
3 but failed to participate thereafter.

4 MR. LAY: Yes, ma'am.

5 THE COURT: And the remand order of the
6 Court, though it contains some other directives
7 that I will comply with, as I have indicated to
8 the Supreme Court, remands these very things
9 back to this Court, the trial we have set.

10 MR. LAY: Yes, ma'am. Precisely.

11 THE COURT: Okay. All right. With that
12 understood, who will speak for the Altrad
13 parties?

14 MR. CARROLL: Your Honor, Todd Carroll for
15 the Altrad parties.

16 Your Honor, first of all, I want the record
17 to be clear that this notion of a settlement, I
18 have no idea how the receiver thinks he can
19 enter into a settlement with anybody given he
20 does not exist as a legal entity in the state.

21 And the reason that I say that is exactly
22 what you and Mr. Lay were just talking about,
23 that June remand order didn't send everything
24 back down to this Court with a blindfold on at
25 the corner of Sumter and Gervais that said we'll

1 wait and see whatever happens at the end of
2 trial.

3 What it did was it gave this Court very
4 specific instructions about what to do with
5 this -- about not only this receivership but
6 every receivership in the asbestos docket.

7 And the very first paragraph A1 said that
8 the receiver is not to be authorized to do work
9 outside of the case in which he is appointed.

10 In the recitation of the settlement that
11 Your Honor gave a moment ago, Your Honor said,
12 well, he was appointed in Park, which we
13 disagreed with, and he was allowed to spread his
14 work in two other cases, like this one.

15 Well, Your Honor, respectfully, that's
16 exactly what the Supreme Court said can't
17 happen. And that came from the June order that
18 Mr. Lay was just pointing out is his view -- in
19 his view is the nexus of why this case could be
20 tried. It actually cannot be tried because the
21 threshold issues of jurisdiction, of standing,
22 of everything is a nullity in Park, everything
23 is a nullity in Tibbs, all of these threshold
24 issues have remained unaddressed or unresolved
25 by the Court. There's not an order from

1 Your Honor that responds to the Supreme Court's
2 June remand instructions.

3 There are threshold questions that have got
4 to be addressed by this Court before anything
5 else can happen. And so on that basis, you
6 know, we want the record to reflect that we are
7 quite puzzled by this notion of settlement. We
8 don't see how that can even happen. But also
9 the motion to amend itself is a nullity. It
10 doesn't exist. It is not filed by somebody that
11 has standing to file anything.

12 And I'm glad to walk you through that. We
13 did that in the July hearing, and we did that in
14 the August hearing.

15 THE COURT: We had quite a fulsome hearing
16 on precisely these matters.

17 MR. CARROLL: Yes, ma'am. Two of them.

18 THE COURT: And I indicated by letter
19 ruling what I would rule in that regard. And
20 you can be assured that those orders will be
21 filed as well.

22 MR. CARROLL: But they haven't been filed,
23 and that's my point.

24 THE COURT: I understand that. But you and
25 I differ radically about whether or not other

1 parties in this litigation have the ability to
2 settle with the receiver, but we also disagree
3 very, very radically about what it means to
4 appoint a receiver, a state receiver, and what
5 the ambit of that state receiver's authority is.

6 And that, of course, has been indicated by
7 what I said in the previous hearings we've had
8 on this matter.

9 But you have responded to this matter. You
10 have filed an answer in this matter.

11 MR. CARROLL: Yes, ma'am. So that there
12 would be none of this notion of default.

13 THE COURT: Well, I'm sorry, but you filed
14 an answer in this matter. And that -- and you
15 appealed rulings made in connection with your
16 posture as a participating defendant. And those
17 matters went all the way to the Supreme Court
18 who then remanded to me all of these matters.

19 So I don't think you can avoid whatever
20 consequences will come to your failure to
21 participate in these matters by simply making
22 these broad statements that the actions of
23 others in connection with this matter are
24 somehow something that you can challenge.

25 MR. CARROLL: Your Honor, very early -- I'm

1 sorry, I thought you were done.

2 THE COURT: You've got a very different
3 notion of how this Court can operate in the
4 light of the directives that were given to the
5 court in the Tibbs case and in the subsequent
6 memorandum orders by the court. Those matters
7 are clearly back in the jurisdiction of this
8 trial court to deal with, and I will deal with
9 them.

10 But I can assure you that I will not simply
11 stop these proceedings on the basis of what you
12 just argued about, the lack of the receiver's
13 authority. And I made that very clear in what I
14 said in June about this matter. And I don't
15 intend to vary from that.

16 So just so you understand, you can put
17 those things on the record if you like, but I
18 don't believe that they are consistent with the
19 receivership law of South Carolina nor with the
20 directives I've been given by the Supreme Court.
21 We have two very different views about that
22 memorandum from the Supreme Court.

23 And what I've got to do is to translate the
24 activities I take as trial Court into orders
25 that are reviewable by the Court, and I intend

1 to do that in a complex order that presents
2 everything at one time so we don't continue to
3 have this yo-yo back and forth with every action
4 that's taken between the appellate courts and
5 this Court.

6 Because what has happened uniformly in the
7 past, that not one of those appeals has been
8 found to have merit. But we've had a huge delay
9 in trying to deal with this matter because every
10 action that's taken, whether you have the
11 authority to appeal or not, you have appealed
12 and tried to stop the Court from moving forward
13 with the ordinary course of handling this
14 matter.

15 So that's the view of this Court on the
16 matter. You don't agree with that, but
17 understand what I perceive to be the directive
18 of the Supreme Court to me on this matter and
19 the responsibility I have as the presiding trial
20 judge in this matter, and I intend to move
21 forward with these settlements and to move
22 forward with this trial. Just so you
23 understand.

24 MR. CARROLL: Yes, ma'am. And the June
25 order gave very clear instructions that have not

1 yet been followed.

2 THE COURT: See, we just disagree about
3 that.

4 MR. CARROLL: We can disagree about it.

5 THE COURT: I understand.

6 MR. CARROLL: So here's my argument on the
7 motion to amend. In the Park case, it was fully
8 resolved in August of '22. That is what
9 Mr. Park's attorney reported to -- pardon me,
10 June of '22. That's what Mr. Park's lawyer told
11 the Court. In August of '22, Mr. Park
12 represented -- sorry. Also in June of '22,
13 Mr. Park represented to the probate judge that
14 the estate should be closed and that his
15 appointment as PR should be terminated.

16 In August of '22, the Spartanburg County
17 probate judge granted that motion, terminated
18 the appointment, closed the estate.

19 The purported receivership motion did not
20 get filed in Park until March of '23. At that
21 point in time, there was no plaintiff to even
22 make that request. And the request was to
23 appoint a receiver over Cape LPC, a defendant
24 who has not been served with process in that
25 case; therefore, it was a motion without a

1 plaintiff against a defendant who did not exist
2 in that case.

3 The Court granted it without a hearing.
4 And then the receiver has sprung from the Park
5 case into the Tibbs case and has purported to
6 accept service in Tibbs on behalf of Cape PLC,
7 even though the plaintiffs in Tibbs made no
8 attempts to actually serve Cape PLC.

9 Now he tells the Court that he stands in
10 the shoes of Cape Intermediate Holdings Limited,
11 a company that is not even named as a defendant
12 in Tibbs. So we've got a receiver --

13 THE COURT: By the way, a party that you
14 don't represent, correct?

15 MR. CARROLL: Correct, I don't. But I can
16 read the public index.

17 THE COURT: Nobody you mentioned so far
18 that you represent in this matter, correct?

19 MR. CARROLL: You're absolutely right. I'm
20 just reading what's in the pleadings,
21 Your Honor.

22 THE COURT: And this Court has already
23 addressed the legitimacy of the appointment in
24 Park, the legitimacy of the Park proceedings,
25 the fact that there's a tolling agreement in

1 place with respect to the Parks. And you have
2 no status of standing on behalf of Altrad to
3 really be involved in that discussion, do you?

4 MR. CARROLL: Of course, I do. Because all
5 of that shows that there's nothing that exists
6 at this table. This table is a nullity. That
7 affects my client, the Altrads. Okay.

8 THE COURT: How does that affect you all?

9 MR. CARROLL: And the tolling agreement
10 that you referenced in Park didn't exist until
11 the following summer in '23. It didn't exist
12 when counsel for the Parks told the Court there
13 were --

14 THE COURT: I --

15 MR. CARROLL: -- cases still unresolved in
16 June of '22 and didn't exist on the Court's
17 appointed receiver in March of '23.

18 THE COURT: Mr. Carroll.

19 MR. CARROLL: Yes, ma'am.

20 THE COURT: Please don't talk over me.

21 MR. CARROLL: I apologize, Your Honor.

22 THE COURT: Thank you.

23 These are the same arguments that were
24 presented in June. I have indicated in a letter
25 ruling that I don't agree with those arguments

1 and that I find the Park estate to have been
2 reopened properly, and its authority
3 retroactively recognized as the statute
4 contemplates. So we just have a disagreement
5 about that. But what you've got is in your
6 situation a client who has not filed any
7 responsive pleadings, correct?

8 MR. CARROLL: No, ma'am.

9 THE COURT: Well, you filed the pleadings
10 that have been recited into the record, but you
11 have not engaged any further in the litigation.

12 MR. CARROLL: Of course not because the
13 litigation itself is a nullity, and the Supreme
14 Court --

15 THE COURT: I understand. I've ruled
16 otherwise.

17 MR. CARROLL: But you --

18 THE COURT: And if you participate any
19 further in this matter, you may choose not to
20 and simply be in default status in that regard,
21 but if you participate further in this matter,
22 it will be -- you will have to understand that I
23 don't agree with your arguments about that. And
24 I'm not going to --

25 MR. CARROLL: I understand.

1 THE COURT: -- use this hearing to one more
2 time --

3 MR. CARROLL: Yes, ma'am.

4 THE COURT: -- review that.

5 MR. CARROLL: I understand. And,
6 Your Honor, I am trying to be fulsome with my
7 arguments because when Mr. Lay was up here a
8 moment ago or there a moment ago, he said we're
9 on the brink of waiver, and Lord have mercy, I
10 don't want to do that.

11 THE COURT: Well, I agree with him very
12 much. You have not -- you assume the posture of
13 a defendant, to begin with, and then -- or
14 third-party defendant, but you have disobeyed
15 every discovery rule and pretrial responsibility
16 that you have as a responding defendant in this
17 matter.

18 MR. CARROLL: Your Honor, I thoroughly
19 disagree with that.

20 THE COURT: Well, I understand. But please
21 understand that as I preside over this case,
22 that is the view I have of the matter, is you
23 responded to this suit. You then made several
24 efforts to have your feeling of nullity resolved
25 in an appellate posture. The appeal court said

1 we're not going to do that. We're going to send
2 it back to trial court. And they propounded
3 certain questions to the trial court. They've
4 not made any ruling about the issue of the
5 validity of this receivership whatsoever.

6 MR. CARROLL: I know that. That's what
7 they told Your Honor to do and that hasn't
8 happened.

9 THE COURT: And I've done that.

10 MR. CARROLL: There's no order. There's no
11 order that addressed --

12 THE COURT: There is an announced order
13 from the bench, and there's a letter order. And
14 I assure you that in connection with the rest of
15 these matters, there will be an order in place
16 to reflect that.

17 MR. CARROLL: But there is no order as we
18 stand here today.

19 THE COURT: Yes, sir, there is an order.
20 It's my order from the bench. I can do it that
21 way.

22 MR. CARROLL: But, Your Honor, you didn't
23 make an order from the bench. You told us you
24 had to wrestle with these issues, and we had
25 given you a lot of to think about and --

1 THE COURT: We won't --

2 MR. CARROLL: Then we got the letter.

3 THE COURT: We won't quibble about the
4 details, but I think it's pretty clear what my
5 ruling is about it today, viability of the
6 receivership's appointment and the viability of
7 this lawsuit.

8 MR. CARROLL: Yes, ma'am. So --

9 THE COURT: And at least you shared it to
10 some extent when you made your responsive
11 pleadings. And now that you've heard the other
12 side is going to take the position that you're
13 very close to waiver, you're trying to have it
14 both ways.

15 MR. CARROLL: No, ma'am, I'm not. No. I'm
16 not trying to have it both ways. My argument
17 has been clear from the word jump. The moment
18 we showed up in this case, we said there is no
19 basis. There is no jurisdictional basis for
20 this.

21 And in June of '25, the South Carolina
22 Supreme Court instructed Your Honor to tell it
23 what the basis is, and that hasn't happened yet.
24 And I know Your Honor disagrees with my reading
25 of the record, but I think I'm on very firm

1 ground with that.

2 But setting aside the nullity notion,
3 right, that comes from the invalidity of Park --
4 and by the way, there's still no evidence in the
5 record that Mr. Park -- I don't think as a
6 matter of law he could so-called ratify what
7 happened three years ago, but even if he could
8 under the law, there's still no evidence of him
9 even trying to do that either.

10 But setting aside all of the nullity orders
11 that we've briefed and argued about ad nauseam,
12 there's another very fundamental problem -- two
13 fundamental problems with the receiver's
14 proposed amended pleading.

15 Number one, he's trying to give you a
16 pleading and a claim that was resolved in the
17 Adams case 35 years ago. Quite literally,
18 everything that he's asking the Court to find
19 with this notion of amalgamation was tried,
20 appealed, and his view was rejected summarily --
21 not summarily, twice through hundred-plus
22 order -- hundred-plus-page orders. He's simply
23 asking the Court to cosign on a fiction that was
24 rejected 35 years ago.

25 Point one.

1 Point two --

2 THE COURT: And the Adams -- the Adams
3 order was issued by what authority?

4 MR. CARROLL: It was issued by a trial
5 court in England. It was appealed. And it was
6 addressed by the Court of Appeals in England
7 after being heavily contested by American
8 plaintiffs.

9 THE COURT: All right, sir.

10 MR. CARROLL: And so point number two, the
11 claims that he seems to want to ask the Court to
12 enter have been released by the company that he
13 claims to speak on behalf of.

14 Cape Intermediate Holdings Limited is not a
15 party to the Tibbs case. I cannot say that more
16 clearly. It's not even named as a defendant in
17 the caption. Yet the receiver is pretending to
18 speak on its behalf and bring these claims
19 against my clients, Mr. Altrad, Altrad
20 Investment Authority.

21 What Cape Intermediate Holdings Limited --

22 THE COURT: The Adams case and those claims
23 that you're talking about were claims in the
24 creation of a fund that had to do only with a
25 certain category of English workers.

1 MR. CARROLL: No, ma'am.

2 THE COURT: Had nothing to do with these
3 much later arising claims arising out of
4 business done at a much later time --

5 MR. CARROLL: Your Honor, there was no
6 business done.

7 THE COURT: -- that didn't matter at all.

8 MR. CARROLL: There was no more business
9 done after Adams.

10 THE COURT: Well, that's your view of the
11 succession of corporations. It's not these
12 plaintiffs' view.

13 MR. CARROLL: I don't know how anybody can
14 suggest that Cape Intermediate Holdings was
15 doing any more asbestos business after 1990.
16 And their theory of liability is that everything
17 goes through NAAC, the National -- the company
18 in Illinois. And it was there to -- it was not
19 some shelf entity. It had insurance. It paid
20 claims. It defended itself in claims.

21 The whole -- this Adams case came after
22 NAAC's insurance was exhausted and American
23 plaintiffs were trying to find another route to
24 recover money. Which is exactly what this null
25 receiver is trying to do here.

1 And in the Adams case, a trial judge heard
2 weeks and weeks and weeks of trial and said I've
3 considered absolutely every piece of evidence
4 you could ever marshal on this. I've heard from
5 the witnesses who actually lived it. And you're
6 wrong. NAAC was its own independent company.

7 That got appealed. There was a proposed --
8 dozens of proposed errors that the Adams
9 plaintiffs gave to the Court of Appeals. They
10 said the trial judge got the facts wrong in
11 these dozens of ways.

12 And the Court of Appeals looked at every
13 one single one of those that's in an appendix
14 attached to the Court of Appeals' opinion that
15 we've given to this Court and to the
16 South Carolina Supreme Court where this court of
17 appeals in England said you were just wrong on
18 the facts.

19 And those are the same facts that the
20 receiver is handing Your Honor in the amended
21 pleading that you can't -- you can't do that.

22 But number two, the claims that he's trying
23 to present against my client on behalf of Cape
24 Intermediate Holding or Cape PLC, or both, have
25 been released. There is no claim that he can

1 bring against my client because the companies
2 that actually have those claims have released my
3 clients. And my clients have likewise released
4 those companies from any potential counterclaim
5 that could come out of the same nucleus of
6 facts.

7 So he's asking you to -- a receivership who
8 doesn't exist as a matter of law, he's asking
9 you --

10 THE COURT: Okay. I've got it. You don't
11 need to repeat it again, Mr. Carroll. I've got
12 what your issue is about that.

13 I think the Supreme Court has already had
14 something to say about the applicability and
15 viability of the English authorities that you
16 cited on what we're doing in this South Carolina
17 court about South Carolina claimants.

18 So I understand your position about that.
19 I don't agree with you. I don't think the
20 South Carolina Supreme Court agrees with you.

21 MR. CARROLL: Well, Your Honor --

22 THE COURT: So your position is noted on
23 the record.

24 MR. CARROLL: But the claims have been
25 released. There can't be --

1 THE COURT: I understand that that's your
2 position.

3 MR. CARROLL: And not only that, not only
4 is there an actual contract on that point, but
5 it was handed to a different English court, and
6 they had a trial last week -- or two weeks ago.
7 And his honor issued a ruling that was quite
8 thorough last week that says this contract is
9 enforcement.

10 We continue to not recognize the
11 receivership, which is, again, back to my
12 earlier point about I don't know how my
13 colleagues on -- at Anglo can settle, quote,
14 settle with the receivership. Perhaps they're
15 paying Mr. Protopapas' individual capacity. But
16 I don't think they can actually settle with a
17 receiver because they have a court in England,
18 too, now saying English law does not recognize
19 this receivership.

20 And the points that the English court --

21 THE COURT: Well, the English court does
22 not recognize the authority of the American
23 courts in this situation at all. Our own court
24 had its own view of that. And, you know, the
25 activities in 1776 had some effect on the

1 independence of American courts and --

2 MR. CARROLL: Sure.

3 THE COURT: -- the authority of American
4 courts. And as far as I'm concerned, that's not
5 something that I need to revisit. I'm operating
6 under the framework that my own appellate court
7 has given me and the responsibility they have
8 given me on this remand.

9 MR. CARROLL: Yes, ma'am.

10 THE COURT: You've argued those things
11 before. Our court has not agreed with you on
12 that and has remanded the thing to me with
13 certain instructions. And nothing I've done so
14 far has contradicted to what they've asked me to
15 do in any respect, in my view.

16 MR. CARROLL: Well, I take it --

17 THE COURT: But I certainly don't think
18 you've got the authority under any view of our
19 own law or what you think is applicability in
20 English law to try to interfere with the ability
21 of Anglo to settle its responsibilities as it
22 sees them.

23 And I look with great concern on
24 codefendants in this case. It's one thing for
25 you to take the position as what the Court's

1 authority may be with respect to your clients,
2 Altrad. It's quite another thing for you to try
3 to blow up the settlements that other defendants
4 are making. How you got the authority or the
5 standing to do that is something I don't quite
6 understand.

7 MR. CARROLL: Your Honor, I'm simply
8 pointing out that Anglo appears to have made a
9 contract with somebody that doesn't exist.

10 THE COURT: Mr. Carroll, this is not some
11 academic law school exercise in talking about
12 the law. You've either got the authority to try
13 to interfere with the legitimate business
14 judgments that other defendants have made in
15 this action or you don't. And I am not going to
16 allow defendants who have made -- considered
17 business judgments about their own posture in
18 this matter to be told that your disagreement
19 with what they are doing is some reason for this
20 Court not to act.

21 The Court is going to act. The Court is
22 going to rule, as I indicated I will rule, as
23 the authority of the receiver. You can do what
24 you want to do with your clients in that regard.
25 But the notion that you could interfere with the

1 legitimate desires of other participants in this
2 litigation to settle their matters is something
3 that I can't comprehend.

4 I also can't comprehend how you personally
5 can on the one hand take this position with
6 respect to Altrad and on the other hand
7 representing USF&G and others who have interests
8 in some phase of this thing on their behalf and
9 seek settlements.

10 So I -- you know, that's something you have
11 to work out on your own, but I'm not going to
12 let it influence the responsibility the Court
13 has directed me on with respect to bringing
14 these other matters to conclusion.

15 MR. CARROLL: Well, Your Honor, I'm
16 simply -- again, I don't want to venture into
17 the notion of waiver. And when I hear the
18 contract has been entered on behalf --
19 reportedly on behalf of the company that has
20 told Mr. Protopapas that he has no authority to
21 speak for them, I feel like that I have to at
22 least point that out on the record lest I be
23 told I have waived something later.

24 THE COURT: All right.

25 MR. CARROLL: I appreciate your point about

1 1776. I understand that the English court does
2 not sit here in Columbia. Our General Assembly
3 has passed a law, the Receiving Statute or the
4 Reception Statute, I can't remember what it's
5 called.

6 THE COURT: It's one of the oldest laws on
7 the book. I'm extremely familiar with it. It's
8 the Reception Act. But the Reception Act
9 receives into our panoply --

10 MR. CARROLL: Common laws.

11 THE COURT: -- of common law authorities of
12 this state. Certain English principles. It
13 doesn't give the English courts the authority by
14 the Reception Act to interfere with the
15 sovereign authorities of the United States court
16 system or the South Carolina court system. And
17 I think that's exactly what the Supreme Court of
18 South Carolina meant when they made the first
19 rulings about this matter.

20 MR. CARROLL: Yes, ma'am. If I may make
21 two points on that. English common law is what
22 controlled the Adams decision. And English
23 common law in Adams --

24 THE COURT: All they are is an interpreting
25 court at that point. We don't -- the Reception

1 Act doesn't continue to receive into the law of
2 this state as a binding authority rulings made a
3 hundred -- several hundred years after our
4 Reception Act was passed. It's not some
5 looking-forward thing. It received into our
6 complex certain common law --

7 MR. CARROLL: Yes, ma'am.

8 THE COURT: -- was a matter of law at that
9 time. But we've got many decisions that say
10 that the Reception Act is not the ability for a
11 litigant on down the road to reach into
12 decisions of any common law jurisdiction,
13 including England, and say, oh, that court
14 decided it this way, it binds you. That's not
15 how the Reception Statute works.

16 MR. CARROLL: I understand that. My point
17 was simply that English common law on the
18 question of amalgamation is the same as
19 South Carolina law.

20 THE COURT: It may or may not be, but it's
21 not the English court's business to tell us.

22 MR. CARROLL: It certainly is.

23 THE COURT: No. It's the business of the
24 South Carolina courts to decide issues of
25 amalgamation interest and the decisions on the

1 books at the present time are way forward of
2 what the original thoughts about that might have
3 been in common law at the time of the Reception
4 Act.

5 So this doesn't empower some
6 non-South Carolina court to bind South Carolina
7 on the front end as to how it views amalgamation
8 and interest. That's the product of the
9 authority of the South Carolina Supreme Court
10 and South Carolina General Assembly on an
11 ongoing basis.

12 And the South Carolina General Assembly has
13 passed many statutory laws, including my old
14 Business Corporation Act that I formulated many
15 years ago, that have all kinds of implications
16 about what common law may have been with respect
17 to corporate existence and authority.

18 I do not in any way regard this argument
19 about litigation over the Adams matter as having
20 some binding effect on common law in this
21 country.

22 MR. CARROLL: Well, Your Honor, I'm
23 disappointed to hear that, as you can imagine.
24 I can't imagine taking a case out of
25 South Carolina and saying, well, the court of

1 jurisdiction looked at these facts, applied the
2 law, that actually matches the second
3 jurisdictions of law, looked at the same bundle
4 of facts, looked at the same law, made this
5 ruling, it was appealed, it was affirmed, every
6 single argument was addressed, and then having
7 forum number two.

8 Which, again, the Tibbs family is from
9 North Carolina. They're not South Carolinians.
10 Cape Intermediate Holdings and Cape PLC are --
11 one's in Jersey, one's in England. My clients
12 are in France. Mr. Rawl's clients are elsewhere
13 too.

14 I can't fathom what interest the state of
15 South Carolina could possibly have in a case
16 like this that would allow a court of this state
17 to say, well, the witnesses who lived the facts
18 testified in front of a court of competent
19 jurisdiction for weeks at a time in a hotly
20 contested case with American plaintiffs, and we
21 just really just don't care what they say. That
22 really surprises me.

23 THE COURT: All right. Well, you've said
24 that once again for about the fifth time in this
25 particular presentation. I think you've made

1 your point.

2 MR. CARROLL: Yes, ma'am.

3 THE COURT: I do not embrace it in any way.

4 MR. CARROLL: But, Your Honor --

5 THE COURT: Mr. Carroll, I think we've
6 finished with this discussion. If you've got
7 something further to say about the finding of
8 English decisions of 20 years ago on the common
9 law of South Carolina, I think I've heard enough
10 to understand what the argument is. I don't
11 agree with you.

12 MR. CARROLL: Yes, ma'am. My only other
13 point that Your Honor didn't engage with and so
14 I want to make sure if you have any questions,
15 that I can answer them.

16 Cape Intermediate Holding and Cape PLC have
17 released the claims against my clients. I can't
18 understand how those claims could possibly be
19 brought back to life at the request of the
20 receiver who is operating without an
21 appointment. So I think the motion to amend has
22 to be denied because it's trying to bring up
23 claims that don't exist anymore. If you have
24 any questions, I'm glad to answer them.
25 Otherwise, I will yield the podium.

1 THE COURT: All right, sir.

2 MR. CARROLL: Thank you.

3 THE COURT: All right. What are we doing
4 over here, Mr. Robinson?

5 MR. RAWL: Your Honor, may I?

6 THE COURT: Mr. Rawl.

7 MR. RAWL: May I -- Charter and ESAB is
8 wanting to be heard.

9 THE COURT: If you're going to address the
10 Court, go to the podium and address me,
11 Mr. Rawl.

12 MR. RAWL: Thank you, Your Honor. Without
13 specific preserving and not waiving personal
14 jurisdiction, I represent Charter Consolidated
15 Limited, ESAB Corporation, and Central Mining
16 Investment Corp.

17 My client has specifically preserved its
18 personal jurisdiction position and its other
19 jurisdiction positions in every single hearing,
20 at every single filing that has ever done in
21 this case.

22 And just as a little bit of a background,
23 Your Honor is correct, my client did move to
24 dismiss the case and move to dissolve the
25 receivership all at the same time. Which was

1 several bases for 12(b)(6), lack of personal
2 jurisdiction, and lack of regular jurisdiction.

3 The court issued an order --

4 THE COURT: Denying.

5 MR. RAWL: -- denying two different orders.

6 The first order was an order denying our motion
7 for personal jurisdiction and denying our
8 arguments that the receiver has no authority to
9 act and there is no basis for the appointment of
10 the receiver. And in that first order that
11 Your Honor issued in this case was appealed.
12 And that order was appealed in -- on December
13 the 18th of 2023.

14 And my client and all of the other
15 defendants, you know, appealed both the --
16 whether or not a receiver was ever appointed,
17 whether --

18 THE COURT: Right. Your appeal -- you
19 appealed the denial of a motion to dismiss,
20 which is a nonappealable matter, correct?

21 MR. RAWL: We appeal the --

22 THE COURT: You appealed the denial of a
23 12(b)(6) motion, correct?

24 MR. RAWL: We did not, Your Honor.

25 THE COURT: Then what did you appeal?

1 MR. RAWL: We appealed the ability of the
2 receiver to act in this case as it was never
3 appointed.

4 THE COURT: There's no such thing as the
5 appeal of the ability of the receiver to act.
6 You have got to appeal something that I ruled
7 upon.

8 MR. RAWL: Yes.

9 THE COURT: I ruled upon your motion to
10 dismiss. That motion to dismiss either did or
11 did not raise issues about the legitimacy of the
12 receivership.

13 MR. RAWL: Your Honor, you issued two
14 orders.

15 THE COURT: Sir?

16 MR. RAWL: You issued two orders.

17 THE COURT: Right. And they encompass the
18 contention about the legitimacy of the
19 receivership as well as the lack of jurisdiction
20 over your clients.

21 MR. RAWL: Yes, Your Honor.

22 THE COURT: And the lack of jurisdiction
23 over your client is kind of a mirror of your
24 attack on the receivership. They're bound
25 together. But I denied your motions.

1 MR. RAWL: You did.

2 THE COURT: And those denial of motions is
3 not appealable. But you went on a long
4 expedition of trying to appeal, did you not?

5 MR. RAWL: Your Honor, yes.

6 THE COURT: So what happened about that?

7 MR. RAWL: We ended up winning that in the
8 Supreme Court when the Court granted our
9 petition for certiorari and agreed with the
10 position that we made originally in those
11 motions, which said that we argued that a
12 receiver appointed in one case may not act in
13 another case. It was the primary basis for all
14 of the appeals.

15 And so at the end of -- after we appealed
16 on I believe it was December 18th or 19th of
17 2023, all the way until June the 26th of 2025,
18 where the Supreme Court ended up ruling with us
19 on our contentions. And so -- and to be
20 specific, Your Honor, the original order
21 addressed personal -- your original order
22 addressed personal jurisdiction and why the
23 receivership could be continued and why a
24 receiver could act from Park to the Tibbs case.

25 And so we said that there's no basis for

1 the receiver to act.

2 So from -- and so we did. We appealed it
3 on I think December the 18th of 2023. It was --
4 we fully briefed it. The receiver made a motion
5 to strike. We briefed that.

6 The Court of Appeals struck the appeal.

7 We sought a rehearing on bond. The Court
8 denied our rehearing on bond. At this point,
9 the Court -- the remitter has still not been
10 returned. We sought cert to the Supreme Court,
11 and our cert motion was granted.

12 So, you know, the receiver -- I mean, this
13 Court didn't have jurisdiction over any of my
14 clients.

15 THE COURT: No. No. All you told me right
16 now is that cert has been granted on your
17 motion, right? There's been no hearing had on
18 it or anything else. Cert has been granted,
19 correct?

20 MR. RAWL: Cert was granted on our petition
21 for certiorari, yes.

22 THE COURT: With respect to the Court of
23 Appeals' granting of the motion to strike,
24 correct? Or the Court of Appeals ruled against
25 you. You've now asked for certiorari to review

1 their decision; am I right?

2 MR. RAWL: The Court of Appeals struck the
3 appeal.

4 THE COURT: That's right. They ruled
5 against you.

6 MR. RAWL: They granted a motion to strike.
7 They did not address the merits.

8 THE COURT: Well, that's the whole point.
9 Procedurally, you can't go in medias res like
10 you've been trying to do all along and appeal
11 something that's not appealable. They've ruled
12 it was not appealable; and therefore, that is
13 why they ruled against you.

14 MR. RAWL: And then we sought rehearing.

15 THE COURT: And they denied it. And now
16 the Supreme Court has indicated that they will
17 hear those arguments. They have made no
18 judgment on the legitimacy or validity of the
19 arguments. As we stand here today, those
20 arguments have been rejected by the only
21 appellate authority to evaluate them.

22 MR. RAWL: I strenuously disagree,
23 Your Honor. The Supreme Court, in its June 26th
24 order, very much --

25 THE COURT: Which June -- the order in

1 Tibbs?

2 MR. RAWL: Yes.

3 THE COURT: That is an order that remanded
4 everything to me in Tibbs, right?

5 MR. RAWL: It remanded something to you,
6 Your Honor, yes, I agree. With specific
7 instructions --

8 THE COURT: What did it do to your case?

9 MR. RAWL: What did it do to my case?

10 THE COURT: Yes.

11 MR. RAWL: Well, what it said was -- is,
12 you know, we argued that Tibbs could not go
13 forward because the receiver is not appointed in
14 Tibbs and there was never --

15 THE COURT: They remanded that to me and
16 they said they weren't going to hear that.

17 MR. RAWL: With instructions to not allow a
18 receiver to move forward in a case where he
19 wasn't appointed, which is Tibbs.

20 THE COURT: Right.

21 MR. RAWL: Now, I do understand,
22 Your Honor, that as you put -- as soon as that
23 word came out, you said I have to figure out how
24 to address the specific instructions that were
25 given me by the Supreme Court. And we've had

1 two hearings on what to do about that.

2 THE COURT: Right. I've indicated what I'm
3 going to do. You all disagree heartily with me.
4 So now you want to appeal that when the Court
5 sent it back to me to try to make some sense of
6 it and make some rulings. You are now once
7 again in medias res this matter trying to
8 indicate to the court that I don't have
9 authority to settle some of the parties, to hear
10 anything further, to do anything other than just
11 agree with you.

12 MR. RAWL: I think Your Honor does have the
13 authority to do the first -- the thing that the
14 Supreme Court said to do. It remanded the issue
15 to you to decide the first --

16 THE COURT: It remanded the entire case to
17 me, and then they filed an order making certain
18 directives as I take these cases back within my
19 jurisdiction and deal with them on the merits.

20 MR. RAWL: The first -- what the Supreme
21 Court said was that Your Honor was supposed to,
22 especially with Tibbs, where we filed the
23 appeal, to address whether or not an order was
24 appointed in that case to allow the receiver to
25 act in that case. That was the first thing that

1 was to be done.

2 And Your Honor considered that and
3 Your Honor said that you were going to issue an
4 order on that. You asked for proposed orders.
5 You just -- you issued a ruling or a report to
6 the Supreme Court saying that you did --

7 THE COURT: I'm well aware of that whole
8 history, Mr. Rawl.

9 MR. RAWL: My point, Your Honor --

10 THE COURT: Yes, sir.

11 MR. RAWL: -- is that from December of
12 2023, when we initially appealed, through at the
13 very earliest June of '26 -- of 2025, the
14 exclusive jurisdiction over anything to do with
15 the receiver or anything to do with my client
16 was with the Supreme Court. So any order or
17 motion that was made between December of '23 and
18 June of '26, where this Court didn't have
19 jurisdiction, is a nullity.

20 My client's position is then on June 26,
21 Your Honor, this Court was supposed to look at
22 what the points from the June 26 order to
23 determine whether or not there is a receiver
24 that can act and issue an order on that. That
25 is the threshold issue with regard to the

1 appeal. That has not yet happened.

2 THE COURT: I understand your position.

3 MR. RAWL: Yes. And so my client's
4 position is that nothing that has happened since
5 December -- so my client made a motion to
6 dismiss and a motion to dissolve. Your Honor
7 ruled on it, we appealed it. And from that
8 point on, the remitter has not been returned to
9 this Court.

10 And so our position is, you know, there was
11 nothing for us to -- and we preserved it in
12 every single thing we filed. 205 -- the, you
13 know -- and it's not like the Supreme Court
14 rejected our arguments. They granted them and
15 agreed with us.

16 THE COURT: Well, both the Supreme Court
17 and the Court of Appeals have rejected your
18 arguments several times on exactly this point.
19 And what they finally did was send all that
20 material back to me, your contentions in Tibbs,
21 Anglo's contentions in Tibbs, Cape's contentions
22 in Tibbs. Everybody's contentions. Sent them
23 back to me because those matters were completely
24 remanded to me. And they're all raised in the
25 Tibbs case. And now I have them back in my

1 jurisdiction to try to figure out how to do
2 something going forward.

3 I have had a two fulsome hearings about the
4 South Carolina's remand. I have indicated how
5 I'm going to rule. I am trying to get this
6 thing in a posture where I have one encompassing
7 order I can send to the Supreme Court for them
8 to look at.

9 You have done the same treadmill of trying
10 to appeal everything that happens so as to
11 prevent the Court from doing what the Supreme
12 Court has charged me with doing. They sent all
13 that back to me and said you look at this thing,
14 here's some particular things we want you to
15 deal with in that connection. And that is what
16 I'm trying to do.

17 I understand you have a different view of
18 the matter. I think I understand what your view
19 is. I don't agree with it. So there we are. I
20 don't think there's anything more you can say
21 that will assist me in this matter.

22 MR. RAWL: Your Honor, I would like to make
23 a couple of points.

24 THE COURT: Mr. Rawl, have you not heard
25 what I just said?

1 MR. RAWL: I have certain arguments that
2 I've not yet made, Your Honor.

3 THE COURT: I see. I will let you proceed
4 with great caution. I can tell you, Mr. Rawl, I
5 don't believe what you just told me. So if you
6 now proceed with any further arguments along the
7 line of what you've already sent to the Court of
8 Appeals and Supreme Court several times, and
9 then again trying to make another intermediate
10 appeal of something that's not appealable, they
11 just simply haven't dealt with yet, I will not
12 regard that with favor.

13 MR. RAWL: May I point out the specific
14 ruling on the June 26th?

15 THE COURT: No, sir, I won't hear anything
16 more about that. You all have talked about
17 June 26. I had a big hearing about it. I've
18 made rulings about it. I don't think I need to
19 hear anything further about that.

20 You made arguments when we had the hearing
21 about what you all think we have a fundamental
22 disagreement about what the Supreme Court
23 directed me to do. They did not make any merits
24 rulings about anything to do with the receiver's
25 authority. They sent it back to me and told me

1 to make rulings.

2 And the reason they do that, they want a
3 record of what the ruling is and why it was
4 made. And I'm going to provide that to the
5 Court.

6 And I've indicated what it's going to be.
7 And I will do it in the context of trying to
8 send a complete package on this case to them
9 with all the rulings. And with an indication of
10 any part of it that's been settled.

11 And I will not allow further the treadmill
12 that we've gotten on for about three years now
13 of you all trying to avoid the Court making a
14 final decision on these matters by appealing
15 nonappealable matters. And that's where I think
16 we are.

17 So I don't need to hear anything further
18 about the June 26 order. You have been heard
19 extensively on that already, and I don't need to
20 hear anything further.

21 MR. RAWL: Your Honor, I would like to
22 incorporate the arguments that Mr. Carroll just
23 made while he was standing up here.

24 THE COURT: All right, sir.

25 MR. RAWL: And I do want to clarify -- make

1 sure Your Honor has not issued a final order
2 yet.

3 THE COURT: I understand that.

4 MR. RAWL: I just want to make sure.

5 THE COURT: I understand that's your
6 position, and I understand that is Mr. Carroll's
7 position. You led with that and you've said it
8 about four or five times in the course of this
9 very argument, so I understand what your
10 position is.

11 MR. RAWL: I'm just asking -- if I'm wrong,
12 Your Honor --

13 THE COURT: I'm not here to be questioned,
14 Mr. Rawl.

15 MR. RAWL: It's --

16 THE COURT: Mr. Rawl. Mr. Rawl. I think
17 I've heard enough.

18 MR. RAWL: So, Your Honor, with regard to
19 issues that I've not yet addressed, until this
20 Court issues a final order, we don't know the
21 scope of what Your Honor is going to order. For
22 example, we don't know what entity you are going
23 to order would be in receivership. We don't
24 know what the scope of the authority of that
25 receivership would be. We don't know whether or

1 not, you know, whatever order you issue is going
2 to comply with the bond provisions of the
3 South Carolina Receivership Statute. We don't
4 know --

5 THE COURT: Mr. Carroll.

6 MR. RAWL: I'm Mr. Rawl. Yes.

7 THE COURT: I mean Mr. Rawl, those are
8 matters you can raise at a certain point in
9 time, but I'm not going to hear those arguments
10 right now.

11 MR. RAWL: And my only point is we don't --
12 you know, my client does not know the answer to
13 those questions because we don't have that
14 order. So without that information, we don't
15 have the ability to even respond to those
16 motions.

17 THE COURT: Mr. Rawl, that's fine. You've
18 made your position known on this now for about
19 the fourth time of these proceedings. I don't
20 need any further argument on that. If you don't
21 have anything further to say other than this,
22 please take your seat.

23 MR. RAWL: Your Honor, thank you very much.

24 THE COURT: Yes, sir.

25 All right. Mr. Lay? Mr. Protopapas?

1 MR. LAY: I'm just going to --

2 THE COURT: What I want to know is this.

3 MR. LAY: Yes, ma'am.

4 THE COURT: We've got a settlement that is
5 going to be projected. And my guess is that the
6 parties having reached that settlement,
7 projected as Mr. Protopapas indicated it would
8 be, by this Thursday, I will await getting those
9 materials.

10 But what I want to know is this: Assuming
11 that we reached the settlements that you all
12 have brought out now indicated that the parties
13 have reached before me today, outline for me
14 where you think we're going with respect to the
15 trial.

16 MR. LAY: For the trial, Your Honor, we
17 have -- with the two nonparticipating
18 defendants, we still have to put our case up
19 even though it's going to be an unopposed trial.

20 THE COURT: Right.

21 MR. LAY: So we're still going to need
22 probably three days to put our case on against
23 the remaining two groups of defendants.

24 THE COURT: The Altrad Group and --

25 MR. LAY: The Altrad Group and the Charter.

1 THE COURT: Charter.

2 MR. LAY: Yes, ma'am.

3 THE COURT: And the Altrad Group and the
4 Charter Group have taken the position before me
5 today, as articulated by Mr. Carroll and
6 Mr. Rawl, that they don't think the Court has
7 any authority and so forth and so on. I have no
8 doubt when the documents come to me Thursday and
9 I file those, together with my other orders in
10 this matter, I have no doubt but what they will
11 attempt to appeal that.

12 And, you know, all I can tell you is I'm
13 going to finalize all this material as soon as I
14 get your settlement materials.

15 MR. LAY: Yes, ma'am. And, you know, I
16 want to point out that we also got an order from
17 the Supreme Court on September 25th
18 specifically --

19 THE COURT: Yes.

20 MR. LAY: -- addressed whether or not there
21 can be approval of settlements. So that would
22 be the height of frivolity if they appealed some
23 sort of settlement agreement.

24 THE COURT: When the Supreme Court --

25 MR. LAY: On what basis that would be, I

1 have no idea.

2 THE COURT: Well, that's exactly right.

3 The Supreme Court has made it clear that they
4 want settlements to proceed, and then they want
5 recitations made in connection with those
6 settlements that indicate the authority of the
7 Court and the posture of the parties. And I
8 will do that.

9 That is why I want to put all this together
10 in one package when I get the materials from you
11 all so that it will all be in front of them.
12 That will embrace not only directives when all
13 these matters were remanded by the earlier
14 directive of the Court, but they will also
15 incorporate the directives of the Court in the
16 September 25th order.

17 And then we'll have a package that can go
18 to them. And I would be astounded if the
19 directive wasn't then given, go try these
20 matters and then let us receive a complete trial
21 package so that we have the entire matter and a
22 complete trial.

23 MR. LAY: Your Honor, I just want to say it
24 was not only proceed on settlement, it was to go
25 through your normal course, proceeding in your

1 normal course, which is absolutely the trial
2 process.

3 THE COURT: Exactly.

4 MR. LAY: And they made it very clear.

5 THE COURT: Of course, let's remember that
6 this matter that's set for trial now was set for
7 trial either twice or maybe more and always
8 delayed by these appellate maneuvers, none of
9 which have ultimately proved successful, as I
10 recall. Am I right about that?

11 MR. LAY: Yes, ma'am.

12 THE COURT: They claim a lot of success,
13 but the final June order -- I think the June
14 order directs me to do certain things in
15 connection with the further handling of this
16 matter at trial. And that's what I'm attempting
17 to do.

18 So what I'm simply saying is this: I
19 understand what the trial will look like and
20 there are certainly things that the rulings that
21 we need to be made if we go forward on certain
22 affidavits and certain other things, but they
23 can be made at trial.

24 MR. LAY: Yes, ma'am.

25 THE COURT: They are not things that need

1 to be pretried. What we need to concentrate, as
2 I see it, on pretrial is to finalize or
3 regarding the authority of the receiver to act
4 and orders regarding the settlement of those who
5 are settling. And that is what I would like to
6 see in a fulsome package to me on Thursday.

7 MR. LAY: Yes, ma'am.

8 THE COURT: And that I can then look at,
9 deal with, modify as I see fit. But I think the
10 outlines of what I have found about the status
11 of the receiver and the receiver's authority is
12 already well-known to everybody in this room
13 pursuant to the other hearings that have been
14 held.

15 MR. LAY: Agreed.

16 THE COURT: Okay. What do I then -- what
17 further do I need to do at this moment?

18 MR. LAY: I would ask you to grant the
19 motion to amend.

20 THE COURT: Yes, sir. It is granted.

21 MR. LAY: Yes, ma'am.

22 THE COURT: And that can be encompassed in
23 what you bring to me Thursday about, A, the
24 settlement; and, B, the finalization of the
25 order I previously announced that was previously

1 submitted to me and which can be signed in
2 the -- basically the posture that was received
3 by me. But I need to look at it one more time
4 when it's proposed as the final order to decide
5 whether that is the way I will sign it in light
6 of the direction of September 25th.

7 MR. LAY: Yes, ma'am.

8 THE COURT: Do you need anything else by
9 way of any rulings from me?

10 MR. LAY: I think that's it, Your Honor.

11 THE COURT: All right. So just to recap.
12 The motion to amend the complaint is granted
13 over the objection and supplemental objection
14 and opposition of the third-party defendants
15 Charter, Central, Altrad, to the receiver's
16 motion to confirm the appointment of receiver
17 and receiver's amended motion for leave to amend
18 the third-party complaint.

19 I indicated that I have taken into account
20 all those pleadings. And in the face of those
21 pleadings, I have granted the motion to amend
22 and denied the motions or refused to grant the
23 objections, is the way they phrase. They
24 phrased it as an objection. That's kind of an
25 odd way to phrase it. But I denied the

1 objections, and I grant the motion the amend.

2 And the orders need to reflect that.

3 MR. LAY: Yes, ma'am.

4 THE COURT: In a manner that the Court has
5 indicated in the observations I've already made
6 in the course of these proceedings.

7 MR. LAY: Yes, ma'am.

8 THE COURT: All right. Mr. Robinson.

9 MR. ROBINSON: Your Honor, on behalf of the
10 receiver, the Court was referencing -- and it is
11 in the order that came out from the Supreme
12 Court September 25th. I know we put the
13 settlement on the record for the purpose of
14 43(k) and given you the key terms of it.

15 THE COURT: Right.

16 MR. ROBINSON: The Supreme Court said that
17 "As we wait the trial court ruling on the
18 matters referenced in this court, order dated
19 June 6, 2025, we issue this order to clarify
20 that nothing in the June 6, 2025, order prevents
21 the trial court proceedings from continuing in
22 the normal course in the asbestos litigation,
23 including the filing of and decisions on motions
24 to approve settlement agreements."

25 THE COURT: Well, thank you for making that

1 clear. I'm sure that will also be a part of the
2 filings that you will make proposing the written
3 order that I just recited from the bench.

4 But it's very clear to me from that
5 directive from the Supreme Court that they fully
6 anticipate that I will continue the judgments I
7 already made upholding the legitimacy of the
8 receiverships, and that I will consider the
9 fairness on its merits of proposed settlements
10 with respect to defendants in the proceedings
11 before me.

12 Had the Court not intended for me to do
13 that, I think it would have said so. I think it
14 is a direct reputation of the arguments that
15 have been made by Mr. Carroll and Mr. Rawl on
16 behalf of their client previously and today's
17 proceedings where they contend that the June
18 order of the Supreme Court called into question
19 the viability or the legitimacy of the
20 receiverships.

21 I viewed it as anything but that, and I
22 think the further directive that you have just
23 referred to underscores that.

24 But I will make very clear what I think the
25 receiver's authority is from whence it is

1 derived as I think I've already indicated on the
2 record in other proceedings that have been held
3 and today. I'm not going to vary from that.

4 MR. ROBINSON: Thank you, Your Honor.

5 THE COURT: All right, sir. Anything
6 further?

7 MR. CARROLL: Yes, ma'am. Item 5 on the
8 agenda.

9 THE COURT: What's that?

10 MR. CARROLL: Item 5 on the agenda.

11 THE COURT: Yes. That's the objections and
12 motion to strike the affidavits of Dr. Steven
13 Press and James T.H. Buxton.

14 Let me say this before you begin,
15 Mr. Carroll.

16 MR. CARROLL: Yes, ma'am.

17 THE COURT: What I just said to Mr. Lay is
18 that objections like this, which have to do with
19 the trial of this case and materials submitted
20 in connection with the trial of this case are
21 things that I will rule upon when the matter is
22 tried. So I don't think there's any necessity
23 for you to argue your objections and motion to
24 strike the affidavits of Dr. Steven Press and
25 James T.H. Buxton.

1 As I understand it, those materials are
2 submitted in connection with the materials that
3 would be put forth at the trial of this matter.
4 Am I wrong about that?

5 MR. CARROLL: Respectfully, Your Honor, you
6 are wrong.

7 THE COURT: All right. Why?

8 MR. CARROLL: These affidavits were
9 submitted in support of the receiver's motion to
10 confirm appointment in Tibbs. He filed these
11 affidavits in support of that. And so we filed
12 a motion to strike that. And Your Honor still
13 hasn't granted that motion. So to the extent
14 these affidavits inform your judgment, they
15 should be stricken.

16 Dr. Press' -- Dr. Press' proposed
17 testimony, you know, number one, of course these
18 come from -- the filing came from the receiver
19 who doesn't exist. I don't want to replot that
20 ground.

21 But number two, Dr. Press' testimony is
22 essentially an attempt to do a work around the
23 Adams case. He says, Hey, I'm a fact witness
24 and I've read some books. Here's how I think
25 Adams should be resolved. He didn't say

1 Adams. But he says here's how I think -- here's
2 how I think this amalgamation issue should be
3 resolved.

4 And I do not want to belabor that point,
5 Your Honor. I don't think this is something
6 that a purported expert could possibly testify
7 about. The Whittaker Clark Daniels case from
8 the third circuit from last month that addressed
9 the receivership there in the third circuit
10 said, Hey, if this receiver thinks he can
11 operate outside of South Carolina, he's
12 absolutely wrong. The U.S. constitution forbids
13 that. And if there's any doubt about it, he has
14 got to go to where Whittaker Clark & Daniels is
15 and ask those courts what his authority is.

16 Well, Your Honor, here, those courts --
17 quote/unquote, those courts would be the courts
18 of England, and they've already spoken. And
19 they say the receiver is wrong and that
20 Dr. Press is wrong. So I think his affidavit
21 should be stricken for those reasons.

22 Mr. Buxton's affidavit, again, if
23 Your Honor is going to consider it, as you
24 address the motion to, quote/unquote, confirm
25 the receivership, Mr. Buxton is presented as a

1 expert on the law. And of course, Your Honor
2 knows that's never the proper source of expert
3 testimony.

4 So for those reasons, Your Honor, I don't
5 want to belabor the point. If you have any
6 questions, I'm glad to answer them. But if not,
7 I will sit down.

8 THE COURT: All right.

9 MR. CARROLL: I didn't want the moment to
10 pass, and, again, I don't want to be accused of
11 waiving anything.

12 THE COURT: Yes, sir. I understand.

13 MS. JOYNER: Good morning or afternoon at
14 this point. Lindsay Joyner on behalf of the
15 receiver.

16 In response to this motion, Your Honor, we
17 believe it's moot because you've already made a
18 decision on the receivership. Those affidavits
19 were submitted in reply on the motion to confirm
20 the receivership order. And so any attempt now
21 to try to go at them substantively would be
22 waiver in the pretrial context.

23 And you've already made your decision clear
24 in your August 13th letter. So we believe this
25 motion is moot. But if Your Honor has questions

1 for me, I'm happy to answer them.

2 THE COURT: Well, I agree with you that
3 the -- I have decided now the issue concerning
4 the confirmation of the appointment of a
5 receiver. And frankly, I've done so without any
6 reference to these two affidavits. My decision
7 and the discussion that we had at the two
8 hearings I had on this matter did not encompass
9 discussing either of these folks' affidavits but
10 rather had to do with analyzing the Park case,
11 the authority of the receiver's appointment
12 there, and the authority of the receiver going
13 forward to act as receiver in connection with
14 other South Carolina claims.

15 So I agree that these objections are not
16 proper pretrial material. I made the decision,
17 in light of the other filings of legal
18 arguments, and nor was the observation of these
19 two folks in their affidavits discussed at the
20 time of those hearings.

21 So they are not anything that I would
22 consider as necessities of ruling about
23 pretrial. And we will see what happens in the
24 trial of the matter when it takes place as to
25 what the posture of these two affidavits would

1 be in terms of being offered by your client.

2 But I don't consider the matter of
3 confirmation of the appointment of the receiver
4 as something that needs any further elucidation
5 by way of affidavits at this time.

6 MS. JOYNER: Yes, Your Honor.

7 THE COURT: All right. Anything further?

8 MR. PROTOPAPAS: Nothing further for the
9 receiver, Your Honor.

10 THE COURT: All right.

11 Now, I just will observe for
12 Mr. Protopapas, for you, and for Mr. Robinson,
13 there may be other receiverships that now need
14 some attention in terms of confirming orders,
15 particularly settlement orders.

16 Now that I have got the directive from the
17 Court that makes it clear that I am to proceed
18 with those, I want to revive or look at those
19 and get them dealt with in regular format. So I
20 know I've got a couple with Heat and Frost that
21 are sitting on my desk, and I now feel that the
22 Court has given me direction sufficient to deal
23 with those matters and I want to deal with them.

24 MR. PROTOPAPAS: Your Honor, we'll provide
25 the Court with a list copying the appropriate --

1 THE COURT: Exactly. Exactly. I've got
2 several of them in folders sitting here right
3 now, but I want them in one comprehensive series
4 of orders and get those matters out of the way
5 now that I've got the Court's indication that I
6 should proceed with those. And that nothing
7 within their purview, by way of any over appeals
8 or any other filings, prevents me or stays me
9 from acting as a trial judge on these
10 settlements. And that's what I want to do.

11 MR. PROTOPAPAS: Yes, Your Honor. We will
12 collect and provide the appropriate copy to
13 defense counsel. So you have it in one place
14 don't have to look at thousand of filings we
15 have suffered the Court --

16 THE COURT: Great. Thank you very much.
17 Anything further?

18 MR. PROTOPAPAS: Nothing, Your Honor.

19 MR. RAWL: Your Honor, just briefly. You
20 know, my reading of that Supreme Court order, I
21 don't think was intended to be receivers. I
22 think it was just underlying asbestos cases.

23 But the only question I have, you know,
24 Your Honor, is that --

25 THE COURT: I might say to you, Mr. Rawl,

1 that is I think belied by the words themselves
2 in the Supreme Court. But I'm also not aware of
3 any settlements of individual mesothelioma cases
4 that you would have any interest in. But for
5 your information, I am not aware of any
6 settlements of mesothelioma cases on the
7 asbestos docket as a general matter that have
8 not been dealt with.

9 I know of only one that is on my desk right
10 now that had to be supplemented with some
11 further information about the distribution of
12 proceeds. But other than that, I'm not aware of
13 anything that's been brought to the attention of
14 the Supreme Court dealing with settlements of
15 individual mesothelioma cases.

16 I think they were very well aware that the
17 settlements that were being discussed in
18 connection with anything before them had to do
19 with the status of the receiver and the
20 authority of the receiver in these very matters.

21 MR. RAWL: Your Honor, I have no idea what
22 the Supreme Court -- I presume that the Supreme
23 Court didn't know about the settlement today
24 because it was not told to even us until today.
25 So I assume this Supreme Court --

1 THE COURT: No, sir. No, sir.

2 MR. RAWL: -- doesn't know any of those
3 issues.

4 THE COURT: Mr. Rawl, the Supreme Court and
5 the world would know that there have been many
6 qualified settlement funds approved and
7 settlements made in connection with actions by
8 the receiver. I held all kind of hearings.

9 We now have a comprehensive place on the
10 filings with the Richland County clerk's office
11 where one can view in a comprehensive whole a
12 listing of the status of these various
13 settlements and the activities of the receiver
14 in connection therewith.

15 So, no, sir, I don't view the remarks of
16 the Supreme Court as not including receiver
17 activity when that's been the very thrust of
18 what they talked about as they remanded these
19 cases to me to begin with. I think that's
20 precisely what they're talking about. And I
21 think what we're about here today is, again,
22 precisely what the court was talking about when
23 they made it clear that settlements could go
24 forward.

25 MR. RAWL: Thank you, Your Honor.

1 THE COURT: So thank you for your remarks
2 in that regard. Again, I couldn't disagree more
3 with you. I think I understand completely what
4 they said.

5 MR. RAWL: Thank you, Your Honor.

6 And my only last question is, I can't
7 remember if it was Mr. Lay or Mr. Protopapas
8 said he was going to provide us a copy of the
9 revised proposed order that they were going to
10 provide to you. I just wanted to know, you
11 know, how many days we would have to respond.

12 THE COURT: I'm not going to give any
13 further days or anything else. We had proposed
14 orders out there. I simply expect them to look
15 at them as both sides submitted them and provide
16 them to me. But I'm not going to make any
17 further back and forth. I've already done that.
18 And you all have already made it quite clear
19 what your position is. I have that, and I'm
20 obviously not going to agree with you.

21 MR. RAWL: Thank you. But we will get a
22 copy of whatever is provided to Your Honor,
23 correct?

24 THE COURT: Mr. Rawl, I find it a little
25 bit insulting to me that you would think that

1 there is anything I would ever receive from a
2 lawyer that wouldn't be copied to all opposing
3 counsel. I am confident they will do that, and
4 I am confident anything that I do by way of
5 signing an order is going to be filed with the
6 Richland County clerk's office in the due course
7 and given to all parties.

8 MR. RAWL: Thank you so much, Your Honor.

9 THE COURT: Yes, sir.

10 MR. PROTOPAPAS: Nothing further,
11 Your Honor.

12 THE COURT: All right. Court will be
13 adjourned.

14 - - -

15 (The hearing concluded at 1:04 p.m.)

16 - - -

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, Sheri L. Byers, Registered Professional Reporter and Notary Public of the State of South Carolina at Large, do hereby certify:

That the foregoing proceedings were taken before me on the date and at the time mentioned on page 1 and the proceedings were recorded stenographically by me and were thereafter transcribed under my direction; that the foregoing transcript as typed is a true, accurate and complete record of the proceedings to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 6th day of October, 2025, at Lexington, Lexington County, South Carolina.

Sheri L. Byers
 Sheri L. Byers,
 Registered Professional Reporter,
 Notary Public
 State of South Carolina at Large
 My Commission expires:
 November 1, 2033