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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2025-002104

RECORD ON APPEAL
(VOLUME VIII)

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,
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of which

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

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

v.

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

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

of which

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

WOMBLE BOND DICKINSON (US) LLP

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

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

SMITH ROBINSON, LLC

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

Attorneys for Respondent

GORDON REES SCULLY MANSUKHANI,
LLP

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

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

GALLIVAN, WHITE & BOYD, PA

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

Attorneys for Respondent

MORGAN, LEWIS & BOCKIUS LLP

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

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

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

Attorneys for Respondent

Other Counsel of Record:

KASSEL MCVEY

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

Counsel for Plaintiffs

DEAN OMAR BRANHAM SHIRLEY LLP

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

Counsel for Plaintiffs

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

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

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

ASBESTOS DOCKET MANAGEMENT

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

PROCEDURAL HISTORY

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

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

ANALYSIS AND TREATMENT OF CONFIDENTIAL SETTLEMENT AGREEMENTS

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

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

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

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

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

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

LIQUIDATION OF RECEIVERSHIP ASSETS AND APPROVAL OF SETTLEMENT

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

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

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

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

THE PRESENT SETTLEMENT AND REQUESTED RELIEF

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

B. Approval of Qualified Settlement Fund

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

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

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

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

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

CONTRACTS WITH ATTORNEYS

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

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

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

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

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

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

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

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

IT IS THEREFORE ORDERED THAT:

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

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

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

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

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

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

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

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

IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Richland Common Pleas

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

Case Number: 2023CP4001759

Type: Order/Approval Of Settlement

So Ordered

Jean H. Toal

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

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	FOR THE FIFTH JUDICIAL CIRCUIT
JOHN A. TIBBS AND MARGARET B. TIBBS,	In Re: Asbestos Personal Injury Litigation Coordinated Docket
Plaintiff,	Civil Action No. 2023-CP-40-01759
Vs.	
3M COMPANY, et al.,	
Defendants.	
STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	FOR THE FIFTH JUDICIAL CIRCUIT
KEITH W. PARK, Individually and as the Personal Representative of the Estate of ISABELLA PARK,	In Re: Asbestos Personal Injury Litigation Coordinated Docket
Plaintiff,	Civil Action No. 2021-CP-40-02727
Vs.	
ARMSTRONG INTERNATIONAL, INC.,	
Defendants.	

NOTICE OF FILING

NOW COMES the undersigned, as counsel of record for Third Party Plaintiff, Peter D. Protopapas, as Receiver for Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd. (hereinafter “The Receiver”) and files a copy of the South Carolina Asbestos Victims Compensation QSF LLC Operating Agreement.

RIKARD & PROTOPAPAS

s/ John Chandler
John Chandler SC Bar 100837
2110 N. Beltline Blvd.
Columbia, SC 29204
803.978.6111
jchandler@rplegalgroup.com

SMITH ROBINSON, LLC
Jonathan M. Robinson
3200 Devine Street
Columbia, SC 29205
jon@smithrobinsonlaw.com
(803) 254-5445

GALLIVAN, WHITE & BOYD, P.A.
John T. Lay, Jr., SC Bar No. 64526 Lindsay A.
Joyner, SC Bar No. 77437
Olesya V. Bracey, SC Bar No. 101409 Eleanor L.
Jones, SC Bar No. 104678 1201 Main Street, Suite
1200 PO Box 7368 (29202) Columbia, SC 29201
jlay@gwblawfirm.com ljoyner@gwblawfirm.com
obracey@gwblawfirm.com
ejones@gwblawfirm.com (803) 779-1833

MORGAN, LEWIS & BOCKIUS LLP
Troy S. Brown
Dana E. Becker
1701 Market Street
Philadelphia, PA 19103
troy.brown@morganlewis.com
dana.becker@morganlewis.com
(215) 963-5000

MORGAN, LEWIS & BOCKIUS LLP
Brady Edwards (*pro hac vice forthcoming*)
Lauren McCulloch Semlinger
1000 Louisiana St., Suite 4000
Houston, TX 77002
brady.edwards@morganlewis.com
lauren.semlinger@morganlewis.com
(713) 890-5467

MORGAN, LEWIS & BOCKIUS LLP
Paul A. Scrudato
101 Park Avenue
New York, NY 10178
paul.scrudato@morganlewis.com
(212) 309-6000

*Attorneys for Third-Party Plaintiff Peter D.
Protopapas, in his capacity as the Court-appointed
Receiver (the "Receiver") for Cape PLC, now
known as Cape Intermediate Holdings Ltd., as
successor in interest to Cape Industries Ltd. (f/k/a
Cape Asbestos Company Ltd.)*

SOUTH CAROLINA ASBESTOS VICTIMS COMPENSATION QSF LLC OPERATING AGREEMENT

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

WITNESSETH:

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

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

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

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

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

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

Article I General Fund Provisions

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

1.2 Fund Purposes. The purposes of this Fund shall be (i) to provide funds which may be used to resolve South Carolina claims, actions, suits, losses, rights, damages, costs, fees, expenses, obligations, liabilities, and causes of action of every character, nature (whether sounding in tort, contract, warranty, or any other theory of law, or equity), kind or description whatsoever, known or unknown, past, present, or future, foreseen or unforeseen, and suspected or unsuspected, arising out of, or relating to, injuries arising from alleged exposure to Cape Asbestos Products (as defined in the Settlement Agreement), that are brought in South Carolina by any person or entity (whether it is an asbestos claimant, an asbestos trust, or others) (“**Cape Asbestos Suits**”); (ii) to provide funds to be used to pay the legal fees of the Receiver and lawyers engaged by the Receiver; (iii) to provide funds to be used to pay any settlement or to satisfy any final judgment or award entered against the Receiver in connection with any claims, causes of action, demands, proceedings, or investigations (whether threatened, pending, or future) asserted against the Receiver in his capacity as the Receiver; (iv) to provide advances to pay for legal fees and settlement costs of Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) (“**Cape**”) pending reimbursement or indemnification by other responsible third parties; (v) to secure certain future potential contingent obligations pursuant to the terms of the Settlement Agreement, which terms are expressly incorporated herein by reference; (vi) to pay for administrative and management costs as provided for herein; and (vii) to do all things necessary or appropriate in connection with the foregoing.

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

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

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

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

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

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

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

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

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

Article II

Deposits

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

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

Article III Funding, Distributions and Advances

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

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

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

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

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

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

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

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

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

Article IV **Manager**

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

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

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

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

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

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

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

Article V

Investment of Fund

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

Article VI

Fund Administration, Record Keeping and Accountings

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

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

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

Article VII

Powers of Manager

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

Article VIII

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

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

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

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

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

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

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

Article IX
Miscellaneous Provisions

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

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

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

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

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

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

with copy to: Company Secretary

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

with copy to:

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

with copy to:

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

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

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

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

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

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

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

Receiver of Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)

By: _____
Name: Peter D. Protopapas
Title: Receiver
Date: October __, 2025

Accepted and agreed:

MANAGER and MEMBER

By: _____
Name: Peter D. Protopapas
Title: Manager and Sole Member
Date: October __, 2025

Schedule 1 to Operating Agreement

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

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

\$ _____

Date

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

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

1. Payments.

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

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

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

2. Defaults.

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

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

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

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

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

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

3. Miscellaneous.

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

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

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

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

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

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

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

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

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

By: _____

Name: _____

Title: _____

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

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

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

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

**Receiver for Cape PLC, now known as
Cape Intermediate Holdings Ltd., as
successor in interest to Cape Industries
Ltd. (f/k/a Cape Asbestos Company Ltd.)**

Dated: _____

By: _____
Title: _____

Schedule 4 to Operating Agreement

The residuary beneficiaries are as follows:

College of Charleston
Clemson University
University of South Carolina

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

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

ISABELLA PARK,

Plaintiff,

V.

ARMSTRONG INTERNATIONAL, INC.

3M COMPANY

4520 CORP., INC.

BECON CONSTRUCTION COMPANY, INC.

BRENNTAG NORTH AMERICA, INC.

BRENNTAG SPECIALTIES, LLC

BW/IP INC.

CAPE PLC

CARBOLINE COMPANY

CARRIER CORPORATION

CELANESE CORPORATION

CLARK-RELIANCE CORPORATION,

CNA HOLDINGS LLC

COVIL CORPORATION

CRANE CO.

CRANE INSTRUMENTATION &
SAMPLING, INC.

DANA COMPANIES LLC,

ECODYNE CORPORATION

C/A NO. 2021-CP-40-_____

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

SUMMONS

	)
FISHER CONTROLS INTERNATIONAL,	)
LLC	)
	)
FLOWSERVE CORPORATION,	)
	)
FLUOR CONSTRUCTORS	)
INTERNATIONAL,	)
	)
FLUOR CONSTRUCTORS	)
INTERNATIONAL, INC.	)
	)
FLUOR DANIEL SERVICES CORPORATION	)
	)
FLUOR ENTERPRISES, INC.	)
	)
FMC CORPORATION	)
	)
FOSTER WHEELER ENERGY	)
CORPORATION	)
	)
GARDNER DENVER, INC.	)
	)
GENERAL ELECTRIC COMPANY	)
	)
THE GOODYEAR TIRE & RUBBER	)
COMPANY	)
	)
GOULDS PUMPS, INCORPORATED	)
	)
GRINNELL LLC	)
	)
HENRY PRATT COMPANY, LLC	)
	)
HILLS-MCCANNA, LLC	)
	)
METROPOLITAN LIFE INSURANCE	)
COMPANY	)
	)
RILEY POWER INC.,	)
	)
ROBERTSHAW CONTROLS CO.	)
	)
SCHNEIDER ELECTRIC SYSTEMS USA,	)
INC.	)
	)

SOUTHERN INSULATION, INC.)
)
SPIRAX SARCO, INC.)
)
SPX COOLING TECHNOLOGIES, INC.)
)
STARR DAVIS COMPANY, INC.)
)
STARR DAVIS COMPANY OF S.C., INC.)
)
STERLING FLUID SYSTEMS (USA), LLC)
)
UNION CARBIDE CORPORATION)
)
UNITED STATES FIDELITY AND)
GUARANTY COMPANY)
)
THE WILLIAM POWELL COMPANY)
)
VISTRA INTERMEDIATE COMPANY LLC,)
)
YORK INTERNATIONAL CORPORATION)
)
ZURN INDUSTRIES, LLC)
)
Defendants.)
_____)

SUMMONS

TO DEFENDANTS ABOVE-NAMED:

[THIS SPACE IS INTENTIONALLY LEFT BLANK]

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the Plaintiff's counsel, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service. If you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,

/s/ Theile B. McVey

Theile B. McVey (SC Bar No. 16682)

Jamie D. Rutkoski (SC Bar No. 103270)

KASSEL MCVEY ATTORNEYS AT LAW

1330 Laurel Street

Post Office Box 1476

Columbia, South Carolina 29202-1476

T: 803-256-4242

F: 803-256-1952

tmcvey@kassellaw.com

jrutkoski@kassellaw.com

Other email: emoultrie@kassellaw.com

and

Jordan Blumenfeld-James (CA Bar No. 235185)

(To be admitted *Pro Hac Vice*)

DEAN OMAR BRANHAM SHIRLEY, LLP

302 N. Market Street, Suite 300

Dallas, Texas 75202

T: 214-722-5990

F: 214-722-5991

jbj@dobslegal.com

Other email: jjohnson@dobslegal.com

ATTORNEYS FOR PLAINTIFFS

June 4, 2021

Columbia, South Carolina.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

ISABELLA PARK,)
Plaintiff,)
v.)
ARMSTRONG INTERNATIONAL, INC.)
3M COMPANY)
f/k/a MINNESOTA MINING AND)
MANUFACTURING COMPANY)
4520 CORP., INC.)
individually and as successor-in-interest to)
BENJAMIN F. SHAW COMPANY)
BECON CONSTRUCTION COMPANY,)
INC.)
BRENNTAG NORTH AMERICA, INC.)
individually and as successor-in-interest to)
MINERAL PIGMENT SOLUTIONS, INC.)
and WHITTAKER, CLARK & DANIELS, INC.)
BRENNTAG SPECIALTIES, LLC)
f/k/a BRENNTAG SPECIALTIES, INC.)
f/k/a MINERAL PIGMENT SOLUTIONS, INC.)
successor-in-interest to WHITTAKER CLARK)
& DANIELS, INC.)
BW/IP INC.)
and its wholly-owned subsidiaries)
CAPE PLC)
individually and as successor-in-interest to)
CAPE ASBESTOS COMPANY)
CARBOLINE COMPANY)
CARRIER CORPORATION)
CELANESE CORPORATION)

C/A NO. 2021-CP-40-_____

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket
Living Mesothelioma

COMPLAINT

(Jury Trial Demanded)

CLARK-RELIANCE CORPORATION)
 and its JERGUSON GAGE & VALVE)
 DIVISION)
)
CNA HOLDINGS LLC)
 f/k/a CELANESE CORPORATION f/k/a)
 HOECHST CELANESE CORPORATION, sued)
 individually and as successor in-interest-to)
 FIBER INDUSTRIES, INC.)
)
COVIL CORPORATION)
)
CRANE CO.)
)
CRANE INSTRUMENTATION &)
SAMPLING, INC.)
 f/k/a CIRCOR INSTRUMENTATION)
 TECHNOLOGIES, INC. f/k/a HOKE INC.)
)
DANA COMPANIES LLC)
 successor-by-merger to DANA)
 CORPORATION)
)
ECODYNE CORPORATION)
)
FISHER CONTROLS INTERNATIONAL,)
LLC)
)
FLOWSERVE CORPORATION)
 f/k/a THE DURIRON COMPANY INC.)
)
FLUOR CONSTRUCTORS)
INTERNATIONAL)
 f/k/a FLUOR CORPORATION)
)
FLUOR CONSTRUCTORS)
INTERNATIONAL, INC.)
)
FLUOR DANIEL SERVICES)
CORPORATION)
)
FLUOR ENTERPRISES, INC.)
)
FMC CORPORATION)
 on behalf of its former Peerless Pump business)
)
)

FOSTER WHEELER ENERGY CORPORATION	)
	)
GARDNER DENVER, INC.	)
	)
GENERAL ELECTRIC COMPANY	)
	)
THE GOODYEAR TIRE & RUBBER COMPANY	)
	)
GOULDS PUMPS, INCORPORATED	)
	)
GRINNELL LLC	)
d/b/a GRINNELL CORPORATION	)
	)
HENRY PRATT COMPANY, LLC	)
a subsidiary of MUELLER CO. LLC	)
	)
HILLS-MCCANNA, LLC	)
	)
METROPOLITAN LIFE INSURANCE COMPANY	)
a wholly-owned subsidiary of METLIFE INC.	)
	)
RILEY POWER INC.	)
f/k/a RILEY STOKER CORPORATION and	)
D.B. RILEY, INC.	)
	)
ROBERTSHAW CONTROLS CO.	)
	)
SCHNEIDER ELECTRIC SYSTEMS USA, INC.	)
f/k/a INVENSYS SYSTEMS, INC.	)
	)
SOUTHERN INSULATION, INC.	)
	)
SPIRAX SARCO, INC.	)
	)
SPX COOLING TECHNOLOGIES, INC.	)
individually and successor-in-interest to	)
MARLEY COOLING TOWERS CO.	)
	)
STARR DAVIS COMPANY, INC.	)
	)
STARR DAVIS COMPANY OF S.C., INC.	)
	)
STERLING FLUID SYSTEMS (USA), LLC	)

UNION CARBIDE CORPORATION

**UNITED STATES FIDELITY AND
GUARANTY COMPANY**

individually and as the alter ego to COVIL
CORPORATION

THE WILLIAM POWELL COMPANY

**VISTRA INTERMEDIATE COMPANY
LLC**

individually and as successor-in-interest to
CRSS INC.

YORK INTERNATIONAL CORPORATION

ZURN INDUSTRIES, LLC

individually and as successor-in-interest to
ZURN INDUSTRIES, INC.

Defendants.

PLAINTIFF'S COMPLAINT

NOW COMES Plaintiff, ISABELLA PARK (hereinafter "Plaintiff"), citizen and resident of the State of South Carolina, and sues the named Defendants for compensatory and punitive damages, by and through her attorneys, and comes before this court and alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiff Isabella Park has been diagnosed with mesothelioma caused by exposure to asbestos dust and fibers. This exposure occurred as a result of her husband's work with and around asbestos-containing products, which caused asbestos containing dust to cover his clothing, vehicle and body, which he brought home to Plaintiff, who was then exposed to said asbestos dust and fibers.

2. This Court has personal jurisdiction over Defendants because Plaintiff's claims arise from Defendants, or their predecessors in interest, conduct in:

- (a) Transacting business in this State, including the sale, supply, purchase, and/or use of asbestos and/or asbestos-containing products, within this State;
- (b) Contracting to supply services or things in the State;
- (c) Commission of a tortious act in whole or in part in this State;
- (d) Having an interest in, using, or possessing real property in this State; and/or
- (e) Entering into a contract to be performed in whole or in part by either party in this State.

3. Plaintiff's claims against the Product Defendants, as defined herein, arise out of Defendants' purposeful efforts to serve directly or indirectly the market for their asbestos and/or asbestos-containing products in this State, either through direct sales or through utilizing an established distribution channel with the expectation that their products would be purchased and/or used within South Carolina.

4. Plaintiff's claims against the Premises Defendants, as defined herein, arise out of Defendants' ownership and/or control of real property located in South Carolina and the purchase and use of asbestos-containing products on their premises located in South Carolina, with which Plaintiff's husband, Andrew Park (deceased), worked, and as a result was exposed to asbestos, which he brought home to Plaintiff and exposed her to asbestos.

5. All of the named Defendants are corporations who purposefully availed themselves of the privilege of doing business in this State, and whose substantial and/or systematic business in South Carolina exposed Plaintiff to asbestos in this State, subjecting them to the jurisdiction of the South Carolina courts pursuant to the South Carolina Long-Arm Statute and the United States Constitution.

6. Plaintiff Isabella Park was exposed to asbestos through asbestos dust and fibers brought home on her husband's work clothes, from asbestos dust in his vehicle and asbestos dust on his body including his hair, and from the dust being distributed and re-entrained in their home. Her exposure to asbestos dust and fibers occurred through her contact with her husband's work clothing and person when greeting him at the end of his work day, through laundering his work clothing on a regular basis, through spending time in his vehicle in which asbestos dust and fibers had been deposited, and through sharing a home contaminated with asbestos fibers that were constantly being stirred up and re-entrained in the air that she breathed throughout their home.

7. Plaintiff's cumulative exposure to asbestos as a result of acts and omissions of Defendants and/or their defective products, individually and together, was a substantial factor in causing Plaintiff Isabella Park's mesothelioma and other related injuries and therefore under South Carolina law, is the legal cause of Plaintiff Isabella Park's injuries and damages.

8. Neither Plaintiff Isabella Park, nor her late husband, were aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

9. Plaintiff's husband Andrew Park worked with, or in close proximity to others who worked with, asbestos-containing materials including but not limited to asbestos-containing products and other asbestos-containing materials manufactured and/or sold by the Product Defendants and used on property owned and controlled by the Premises Defendants. Plaintiff's husband Andrew Park brought this asbestos home with him, which caused Plaintiff to be exposed to asbestos.

10. Each of the named Defendants is liable for damages stemming from its own tortious conduct or the tortious conduct of an "alternate entity" as hereinafter defined. Defendants are liable for the acts of their "alternate entity" and each of them, in that there has been a corporate name change, Defendant is the successor by merger, by successor in interest, or by other

acquisition resulting in a virtual destruction of Plaintiff's remedies against each such "alternate entity"; Defendants, each of them, have acquired the assets, product line, or a portion thereof, of each such "alternate entity"; such "alternate entities" have acquired the assets, product line, or a portion thereof of each such Defendant; Defendants, and each of them, caused the destruction of Plaintiff's remedies against each such "alternate entity"; each such Defendant has the ability to assume the risk-spreading role of each such "alternate entity;" and that each such defendant enjoys the goodwill originally attached to each "alternate entity."

DEFENDANT	ALTERNATE ENTITY
4520 CORP., INC.	as successor-in-interest to BENJAMIN F. SHAW COMPANY
3M COMPANY	f/k/a MINNESOTA MINING & MANUFACTURING COMPANY
BRENNTAG NORTH AMERICA, INC.	individually and as successor-in-interest to MINERAL PIGMENT SOLUTIONS, INC. and WHITTAKER, CLARK & DANIELS, INC.
BRENNTAG SPECIALTIES, LLC	f/k/a BRENNTAG SPECIALTIES, INC f/k/a MINERAL PIGMENT SOLUTIONS, INC. successor-in-interest to WHITTAKER CLARK & DANIELS, INC.
BW/IP INC.	and its wholly-owned subsidiaries
CAPE PLC	individually and as successor-in-interest to CAPE ASBESTOS COMPANY
CLARK-RELIANCE COPORATION	and its JERGUSON GAGE & VALVE division
CNA HOLDINGS LLC	f/k/a CELANESE CORPORATION f/k/a HOECHST CELANESE CORPORATION, sued individually and as successor in-interest-to FIBER INDUSTRIES, INC.

DEFENDANT	ALTERNATE ENTITY
CRANE INSTRUMENTATION & SAMPLING, INC.	f/k/a CIRCOR INSTRUMENTATION TECHNOLOGIES, INC. f/k/a HOKE INC.
DANA COMPANIES, LLC	successor-by-merger to DANA CORPORATION
FLOWERVE CORPORATION	f/k/a THE DURIRON COMPANY INC.
FLUOR CONSTRUCTORS INTERNATIONAL	f/k/a FLUOR CORPORATION
FMC CORPORATION	on behalf of its former Peerless Pump business
GRINNELL LLC	d/b/a GRINNELL CORPORATION
HENRY PRATT COMPANY, LLC	a subsidiary of MUELLER CO. LLC
METROPOLITAN LIFE INSURANCE COMPANY	a wholly-owned subsidiary of METLIFE INC.
RILEY POWER INC.	f/k/a RILEY STOKER CORPORATION and D.B. RILEY, INC.
SCHNEIDER ELECTRIC SYSTEMS USA, INC.	f/k/a INVENSYS SYSTEMS, INC.
SPX COOLING TECHNOLOGIES, INC.	individually and successor-in-interest to MARLEY COOLING TOWERS CO.
VISTRA INTERMEDIATE COMPANY LLC	individually and as successor-in-interest to CRSS INC.
UNITED STATES FIDELITY AND GUARANTY COMPANY	Individually, and as the alter ego to COVIL CORPORATION
ZURN INDUSTRIES, LLC	individually and as successor-in-interest to ZURN INDUSTRIES, INC.

11. Plaintiff has been informed and believes, and thereon alleges, that at all times herein mentioned, Defendants or their “alternate entities” were or are corporations, partnerships, unincorporated associations, sole proprietorships and/or other business entities organized and existing under and by virtue of the laws of the State of South Carolina, or the laws of some other state or foreign jurisdiction, and that said Defendants were and/or are authorized to do business in the State of South Carolina, and that said Defendants have regularly conducted business in the State of South Carolina.

12. Plaintiff has been informed and believes, and thereon alleges, that progressive lung disease, mesothelioma and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

13. As a direct and proximate result of the conduct as alleged within, Plaintiff Isabella Park has suffered permanent injuries, including, but not limited to, mesothelioma and other lung damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to her damage in the sum of the amount as the trier of fact determines is proper.

14. As a direct and proximate result of the conduct as hereinafter alleged, Plaintiff Isabella Park incurred liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to Plaintiff at this time. Plaintiff request leave to supplement this Court and all parties accordingly when the true and exact cost of Plaintiff’s medical treatment is ascertained.

THE PARTIES

15. Plaintiff Isabella Park is a current resident of the State of South Carolina. Plaintiff Isabella Park was exposed to asbestos as a result of her husband Andrew Park's career at various job sites, including but not limited to, locations in South Carolina. Plaintiff was exposed to asbestos through asbestos dust and fibers taken home on her husband, from asbestos dust in his vehicle, asbestos dust on his body including his hair, and from the dust being distributed and re-entrained.

16. Defendant, **ARMSTRONG INTERNATIONAL, INC.**, was and is a Michigan corporation with its principal place of business in Michigan. At all times material hereto, ARMSTRONG INTERNATIONAL, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Armstrong steam traps. ARMSTRONG INTERNATIONAL, INC. is sued as a Product Defendant. Plaintiff's claims against ARMSTRONG INTERNATIONAL, INC. arise out of this Defendant's business activities in the State of South Carolina.

17. Defendant, **4520 CORP., INC.**, individually and as successor-in-interest to BENJAMIN F. SHAW COMPANY, was and is a Delaware corporation with its principal place of business in Oregon. At all times material hereto, 4520 CORP., INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. 4520 CORP., INC. is sued as a Product Defendant. 4520 CORP., INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including Plaintiff's husband Andrew Park and Plaintiff, to lethal doses of asbestos.

Plaintiff's claims against 4520 CORP., INC. arise out of this Defendant's business activities in the State of South Carolina.

18. Defendant, **3M COMPANY**, f/k/a MINNESOTA MINING & MANUFACTURING COMPANY, was and is a Delaware corporation with its principal place of business in Minnesota. At all times material hereto, 3M COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, 3M masks, 3M safety devices, and other asbestos-containing products. 3M COMPANY is sued as a Product Defendant. Plaintiff's claims against 3M COMPANY arise out of this Defendant's business activities in the State of South Carolina.

19. Defendant, **BRENNTAG NORTH AMERICA, INC.**, individually and as successor-in-interest to MINERAL PIGMENT SOLUTIONS, INC. and WHITTAKER, CLARK & DANIELS, INC., was and is a Delaware corporation with its principal place of business in Pennsylvania. At all times material hereto, BRENNTAG NORTH AMERICA, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing talc. BRENNTAG NORTH AMERICA, INC. is sued as a Product Defendant. Plaintiff's claims against BRENNTAG NORTH AMERICA, INC. arise out of this Defendant's business activities in the State of South Carolina.

20. Defendant, **BRENNTAG SPECIALTIES, LLC** f/k/a BRENNTAG SPECIALTIES, INC. f/k/a MINERAL PIGMENT SOLUTIONS, INC. as successor-in-interest to WHITTAKER, CLARK & DANIELS, INC., was and is a Delaware limited liability corporation with its principal place of business in New Jersey. At all times material hereto, BRENNTAG

SPECIALTIES, LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing talc. BRENNTAG SPECIALTIES, LLC is sued as a Product Defendant. Plaintiff's claims against BRENNTAG SPECIALTIES, LLC arise out of this Defendant's business activities in the State of South Carolina.

21. Defendant, **BW/IP INC.** and its wholly-owned subsidiaries, was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, BW/IP INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Byron Jackson pumps. BW/IP INC. is sued as a Product Defendant. Plaintiff's claims against BW/IP INC. arise out of this Defendant's business activities in the State of South Carolina.

22. Defendant, **CARBOLINE COMPANY**, was and is a Delaware corporation with its principal place of business in Missouri. At all times material hereto, CARBOLINE COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing coatings. CARBOLINE COMPANY is sued as a Product Defendant. Plaintiff's claims against CARBOLINE COMPANY arise out of this Defendant's business activities in the State of South Carolina.

23. Defendant, **CARRIER CORPORATION**, was and is a Delaware corporation with its principal place of business in Florida. At all times material hereto, CARRIER CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced,

repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Carrier Furnaces, Carrier air compressors and HVAC products. CARRIER CORPORATION is sued as a Product Defendant. Plaintiff's claims against CARRIER CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

24. Defendant, **CELANESE CORPORATION**, was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, CELANESE CORPORATION owned and/or controlled premises at which the Plaintiff's husband Andrew Park and Plaintiff were exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, the Hoechst Celanese facility a/k/a Fiber Industries Inc. in Spartanburg, South Carolina and Greer, South Carolina. CELANESE CORPORATION is sued as a Premises Defendant. Plaintiff's claims against CELANESE CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

25. Defendant, **CLARK-RELIANCE CORPORATION**, and its JERGUSON GAGE & VALVE division, was and is a Delaware corporation with its principal place of business in Ohio. At all times material hereto, CLARK-RELIANCE CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Jacoby-Tarbox sight glasses. CLARK-RELIANCE CORPORATION is sued as a Product Defendant. Plaintiff's claims against CLARK-RELIANCE CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

26. Defendant, **CNA HOLDINGS LLC**, f/k/a CELANESE CORPORATION f/k/a HOECHST CELANESE CORPORATION, individually and as successor in-interest-to FIBER

INDUSTRIES, INC., was and is a Delaware limited liability corporation with its principal place of business in Texas. At all times material hereto, CNA HOLDINGS LLC owned and/or controlled premises at which the Plaintiff's husband Andrew Park and Plaintiff were exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, the Hoechst Celanese facility a/k/a Fiber Industries Inc. in Spartanburg, South Carolina and Greer, South Carolina. CNA HOLDINGS LLC is sued as a Premises Defendant. Plaintiff's claims against CNA HOLDINGS LLC arise out of this Defendant's business activities in the State of South Carolina.

27. Defendant, **COVIL CORPORATION**, was a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, COVIL CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. COVIL CORPORATION is sued as a Product Defendant. COVIL CORPORATION is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Covil Corporation, exposed tens of thousands of people, including Plaintiff's husband Andrew Park and Plaintiff, to lethal doses of asbestos. Plaintiff's claims against COVIL CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

28. Defendant, **CRANE CO.**, was and is a Delaware corporation with its principal place of business in Connecticut. At all times material hereto, CRANE CO. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or

equipment, including, but not limited to, asbestos-containing Crane valves and Deming pumps. CRANE CO. is sued as a Product Defendant. Plaintiff's claims against CRANE CO. arise out of this Defendant's business activities in the State of South Carolina.

29. Defendant, **CRANE INSTRUMENTATION & SAMPLING, INC.** f/k/a CIRCOR INSTRUMENTATION TECHNOLOGIES, INC. f/k/a HOKE INC., was and is a New York corporation with its principal place of business in South Carolina. At all times material hereto, CRANE INSTRUMENTATION & SAMPLING, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Hoke valves. CRANE INSTRUMENTATION & SAMPLING, INC. is sued as a Product Defendant. Plaintiff's claims against CRANE INSTRUMENTATION & SAMPLING, INC. arise out of this Defendant's business activities in the State of South Carolina.

30. Defendant, **DANA COMPANIES LLC**, successor-by-merger to DANA CORPORATION, was and is a Virginia limited liability company with its principal place of business in Ohio. At all times material hereto, DANA COMPANIES LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Victor gaskets. DANA COMPANIES LLC is sued as a Product Defendant. Plaintiff's claims against DANA COMPANIES LLC arise out of this Defendant's business activities in the State of South Carolina.

31. Defendant, **ECODYNE CORPORATION**, was and is a Delaware corporation with its principal place of business in Illinois. At all times material hereto, ECODYNE CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced,

repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing Foster Wheeler cooling towers. ECODYNE CORPORATION is sued as a Product Defendant. Plaintiff's claims against ECODYNE CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

32. Defendant, **FISHER CONTROLS INTERNATIONAL, LLC**, was and is a Delaware limited liability company with its principal place of business in Missouri. At all times material hereto, FISHER CONTROLS INTERNATIONAL, LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Fisher valves. FISHER CONTROLS INTERNATIONAL, LLC is sued as a Product Defendant. Plaintiff's claims against FISHER CONTROLS INTERNATIONAL, LLC arise out of this Defendant's business activities in the State of South Carolina.

33. Defendant, **FLOWSERVE CORPORATION**, f/k/a THE DURIRON COMPANY, INC., was and is a New York corporation with its principal place of business in Texas. At all times material hereto, FLOWSERVE CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Duriron pumps and valves, as well as Durco pumps and valves. FLOWSERVE CORPORATION is sued as a Product Defendant. Plaintiff's claims against FLOWSERVE CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

34. Defendant, **FLUOR CONSTRUCTORS INTERNATIONAL** f/k/a/ **FLUOR CORPORATION**, was and is a California corporation with its principal place of business in Texas. At all times material hereto, **FLUOR CONSTRUCTORS INTERNATIONAL** mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. **FLUOR CONSTRUCTORS INTERNATIONAL** is sued as a Product Defendant. **FLUOR CONSTRUCTORS INTERNATIONAL** is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including Plaintiff's husband Andrew Park and Plaintiff, to lethal doses of asbestos. Plaintiff's claims against **FLUOR CONSTRUCTORS INTERNATIONAL** arise out of this Defendant's business activities in the State of South Carolina.

35. Defendant, **FLUOR CONSTRUCTORS INTERNATIONAL, INC.**, was and is a California corporation with its principal place of business in Texas. At all times material hereto, **FLUOR CONSTRUCTORS INTERNATIONAL, INC.** mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. **FLUOR CONSTRUCTORS INTERNATIONAL, INC.** is sued as a Product Defendant. **FLUOR CONSTRUCTORS INTERNATIONAL, INC.** is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including Plaintiff's husband Andrew Park and Plaintiff, to lethal doses of asbestos. Plaintiff's claims against **FLUOR**

CONSTRUCTORS INTERNATIONAL, INC. arise out of this Defendant's business activities in the State of South Carolina.

36. Defendant, **FLUOR DANIEL SERVICES CORPORATION**, was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, FLUOR DANIEL SERVICES CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. FLUOR DANIEL SERVICES CORPORATION is sued as a Product Defendant. FLUOR DANIEL SERVICES CORPORATION is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including Plaintiff's husband Andrew Park and Plaintiff, to lethal doses of asbestos. Plaintiff's claims against FLUOR DANIEL SERVICES CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

37. Defendant, **FLUOR ENTERPRISES, INC.**, was and is a California corporation with its principal place of business in Texas. At all times material hereto, FLUOR ENTERPRISES, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. FLUOR ENTERPRISES, INC. is sued as a Product Defendant. FLUOR ENTERPRISES, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including Plaintiff's husband Andrew Park and

Plaintiff, to lethal doses of asbestos. Plaintiff's claims against FLUOR ENTERPRISES, INC. arise out of this Defendant's business activities in the State of South Carolina.

38. Defendant, **FMC CORPORATION**, on behalf of its former Peerless Pump business, was and is a Delaware corporation with its principal place of business in Pennsylvania. At all times material hereto, FMC CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Peerless pumps. FMC CORPORATION is sued as a Product Defendant. Plaintiff's claims against FMC CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

39. Defendant, **FOSTER WHEELER ENERGY CORPORATION**, was and is a Delaware corporation with its principal place of business in New Jersey. At all times material hereto, FOSTER WHEELER ENERGY CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Foster Wheeler boilers and Foster Wheeler cooling towers. FOSTER WHEELER ENERGY CORPORATION is sued as a Product Defendant. Plaintiff's claims against FOSTER WHEELER ENERGY CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

40. Defendant, **GARDNER DENVER, INC.**, was and is a Delaware corporation with its principal place of business in Wisconsin. At all times material hereto, GARDNER DENVER, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Gardner

Denver pumps. GARDNER DENVER, INC. is sued as a Product Defendant. Plaintiff's claims against GARDNER DENVER, INC. arise out of this Defendant's business activities in the State of South Carolina.

41. Defendant, **GENERAL ELECTRIC COMPANY**, was and is a New York corporation with its principal place of business in Massachusetts. At all times material hereto, GENERAL ELECTRIC COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing General Electric turbines. GENERAL ELECTRIC COMPANY is sued as a Product Defendant. Plaintiff's claims against GENERAL ELECTRIC COMPANY arise out of this Defendant's business activities in the State of South Carolina.

42. Defendant, **THE GOODYEAR TIRE & RUBBER COMPANY**, was and is an Ohio corporation with its principal place of business in Ohio. At all times material hereto, THE GOODYEAR TIRE & RUBBER COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Durabla gaskets. THE GOODYEAR TIRE & RUBBER COMPANY is sued as a Product Defendant. Plaintiff's claims against THE GOODYEAR TIRE & RUBBER COMPANY arise out of this Defendant's business activities in the State of South Carolina.

43. Defendant, **GOULDS PUMPS, INCORPORATED**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, GOULDS PUMPS, INCORPORATED mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or

asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Goulds pumps. GOULDS PUMPS, INCORPORATED is sued as a Product Defendant. Plaintiff's claims against GOULDS PUMPS, INCORPORATED arise out of this Defendant's business activities in the State of South Carolina.

44. Defendant, **GRINNELL, LLC** d/b/a GRINNELL CORPORATION, was and is a Delaware limited liability company with its principal place of business in Florida. At all times material hereto, GRINNELL, LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Grinnell boilers and valves. GRINNELL, LLC is sued as a Product Defendant. Plaintiff's claims against GRINNELL, LLC arise out of this Defendant's business activities in the State of South Carolina.

45. Defendant, **HENRY PRATT COMPANY LLC**, a subsidiary of MUELLER CO. LLC, was and is a Delaware limited liability company with its principal place of business in Illinois. At all times material hereto, HENRY PRATT COMPANY LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Pratt valves. HENRY PRATT COMPANY LLC is sued as a Product Defendant. Plaintiff's claims against HENRY PRATT COMPANY LLC arise out of this Defendant's business activities in the State of South Carolina.

46. Defendant, **HILLS-MCCANNA LLC**, was and is a Michigan limited liability company with its principal place of business in Michigan. At all times material hereto, HILLS-MCCANNA LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-

containing products, materials, or equipment, including, but not limited to, asbestos-containing valves. HILLS-MCCANNA LLC is sued as a Product Defendant. Plaintiff's claims against HILLS-MCCANNA LLC arise out of this Defendant's business activities in the State of South Carolina.

47. Defendant, **METROPOLITAN LIFE INSURANCE COMPANY**, a wholly-owned subsidiary of METLIFE INC., was and is a New York corporation with its principal place of business in New York. METROPOLITAN LIFE INSURANCE COMPANY has done and does business in the State of South Carolina. METROPOLITAN LIFE INSURANCE COMPANY is named as a conspiracy defendant.

48. Defendant, **RILEY POWER INC. f/k/a RILEY STOKER CORPORATION** and D.B. RILEY, INC., was and is a Massachusetts corporation with its principal place of business in Massachusetts. At all times material hereto, RILEY POWER INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Riley boilers. RILEY POWER INC. is sued as a Product Defendant. Plaintiff's claims against RILEY POWER INC. arise out of this Defendant's business activities in the State of South Carolina.

49. Defendant, **SCHNEIDER ELECTRIC SYSTEMS USA, INC. f/k/a INVENSYS SYSTEMS, INC.**, was and is a Massachusetts corporation with its principal place of business in Massachusetts. At all times material hereto, SCHNEIDER ELECTRIC SYSTEMS USA, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Foxboro valves and Fulton Sylphon valves. SCHNEIDER ELECTRIC SYSTEMS USA, INC. is sued as a

Product Defendant. Plaintiff's claims against SCHNEIDER ELECTRIC SYSTEMS USA, INC. arise out of this Defendant's business activities in the State of South Carolina.

50. Defendant, **SOUTHERN INSULATION INC.**, was a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, SOUTHERN INSULATION INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. SOUTHERN INSULATION INC. is sued as a Product Defendant. SOUTHERN INSULATION INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Southern Insulation Inc., exposed tens of thousands of people, including Plaintiff's husband Andrew Park and Plaintiff, to lethal doses of asbestos. Plaintiff's claims against SOUTHERN INSULATION INC. arise out of this Defendant's business activities in the State of South Carolina.

51. Defendant, **SPIRAX SARCO, INC.**, was and is a Delaware corporation with its principal place of business in South Carolina. At all times material hereto, SPIRAX SARCO, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Sarco steam traps and valves. SPIRAX SARCO, INC. is sued as a Product Defendant. Plaintiff's claims against SPIRAX SARCO, INC. arise out of this Defendant's business activities in the State of South Carolina.

52. Defendant, **SPX COOLING TECHNOLOGIES, INC.**, individually, and as successor-in-interest to MARLEY COOLING TOWERS CO., was and is a Delaware corporation

with its principal place of business in Kansas. At all times material hereto, SPX COOLING TECHNOLOGIES, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Marley cooling towers. SPX COOLING TECHNOLOGIES, INC. is sued as a Product Defendant. Plaintiff's claims against SPX COOLING TECHNOLOGIES, INC. arise out of this Defendant's business activities in the State of South Carolina.

53. Defendant, **STARR DAVIS COMPANY, INC.**, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, STARR DAVIS COMPANY, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. STARR DAVIS COMPANY, INC. is sued as a Product Defendant. STARR DAVIS COMPANY, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Starr Davis Company Inc., exposed tens of thousands of people, including Plaintiff's husband Andrew Park and Plaintiff, to lethal doses of asbestos. Plaintiff's claims against STARR DAVIS COMPANY, INC. arise out of this Defendant's business activities in the State of South Carolina.

54. Defendant, **STARR DAVIS COMPANY OF S.C., INC.**, was a South Carolina corporation with its principal place of business in North Carolina. At all times material hereto, STARR DAVIS COMPANY OF S.C., INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited

to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. STARR DAVIS COMPANY OF S.C., INC. is sued as a Product Defendant. STARR DAVIS COMPANY OF S.C., INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Starr Davis Company of S.C. Inc., exposed tens of thousands of people, including Plaintiff's husband Andrew Park and Plaintiff, to lethal doses of asbestos. Plaintiff's claims against STARR DAVIS COMPANY OF S.C., INC. arise out of this Defendant's business activities in the State of South Carolina.

55. Defendant, **STERLING FLUID SYSTEMS (USA), LLC**, was and is a Delaware limited liability company with its principal place of business in Indiana. At all times material hereto, STERLING FLUID SYSTEMS (USA), LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Peerless pumps. STERLING FLUID SYSTEMS (USA), LLC is sued as a Product Defendant. Plaintiff's claims against STERLING FLUID SYSTEMS (USA), LLC arise out of this Defendant's business activities in the State of South Carolina.

56. Defendant, **UNION CARBIDE CORPORATION**, was and is a New York corporation with its principal place of business in Texas. At all times material hereto, UNION CARBIDE CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing fibers. UNION CARBIDE CORPORATION is sued as a Product Defendant related to its Bakelite product(s), as well as supply of raw asbestos fiber under the product name Calidria.

Plaintiff's claims against UNION CARBIDE CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

57. Defendant, **UNITED STATES FIDELITY AND GUARANTY COMPANY**, individually, and as the alter ego to COVIL CORPORATION ("USF&G" or "Covil's Alter Ego") is a Connecticut corporation with its principal place of business in Connecticut. UNITED STATES FIDELITY AND GUARANTY COMPANY is an insurance company subject to the jurisdiction of this Honorable Court by virtue of its direct acts within the state of South Carolina which give rise to the claims herein against it. At all times pertinent herein USF&G was the alter-ego of Defendant Covil Corporation and as such, is directly liable for the tortious conduct of Covil Corporation.

58. Defendant, **VISTRA INTERMEDIATE COMPANY LLC**, individually and as successor-in-interest to CRSS INC., was and is a Delaware limited liability corporation with its principal place of business in Texas. At all times material hereto, VISTRA INTERMEDIATE COMPANY LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the design of facilities that included the use of asbestos-containing materials, and the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. VISTRA INTERMEDIATE COMPANY LLC is sued as a Product Defendant. VISTRA INTERMEDIATE COMPANY LLC is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including Plaintiff's husband Andrew Park and Plaintiff, to lethal doses of asbestos. Plaintiff's claims against VISTRA INTERMEDIATE COMPANY LLC arise out of this Defendant's business activities in the State of South Carolina.

59. Defendant, **THE WILLIAM POWELL COMPANY**, was and is a corporation incorporated under the laws of the State of Ohio with its principal place of business in Ohio. At all times material hereto, THE WILLIAM POWELL COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Powell valves. THE WILLIAM POWELL COMPANY is sued as a Product Defendant. Plaintiff's claims against THE WILLIAM POWELL COMPANY arise out of this Defendant's business activities in the State of North Carolina.

60. Defendant, **YORK INTERNATIONAL CORPORATION**, was and is a Delaware corporation with its principal place of business in Wisconsin. At all times material hereto, YORK INTERNATIONAL CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing York compressors. YORK INTERNATIONAL CORPORATION is sued as a Product Defendant. Plaintiff's claims against YORK INTERNATIONAL CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

61. Defendant, **ZURN INDUSTRIES, LLC**, individually and as successor-in-interest to ZURN INDUSTRIES, INC., was and is a Delaware limited liability company with its principal place of business in Wisconsin. At all times material hereto, ZURN INDUSTRIES, LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Zurn boilers, Zurn strainers, and Erie City boilers. ZURN INDUSTRIES, LLC is sued as a Product Defendant.

Plaintiff's claims against ZURN INDUSTRIES, LLC arise out of this Defendant's business activities in the State of South Carolina.

62. Plaintiff, Isabella Park, was exposed through her husband, Andrew Park, while he worked with and around asbestos-containing equipment in his immediate vicinity at his work site, the premises of Defendants CELANESE CORPORATION and CNA HOLDINGS LLC (collectively, hereinafter the "Premises Defendants"). All other Defendants, or their applicable predecessors in interest, (except for METROPOLITAN LIFE INSURANCE COMPANY) were engaged in the manufacture, sale, distribution and/or installation of asbestos-containing products or raw asbestos materials for use in South Carolina and other states at times relevant to this action. At all times relevant to this action, the Defendants and the predecessors of the Defendants, for whose actions the Defendants are legally responsible, were engaged in the manufacture, sale, distribution, and/or installation of asbestos-containing products and raw materials for use in South Carolina and other states at times relevant to this action.

BACKGROUND FACTS

63. Plaintiff Isabella Park brings this action for monetary damages as a result of contracting an asbestos-related disease.

64. On or about January 29, 2021, the Plaintiff, Isabella Park was advised that she was suffering from malignant Mesothelioma.

65. Plaintiff's mesothelioma was caused by her husband Andrew Park's employment as a group leader, and senior process engineer at various Hoechst Celanese facilities from 1970 to 1985 throughout South Carolina. Plaintiff's husband performed a variety of tasks throughout the facilities, and was further exposed through his work around various other trades, including, but not necessarily limited to, boilermakers, welders, mechanics, carpenters, iron workers, insulators, millwrights, and pipefitters, including but not limited to the following sites:

- Hoechst Celanese a/k/a Fiber Industries, Inc – Spartanburg, SC
- Hoechst Celanese a/k/a Fiber Industries, Inc – Greer, SC

66. While employed at these various jobsites, Plaintiff's husband Andrew Park wore his own clothes to work, was exposed to asbestos dust and fibers that he brought home on his work clothes, fell off in his vehicle and were on his body including his hair, that distributed and re-entrained in his vehicle and home, which caused Plaintiff Isabella Park to be exposed to said asbestos dust in sufficient amounts as to cause her to develop mesothelioma.

67. Plaintiff Isabella Park was exposed to asbestos dust and fibers from products, services, and goods manufactured, distributed and/or sold by Defendants for use at Plaintiff's husband Andrew Park's jobsites which she came in contact with off premises by contact with her husband Andrew Park's work clothes, personal possessions and vehicle. Her exposure to asbestos dust and fibers occurred through her contact with her husband's work clothing and person when greeting him at the end of his work day, through laundering his work clothing on a regular basis, through spending time in his vehicle in which asbestos dust and fibers had been deposited, and through sharing a home contaminated with asbestos fibers that were constantly being stirred up and re-entrained in the air that they breathed throughout their home.

68. The Defendants were engaged in the business of mining and/or milling, manufacturing, distributing, supplying and/or using and/or recommending and/or installing and/or removing asbestos materials.

69. The premise owners caused asbestos products to be used, sold or placed on their job site which the Defendants knew or should have known existed on the premises. The premise Defendants negligently failed to comply with its duties to the Plaintiff's late husband and Plaintiff, Isabella Park to maintain their premises in a reasonably safe condition and/or to warn or protect

the Plaintiff against the dangers on the premises. The Defendant premises owners breached this duty in the following manners:

- a. The Defendants specified or contracted for the use of asbestos products, and also provided such products for use by co-workers of the Plaintiff's husband and further failed to restrict the use of asbestos products in their plants even after the Defendants knew or should have known of the dangers associated with exposure to airborne asbestos fibers brought home to his family and exposed Plaintiff to said asbestos fibers;
- b. The Defendants, and each of them, knew, or with the exercise of reasonable care should have known, of the dangers associated with exposure to airborne asbestos fibers created by the sawing, cutting, application and other use of asbestos products, and by the demolition and tearing out of existing asbestos insulation and of asbestos products, components, and materials, all of which could cause dangerous amounts of asbestos to be brought home causing exposure there;
- c. The Defendants failed to take reasonable precautions or exercise due care to warn Plaintiff's husband of the danger and harm to which he was exposed while working in close proximity to asbestos insulations and other craftsman whose work activities created airborne asbestos fibers, and failed to warn Plaintiff's husband and Plaintiff of the dangers of bringing said asbestos home and exposing his family to said asbestos there;
- d. The Defendants failed to provide Plaintiff's husband with protective equipment and clothing to guard him from bringing asbestos fibers home with him on his clothing and person;
- e. The design, construction, maintenance, installation, placement or continued placement by failure to remove or render harmless asbestos products in the Defendants' facilities as identified above created an unreasonable risk of harm to the Plaintiff, as Plaintiff's husband was directed to work on the Defendants' premises; and,
- f. The Defendants failed to provide adequate inspection and supervision with regard to the activities of their employees and contractors and subcontractors involved in the use,

disturbance or tearout of asbestos as aforesaid, after they had actual or constructive notice of the existence of unsafe working conditions on their premises arising from said asbestos products.

70. Defendants USF&G and its predecessors, acting as the alter egos of Covil Corporation, owed a duty to Plaintiff's husband and Plaintiff to warn, protect, enforce safety and hygiene rules and policies or otherwise use their superior knowledge to provide a safe environment.

71. Plaintiff's exposure to asbestos as a result of acts and omissions of Defendants and their defective products, individually and together, was a substantial factor in causing Plaintiff Isabella Park's mesothelioma and other related injuries and therefore under South Carolina law, is the legal cause of Plaintiff's injuries and damages.

72. Plaintiff Isabella Park and Plaintiff's late husband were not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

73. Plaintiff is informed and believes, and thereon alleges, that progressive lung disease, mesothelioma and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

74. As a direct and proximate result of the conduct as alleged within, Plaintiff Isabella Park suffered permanent injuries, including, but not limited to, mesothelioma and other lung damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to his damage in the sum of the amount as the trier of fact determines is proper.

75. As a direct and proximate result of the conduct as hereinafter alleged, Plaintiff Isabella Park incurred liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to Plaintiff at this

time. Plaintiff requests leave to supplement this Court and all parties accordingly when the true and exact cost of Plaintiff Isabella Park's medical treatment is ascertained.

FACTUAL BACKGROUND AS TO COVIL

76. Covil Corporation ("Covil"), a South Carolina company founded on selling asbestos insulation throughout South Carolina and the southeast, began its corporate life in 1954. In 1993, Covil Corporation, after the death of its founder Palmer Covil from mesothelioma¹, understanding it had sold asbestos all over South Carolina and the immense implications for the health of workers of South Carolina, quietly dissolved its corporate existence leaving behind only insurance coverage. Between 1993 and 2018, Covil's insurance carrier USF&G and its lawyers, without a representative of the insured or client, appeared for Covil, answered Covil's lawsuits, decided how to defend the suits, what representations to make to court and counsel, answered discovery for Covil (making factual representations), determined how and when to make settlement offers, if any were made at all, and how, if at all, to respond to demands. In essence, USF&G and its lawyers were Covil, put the coffee on in the morning and turned the lights off when they left and made every decision for Covil in between.

77. USF&G has assumed the mantle of Covil. For nearly thirty years, it has acted for and as the company with no regard to the desires or wishes of its insured. The result is that it is the alter-ego of Covil and is responsible for all of the debts it has and continues to incur.

78. Covil was a seller and installer of thermal insulation, including thermal insulation which at certain times contained asbestos.

79. Covil conducted these operations from at least 1964 until approximately 1991, after which Covil ceased to conduct business operations and, in 1993 ultimately, dissolved.

¹ [M]esothelioma, [is] an "invariably fatal cancer...for which asbestos exposure is the only known cause..." *In re Patenaude*, 210 F.3d 135, 138 (3d Cir.), cert. denied, 531 U.S. 1011 (2000).

80. Covil's operations from 1964 through at least 1986 included the sale, installation, repair, replacement, removal or disturbance of asbestos-containing thermal insulation and other building materials, and those operations exposed persons to asbestos who thereby suffered bodily injury (the "Asbestos Allegations").

81. The alleged bodily injury resulting from the Asbestos Allegations has resulted in claims and lawsuits against Covil ("Covil Asbestos Suits").

82. From at least in or about 1991, until the appointment of the Receiver, on November 2, 2018, the defense of the Covil Asbestos Suits was controlled by USF&G. Moreover, on and after 1991, USF&G conducted all of Covil's affairs, including after Covil was dissolved, extending until appointment of the Receiver.²

83. USF&G issued insurance policies to Covil beginning sometime in the 1950s until approximately 1978.

84. From at least in or about 1991, continuing until appointment of the Receiver, USF&G managed Covil, making all determinations as to use and the disposition of Covil's assets which consisted primarily of corporate documents and insurance policies.

85. USF&G, until 2018, made all determinations as to the disposition of Covil Asbestos Suits as well as the treatment and characterization of claims under the Covil insurance policies.

86. Since as early as approximately 1991, USF&G acted for the purpose of ensuring that there was no independent person or entity acting by or on behalf of Covil. USF&G determined that the only Covil that could exist would be a Covil that was for all purposes USF&G's alter ego, and/or controlled entity.

² For reasons set forth herein, the appointment of the receiver does not alleviate the obligations of USF&G as it relates to Covil's current and future debts.

87. USF&G effectuated its common purpose of exclusive, unilateral control of Covil by running Covil's affairs in all material aspects.

88. At no time did USF&G make efforts to appoint an independent person or entity to determine what was in Covil's best interest. Rather, USF&G unilaterally determined what was best for Covil, or disregarded what was best for Covil, acting in their own interest, regardless of whether there was an actual or potential conflict between their interest and Covil's interest.

89. Each of USF&G's actions on behalf of Covil was for the purpose of protecting USF&G rather than Covil.

90. In addition to controlling the assets and affairs of Covil, USF&G unilaterally hired agents for Covil, including experts and a professional 30(b)(6) witness to act as and on behalf of, and to constitute Covil, de facto or de jure.

91. USF&G is required to act in good faith and to engage in fair dealing in all of their actions in regard to Covil.

92. The result of USF&G's actions were to effectuate USF&G's desire that no Covil separate and apart from USF&G would exist.

93. USF&G's complete control over Covil, and management of Covil's affairs, included, but not limited to, the Covil asbestos suits.

94. Asbestos litigation is littered with the bodies of those who made and sold asbestos containing insulation. Some of the largest companies in the world, many of them insured by USF&G, have gone bankrupt because of the harm asbestos insulation causes. That any reasonable person believed that Covil would not be found liable in amounts far exceeding the claimed liability limits of USF&G is difficult to fathom.

95. By way of example only, some communications involving USF&G demonstrate how it ran Covil. To be perfectly clear, USF&G made the decisions for Covil without regard to

the position of Covil. We know this because there was not a single person employed by Covil, or appointed by a court to make those decisions. USF&G here made all of the decisions for Covil without possibly having any idea of what Covil wanted or making any sort of informed decision at all. Some of the pertinent communications in just the recent years include:

Date	From	To/CC	Subject	Key points of email
10/9/18 3:46 pm	Mark Wall	Irene Muse; Barb Davis; Steven Fries; Gerry Begley; John Weiss; Carol Weill; William Silverman; Pauline Burdin	New cases	Covil has been named in at least two new cases, but we have no Notice of Service. I'm assuming we need to be served before appearing. Agree.
10/18/18 1:49 pm	Mark Wall	Irene Muse Barb Davis; Steven Fries; Gerry Begley; John Weiss; Carol Weill; William Silverman; Pauline Burdin	New trial etc. / new cases	Unserved case Hill set for March; depo scheduled; recommend not appear.
10/19/18 9:07am	Barb Davis	Mark Wall Irene Muse Steven Fries Gerry Begley John Weiss Carol Weill	New cases	Do we really think we would not be served at some point? If we had already been served, would still recommend not attending the plaintiff deposition?
10/22/18 3:47pm	Mark Wall	Irene Muse Barb Davis Steven Fries Carol Weill	FW James Michael Hill v. Advance Auto Parts Amended NOD of James Michael Hill	FYI see attached communications.

Date	From	To/CC	Subject	Key points of email
10/22/18 3:57pm	Carol Weill	Barb Davis Mark Wall Irene Muse Steven Fries Gerry Begley John Weiss William Silverman Pauline Burdin Sara Schrodetzki Tommy Boger	New cases	Request for response to inquiries.
10/23/18 2:07pm	Mark Wall	Carol Weill; Barb Davis; Irene Muse Gerry Begley John Weiss William Silverman Pauline Burdin Steven Fries travelers Sara Schrodetzki Tommy Boger	Covil unserved cases	Maybe Jim stopped accepting service. If we get served later, and Hill is still alive, we re-depose him. If we were served, we should attend; however, we checked the docket and there was no proof of serviced filed.
10/23/18 4:15pm	Carol Weill	Mark Wall Barb Davis Irene Muse Steven Fries Gerry Begley John Weiss William Silverman Pauline Burdin Sara Schrodetzki Tommy Boger	Covil Unserved cases	Recommending that Mark not appear for depositions in cases where service has not yet been effectuated.
10/31/18 3:57pm	Mark Wall	Irene Muse Steven Fries Carol Weill Barb Davis Gerry Begley John Weiss Pauline Burdin	FW Hill and email from Theile asking about answers	It didn't take them very long to figure out. What response at this point?

Date	From	To/CC	Subject	Key points of email
11/1/18 1:53pm	Mark Wall	Irene Muse Steven Fries Carol Weill Erin Corbally, Barb Davis Gerry Begley John Weiss	FW Hill and Taylor	FYI see below. Below is Mark's email stating that he had not been asked to represent Covil in Hill and Taylor and Theile's email from 11/1/18 at 10:34 am asking about past due answers.
11/1/18 2:00pm	Steven Fries	Mark Wall, Irene Muse Carol Weill Erin Corbally Davis Barb Gerry Begley John Weiss	Re. Hill and Taylor	I thought you said yesterday that if approached by Plaintiff on these cases that we're going to tell them no record of service.
11/1/18 2:04pm	Mark Wall	Steven Fries Irene Muse Carol Weill Erin Corbally Barb Davis Gerry Begley John Weiss	Re. Hill and Taylor	In face of what has been filed today, I thought I would start slowly and leave service to last. I want to see what they say about service.

96. USF&G acted deliberately when deciding what actions to take or not take and without any input from an independent Covil. These actions were in breach of its duties to Covil.

**USF&G is Fully Responsible for Conduct
Prior to November 2, 2018, as Covil's Alter Ego, Agency or Instrumentality**

97. USF&G's pattern and practice has made USF&G fully responsible for all of Covil's liabilities prior to appointment of the Receiver.

98. Under a number of legal theories, USF&G is Covil and acted as Covil for nearly 30 years.

99. Covil has become the alter ego of USF&G:

- a. USF&G has shown a total domination and control over Covil;
- b. The domination was so complete that Covil never manifested separate

corporate interests of its own and functioned solely to achieve the purposes of USF&G;

- c. USF&G misused its domination of Covil and were not entitled to dominate Covil; and
- d. Inequitable consequences have resulted with the unilateral application of insurance proceeds, default judgments, and verdicts.

100. USF&G was the principal and Covil the agent or agency:

- a. USF&G manifested complete control over Covil and purported to act on Covil's behalf;
- b. The course of dealing between the principal and the agent clearly show no independent Covil; and
- c. USF&G became active participants in Covil rather than simply insurers.

101. USF&G acts and omissions satisfy the elements of Alter-Ego under South Carolina law and the requested finding by the Court is that USF&G is the Alter-Ego of Covil and thus, responsible for the debts, present and future, of Covil.

**USF&G is Fully Responsible for Conduct
After November 2, 2018, as Covil's Alter Ego, Agency or Instrumentality**

102. Because USF&G, for nearly 30 years, have controlled Covil, they have made Covil's defense of asbestos litigation nearly, if not completely, impossible.

103. USF&G took no steps to accumulate or preserve Covil's documents. USF&G took no steps to procure or preserve the testimony of material fact witnesses who, through the passage of time, are now no longer available to Covil.

104. The result of these failures is that Covil is now irretrievably defenseless in asbestos cases. These failures will continue to haunt Covil at all times going forward. Because of this, USF&G can now no longer claim that any control or domination of Covil and the damages resulting therefrom ended in November of 2018 with the appointment of the receiver.

Breach of Fiduciary Duty by the Alter Ego

105. At all times after 1993, Covil Corporation was insolvent.

106. At all relevant times as set forth above and incorporated in this count as if fully set forth herein, USF&G was the alter-ego, jointly and/or severally of Covil Corporation.

107. As the equitable owner and alter-ego of Covil Corporation, USF&G was obligated under the law of South Carolina to act as fiduciary of the creditors of Covil Corporation. Instead, USF&G operated Covil for its own benefit and breached its fiduciary duties to Covil Corporation and each of its creditors beginning at least by 1991.

108. As a result of these breaches, Covil has been irrevocably damaged and without a finding of liability against USF&G cannot be made whole.

109. As a direct and proximate result of USF&G's acts and omissions, plaintiff is entitled to recover attorneys' fees and costs of this action from USF&G. Plaintiff is also entitled to punitive damages stemming from USF&G's breach of their fiduciary duties to Covil Corporation.

FOR A FIRST CAUSE OF ACTION
(Product Liability: Negligence)

Plaintiff Complains of Defendants for a Cause of Action for Negligence and Alleging as Follows:

110. Plaintiff incorporates herein by reference, as though fully set forth herein, each and every paragraph of the General Allegations above.

111. At all times herein mentioned, each of the named Defendants and/or via the doctrine of alter ego was an entity and/or the successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively as "alternate entities," engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing,

marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain product, namely asbestos, other products containing asbestos, and products manufactured for foreseeable use with asbestos products.

112. At all times herein mentioned, Defendants, and/or their alter egos and/or their “alternate entities” singularly and jointly, negligently and carelessly researched, manufactured, fabricated, designed, modified, tested or failed to test, abated or failed to abate, inadequately warned or failed to warn of the health hazards, failed to provide adequate use instructions for eliminating the health risks inherent in the use of the products, labeled, assembled, distributed, leased, bought, offered for sale, supplied, sold, inspected, serviced, installed, contracted for installation, repaired, marketed, warranted, rebranded, manufactured for others, packaged and advertised, a certain product, namely asbestos, other products containing asbestos, and products manufactured for foreseeable use with asbestos products, in that said products caused personal injuries to Plaintiff Isabella Park and others similarly situated, (hereinafter collectively called “exposed persons”), while being used for their intended purpose and in a manner that was reasonably foreseeable.

113. The asbestos and asbestos-containing products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-containing/utilizing product. Said alternatives would have prevented Defendants’ asbestos and asbestos-containing products from causing Plaintiff Isabella Park’s mesothelioma, due to an inability of any asbestos-alternative to penetrate the pleural lining of Plaintiff Isabella Park’s lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their “alternate entities.” Said alternatives were of comparable utility to the asbestos or asbestos-containing products of Defendants and/or their “alternate entities.” The gravity of the potential harm resulting from the

use of Defendants' asbestos or asbestos-containing products, and the likelihood such harm would occur to users of its products, far outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use by Plaintiff's husband Andrew Park. Defendants and/or their "alternate entities" had a duty to exercise due care in the pursuance of the activities mentioned above and Defendants, each of them, breached said duty of due care.

114. Defendants, and/or their alter egos, and/or their "alternate entities" knew or should have known, and intended that the aforementioned asbestos and asbestos-containing products would be transported by truck, rail, ship and other common carriers, that in the shipping process the products would break, crumble or be otherwise damaged; and/or that such products would be used for insulation, construction, plastering, fireproofing, soundproofing, automotive, aircraft and/or other applications, including, but not limited to grinding sawing, chipping, hammering, scraping, sanding, breaking, removal, "rip-out," and other manipulation, resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or handling by exposed persons, including Plaintiff's husband Andrew Park and Plaintiff, would use or be in proximity to and exposed to said asbestos fibers.

115. At all times relevant, Defendants, and/or their alter egos, and/or their "alternate entities" were aware of their asbestos and asbestos-containing products' defect but failed to adequately warn Plaintiff's husband Andrew Park and Plaintiff or others in their vicinity, as well as failed to adequately warn others of the known hazards associated with their products and/or failed to recall or retrofit their products. A reasonable manufacturer, distributor, or seller of

Defendants' products would have, under the same or similar circumstances, adequately warned of the hazards associated with their products.

116. Plaintiff's husband Andrew Park and Plaintiff and others in their vicinity used, handled or were otherwise exposed to asbestos and asbestos-containing products referred to herein in a manner that was reasonably foreseeable. Plaintiff's husband Andrew Park's exposure to asbestos and asbestos-containing products occurred at various locations as set forth in this Complaint, and resulted in Plaintiff being exposed at home.

117. Plaintiff Isabella Park suffers from mesothelioma, a cancer related to exposure to asbestos and asbestos-containing products. Plaintiff and Plaintiff's husband Andrew Park were not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury or disease.

118. Defendants' and/or their alter egos conduct and defective products as described in this cause of action were a direct cause of Plaintiff Isabella Park's injuries, and all damages thereby sustained by Plaintiff Isabella Park. Plaintiff therefore seeks all compensatory damages in order to make them whole, according to proof.

119. Furthermore, the conduct of Defendants, and/or their alter ego, and/or their "alternate entities" in continuing to market and sell products which they knew were dangerous to Plaintiff and the public without adequate warnings or proper use instructions was done in a conscious disregard and indifference to the safety and health of Plaintiff Isabella Park and others similarly situated.

120. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, failing to recall or retrofit, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, rebranding, manufacturing for

others, packaging and advertising asbestos and asbestos-containing products or products manufactured for foreseeable use with asbestos products, Defendants, and/or their alter egos, and/or their "alternate entities" did so with conscious disregard for the safety of "exposed persons" who came in contact with asbestos and asbestos-containing products, in that Defendants, and/or their alter egos, and/or their "alternate entities" had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos, asbestos-containing products or products manufactured for foreseeable use with asbestos products, including, but not limited to, asbestosis, mesothelioma, lung cancer, and other lung damages. This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants, and/or their alter egos, and/or their "alternate entities."

121. Defendants, and/or their alter egos, and their "alternate entities" were aware that members of the general public and other "exposed persons," who would come in contact with their asbestos and asbestos-containing products, had no knowledge or information indicating that asbestos, asbestos-containing products, or products manufactured for foreseeable use with asbestos products, could cause injury, and Defendants, and/or their alter egos, and their "alternate entities," each of them, knew that members of the general public and other "exposed persons," who came in contact with asbestos and asbestos-containing products or products manufactured for foreseeable use with asbestos products, would assume, and in fact did assume, that exposure to asbestos and asbestos-containing products was safe, when in fact said exposure was extremely hazardous to health and human life.

122. The above-referenced conduct of Defendants, and/or their alter egos, and their "alternate entities," was motivated by the financial interest of Defendants, their "alternate entities," and each of them, in the continuing, uninterrupted research, design, modification, manufacture, fabrication, labeling, instructing, assembly, distribution, lease, purchase, offer for sale, supply,

sale, inspection, installation, contracting for installation, repair, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos, asbestos-containing products and products manufactured for foreseeable use with asbestos products. Defendants, their “alternate entities,” and each of them consciously disregarded the safety of “exposed persons” in pursuit of profit. Defendants and/or their alter egos were consciously willing and intended to permit asbestos and asbestos-containing products to cause injury to “exposed persons” without warning them of the potential hazards and further induced persons to work with and be exposed thereto, including Plaintiff.

123. Plaintiff and Plaintiff’s husband Andrew Park and other exposed persons did not know of the substantial danger of using Defendants’ asbestos, asbestos containing-products, and products manufactured for foreseeable use with asbestos products. The dangers inherent in the use of these products were not readily recognizable by Plaintiff and Plaintiff’s husband Andrew Park or other exposed persons. Defendants and/or their "alternate entities" further failed to adequately warn of the risks to which Plaintiff Isabella Park, and others similarly situated were exposed.

124. Defendants, and/or their alter egos, and/or their "alternate entities" are liable for the fraudulent, oppressive, and malicious acts of their “alternate entities,” and each Defendant's officers, directors and managing agents participated in, authorized, expressly and impliedly ratified, and had full knowledge of, or should have known of, the acts of each of their “alternate entities” as set forth herein.

125. The herein-described conduct of Defendants and their “alternate entities,” was and is willful, malicious, fraudulent, and outrageous and in conscious disregard and indifference to the safety and health of persons foreseeably exposed. Plaintiff, for the sake of example and by way of punishing said Defendants and/or their alter egos, seek punitive damages according to proof against all defendants.

FOR A SECOND CAUSE OF ACTION**(Product Liability: Strict Liability - S.C. Code Ann. § 15-73-10, et seq.)****As a Second and Distinct Cause of Action for Strict Liability, Plaintiff Complains of Defendants, and Alleges as Follows:**

126. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs.

127. Plaintiff Isabella Park suffers from mesothelioma, a cancer related to exposure to asbestos, asbestos-containing products and products manufactured for foreseeable use with asbestos products. Plaintiff was not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

128. The Products Defendants' and/or their alter egos' conduct and defective products as described above were a direct cause of Plaintiff Isabella Park's injuries, and the injuries and damages thereby sustained by Plaintiff.

129. Furthermore, the Defendants' and/or their alter egos' conduct and that of their "alternate entities" in continuing to market and sell products which they knew were dangerous to Plaintiff and the public without adequate warnings or proper use instructions, was done in a conscious disregard and indifference to the safety and health of Plaintiff and others similarly situated.

130. Defendants, and/or their alter egos, and/or their "alternate entities" knew or should have known, and intended that the aforementioned asbestos and products containing asbestos would be transported by truck, rail, ship and other common carriers, that in the shipping process the products would break, crumble or be otherwise damaged; and/or that such products would be used for insulation, construction, plastering, fireproofing, soundproofing, automotive, aircraft and/or other applications, including, but not limited to grinding, sawing, chipping, hammering, scraping, sanding, breaking, removal, "rip-out," and other manipulation, resulting in the release of

airborne asbestos fibers, and that through such foreseeable use and/or handling, “exposed persons,” including Plaintiff, would use or be in proximity to and exposed to said asbestos fibers.

131. Plaintiff’s husband Andrew Park, and Plaintiff, and others in their vicinity used, handled or were otherwise exposed to asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, referred to herein in a manner that was reasonably foreseeable. Plaintiff Isabella Park’s exposure to asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products occurred at various locations as set forth in this Complaint.

132. Defendants, and/or their alter egos, and/or their "alternate entities" knew and intended that the above-referenced asbestos and asbestos-containing products would be used by the purchaser or user without inspection for defects therein or in any of their component parts and without knowledge of the hazards involved in such use.

133. The asbestos and asbestos-containing products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-containing/utilizing product. Said alternatives would have prevented Defendants’ and/or their alter egos asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products from causing Plaintiff Isabella Park’s mesothelioma, due to an inability of any asbestos-alternative to penetrate the pleural lining of Plaintiff Isabella Park’s lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants, and/or their alter egos, and/or their “alternate entities.” Said alternatives were of comparable utility to the asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products of Defendants, and/or their alter egos, and/or their “alternate entities.” The gravity of the potential harm resulting from the use of Defendants’ and/or their alter egos asbestos or asbestos-containing

products, and the likelihood such harm would occur, far outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use.

134. The defect existed in the said products at the time they left the possession of Defendants, and/or their alter egos, and/or their "alternate entities," and each of them. Said products were intended to reach the ultimate consumer in the same condition as it left defendants. Said products did, in fact, cause personal injuries, including mesothelioma, asbestosis, other lung damage, and cancer to "exposed persons," including Plaintiff Isabella Park herein, while being used in a reasonably foreseeable manner, thereby rendering the same defective, unsafe and dangerous for use.

135. Plaintiff and Plaintiff's husband Andrew Park, and other exposed persons did not know of the substantial danger of using Defendants' asbestos, asbestos-containing products, or products manufactured for foreseeable use with asbestos products. The dangers inherent in the use of these products were not readily recognizable by Plaintiff, Plaintiff's husband Andrew Park, or other exposed persons. Said Defendants and/or their "alternate entities" further failed to adequately warn of the risks to which Plaintiff Isabella Park and others similarly situated were exposed.

136. Defendants' defective products as described above were a direct cause of Plaintiff Isabella Park's injuries, and the damages thereby sustained.

137. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising

asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, Defendants, and/or their alter egos, and/or their "alternate entities," and each of them, did so with conscious disregard for the safety of Plaintiff and Plaintiff's husband Andrew Park, and other exposed persons who came in contact with the asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, in that Defendants, and/or their alter egos, and/or their "alternate entities" had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products, including, but not limited to, mesothelioma, asbestosis, other lung damages and cancers. This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their "alternate entities."

138. Defendants, and/or their alter egos, and/or their "alternate entities" were aware that members of the general public and other exposed persons, who would come in contact with their asbestos and asbestos-containing products, had no knowledge or information indicating that asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products could cause injury. Defendants, and/or their alter egos, and/or their "alternate entities" further knew that members of the general public and other exposed persons, who came in contact with asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products would assume, and in fact did assume, that exposure to asbestos and asbestos-containing products was safe, when in fact exposure was extremely hazardous to health and human life.

139. The above-referenced conduct of Defendants, and/or their alter egos, and/or their "alternate entities" motivated by the financial interest of Defendants, their "alternate entities," and each of them, in the continuing and uninterrupted research, design, modification, manufacture,

fabrication, labeling, instructing, assembly, distribution, lease, purchase, offer for sale, supply, sale, inspection, installation, contracting for installation, repair, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products. Defendants and/or their "alternate entities" consciously disregarded the safety of "exposed persons" in their pursuit of profit and in fact consciously intended to cause injury to Plaintiff Isabella Park and other exposed persons and induced persons to work with, be exposed to, and thereby injured by asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products.

140. Defendants are liable for the fraudulent, oppressive, and malicious acts of their "alternate entities," and each Defendant's officers, directors and managing agents participated in, authorized, expressly and impliedly ratified, and knew, or should have known of, the acts of each of their "alternate entities" as set forth herein.

141. The conduct of said defendants, their "alternate entities," and each of them as set forth in this Complaint, was and is willful, malicious, fraudulent, outrageous and in conscious disregard and indifference to the safety and health of exposed persons. Plaintiff, for the sake of example and by way of punishing said Defendants, and/or their alter egos, seeks punitive damages according to proof against all defendants.

142. At all times herein mentioned, each of the named Defendants, and/or their alter egos, was an entity and/or the successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively as "alternate entities," engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, assembling, distributing, leasing, buying, offering for

sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain product, namely asbestos, other products containing asbestos and products manufactured for foreseeable use with asbestos products.

FOR A THIRD CAUSE OF ACTION
(Vicarious Liability of Defendants Based upon Respondeat Superior)

As a Third Distinct Cause of Action Against Defendants, Plaintiff Brings this Third Cause of Action for Vicarious Liability of Product and Premises Defendants Based upon Respondeat Superior and Alleges as Follows:

143. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs.

144. Prior to and during all relevant times Defendants, and/or their alter egos, and/or their “alternate entities” employed workers (hereinafter “employees”) in areas where defendants owned, maintained, controlled, managed and/or conducted business activities where Plaintiff’s husband Andrew Park worked and/or spent time as alleged above.

145. At all times herein mentioned, Defendants’ employees frequently encountered asbestos-containing products, materials, and debris during the course and scope of their employment, and during their regular work activities negligently disturbed asbestos-containing materials to which Plaintiff’s husband Andrew Park was exposed, and as a result Plaintiff was exposed at home.

146. Employees handling and disturbing asbestos-containing products in Plaintiff’s husband Andrew Park’s vicinity were the agents and employees of defendants and at all times relevant were subject to the control of Defendants with respect to their acts, labor, and work involving (a) the removal, transport, installation, cleaning, handling, and maintenance of asbestos-containing products, materials, and debris, and (b) the implementation of safety policies and

procedures. Defendants controlled both the means and manner of performance of the work of their employees as described herein.

147. Employees handling and disturbing asbestos-containing products in Plaintiff's husband Andrew Park's, Plaintiff's, and others' vicinity received monetary compensation from Defendants in exchange for the work performed and these employees performed the work in the transaction and furtherance of Defendants' businesses.

148. Harmful asbestos fibers were released during Defendants' employees' use, handling, breaking, or other manipulation of asbestos-containing products and materials.

149. Once released, the asbestos fibers contaminated the clothes, shoes, skin, hair, and body parts of those exposed, including Plaintiff's husband Andrew Park, who would then bring said asbestos home, causing Plaintiff to inhale those fibers.

150. The asbestos and asbestos-containing materials were unsafe in that handling and disturbing products containing asbestos causes the release of asbestos fibers into the air onto surrounding surfaces, and onto persons in the area. The inhalation of asbestos fibers can cause serious disease and death.

151. Defendants' employees' use, handling and manipulation of asbestos-containing materials, as required by their employment and occurring during the course and scope of their employment, did in fact, cause personal injuries, including mesothelioma and other lung damage, to exposed persons including Plaintiff Isabella Park.

152. Defendants' employees were negligent in their use, handling and manipulation of said products in that they failed to isolate their work with asbestos and/or to suppress asbestos fibers from being released into the air and surrounding areas. They also failed to take appropriate steps to learn how to prevent exposure to asbestos, failed to warn and/or adequately warn Plaintiff's husband Andrew Park that he, and as a result Plaintiff, were being exposed to asbestos, failed to

adequately warn Plaintiff and Plaintiff's husband Andrew Park of the harm associated with their exposure to asbestos, and provide them with protection to prevent their inhalation of asbestos.

153. Defendants' employees knew or should have known that failure to take such steps would result in exposure to bystanders including Plaintiff's husband Andrew Park, and as a result Plaintiff.

154. Defendants' employees owed Plaintiff and Plaintiff's husband Andrew Park a duty to exercise due care and diligence in their activities while he was lawfully on the premises so as not to cause them harm.

155. Defendants' employees breached this duty of care as described above.

156. At all times mentioned, Plaintiff and Plaintiff's husband Andrew Park were unaware of the dangerous condition and unreasonable risk of personal injury created by Defendants' employees' use of and work with asbestos-containing products and materials.

157. As a direct result of the Defendants' employees' conduct, Plaintiff's husband Andrew Park's exposure to asbestos, asbestos-containing materials, and products manufactured for foreseeable use with asbestos products, each individually and together, caused severe and permanent injury to Plaintiff Isabella Park and the damages and injuries as complained of herein by Plaintiff.

158. The risks herein alleged and the resultant damages suffered by the Plaintiff Isabella Park were typical of or broadly incidental to Defendants' business enterprises. As a practical matter, the losses caused by the torts of Defendants' employees as alleged were sure to occur in the conduct of Defendants' business enterprises. Nonetheless, Defendants engaged in, and sought to profit by, their business enterprises without exercising due care as described in this Complaint, which, on the basis of past experience, involved harm to others as shown through the torts of employees.

159. Based on the foregoing, Defendants as the employers of said employees are vicariously liable under the doctrine of respondeat superior for all negligent acts and omissions committed by their employees in the course and scope of their work that caused harm to Plaintiff.

FOR A FOURTH CAUSE OF ACTION
(Premises Liability: Negligence as to Premises Owner/Contractor)

As a Fourth Distinct Cause of Action for General Negligence, Plaintiff Complains of Premises Defendants, and Alleges as Follows:

160. Plaintiffs incorporate by reference, the preceding paragraphs as if fully set forth herein.

161. Prior to and during all relevant times, the Premises Defendants and/or their “alternate entities” employed workers in areas where Premises Defendants owned, maintained, controlled, managed and/or conducted business activities where Plaintiff’s husband Andrew Park worked and/or spent time.

162. At all times herein mentioned, Premises Defendants selected, supplied, and distributed asbestos-containing materials to their employees for use during their regular work activities, and said employees disturbed those asbestos-containing materials.

163. Premises Defendants were negligent in selecting, supplying, distributing and disturbing the asbestos-containing products and in that said products were unsafe. Said products were unsafe because they released asbestos fibers and dust into air when used which would be inhaled by Plaintiff’s husband Andrew Park and settled onto his clothes, shoes, hands, face, hair, skin, and other body parts thus creating a situation whereby workers, by-standers, and family members including Plaintiff Isabella Park would be exposed to dangerous asbestos dust beyond the present.

164. The asbestos, asbestos-containing materials, and products manufactured for foreseeable use with asbestos products described herein were unsafe in that handling and

disturbing products containing asbestos causes the release of asbestos fibers into the air, and the inhalation of asbestos fibers causes serious disease and death. Here, the handling of the above-described asbestos-containing materials by Premises Defendants' employees, as required by their employment and occurring during the course and scope of their employment, did, in fact, cause personal injuries, including mesothelioma, lung cancer and other lung damage, to exposed persons, including Plaintiff.

165. At all times herein mentioned, Premises Defendants knew or should have known that its employees and bystanders thereto, including Plaintiff and Plaintiff's husband Andrew Park, frequently encountered asbestos-containing products and materials during the course and scope of their work activities.

166. At all times herein mentioned, Premises Defendants knew or should have known that the asbestos-containing materials encountered by its employees and bystanders thereto including Plaintiff and Plaintiff's husband Andrew Park, were unsafe in that harmful asbestos fibers were released during the use, handling, breaking, or other manipulation of asbestos-containing products and materials, and that once released, asbestos fibers can be inhaled, and can alight on the clothes, shoes, skin, hair, and body parts of those exposed, where further activity causes the fibers to once again be released into the air where they can be inhaled, all of which causes serious disease and/or death.

167. At all times herein mentioned, Premises Defendants, in the exercise of reasonable diligence, should have known that absent adequate training and supervision, their employees and bystanders thereto, including Plaintiff and Plaintiff's husband Andrew Park, were neither qualified nor able to identify asbestos-containing products nor to identify the hazardous nature of their work activities involving asbestos-containing products.

168. At all times herein mentioned, Plaintiff and Plaintiff's husband Andrew Park were unaware of the dangerous condition and unreasonable risk of personal injury created by the presence and use of asbestos-containing products and materials.

169. At all times herein mentioned, Premises Defendants, in the exercise of reasonable diligence, should have known that workers and bystanders thereto, would bring dangerous dust home from the workplace and contaminate their family cars and homes, continuously exposing and potentially causing injury to others off the premises.

170. At all times herein mentioned, Premises Defendants had a duty to use due care in the selection, supply, distribution and disturbance of asbestos-containing products and materials to its employees, to adequately instruct, train, and supervise their employees and to implement adequate safety policies and procedures to protect workers and persons encountering those workers, including Plaintiff, from suffering injury or death as a result of the asbestos hazards encountered and created by the work of Premises Defendants' employees.

171. Premises Defendants' duties as alleged herein exist and existed independently of Defendants' duties to maintain their premises in reasonably safe condition, free from concealed hazards.

172. Premises Defendants negligently selected, supplied, and distributed the asbestos-containing materials and failed to adequately train or supervise their employees to identify asbestos-containing products and materials; to ensure the safe handling of asbestos-containing products and materials encountered during the course of their work activities; and to guard against inhalation of asbestos fibers and against the inhalation of asbestos fibers by those who would come into close contact with them after they had used, disturbed, or handled, said asbestos-containing products and materials during the course and scope of their employment by Premises Defendants.

173. Premises Defendants failed to warn its employees and bystanders thereto, including Plaintiff and Plaintiff's husband Andrew Park, of the known hazards associated with asbestos and the asbestos-containing materials they were using and/or disturbing.

174. As a direct and proximate result of the conduct of Premises Defendants in selecting, supplying, distributing and disturbing asbestos-containing materials or products manufactured for foreseeable use with asbestos products and failing to adequately train and supervise their employees and failing to adopt and implement adequate safety policies and procedures as alleged herein, Plaintiff Isabella Park became exposed to and inhaled asbestos fibers, which was a substantial factor in causing Plaintiff Isabella Park to develop asbestos-related disease mesothelioma, and to suffer all damages attendant thereto.

FOR A FIFTH CAUSE OF ACTION

(Product Liability: Breach of Implied Warranties - S.C. Code Ann. § 36-2-314)

As a Fifth Distinct Cause Of Action for Breach of Implied Warranties, Plaintiff Complains of Defendants and Alleges as Follows:

175. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs.

176. Each of the Defendants and/or their alter egos impliedly warranted that their asbestos materials or asbestos-containing products were of good and merchantable quality and fit for their intended use.

177. The implied warranty made by the Defendants, and/or their alter egos, that the asbestos and asbestos-containing products were of good and merchantable quality and fit for the particular intended use, was breached. As a result of that breach, asbestos was given off into the atmosphere where Plaintiff's husband Andrew Park carried out his duties and was inhaled by Plaintiff Isabella Park through asbestos dust and fibers taken home on her husband's work clothes,

from asbestos dust in his vehicle and asbestos dust on his body including his hair and from the dust being distributed and re-entrained.

178. As a direct and proximate result of the breach of the implied warranty of good and merchantable quality and fitness for the particular intended use, Plaintiff's husband Andrew Park was exposed to Defendants' asbestos, asbestos-containing products, and/or products manufactured for foreseeable use with asbestos products and consequently Plaintiff Isabella Park was exposed to Defendants' asbestos dust and fibers that remained on her husband's clothes, in his vehicle, on his work equipment and on his body, and developed lung cancer, causing Plaintiff Isabella Park to suffer all damages attendant thereto.

FOR A SIXTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

For a Sixth Distinct Cause of Action for Fraudulent Misrepresentation, Plaintiff Complains of Defendants, and Alleges as Follows:

179. Plaintiffs repeat and re-allege the portions of the above paragraphs where relevant.

180. That during, before and after Plaintiff's exposure to asbestos products manufactured by Defendants and/or their "alternate entities", the Defendants and/or their "alternate entities" falsely represented facts, including the dangers of asbestos exposure to Plaintiff's in the particulars alleged in the paragraphs above, while Defendants each had actual knowledge of said dangers of asbestos exposure to persons such as Plaintiff. At the same time of these misrepresentations, Defendants each knew of the falsity of their representations and/or made the representations in reckless disregard of their truth or falsity.

181. The foregoing representations were material conditions precedent to Plaintiff's continued exposure to asbestos-containing products. Defendants and/or their "alternate entities", each intended that Plaintiff and Plaintiff's husband Andrew Park act upon the representations by continuing Plaintiff late husband's work around, and thereby exposure to, the asbestos products.

Plaintiff and Plaintiff's husband Andrew Park was ignorant of the falsity of Defendants' representations and rightfully relied upon the representations.

182. As a direct and proximate result Plaintiff and Plaintiff's husband Andrew Park's reliance upon Defendants' false representations, Plaintiff has suffered injury and damages as described herein.

FOR A SEVENTH CAUSE OF ACTION

(Conspiracy, Concert of Action – Defendant Metropolitan Life Insurance Company)

For a Seventh Distinct Cause of Action for Fraudulent Misrepresentation, Plaintiff Complains of Defendant Metropolitan Life Insurance Company, and Alleges as Follows:

183. Plaintiff repeats and re-alleges the portions of the above paragraphs where relevant.

184. Beginning in the late 1920's, conspirators including Defendant Metropolitan Life Insurance Company ("Met Life"), as well as Johns-Manville, Raybestos-Manhattan and others, undertook a duty to conduct research on asbestos-related health problems and to inform the public about any health risks that could be associated therewith. In or about 1929, Met Life, through its agents and employees acting within the scope of their agency and employment, including but not limited to Dr. Anthony J. Lanza ("Lanza"), began an investigation of asbestos-related health hazards. In 1935, this study was altered by Lanza, with the full knowledge of Met Life, at the request of and in concert with the asbestos industry in order to wrongly influence the United States Public Health Service, the United States medical community and various state legislatures.

185. Thereafter, Defendant Met Life through the acts and omissions of its employees, most notably Lanza, undertook a series of activities with various members of the asbestos industry including but not limited to Johns-Manville, Raybestos-Manhattan/ Raymark Industries, Inc., United States Gypsum, American Brake Blok/Abex, and others to suppress and misrepresent the dangers of exposure to asbestos dust to employees of Met Life's insureds and the general public and the medical community.

186. The conspirators through their agent, Lanza of Met Life, made a concerted effort to discredit and to terminate the experiments of certain scientists who were developing data of profound importance for the area of public health in relation to the cancer hazard which existed for workers and bystanders in the asbestos industry.

187. As a direct and proximate result of Met Life's intentional publication of deceptive and misleading medical data and information, and other conspiratorial acts and omissions, Defendant caused asbestos to be used in the occupational settings from which Plaintiff and Plaintiff's husband Andrew Park were exposed to asbestos dust which resulted in Plaintiff Isabella Park's injuries. Defendant Met Life, through its agents and employees and officers, aided and abetted and gave substantial assistance to Johns-Manville and Raybestos-Manhattan in their tortious selling of asbestos products and voluntarily undertook a duty to warn the United States Public Health Service, the medical community, and others about the danger of asbestos and consciously and negligently misrepresented the dangers of asbestos to the United States Public Health Service, the medical community, and others, all to the ultimate harm of Plaintiffs herein.

188. Defendant Met Life rendered substantial aid and assistance to the manufacturers of asbestos-containing products to which Plaintiff Isabella Park was exposed, and such assistance by Met Life aided and abetted the negligence and the marketing of unreasonably dangerous asbestos-containing products by such manufacturers which proximately caused Plaintiff Isabella Park's illness.

189. In both conducting tests and in publishing their alleged results, Met Life failed to exercise reasonable care to conduct or publish complete, adequate and accurate tests of the health effects of asbestos. Met Life also caused to be published intentionally false, misleading, inaccurate and deceptive information about the health effects of asbestos exposure.

190. Plaintiff Isabella Park unwittingly and justifiably relied upon the thoroughness of Met Life's tests and information dissemination, the results of which Met Life published in leading medical journals.

191. As a direct and proximate contributing result of Met Life's failures to conduct or accurately publish adequate tests or disseminate accurate and truthful information, after undertaking to do so; (i) the risk of harm to Plaintiff Isabella Park from asbestos exposure was increased, and (ii) Plaintiff suffered the injuries described herein.

192. In failing to test fully and adequately for the adverse health effects from exposure to asbestos; in delaying the publication of such results; and in falsely editing such results as were obtained; in suppressing relevant medical inquiry and knowledge about those hazards to promote the sale and distribution of asbestos as a harmless product; and in collaborating with the other Defendants materially to understate the hazards of asbestos exposure, all for its own profit and gain, Met Life acted recklessly, wantonly, and in calculated disregard for the welfare of the general public, including Plaintiff.

193. Additionally and alternatively, as a direct and proximate result of Met Life's actions and omissions, Plaintiff and Plaintiff's husband Andrew Park was caused to remain ignorant of all the dangers of asbestos resulting in Plaintiff, his co-workers, his family, and the general public to be unaware of the true and full dangers of asbestos, depriving Plaintiff and Plaintiff's husband Andrew Park of the opportunity to decide for themselves whether they wanted to take the risk of being exposed to asbestos, denied Plaintiff and Plaintiff's husband Andrew Park the opportunity to take precautions against the dangers of asbestos and proximately caused Plaintiff's damages herein.

194. During the relevant time period the Plaintiff and Plaintiff's husband Andrew Park were exposed to and did inhale and/or ingest asbestos dust, fibers, and particles, which dust, fibers,

and particles came from the asbestos or asbestos-containing products which were mined, milled, manufactured, fabricated, supplied, and/or sold by the Johns Manville and/or Raybestos/Raymark.

195. Defendant, Met Life, together with Manville, Raymark and other persons and entities, known and unknown at times relevant hereto, engages in a conspiracy or concert of action to inflict injury on the Plaintiff Isabella Park, and to withhold, alter, suppress and misrepresent information about the health effects of asbestos exposure. One or more of said conspirators did cause tortious injury to the Plaintiff Isabella Park in the course of or as a consequence of the conspiracy or concert of action. At least the following enumerated acts were undertaken by the conspirators in the course of and in furtherance of the conspiracy or concert of action:

- (a) In 1932, Met Life, through Lanza and others, assisted Manville with medical examinations of over 1,000 employees of Manville's factory in Manville, New Jersey. The report of this study shows that a large percentage of the employees suffered from asbestosis including employees not directly involved in the manufacturing process. This 1932 medical survey was not published in the medical literature and, therefore, was unavailable to scientists studying the issue of asbestos-related disease. Further collaboration between Manville and Met Life continued the cover-up.
- (b) Beginning in approximately 1934, Manville, through its agents, Vandiver Brown and Attorney J.C. Hobart, suggested to Lanza, Associate Director of Met Life, which was then insurer of Manville and Raymark, that Lanza publish a study on asbestosis in which Lanza would affirmatively misrepresent material facts about the health consequences of asbestos exposure. This was accomplished through intentional deletion of Lanza's description of asbestosis as 'fatal' and through other selective editing that affirmatively misrepresent asbestosis as a disease process less serious than it actually is and was known to be. As a result, Lanza's study was published in the medical literature in this misleading fashion in 1935. The conspirators were motivated, in part, to effectuate this fraudulent misrepresentation and fraudulent nondisclosure by the desire to influence proposed legislation to regulate asbestos exposure and to provide a defense in lawsuits involving Manville, Raymark, and Met Life as insurer. Furthermore, upon information and belief, it is alleged that Met Life, at all times relevant hereto, had substantial monetary investments in Manville and Raymark, among other asbestos product manufacturers and distributors.

- (c) In 1936, the conspirators or some of them entered into an agreement with the Saranac Laboratories. Under this agreement, these conspirators acquired the power to decide what information Saranac could publish about asbestos disease and to control in what form such publications would occur. This agreement gave these conspirators power to affirmatively misrepresent the results of the work at Saranac, and also gave these conspirators power to material facts included in any study. On numerous occasions thereafter, the conspirators exercised their power to prevent Saranac scientists from disclosing material scientific data, resulting in numerous misstatements of fact being made at scientific meetings.
- (d) By November 1948, or earlier, Manville, Met Life (acting through Lanza), Raymark, and others decided to exert their influence to materially alter and misrepresent material facts about the substance of research started by Dr. Leroy Gardner at the Saranac Laboratories beginning in 1936. Dr. Gardner's research involved carcinogenicity of asbestos in mice and also included an evaluation of the health effects of asbestos on humans with a critical review of the then-existing standards of dust exposure for asbestos and asbestos products.
- (e) At a meeting on November 11, 1948, these conspirators and others intentionally and affirmatively determined that Dr. Gardner's work should be edited to specifically delete material facts about the cancer-causing propensities of asbestos and the health effects of asbestos on humans and they determined that only an edited version would be published. These conspirators thereby fraudulently misrepresented the risks of asbestos exposure to the public, in general, and to the class of persons exposed to asbestos, including the Plaintiff.
- (f) As a direct result of influence exerted by the above described conspirators, Dr. Arthur Vorwald published Dr. Gardner's edited work in the Journal of Industrial Hygiene, AMA Archives of Industrial Hygiene and Occupational Health in 1951 in a form that stressed those portions of Dr. Gardner's work that the conspirators wished stressed, but which omitted references to human asbestosis and cancer, thereby fraudulently and affirmatively misrepresenting the extent of the risks. The conspirators affirmatively and deliberately disseminated this misleading Vorwald publication to universities, libraries, government officials, agencies and others.
- (g) Such action constituted a material affirmative misrepresentation of the material facts involved in Dr. Gardner's work and resulted in creating an appearance that inhalation of asbestos was a less serious health concern than Dr. Gardner's unedited work indicated.
- (h) For many decades, Met Life, individually, jointly and in conspiracy with Manville and Raymark, have been in possession of medical and scientific data, literature, and test reports which clearly indicated that the inhalation

of asbestos dust and fibers resulting from the ordinary foreseeable use of said asbestos-containing products and/or machinery requiring or calling for the use of asbestos or asbestos-containing products were unreasonably dangerous, hazardous, deleterious to human health, carcinogenic, and potentially deadly.

- (i) Despite the medical and scientific data, literature and test reports possessed by and available to Met Life, individually and in conspiracy with Manville and Raymark, Fraudulently, willfully and maliciously withheld, concealed and suppressed said medical and scientific data, literature and test reports regarding the risks of asbestosis, cancer, mesothelioma, and other illnesses and diseases from Plaintiff who using and being exposed to Manville or Raymark asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products; caused to be released, published and disseminated medical and scientific data, literature and test reports containing information and statements regarding the risks of asbestosis, cancer, mesothelioma and other illnesses and diseases, which Metropolitan, Manville and Raymark knew were either incorrect, incomplete, outdated and misleading; distorted the results of medical examinations conducted upon workers who were using asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products and being exposed to the inhalation of asbestos dust and fibers by falsely stating and/or concealing the nature and extent of the harm which workers suffered; and failed to adequately warn the Plaintiff of the dangers to which he was exposed when they knew of the dangers.
- (j) By the false and fraudulent representations, omissions, failures, and concealments set forth above, Met Life, Manville and Raymark, individually, jointly, and in conspiracy with each other, intended to induce the Plaintiff to rely upon said false and fraudulent representations, omissions, failures, and concealments, to continue to expose themselves to the dangers inherent in the use of and exposure to their asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products. Said misrepresentations were false, incomplete, and misleading and constitute negligent misrepresentations as defined by Sections 311 and 522 of the Restatement (Second) of Torts.

196. Plaintiff and Plaintiff's husband Andrew Park reasonably and in good faith relied upon the false and fraudulent representations, omissions, failures, and concealments made by Met Life, Manville, and Raymark regarding the nature of their asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products.

197. As a direct and proximate result of the conspiracy and concert of action between Met Life, Manville and Raymark, the Plaintiff and Plaintiff's husband Andrew Park have been deprived of the opportunity of informed free choice and connection with the use of and exposure to Manville and Raymark's asbestos and asbestos-containing products, and therefore continued to work with and be exposed to the co-conspirator corporation's asbestos and asbestos-containing products and as a result brought home on his clothes, hair, shoes, and in his case asbestos dust or fibers contracted asbestos-related diseases and other conditions, and/or aggravated pre-existing conditions, as a result of which the Plaintiff Isabella Park has been damaged.

FOR A EIGHTH CAUSE OF ACTION
(Alter Ego As to United States Fidelity And Guaranty Company,

For a Ninth Distinct Cause of Action, Alter Ego Claims, Plaintiff Complains of Defendants, and Alleges as Follows:

198. Covil Corporation ("Covil"), a South Carolina company founded on selling asbestos insulation throughout South Carolina and the southeast, began its corporate life in 1954. In 1993, Covil Corporation, after the death of its founder Palmer Covil from mesothelioma³, understanding it had sold asbestos all over South Carolina and the immense implications for the health of workers of South Carolina, quietly dissolved its corporate existence leaving behind only insurance coverage. Between 1993 and 2018, USF&G their lawyers, including Wall Templeton and Haldrop, P.A. ("WTH") and Gallivan White and Boyd, PA ("GWB" and together with WTH, the "lawyers"), without an insured or client, appeared for Covil, answered Covil's lawsuits, decided how to defend the suits, what representations to make to court and counsel, answered discovery for Covil (making factual representations), determined how and when to make settlement offers, if any were made at all, and how, if at all, to respond to demands. In essence,

³ [M]esothelioma, [is] an "invariably fatal cancer...for which asbestos exposure is the only known cause..." In re Patenaude, 210 F.3d 135, 138 (3d Cir.), cert. denied, 531 U.S. 1011 (2000).

Covil's insurers and their lawyers were Covil, turned on the lights in the morning and turned them off when they left and made every decision for Covil in between.

199. USF&G has assumed the mantle of Covil. For nearly thirty years, it has acted for and as the company with no regard to the desires or wishes of its insured. The result is that USF&G is the alter-ego of Covil and are responsible for all of the debts it has and continues to incur.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray judgment, joint and several, against Defendants and/or their "alternate entities" in an amount to be proved at trial, as follows:

1. For Plaintiffs' actual damages according to proof, including pain and suffering, mental distress, as well as medical, surgical and hospital bills;
2. For loss of income or earnings according to proof;
3. For loss of care, comfort and society;
4. For punitive damages according to proof;
5. For Plaintiffs' cost of suit herein;
6. For damages for breach of implied warranty according to proof;
7. For damages for fraudulent misrepresentation according to proof;
8. For damages for conspiracy, concert of action (as to Defendant Metropolitan Life Insurance Company);
9. That United States Fidelity And Guaranty Company, is found to be the alter ego of Covil and, co-extensively liable with Covil as found by the jury in this case; and
10. For such other and further relief as the Court may deem just and proper, including costs and prejudgment interest as provided by South Carolina law.

A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES.

Respectfully submitted,

/s/ Theile B. McVey

Theile B. McVey (SC Bar No. 16682)

Jamie D. Rutkoski (SC Bar No. 103270)

KASSEL MCVEY ATTORNEYS AT LAW

1330 Laurel Street

Post Office Box 1476

Columbia, South Carolina 29202-1476

T: 803-256-4242

F: 803-256-1952

tmcvey@kassellaw.com

jrutkoski@kassellaw.com

Other email: emoultrie@kassellaw.com

and

Jordan Blumenfeld-James (CA Bar No. 235185)

(To be admitted *Pro Hac Vice*)

DEAN OMAR BRANHAM SHIRLEY, LLP

302 N. Market Street, Suite 300

Dallas, TX 75202

T: 214-722-5990

F: 214-722-5991

jbj@dobslegal.com

Other email: jjohnson@dobslegal.com

ATTORNEYS FOR PLAINTIFFS

June 4, 2021

Columbia, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

KEITH W. PARK, INDIVIDUALLY
AND AS THE PERSONAL
REPRESENTATIVE OF THE ESTATE
OF ISABELLA PARK,

Plaintiff,

vs.

ARMSTRONG INTERNATIONAL,
INC. ET AL,

Defendant,

CAPE, PLC, BY AND THROUGH ITS
DULY APPOINTED RECEIVER,
PETER D. PROTOPAPAS,

Third-Party Plaintiff,

vs.

LOCKE LORD, LLP,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS FOR
THE FIFTH JUDICIAL CIRCUIT

Docket No.: 2021CP4002727

AMENDED SUMMONS

(Non Jury)

TO: THE ABOVE-NAMED THIRD-PARTY DEFENDANT:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, a copy of which is hereby served on you, and to serve a copy of your Answer to said Amended Complaint upon the subscribers at 1722 Main Street, Suite 200, Columbia, SC 29201, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Amended Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in such Amended Complaint.

Respectfully Submitted,

HARLING & WEST, LLC

s/W. Jonathan Harling
W. Jonathan Harling, Esquire
SC Bar 16658
Harling & West, LLC
1722 Main Street Suite 200
Columbia, SC 29201
Phone: 803.252.2050
Fax: 800.762.4915
jharling@harlingandwest.com

Brian M. Barnwell, Esquire
SC Bar 78249
Rikard & Protopapas, LLC
2110 N. Beltline Blvd.
Columbia, SC 29204
Phone: 803.978.6111
Fax: 803.978.6112
bb@rplegalgroup.com

ATTORNEYS FOR THIRD-PARTY
PLAINTIFF

Columbia, South Carolina
August 8, 2023

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

KEITH W. PARK, INDIVIDUALLY
AND AS THE PERSONAL
REPRESENTATIVE OF THE ESTATE
OF ISABELLA PARK,

Plaintiff,

vs.

ARMSTRONG INTERNATIONAL,
INC. ET AL,

Defendant,

CAPE, PLC, BY AND THROUGH ITS
DULY APPOINTED RECEIVER,
PETER D. PROTOPAPAS,

Third-Party Plaintiff,

vs.

LOCKE LORD, LLP,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS FOR
THE FIFTH JUDICIAL CIRCUIT

Docket No.: 2021CP4002727

AMENDED COMPLAINT

(Non Jury)

COMES NOW CAPE, PLC, by and through its duly appointed Receiver, Peter D. Protopapas (“Plaintiff” or “Cape”), complaint of the third-party defendant, Locke Lord, LLP, (“Defendant” or “Locke Lord”), who through undersigned counsel respectfully shows unto the Court as follows:

PARTIES

1. The Receiver is a lawyer who was appointed as Receiver of Cape, PLC, (and its affiliate, North American Asbestos Corporation), by Order on March 16, 2023, and who maintains his principal place of business in Richland County, South Carolina.
2. The Receiver is a court appointed officer tasked with marshaling the assets of Cape and its affiliates.
3. Pursuant to Court Order, the Receiver controls the Attorney client privilege of Cape and its affiliates. **See Exhibit A, 3/16/2023 Order Appointing Receiver.**
4. Defendant is a limited liability partnership organized under the laws of the State of Delaware with its principal place of business in the State of Texas.
5. The amount in controversy is under \$75,000.00.

JURISDICTION

6. This Court has jurisdiction over the matters alleged herein pursuant to S.C. Code Ann. §36-2-803, Article V of the Constitution of the State of South Carolina, and the Court's plenary powers.
7. In particular, Defendant purported to represent Cape and its affiliates in matters impacting the asbestos litigation in South Carolina.

VENUE

8. Plaintiff is informed and believes that venue is proper in Richland County, South Carolina.

FACTS

9. Defendant is a law firm that represented Cape and/or its affiliates in connection with asbestos-related matters impacting the South Carolina asbestos litigation.

10. As part of his job as Receiver, Plaintiff wrote to Defendant for the production of Cape and its affiliates' files.

11. On March 20, 2023, Plaintiff wrote to Defendant and provided its Firm Chair with a copy of the Order of Appointment. Plaintiff requested "Cape and its affiliates" files (whether in hard copy or electronic format). **See Exhibit B, March 20, 2023, e-mail, and attachment.**

12. After not having heard back from Defendant, Plaintiff followed up on his request on April 11, 2023. **See Exhibit C, April 11, 2023, email.**

13. Defendant law firm claims:

"Throughout our more than 135-year history, we've cultivated partnerships with a broad range of public and private companies, from Fortune 500 leaders to startups and emerging businesses. Our team can design strategic solutions that meet your long-term goals no matter how large or small your matter, apply our established tradition of responsive, personalized service."

See Exhibit D, Defendant website at www.lockelord.com/about-us

14. Defendant law firm, however, ignored Plaintiff – who stands in the shoes of Defendant's former Client Cape and its affiliates and controls the attorney client privilege of Cape and its affiliates – requests causing unnecessary and costly delay.

15. Defendant also asserts that: "Corporate responsibility is also an important part of Locke Lord's mission[.]" **See Exhibit D, Defendant website at www.lockelord.com/about-us.**

16. On April 17, 2023, Defendant advised Plaintiff "we have determined that the paper files of NAAC were destroyed pursuant to our document retention policy. As a result, we have no responsive records or documents pertaining to your request." **See Exhibit E, April 17, 2023, email.**

17. On July 18, 2023, Plaintiff deposed a Rule 30(b)(6) designee of Defendant regarding Capes files and Cape's relationship with Defendant. **See Exhibit F, Notice of Rule 30(b)(6) deposition.**
18. Defendant's designee testified it was in possession of documents and information related to Cape's file.
19. Defendant's designee testified it was not providing Plaintiff with these documents and information because a lawsuit had been filed.
20. Defendant's designee testified Plaintiff would have to pursue written discovery to obtain Cape's files.
21. Defendant's designee testified it had destroyed files related to Cape in 2021 and 2022.
22. Defendant's designee testified it did not know the contents of the files that were destroyed in 2021 and 2022.
23. Defendant's designee testified Defendant is in possession of financial information regarding Cape.
24. Defendant's designee testified it is in possession of matter numbers and matter descriptions related to Cape.
25. Defendant has made no meaningful effort to locate Plaintiff's files.
26. Defendant has ignored Plaintiff's interests by refusing to provide him with his files and thereby causing delay and increased costs.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

27. The foregoing allegations are realleged and reincorporated as if fully set forth herein verbatim to the extent not inconsistent herewith.

28. Defendant is in possession of Plaintiff's legal files and other information regarding its representation of Cape.
29. Defendant has delayed and impeded, and continues to delay and impede, Plaintiff's access to Plaintiff's files.
30. Defendant has placed its interest ahead of Plaintiff's interests regarding Plaintiff's files.
31. Defendant believes it is not required to provide Plaintiff his files.
32. Defendant has destroyed Plaintiff's files without notice to or consent from Cape.
33. Pursuant to S.C. Code Ann. §15-53-10, et seq, Plaintiff seeks a declaration of the legal relationship between Plaintiff and Defendant.
34. Plaintiff also seeks a further declaration that Plaintiff is entitled to Cape and its affiliates' files and information related to these files.
35. Plaintiff seeks a declaration that Defendant is required to cooperate with the Plaintiff in providing information regarding Defendant's past representation of Cape and its affiliates.
36. Plaintiff seeks a declaration that Defendant is required to provide Plaintiff with all information in its possession regarding Cape's files.
37. Plaintiff seeks a declaration that Defendant has engaged in the spoliation of evidence.
38. Plaintiff seeks a declaration that Defendant has violated its duties to Plaintiff regarding providing Plaintiff with all information in its possession regarding Cape's files.

FOR A SECOND CAUSE OF ACTION
Accounting

39. The foregoing allegations are realleged and reincorporated as if fully set forth herein verbatim to the extent not inconsistent herewith.
40. A confidential or fiduciary relationship exists between Cape and Defendant, as Defendant has served as Cape's attorney for many years.

41. During this representation, Cape has entrusted money or property to Defendant, thereby creating a duty to account.
42. Defendant has failed to account to Cape as it has not provided Plaintiff with any financial records or files despite being requested to do so.
43. Plaintiff is without an adequate remedy at law to obtain this information from Defendant as Defendant has refused to provide it to Plaintiff.
44. Plaintiff seeks an accounting from Defendant for all money or property entrusted to Defendant during Defendant's representation of Cape.

WHEREFORE, Cape and its affiliates, by and through their duly appointed Receiver, demands judgment against Defendant as follows:

- A. For Plaintiff's costs, expenses, and attorneys' fees for bringing this action;
- B. For an Order requiring Defendant to turn over to Plaintiff, Plaintiff's files in their entirety;
- C. For an Order requiring Defendant to answer Plaintiff's questions regarding Defendant's past representation of Plaintiff;
- D. For an Order stating Defendant has engaged in the spoliation of evidence;
- E. For an Order stating Defendant has violated its duties to Plaintiff regarding its files;
- F. For an Order compelling Defendant to account to Plaintiff for all property and money entrusted to Defendant during the course of its representation; and

G. For such other and further relief as the Court may deem just and proper,
including pre-judgment and post-judgment interest as provided by
South Carolina law.

Respectfully submitted,

HARLING & WEST, LLC

s/W. Jonathan Harling
W. Jonathan Harling, Esquire
SC Bar 16658
Harling & West, LLC
1722 Main Street Suite 200
Columbia, SC 29201
Phone: 803.252.2050
Fax: 800.762.4915
jharling@harlingandwest.com

Brian M. Barnwell, Esquire
SC Bar 78249
Rikard & Protopapas, LLC
2110 N. Beltline Blvd.
Columbia, SC 29204
Phone: 803.978.6111
Fax: 803.978.6112
bb@rplegalgroup.com

ATTORNEYS FOR THIRD-PARTY
PLAINTIFF

Columbia, South Carolina
August 8, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
KEITH W. PARK, INDIVIDUALLY	)	
AND AS THE PERSONAL	)	Case No.: 2021-CP-40-02727
REPRESENTATIVE OF THE	)	
ESTATE OF ISABELLA PARK,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	THIRD-PARTY DEFENDANT LOCKE
ARMSTRONG INTERNATIONAL,	)	LORD LLP'S MOTION TO DISSOLVE
INC., <i>et al.</i> ,	)	THE CAPE PLC "RECEIVERSHIP"
	)	
Defendant,	)	
	)	
CAPE, PLC, BY AND THROUGH ITS	)	
DULY APPOINTED RECEIVER,	)	
PETER D. PROTOPAPAS,	)	
	)	
Third-Party	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
LOCKE LORD, LLP,	)	
	)	
Third-Party	)	
Defendant.	)	
	)	

Subject to and without waiving its earlier filed objections to personal jurisdiction in South Carolina, Third-Party Defendant Locke Lord LLP ("Locke Lord" or "the Firm") moves to dissolve the purported receivership of Peter D. Protopapas ("Receiver") over "Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited." By filing this motion, Locke Lord does not waive, but instead specifically preserves, its objection to personal jurisdiction in South Carolina,

for the reasons explained in the Rule 12(b)(2) motion filed prior to this motion and incorporated in full by reference. Locke Lord specifically requests that the Court rule on its motion to dismiss for lack of personal jurisdiction before addressing any of the arguments raised in the present motion to dissolve the receivership, all of which are asserted in the strict alternative to Locke Lord's personal jurisdiction objections.

GROUND FOR DISSOLVING THE PUTATIVE RECEIVERSHIP

The Court must dissolve the receivership for at least the following reasons, which are based on information reflected on the public dockets of this Court or publicly available information that Mr. Park or the Receiver could have located by exercising a modicum of reasonable diligence:

1. Nothing in the record suggests that Cape PLC, a Jersey company, was lawfully served in the *Park* Lawsuit.
2. Cape PLC was not lawfully served with either the summons and complaint or with the motion to appoint the receiver (in violation of South Carolina Code § 15-65-20).
3. Park's counsel attached no proof of service to his motion to appoint the receiver showing lawful service on Cape PLC. In fact, despite the motion representing to the Court that the proof of service was attached as Exhibit A, in fact it was not.
4. On August 28, 2023 – more than fifteen months after this Court was told that Mr. Park's claims were “fully resolved” and more than five months after the Court entered an Order Appointing Receiver, Mr. Park filed a “Notice of Filing Missing Exhibit,” attaching an Affirmation of Andrew Morgan regarding his claimed service of the First Amended Summons – not the Complaint, just the Summons – on

“Cape PLC,” an entity he identifies as having “Companies House Reference Number 00040203.”

5. This “Missing Exhibit” does nothing to cure the defects related to service which compel dissolution of the receivership. The “Motion to Appoint Receiver” sought the appointment following Cape’s “failing to respond to the **Second** Amended Summons in this action, properly served pursuant to Article 10 of the Hague Convention on March 8, 2022, *See*, Ex. A.” (Emphasis added). *See*, Ex. 1 at 5. The document filed by Mr. Park on August 28, 2023, does not indicate service of a **Second** Amended Complaint; at best it indicates service of the **First Amended Summons**. *Id.* Moreover, it does not allege that this occurred in March 2022, it alleges that the mailing occurred “[o]n 14 December 2021” and that under “CPR Part 6.26, proceedings sent by First Class Royal Mail post to an address within the jurisdiction are deemed to have been served on *“the second day after it was posted, left with, delivered to or collected by the relevant service provider ...”* *Id.*, (Emphasis in original) This would make service of the **First** Amended Summons – but not the Complaint – on December 16, 2021.

6. As of the date of the filing of this Motion to Terminate Receivership, there is still nothing in the record of this Court to support the representation that “Cape PLC” was served with the “Second Amended Summons,” upon which this Court apparently predicated its exercise of discretion in issuing the Order Appointing Receiver.

7. The Court did not perform any of the steps legally necessary to appoint a receiver over Cape PLC for purposes of the *Park* Lawsuit, including by confirming

lawful service of process in the *Park* Lawsuit, entering default against Cape PLC, granting a default judgment against Cape PLC, and entering judgment against Cape PLC purporting to reflect a liquidated sum of damages due to the *Park* plaintiffs based on a sufficient factual showing.

8. Nor could any finding of default ever be entered or any adverse action be taken against Cape PLC in this matter because, as of the date of this filing, the record shows service of only the **First** Amended Summons, and even assuming such service was proper service upon the actual Cape PLC (it was not pursuant to Article 10 of the Hague Convention), the time for the entity with Company No. 00040203 to respond has never expired because a **Second** Amended Complaint was filed on December 27, 2021, making it the operative pleading in the case. Contrary to the representations of Mr. Park's counsel, at the time this Court appointed the receiver and as late as the date of the filing of this motion by Locke Lord, there is no evidence in the record of service of the **Second** Amended Summons (or Complaint) on the entity with Company No. 00040203, or any other "Cape" entity. To the contrary, the docket for this case reveals the following timeline:

6/4/2021	Original Complaint filed
11/17/2021	First Amended Complaint filed
12/2/2021	Case placed on trial calendar
12/14/2021	First Amended Summons put in mail in UK for service on Cape (effective service 12/16/2021)
12/27/2021	Second Amended Complaint filed
6/20/2022	Trial date for Park case

9. Mr. Park's counsel procured the order appointing the receiver based on incorrect contentions including that (a) Cape PLC is "dissolved," (b) Cape PLC has "forfeited its charter," (c) Cape PLC was lawfully served with the Second Amended

Summons in the *Park* Lawsuit, and (d) Cape PLC is the successor-in-interest to the Cape Asbestos Company Limited. None of these contentions, which were alleged in the motion to appoint the receiver, and which were reflected in the order appointing the receiver, were true, as any reasonably diligent review of the public record would have revealed.

10. Publicly available records unequivocally demonstrate that Cape PLC is not the successor-in-interest to Cape Asbestos Company Limited, as any reasonably diligent review of the public record would have revealed.

11. The order appointing a receiver is unconstitutional and unlawful because the Court does not have, and made no finding that it has, personal jurisdiction over the target of the receivership – Cape PLC, which all public records clearly show is a Jersey corporation first organized in 2011.

12. The order appointing a receiver is unlawful because, as stated by the South Carolina Supreme Court, “an adjudication of a receivership is a harsh and drastic remedy, one to be granted only with great caution.” *Penn Mut. Life Ins. Co. v. Cudd*, 172 S.C. 88, 91, 172 S.E. 787, 788 (1934). Principles of equity did not and do not support the appointment of a receiver over a foreign company incorporated in Jersey (a) that is not dissolved and is a going concern, (b) with no demonstration of the existence of any assets in South Carolina, (c) based on a single purported default, (d) in a lawsuit in which it was not served with process, and (e) without any adjudication or allocation of liability, or entry of default judgment in the previously “fully resolved” *Park* Lawsuit.

13. There is no justiciable controversy, and the Court has no jurisdiction to issue the advisory opinion sought by the Receiver because Mr. Park's claims were completely resolved and settled prior to the filing of the motion to appoint the receiver. Moreover, Mr. Park lacked standing to even seek the appointment of a receiver as he was not a judgment creditor of Cape PLC.

14. The order appointing the Receiver, based on its plain language and pursuant to South Carolina law, does not authorize the Receiver to file lawsuits on behalf of a foreign company against an out-of-state law firm that has never represented the entity over whom the Receiver was apparently appointed. Even if the Receiver had been appointed over an entity that the Firm had represented, nothing in South Carolina law permits him to file lawsuits pertaining to representation that occurred more than thirty years ago. As explained by the South Carolina Supreme Court, "[t]he power of a receiver only extends to the boundaries of the territorial jurisdiction of the court appointing him." *Pollock v. B. & L. Ass'n*, 48 S.C. 65, 74, 25 S.E. 977, 980 (1896).

15. The Order appointing the Receiver is unlawful because it purports to give the Receiver "the power and authority fully [sic] administer all assets of Cape," when S.C. Code § 15-65-10(4) limits a South Carolina receivership "in like cases, of the property within this State of foreign corporations." The reference to "like cases" regarding foreign corporations is a clear limitation on a receiver's power only where a South Carolina court has *in rem* jurisdiction. On its face, the statute only allows a South Carolina court to appoint a receiver over the assets of a foreign corporation that are found "within this State." Thus, even if the Receiver had been appointed over

Cape Industrial Holdings, Limited – the name of the entity that actually currently holds Company No. 00040203 and which appears to be a successor to the Cape PLC whom lawyers with Lord Bissell Brook represented in and before the 1980s, the law firm of Locke Lord has no assets within the State of South Carolina, and the Amended Third-Party Complaint does not allege that it does or that any of the documents or information sought is now or was ever within the boundaries of the State. There is thus no client property “within the State” of South Carolina for the Receiver to administer.

16. The Order appointing the Receiver is unlawful to the extent based on S.C. Code § 15-65-10(4) because public records show that Cape PLC is not dissolved, not insolvent, and not in imminent danger of insolvency, it has not forfeited its corporate rights in its jurisdiction of incorporation, Jersey, and it never had corporate rights to forfeit in South Carolina, including because there is nothing in the record demonstrating that South Carolina has personal jurisdiction over Cape PLC.

17. The Order appointing the Receiver is unlawful to the extent it is based on S.C. Code § 15-65-10(4) because that statute does not allow a South Carolina court to create a receivership over a foreign corporation that does not have any property in the state and has not had any judgment entered against it.

18. The Order appointing the Receiver is unlawful to the extent based on S.C. Code § 15-65-10(5) because the appointment of a South Carolina receiver over an active Jersey company that was first incorporated in 2011 – decades after the alleged events identified as the “fraud warranting appointment of a receiver” – is not consistent with “existing practice” in South Carolina.

19. The Receiver does not have authority to pursue claims through the vehicle of a third-party complaint under Rule 14, SCRCP because that procedural vehicle only allows for derivative liability for claims adjudicated in the primary action. Only a receiver appointed under S.C. Code §§ 15-65-10(2) or 15-65-10(3) “[a]fter judgment” has authority to pursue such derivative claims. The receiver in the *Park* Lawsuit was appointed under §§ 15-65-10(4) and 15-65-10(5). Mr. Park’s claims were declared fully resolved without entry of any judgment as against Cape PLC.

20. The Order appointing the Receiver violates the South Carolina receivership statute, which does not authorize receiverships of foreign companies over which the South Carolina courts have no jurisdiction, does not authorize receiverships over foreign companies with no property in South Carolina, and does not authorize receivers to file lawsuits on behalf of foreign corporations.

21. The Order appointing the Receiver is unlawful and violates principles of international comity because it purports to interfere with the pre-existing exclusive jurisdiction of the U.K. courts, which previously exercised jurisdiction over the assets of the true successor-in-interest to Cape Asbestos Company Limited in 2006, as described in the Scheme of Arrangement summarized in Note 32 of Cape PLC’s Annual Report 2022, which is available to the public for download from the Jersey companies website.

22. The Order appointing the Receiver is unlawful and violates principles of international comity because it purports to interfere with the pre-existing exclusive jurisdiction of the Jersey courts to exercise oversight and management over the internal affairs of a Jersey company.

23. The Order appointing the Receiver violates *inter alia* the Dormant Commerce Clause, the Foreign Commerce Clause, the Taking Clause, the Due Process Clause, the Excessive Fines Clause, the Equal Protection Clause, and the Supremacy Clause of the U.S. Constitution.

BACKGROUND

On November 17, 2021, the plaintiff Keith Park filed an amended complaint that named “Cape Intermediate Holdings Limited” and “Cape PLC” as defendants. A Second Amended Complaint was filed on December 27, 2021. In Paragraph 15 of the Second Amended pleading, Mr. Park alleged that each of these entities is the “successor-in-interest to Cape Asbestos Company.” In Paragraphs 26 and 27 of that pleading, Mr. Park alleged that each of these entities is a presently-operating company organized under the laws of the United Kingdom with its principal place of business in England.

Publicly available information shows that the allegations in Mr. Park’s Second Amended Complaint are incorrect as Cape PLC is a Jersey company that was created in 2011. *See* Ex. 2, Jersey Financial Services Commission Registry for Cape PLC, at www.jerseyfsc.org/registry/registry-entities/entity/292339. Regardless, there are no other allegations specific to either of these entities anywhere else in that or any other pleading filed in *Park*.

The Court ordered *Park* to begin trial on June 20, 2022. (Ex. 3, Docketing Order at 2 (filed Dec. 1, 2021, in *Park*)) On June 3, 2022, Mr. Park’s counsel reported to the Court that the case was “fully resolved.” (Ex. 4, Email from Ms. McVey to 479 recipients (June 3, 2022)) Other than stipulations of dismissal being filed, the case

was over, and no damages or liability were ever attributed to Cape Intermediate Holdings Limited or Cape PLC. In fact, at the time the case was to be called to trial, there was no indication in the record Mr. Park ever even attempted to serve either of these entities with process in the first place.

But then, nine months later, without a live case or controversy pending, Mr. Park – whose case was already “fully resolved” according to his lawyer – filed a 130-page motion with exhibits to have the Court appoint a receiver over “Cape PLC and its subsidiaries, affiliates, successors, and assigns,” a group that is undefined in the motion. (Ex. 1 Mot. to Appoint Receiver at 1 (filed Mar. 6, 2023, in *Park*)) In its Motion to Appoint Receiver, Counsel represents to the Court that Cape PLC was served with the *Park* Second Amended Summons on March 8, 2022, via the Hague Convention, and cites to an Exhibit A that did not exist in the Court’s docket at the time of filing the motion or the entry of the Order Appointing Receiver, and does not exist on review of the Court’s docket today. As such, there still is nothing in the record, other than counsel’s misrepresentations that it was so, to indicate Mr. Park ever completed service on Cape PLC.

On March 17, 2023, the Court granted that motion without a hearing, explaining:

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

(Ex. 5 Order Appointing Cape PLC Receiver at 1 (filed Mar. 17, 2023, in *Park*)) It then tasked Mr. Protopapas with taking “any and all steps necessary to protect the interests of Cape whatever they may be.” (*Id.*)

One month later, Mr. Protopapas, in his supposed capacity as the receiver for “Cape PLC,” filed a third-party complaint against Locke Lord. But rather than plead a case whereby Cape PLC attempts to shift derivative liability to a third-party defendant – which is the only permissible use of third-party practice recognized by Rule 14, SCRCP, and which would make no sense here because Mr. Park’s asbestos case had been “fully resolved” for eight months and no liability for damages was adjudicated to Cape PLC – Mr. Protopapas sought declaratory judgment on matters regarding Locke Lord’s representation of Cape PLC through attorneys who were formerly affiliated with one of its predecessor law firms in Chicago, Illinois, more than forty years before his appointment. This is clearly not one of the permitted purposes of a third-party complaint under Rule 14.

Everything about this supposed receivership runs afoul of the law. For each of the numerous reasons listed above and discussed below, the Receiver has no standing to proceed, and the receivership appointment must be dissolved immediately.

ARGUMENT

I. The factual grounds for appointing the Receiver were false.

The Court should dissolve its Order appointing the Receiver for the threshold reason that it is based on false factual statements. South Carolina Code § 15-65-10 identifies the limited circumstances under which a court can consider appointing a receiver over property. The *Park* Court cited Sections (4) and (5) of this statute when

appointing Mr. Protopapas. Those statutes provide that a receiver may be appointed to marshal property within the State of South Carolina:

- (4) When a corporation has been dissolved, is insolvent or in imminent danger of insolvency or has forfeited its corporate rights, and, in like cases, of the property within this State of foreign corporations; and
- (5) In such other cases as are provided by law or may in accordance with the existing practice, except as otherwise provided in this Code.

This situation meets none of these conditions.

No Corporate Dissolution. In the appointment order, the Court stated that “Cape Industries Ltd.” (as well as an unspecified, undescribed, unidentified number of “its subsidiaries and global affiliates”) has “dissolved.” The Court used this supposed dissolution as a basis for appointing a receiver over “Cape PLC,” citing Section 15-65-10(4)’s permission for a court to appoint a receiver over the property of a dissolved company. But this is categorically untrue.

First, as noted above, Cape PLC is a registered public company in Jersey, and it is a going concern. It is not dissolved, and the Jersey online corporate database makes this inescapable: www.jerseyfsc.org/registry/registry-entities/entity/292339.¹

See, Ex. 2. Cape PLC is the only company actually identified by name in the

¹ The Court should take judicial notice of the content of the United Kingdom and Jersey government databases. *See generally* Rule 201(b), SCRE (explaining that courts can take judicial notice of facts that are “not subject to reasonable dispute”); *id.* 201(f) (“Judicial notice may be taken at any stage of the proceeding.”); *see also State v. Squires*, 311 S.C. 11, 15, 426 S.E.2d 738, 740 (1992) (taking judicial notice “that the infrared spectroscopy process utilized by [an infrared breath-testing device] has gained general acceptance in the scientific community”).

appointment order, and its very existence demonstrates the impropriety of the receivership order.

Likewise, the receivership order incorrectly states that Cape PLC is the “successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.),” suggesting that the receivership is somehow intended to reach whatever companies have existed along this historical line of entities.² But that lineage exists, too, and has not dissolved. The United Kingdom’s public database for corporate registration reveals that Cape Industries Ltd. changed its name to Cape Industries PLC, then to Cape PLC, then to Cape Intermediate Holdings PLC, and currently operates as Cape Intermediate Holdings Ltd. - the entity that presently holds Company Number 00040203.³ Documents demonstrating this corporate lineage are attached as Exhibit 6, which the United Kingdom makes publicly available for free and can be located within minutes by a simple search of the internet: <https://find-and-update.company-information.service.gov.uk/company/00040203/filing-history>. Significantly, the motion to appoint the receiver was not addressed to or served upon Cape Intermediate Holdings Ltd. and the order appointing the receiver did not reference that entity.

² The receivership order incorrectly recites the corporate structure, but this is beside the point – no matter what entity the Court thought it was appointing Mr. Protopapas to be the receiver over, there is no corporate dissolution, and thus no lawful basis for the appointment.

³ Cape Intermediate Holdings Ltd. was identified as a defendant in the *Park* case, but was never served. It does not appear anywhere in the motion or order appointing the challenged receivership, and it cannot legitimately be deemed to fall within the scope of the receivership order.

At bottom, no entity over which the Court attempted to appoint Mr. Protopapas as a receiver has dissolved. The Court's statements on this point are incorrect based on indisputable facts contained in government records that are readily available to anyone with internet access. The appointment order should be vacated immediately.

No Evidence of Service. The receivership order lists Cape PLC's "fail[ure] to answer this case" as an additional reason to appoint Mr. Protopapas as a receiver. Nothing in the law allows this to be a basis for a court to seize private property through a receivership appointment. But even if the law did allow it, there is nothing in the record to indicate that Cape PLC or any other entity that is conceivably contemplated by the Court's ambiguous catch-all descriptor "Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) and its subsidiaries and global affiliates" was ever served with the operative Second Amended Summons and Complaint in *Park*. The lack of service is fatal to the receivership order.

First, Rules 4 and 4.1, SCRCP, govern service of process for cases in South Carolina state courts. Both require plaintiffs to file proof of service so that a court can evaluate whether it actually has jurisdiction over a defendant. *Id.* 4(g), 4.1(c). The Public Index for this case contains pages and pages of entries, but not a single indication that Cape PLC or any other entity potentially within the undefined scope of the phrase "Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) and its subsidiaries and global affiliates" was ever served with process, or with notice of Mr. Park's motion to appoint a receiver.⁴ (Ex. 7) A court cannot secure personal

⁴ Cape Intermediate Holdings Ltd. was also never served in *Park* despite being listed as a defendant.

jurisdiction over a defendant without proper service of process. *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006). An order – even a default judgment – “is void if a court acts without personal jurisdiction.” *Id.*

Second, when Mr. Park moved to appoint a receiver over Cape PLC, he represented to the Court that Cape PLC “fail[ed] to respond to the Second Amended Summons in this action, as properly served pursuant to Article 10 of the Hague Convention on March 8, 2022.” (Ex. 1, Mot. to Appoint Receiver at 4–5 in *Park*) On August 28, 2023 – nearly seven months after he moved for that appointment – Mr. Park filed a “Notice of Filing of Ommitted [sic] Exhibit” that purported to substantiate the representation in his motion to appoint a receiver. (Ex. 8) But that belated filing only confirms the impropriety of Mr. Park’s motion and the invalidity of the receivership:

1. The purported “Affirmation” of service indicates that the process server attempted to serve Cape PLC “within the jurisdiction of England and Wales.” (Affirmation ¶ 2 & accompanying photographs in *Park*) But Cape PLC is a Jersey company. Not only is Cape PLC not at the address at which service was purportedly made, it isn’t even within the jurisdiction of where service was apparently attempted.
2. The idea that the “Affirmation” proves that Mr. Park’s representation that he served the “Second Amended Summons” on Cape PLC is false. To the extent the “Affirmation” could operate as proof of anything, it specifically attests that the process server attempted to serve the “***First*** Amended Summons” on Cape PLC. (*Id.* ¶ 6 & accompanying cover

letters (emphasis added)) What’s more, the “Affirmation” indicates that service supposedly began on December 14, 2021, and that the pleadings were “deemed to have been served” on December 16, 2021. (*Id.* ¶¶ 10, 13 & accompanying pictures) But the Second Amended Summons and Second Amended Complaint were filed on December 23, 2021—a full week later. There is no way the “Affirmation” can constitute service of the “Second Amended Summons” on anyone when leave to file that pleading did not even exist at the time of alleged service on Cape PLC.

3. As a matter of law, Cape PLC (and Cape Intermediate Holdings Limited, for that matter) had no pleading obligation to Mr. Park because, as a matter of law, he mooted the First Amended Summons and First Amended Complaint by filing – but never serving – the Second Amended Summons and Second Amended Complaint.

Assuming *arguendo* that Cape PLC was properly served as described in the “Affirmation,” Cape PLC’s deadline to respond to the First Amended Summons and First Amended Complaint would have been Tuesday, January 18, 2022 – the first business day following 30 days after service on December 16, 2021, an intervening weekend, and Martin Luther King, Jr. Day. Rules 6(a), 12(a), SCRCR. But before that deadline arrived, Mr. Park re-amended his complaint and filed a Second Amended Summons and a Second Amended Complaint on December 23, 2021. Mr. Park did so with the Court’s approval earlier that same day. (Ex. 9, Order Granting Mr. Park’s Motion for Leave to Amend (Dec. 23, 2021), in *Park*)

As a matter of law, the filing of a new complaint moots the earlier pleading and voids its effect. *See, e.g., Fawzy v. Wauquiez Boats SNC*, 873 F.3d 451, 455 (4th Cir. 2017) (“Because a properly filed amended complaint supersedes the original one and becomes the operative complaint in the case, it renders the original complaint ‘of no effect.’” (quoting *Young v. City of Mt. Ranier*, 238 F.3d 567, 573 (4th Cir. 2001))); *Schein v. Lamar*, 284 S.C. 252, 255, 325 S.E.2d 573, 574 (Ct. App. 1985) (“Since the First Amended Complaint has been superseded by the Second Amended Complaint, it is no longer the operative pleading in the case. Thus, any questions as to the sufficiency of the First Amended Complaint are now moot.”).

Because Mr. Park mooted his First Amended Complaint by filing a Second Amended Complaint, he was obligated to serve that new pleading on Cape PLC (and Cape Intermediate Holdings) if he intended for them to become parties to his case. But he did not. There is still no proof anywhere in the record that Cape PLC (or Cape Intermediate Holdings) was ever served with an operative pleading in this case, so the Court never acquired jurisdiction to enter any orders involving Cape PLC – including the receivership order. It is void as a matter of law, and the “receivership” should be dissolved accordingly. *See Innovative Waste Mgmt. Inc. v. Crest Energy Partners GP, LLC*, 423 S.C. 611, 613, 815 S.E.2d 780, 781 (Ct. App. 2018) (“Void judgments are defined as those from courts that lacked personal or subject matter jurisdiction, or failed to provide due process.”), *aff’d as modified on unrelated point* 425 S.C. 568, 824 S.E.2d 214 (2019).

Because the Court had no jurisdiction over the entity or entities for whose assets it attempted to appoint Mr. Protopapas as receiver, the appointment order is

void as a matter of law. It should be vacated, and the receivership appointment dissolved accordingly.

II. The receivership order is void as a matter of constitutional law.

In addition to failing to meet the plain language of South Carolina Code § 15-65-10 for when a receiver may be appointed, the appointment order should be dissolved because it unlawfully purports to have an extraterritorial effect.

The appointment order purports to vest Mr. Protopapas with “the power and authority [to] fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape whatever they may be.” (Ex. 5, Appointment Order at 1 (emphasis added)) But all publicly available information shows that Cape PLC is a Jersey company that has nothing to do with South Carolina. “Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) and its subsidiaries and global affiliates” likewise have nothing to do with South Carolina, and there’s nothing anywhere in the record to suggest otherwise.

Standing alone, the absence of proof of any property within South Carolina voids the receivership appointment. *See Boynton v. Consol. Indem. & Ins. Co.*, 180 S.C. 279, 293, 185 S.E. 731, 737 (1936) (reversing the appointment of a receiver where there was a “total failure of any proof” that the foreign company “has property in this state”).

Moreover, a South Carolina state court cannot lawfully take assets away from foreign businesses (over which it has no personal jurisdiction) and give them to a South Carolina receiver to “fully administer.” The South Carolina receivership

statute acknowledges this in-state-only limitation on the reach of a receivership. *See* S.C. Code Ann. § 15-65-10(4) (limiting a receiver’s ability to marshal only “the property within this State of foreign corporations”).

Such a limitation is rooted in the constitutional requirement that a state law cannot have extraterritorial effect; to do otherwise would run afoul of, at least, the Commerce Clause, which gives Congress alone the authority to regulate interstate and international commerce:

The South Carolina Supreme Court has written repeatedly that South Carolina statutes have no extraterritorial effect because the general rule is that no state or nation can, by its laws, directly affect, bind, or operate upon property or persons beyond its territorial jurisdiction.

* * * * *

The principle that state laws may not generally operate extraterritorially is one of constitutional magnitude. One state may not “project its legislation” into another, as the Commerce Clause “precludes the application of a state statute to commerce that takes place wholly outside of the State’s borders, whether or not the commerce has effects within the State.”

Carolina Trucks & Equip., Inc. v. Volvo Trucks of N.A., Inc., 492 F3d 484, 489–90 (4th Cir. 2007) (cleaned up).

A receiver’s ability to marshal property across state or national lines undoubtedly involves interstate or foreign commerce, as Congress itself has limited when such authority exists and has made such a remedy available only through the federal courts. 28 U.S.C. §§ 754, 3103. By attempting to displace federal receivership law with a South Carolina statute, the receivership order runs afoul of the Supremacy Clause as well.

Finally, attempting to enforce a South Carolina receivership statute against an entity or entities over which it has no personal jurisdiction also violates the Due Process Clause. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491–92, 611 S.E.2d 505, 508 (2005). And authorizing a receiver to seize all of a private company’s assets without any notice and without any compensation (and without any lawful basis) also violates not only due process, but also likely constitutes an unlawful taking, an excessive fine, and a violation of equal protection, given that the Receiver purportedly operates as an extension of the court.

Because the appointment order purports to give a South Carolina receiver authority over property that is not located in and has no relationship to South Carolina, and seeks to do so without any notice to or jurisdiction over the impacted foreign companies, it is unconstitutional on its face and should be vacated for this additional reason.⁵

CONCLUSION

This receivership is based on factual errors obvious on the face of the order appointing the Receiver. It runs contrary to both the South Carolina Code and the United States Constitution. And the Receiver’s conduct since being appointed demonstrates the impropriety of this receivership continuing. Accordingly, the Court

⁵ Subject to and without waiving its personal jurisdiction objection, the movants respectfully reserve the right to recover all costs, fees, expenses, and damages associated with this proceeding, including from *inter alia* Keith W. Park, the party who sought to create this unlawful receivership in the first place. See S.C. Code Ann. § 15-65-90 (allowing a party opposing a receivership to recover “his actual damages by reason of such receivership” from “the party or parties having procured such receiver”).

should dissolve the receivership and vacate its order appointing Mr. Protopapas as receiver over Cape PLC.

Respectfully submitted this 15th day of September, 2023.

WOMBLE BOND DICKINSON (US) LLP

/s/ M. Elizabeth O'Neill

M. Elizabeth O'Neill (S.C. Bar No. 104013)
One Wells Fargo Center
301 S. College Street, Suite 3500
Charlotte, North Carolina 28202-6037
(704) 350-6310
Elizabeth.ONeill@wbd-us.com
WBD.SCASBESTOS@wbd-us.com

Kevin A. Hall (S.C. Bar No. 015063)
M. Todd Carroll (S.C. Bar No. 74000)
1221 Main Street, Suite 1600
Columbia, South Carolina 29201
(803) 454-7710
kevin.hall@wbd-us.com
todd.carroll@wbd-us.com

**TURNER PADGET GRAHAM & LANEY,
P.A.**

Mark Goddard (S.C. Bar No.: 73965)
1901 Main Street, 17th Floor
Columbia, SC 29201
Ph.: (803) 227-4334
mgoddard@turnerpadget.com

J. Kenneth Carter (S.C. Bar No.: 12812)
Post Office Box 1509
Greenville, SC 29602
Ph.: (864) 552-4611
kcarter@turnerpadget.com

*Attorneys for Third-Party Defendant
Locke Lord LLP*

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
KEITH W. PARK, individually and as the	)	C/A No. 2021-CP-40-02727
Personal Representative of the Estate of	)	
ISABELLA PARK,	)	In Re:
	)	Asbestos Personal Injury Litigation
Plaintiffs,	)	Coordinated Docket
	)	
v.	)	
	)	MOTION TO CLARIFY ORDER
ARMSTRONG INTERNATIONAL, INC.,	)	APPOINTING A RECEIVER FOR
et al.	)	CAPE PLC
	)	
Defendants.	)	

Please take notice that Peter D. Protopapas, in his capacity as Receiver (the “Receiver”) for Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) (“Cape”), acting by and through the undersigned counsel, will move as soon as may be heard for an order clarifying the Order Appointing a Receiver for Cape issued by this Court on March 17, 2023. Specifically, the Receiver seeks clarification that the Receiver’s Cape litigation to date all has been conducted within the appropriate scope of his appointment. In support of this motion, the Receiver would show the Court as follows:

1. By order dated March 17, 2023 (the “Appointment Order”), this Court appointed the Receiver pursuant to section 15-65-10(4)-(5) of the South Carolina Code and granted him the authority to “fully administer all assets of Cape . . . and take any and all steps necessary to protect the interests of Cape whatever they may be.”
2. The Receiver was appointed over Cape because Cape employs a strategy, as in this case, to reject any litigation and potential exposures for injuries caused in the

United States related to their distribution of deadly asbestos in the United States and as such refused to answer the above-captioned complaint.

3. In the fulfillment of his duties, on June 30, 2023, the Receiver initiated a third party action in the South Carolina Court of Common Pleas in *Tibbs v. 3M Co.*, No. 2023-CP-40-01759 (the “Third Party Action”), to adjudicate the parties responsible for Cape’s historical liabilities and the duties owed by those entities to Cape.
4. On September 1, 2023, Third-Party Defendants ESAB Corporation (“ESAB”) filed motions to dismiss the Receiver’s Third Party Action. Among the reasons ESAB argued the Third Party Action should be dismissed was that “The Receiver’s attempts to marshal assets located outside South Carolina exceed the scope of his authority.” Motion at 2.
5. Similarly, Mohed Altrad filed a Motion to Dissolve the Cape PLC Receivership the same day. In it, he argued that “The Order Appointing Receiver, based on its plain language and pursuant to South Carolina law, does not authorize the Receiver to file lawsuits on behalf of a foreign company against other foreign and out-of-state companies.” Motion at 9.
6. In an Order dated December 6, 2023, this Court entered an Order denying the Third Party Defendants’ Motions to Dismiss and Motions to Dissolve.
7. There have been fourteen (14) interlocutory notices of appeal filed by the third party defendants in *John A. Tibbs v. Asbestos Corporation Limited, et al.*, 2023-CP-40-01759 as well as a series of additional appeals to the Supreme Court launched in

September of 2024.¹ The latest three Petitions mark the continuation of these improper appeals. All of the interlocutory appeals that the appellate courts have considered have been dismissed. Those not yet considered, until recently, have been held in abeyance due to attempts to improperly remove this case.²

8. In addition to filing waves of meritless appeals and petitions for certiorari, the third party defendants have stated in no uncertain terms that they will not participate in the underlying case in any way, shape, or form, in a transparent attempt to avoid trial. *See* Ex. B (9/4/2024 letters from Vic Rawl and Todd Carroll). Not content with refusing to participate in the underlying case, the current owners of Cape (i.e., Mohed Altrad and Altrad Investment Authority S.A.S.) have now contrived yet another avenue to avoid the courts in the United States in an effort to further their avoidance of liabilities and exposures by pursuing an injunction against the

¹ *See, e.g.*, Mohed Altrad and Altrad Investment Authority S.A.S. (Appellate Case Nos. 2003-002006 and 2024-001499), Arranco US LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC (Appellate Case Nos. 2003-002007 and 2024-001497), ESAB Corporation (Appellate Case Nos. 2003-002009 and 2024-001423), Charter Consolidated Ltd. (Appellate Case Nos. 2003-002010 and 2024-001423), and Central Mining & Investment Corporation Ltd. (Appellate Case No. 2003-002011 and 2024-001423).

² *See, e.g.*, Appellate Case Nos. 2023-002006, 2023-002007, 2023-002009, 2023-002010, and 2023-002011 (Orders, June 18, 2024 and July 1, 2024) (denying petition for rehearing from dismissal of initial appeals of order denying motion to dismiss and dissolve receivership); Appellate Case No. 2024-000524 (Order, May 3, 2024) (denying petition for rehearing from dismissal of second set of appeals of order granting the Receiver's motion to compel discovery responses); Appellate Case Nos. 2024-001063, 2024-001064, 2024-001065 (third set of notices of appeal of the circuit court's interlocutory orders awarding discovery sanctions). All appeals arising out of the *Tibbs* case were held in abeyance for over two months due to an improper removal of the *Tibbs* action to which Appellants consented. The United States District Court for the District of South Carolina remanded the case to the circuit court on August 13, 2024. *Tibbs v. 3M Co.*, No. 3:24-cv-3771-MGL, ECF No. 75 (D.S.C. Aug. 13, 2024). The level of coordination amongst the Third-Party Defendants cannot be overstated. *See also* September 3, 2024, Letter of Jonathan M. Robinson, Appellate Case No. 2024-001423 (in response to Appellants' unsuccessful attempt to delay their Petition for Writ of Certiorari).

Receiver in the United Kingdom. *See* Ex. C (8/30/24 Winston letter). Subsequently, on September 9, 2024, Cape Intermediate Holdings Limited and Cape plc instituted an action in the High Court of Justice Business and Property Courts of England and Wales seeking to enjoin Peter D. Protopapas from fulfilling his court-appointed duties and obligations charged by the Asbestos Docket Chief Judge, South Carolina Chief Justice Jean Hoefer Toal (Active Ret.) on March 16, 2023. These proceedings violate the Receivership Court's Order of Appointment, and the Barton doctrine, which was reaffirmed by the Fourth Circuit in another case involving this very Receiver in another receivership as well as some of the same counsel representing the Altrad defendants. *See Protopapas v. Travelers Cas. & Sur. Co.*, 94 F.4th 351, 360 (4th Cir. 2024).

9. Despite failed efforts in our state and federal trial and appellate courts to overturn the Barton Doctrine and avoid the Receivership Court, on October 30, 2024, Altrad engaged an esteemed former member of the federal judiciary who left the court 16 years ago, and who has not participated in any litigation in the U.S. involving the Receiver, to opine, in an English court, not a U.S. court, on the propriety of the Receivership in the United States. Sadly, as has been the method of operations, it is obvious on the face of document which lists documents reviewed, Altrad failed to disclose to their expert the multiple appeals and opinions authored by sitting state and federal trial and appellate judges which have rejected Altrad's efforts to evade Receivership law in the United States.³ *See* Hon William W. Wilkins expert report

³ The Altrad third party defendants' pursuit of ends over means was also illustrated in its recent filings at the Court of Appeals where they averred that the "Receiver purports to be a receiver over a Jersey company that has no assets in South Carolina, no judgments against it in South Carolina,

for Altrad in which he stated in relevant part, “when commencing any action that would seemingly otherwise be authorized, a state court appointed receiver would need to undertake care to avoid pursuing legal actions where prior encumbrances or adjudications would render such filings as improper, as such conduct would exceed both his court appointed authority, as circumscribed by controlling precedent, as well as the plain language of Rule 66, SCRCP.” Ex. A, Report of Hon. William Wilkins, at 6.

The Receiver contends that this Court rejected the Third Party Defendants’ arguments when it denied their motions in the December 6, 2023 Order. The Receiver therefore seeks clarification that, pursuant to SCRCP 66, the Receiver’s power and authority to fully administer all assets of Cape includes the right and obligation to administer any claims related to the actions or failure to act of any entity related to or responsible for Cape. The Receiver further seeks clarification that the Receiver’s litigation activity to date has been conducted within the scope of this Court’s Appointment Order.

WHEREFORE, the Receiver prays that this Court grant him an order clarifying the Appointment Order to establish that the Receiver’s litigation activity to date has been conducted within the scope of this Court’s Appointment Order. The Receiver further request such other relief

no active claims against it in South Carolina, and that was never served with a shred of paper about any lawsuit in South Carolina,” and that the Altrad third party defendants “have no contact with South Carolina and are not subject to personal jurisdiction here.” (Appellate Case No. 2024-001063, September 5, 2024 Return to Motion to Dismiss at 3, 4.) However, one needs to look no further than the Altrad Owners Third-Party Defendants’ own website to find that these assertions are simply not true. See South Carolina contact information at rmdksouthcarolinarentaladmins@altrad.com and “Other branches in USA” at 301 Webb Road Williamston, South Carolina, at www.rmdkwikform.com/us/contact-us/; see also “Our History” at <https://www.altrad.com/en/our-history.html>. See Ex. D.

as the Court deems just and proper and reserves the right to supplement this motion with additional memoranda.

SMITH ROBINSON, LLC

s/Jonathan M. Robinson

Jonathan M. Robinson

Shanon N. Peake

G. Murrell Smith, Jr.

3200 Devine Street

Columbia, SC 29205

803-254-5445

Attorneys for Receiver

November 1, 2024

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

KEITH W. PARK, individually and as the
Personal Representative of the Estate of
ISABELLA PARK,

Plaintiffs,

v.

ARMSTRONG INTERNATIONAL, INC.,
et al.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C/A No. 2021-CP-40-02727

In Re: Asbestos Personal Injury Litigation
Coordinated Docket

**ORDER GRANTING RECEIVER'S
MOTION TO CLARIFY ORDER
APPOINTING A RECEIVER FOR
CAPE PLC**

This matter comes before the Court by way of the Receiver for Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) ("Cape") Motion to Clarify Order Appointing a Receiver for Cape, issued by this court on March 17, 2023. The Receiver's Motion is hereby GRANTED.

On June 30, 2023, the Receiver initiated a third party action in the South Carolina Court of Common Pleas in *Tibbs v. 3M Co.*, No. 2023-CP-40-01759 (the "Third Party Action"), to adjudicate the parties responsible for Cape's historical liabilities and the duties owed by those entities to Cape. Certain Third Party Defendants moved to dissolve the receivership and/or dismiss the Third Party Action on the grounds that the Receiver was not authorized to initiate such actions, and that the Receiver's attempts to marshal assets outside of South Carolina exceeded the scope of his authority. This Court denied those motions in an order dated December 6, 2023. Certain Third Party Defendants continue to disagree with South Carolina and Federal court rulings confirming the application of the Barton Doctrine and the authority of the Receiver and Receivership Court. *See Protopapas v. Zurich Am. Ins. Co.*, 2023 WL 2206640, at *2 (D.S.C. Feb. 24, 2023) (Coggins, J.), *appeal dismissed sub nom., Protopapas v. Travelers Cas. & Sur. Co.*, 94 F.4th 351 (4th Cir. 2024). *See, e.g., Pipe & Boiler Insulation, Inc. v. Cont'l Ins. Co. et al.*, No.

3:21-cv-03033-SAL, ECF No. 153, at 4–9 (D.S.C. Mar. 9, 2023) (remanding receivership matter because “the *Barton* doctrine prevents Defendants from removing this matter, filed by a Receiver, to federal court,” while also considering judicial economy in light of the fact that any “settlement agreement is not final until the *Receivership Court* approves the settlement”); *Protopapas v. Zurich Am. Ins. Co. et al.*, No. 3:21-cv-04086-DCC, ECF No. 180, at 4–6, 10 (D.S.C. Feb. 24, 2023) (remanding receivership case because “*Barton*, and its subsequent application in *Porter*, act as a limitation on federal jurisdiction when a state court has previously exercised its authority by appointing a receiver,” such that allowing removal “would directly interfere with the exclusive jurisdiction of the receivership court over this dispute”); *see also S. Insulation, Inc. v. OneBeacon Ins. Grp., Ltd.*, No. 3:22-cv-01308-MGL, ECF No. 46, at 4–6 (D.S.C. Nov. 8, 2022) (remanding receivership case on other basis). *see also, e.g.*, Appellate Case Nos. 2023-002006, 2023-002007, 2023-002009, 2023-002010, and 2023-002011 (Orders, June 18, 2024 and July 1, 2024) (denying petition for rehearing from dismissal of initial appeals of order denying motion to dismiss and dissolve receivership); *Childers v. Davis Mechanical Contractors, et al.* No. 2024-000005 (S.C. Sup. Ct. Order dated March 27, 2024) (dismissing, in an order signed by all five justices, as not immediately appealable an order denying motions to dismiss and dissolve a receivership); *Welch v. Advance Auto Parts, et al.*, No. 2024-000337 (Ct. App. Order dated April 12, 2024) (dismissing as not immediately appealable an order denying appellants’ motions to dissolve a receivership and to dismiss, including on personal jurisdiction grounds, and an order denying appellants’ motions for protection from discovery); *Mitchell v. 3M Company, ABB Inc., et al.*, No. 2024-000341 (Ct. App. Order dated April 12, 2024) (same); *Link v. 3M Company, 4520 Corp., Inc., et al.*, No. 2024-000342 (Ct. App. Order dated April 12, 2024) (rejecting appellants’ contention that the circuit court’s order permitting the receiver to continue his duties during the pendency of the appeal is immediately appealable and dismissing the appeal), *Tibbs v. 3M Co.*, No. 3:24-cv-3771-MGL, ECF No. 75 (D.S.C. Aug. 13,

2024) (remanding the case to the circuit court on August 13, 2024 based on the Barton Doctrine).

Recent events, including an expert report by retired jurist William W. Wilkins, warrant further clarification of the Appointment Order. This Order hereby clarifies that the Receiver's Order of Appointment entered on March 17, 2023, which is incorporated herein by reference, including all of the Receiver's duties and protections, extends to the right and obligation to administer any claims related to the actions or failure to act of any entity related to or responsible for Cape. This Order also clarifies that the Receiver's litigation activity to date has been conducted within the scope of this Court's Appointment Order.

IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Richland Common Pleas

Case Caption: Isabella Park , plaintiff, et al vs Armstrong International Inc ,
defendant, et al

Case Number: 2021CP4002727

Type: Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2024-11-05 15:16:27 page 4 of 4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
KEITH W. PARK, INDIVIDUALLY AND	)	
AS THE PERSONAL	)	Case No.: 2021-CP-40-02727
REPRESENTATIVE OF THE ESTATE	)	
OF ISABELLA PARK,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	<u>THIRD-PARTY DEFENDANT LOCKE</u>
ARMSTRONG INTERNATIONAL, INC.,	)	<u>LORD LLP'S RULE 59 MOTION</u>
<i>et al.</i> ,	)	
	)	
Defendant,	)	
	)	
CAPE, PLC, BY AND THROUGH ITS	)	
DULY APPOINTED RECEIVER, PETER D.	)	
PROTOPAPAS,	)	
	)	
Third-Party Plaintiff,	)	
	)	
vs.	)	
	)	
LOCKE LORD, LLP,	)	
	)	
Third-Party Defendant.	)	
	)	

Pursuant to Rule 59(e), SCRCP, and subject to and without waiving its earlier filed objections to personal jurisdiction in South Carolina, Third-Party Defendant Locke Lord LLP moves the Court to reconsider and vacate its order purportedly “clarifying” the initial order unlawfully appointing a receiver, and renews its long-pending, still-unopposed request that the Court dismiss the putative third-party complaint against Locke Lord and, alternatively, discontinue the unlawful receivership appointment.

BACKGROUND

On March 6, 2023—nine months after their counsel reported to the Court that this case was “fully resolved”—the Plaintiffs filed a motion to appoint a receiver over Cape PLC. The motion was allegedly brought pursuant to South Carolina Code § 15-65-10(4) and -10(5). Neither of these statutes are applicable to Cape PLC, a Jersey company that was formed in 2011 and that has nothing to do with the State of South Carolina—no business, no property, no judgments, no debts. Nor are these statutes applicable to Cape Intermediate Holdings Limited, a different U.K. company for which the Receiver also claims to be a receiver. It also has nothing to do with the State of South Carolina—no business, no property, no judgments, no debts.

What’s more, the putative basis for the Plaintiffs’ motion was a theory that “Cape” had historically used a company called North American Asbestos Corporation—NAAC—as a front for bringing asbestos into the United States while “engaging in a campaign of litigation avoidance.” (Motion to Appoint a Receiver Over Cape PLC at 4.)

This “theory” has been presented before and categorically rejected, as both a matter of fact and law, by both trial and appellate courts in the jurisdiction in which “Cape” was formed and operates. It was the subject of a multiweek trial that spanned from February through July 1988, and an additional multiweek appellate process from April through July 1989, and was fully discredited in an extensive, 140-page opinion from the Court of Appeal of the United Kingdom. *Adams v. Cape Industries plc* (1990) 1 Ch 433 (CA). A copy of the *Adams* opinion is attached. It fully rebuts each and every argument presented in the Plaintiffs’ motion to appoint a receiver, as well as the Receiver’s subsequent litigation activities aimed at Locke Lord and others, and it exposes the foundational misrepresentation of Plaintiffs and the Receiver regarding their “alter ego” theories and their suggestion that “Cape” has any potential liability in the United States.

Without a hearing, without taking evidence, without notice to Cape PLC, despite the case being “fully resolved” for nine months, and despite the Plaintiffs’ misrepresentations to the Court regarding NAAC and “Cape,” the Court granted the Plaintiffs’ motion and appointed a receiver over Cape PLC. The Court entered that order on March 17, 2023.

Less than a month later, the Receiver filed a purported third-party complaint against Locke Lord through which the Receiver claimed to own the attorney-client privilege as it relates to “Cape and its affiliates’ files.” (Compl. ¶ 10 (Apr. 12, 2023).) In August 2023, the Receiver amended the third-party complaint not only to demand access to privileged information to which he is not entitled, but also to demand “an accounting from [Locke Lord] for all money or property entrusted to [Locke Lord] during [Locke Lord’s] representation of Cape.” (Am. Compl. ¶ 44 (Aug. 9, 2023).)

On September 15, 2023, Locke Lord moved to dismiss the third-party complaint due to a lack of personal jurisdiction, as Locke Lord has no connection to South Carolina, and certainly no connection to the state with respect to the activities underlying this litigation.

That motion is unopposed.

Also on September 15, 2023, Locke Lord moved to discontinue the receivership, as it is unlawful as a matter of South Carolina state law and United States constitutional law. There are myriad deficiencies with the Receiver’s appointment, including *inter alia* (a) the court never had jurisdiction over the entity purportedly placed in receivership, making the appointment order void from the outset; (b) the entity in receivership was never served with an operative complaint in the *Park* case, making the appointment order void from the outset; (c) the entity in receivership was never served with the motion to appoint the receiver, in violation of South Carolina Code § 15-65-20; (d) the order appointing the Receiver was entered months after the *Park* case was “fully resolved,” by the Plaintiffs’ counsel’s own admission, and was done without a hearing; (e) there

are no judgments pending against Cape PLC (or any of its so-called “affiliates”), so there are no debts or liabilities at issue; (f) Cape PLC has no property in South Carolina, which is the only thing that a South Carolina state court can attempt to attach via a receivership; (g) the putative appointment of a receiver over out-of-state assets violates, at least, the Dormant and Foreign Commerce Clauses, the Takings Clause, the Excessive Fines Clause, the Due Process Clause, the Equal Protection Clause, and the Supremacy Clause of the United States Constitution; (h) the putative appointment violates principles of international comity because it attempts to interfere with the preexisting exclusive jurisdiction of the U.K. courts, which exercises jurisdiction over the assets of the true successor-in-interest to Cape Asbestos Company Limited in 2006, as described in the Scheme of Arrangement, which is summarized in Note 32 of Cape PLC’s 2022 Annual Report; and (i) the order appointing the Receiver claimed that Cape PLC was “dissolved” and used this as a basis for the appointment, but that was demonstrably false.

That motion is also unopposed.

Also on September 15, 2023, Locke Lord filed a third motion—a motion to dismiss for lack of subject matter jurisdiction, for failure to state a claim, and for violating Rule 14 involving third-party practice. In that motion, Locke Lord explained that the Receiver had no standing to bring the claims he is alleging, and therefore the Court lacks subject matter jurisdiction to proceed with this case. It also explained that the Illinois statute of repose has long expired as to the claims the Receiver is alleging against Locke Lord and that the Receiver had failed to allege even the elements needed under South Carolina law to proceed with his claims against Locke Lord. And it explained that Rule 14, SCRCP, does not allow third-party practice without first-party liability, which does not exist and will not exist in this case that was long ago “fully resolved.”

That motion is also unopposed.

For fourteen months, Locke Lord’s trio of dispositive motions have been pending on the Court’s docket without any opposition at all from the Receiver. And that’s because there is no legitimate opposition to these arguments. There is no personal jurisdiction in South Carolina over Locke Lord; the receivership is void as a matter of law and should be discontinued at once; the third-party complaint fails for numerous reasons; and the basis of the Plaintiffs’ motion to appoint a receiver that set this whole situation in process has been summarily discredited by the *Adams* Court, as it directly held that there is simply no “alter ego” between NAAC and “Cape.”

It is indisputable that the Receiver knows this because it was told to him directly by the directors of Cape PLC and Cape Intermediate Holdings Limited. (*See* Ex. B, Letter from Winston & Strawn London to Protopapas (Aug. 30, 2024) (“However, in *Adams v. Cape*, the English Court of Appeal specifically found that CIHL was not present in the US jurisdiction via NAAC for the purposes of applying the common law test on the recognition of foreign judgments and that it had not otherwise submitted to the jurisdiction of the US Courts. That is the established legal position.”).)

And the Receiver had a forum to dispute the legitimacy of this position as well as the application of *Adams*—in a forum that actually has jurisdiction over those companies—but he declined to do so. (*See* Ex. C, Transcript of U.K. Proceedings at 34:15–21 (Oct. 9, 2024) (“So that’s what his response to this has been. When he was process served with the application, the process server signed a witness statement where it said, slightly dramatically, I suppose, that ‘Mr. Protopapas slammed the door in my face and told me not to come back, and that if I did he was going to be put me on trespassing notice.’”).)

Nevertheless, on November 1, 2024, the Receiver filed a motion styled “Motion to Clarify Order Appointing a Receiver for Cape PLC,” in which the Receiver asked the Court *in this case*

to approve *ex post facto* a series of actions the Receiver had taken *in other cases*. That is wholly improper. Yet, without a hearing and without even waiting the requisite ten days provided by Rule 6(d), SCRCP, the Court granted that motion on November 5, 2024—less than two business days after it was filed, and without giving any litigant (including Locke Lord) an opportunity to object or be heard on the motion. Without explanation, the November 5, 2024 Order declared that everything the Receiver has done “to date has been conducted within the scope of this Court’s Appointment Order.” (Order at 3 (Nov. 5, 2024).)

DISCUSSION

Locke Lord’s trio of dispositive motions have gone unopposed for fourteen months without any activity by the Court, but the Receiver’s attempt to justify his litigation activities in different cases through a “motion to clarify” in this case was granted in less than two business days without a hearing and without any opportunity to object. This is fundamentally unfair and not contemplated by the South Carolina Rules of Civil Procedure. *Cf.* Rule 6(d), SCRCP (at least ten days’ notice required for motions).

The Receiver’s conduct—whether in this case or others—should not be endorsed by the Court because the very appointment order from which he purports to draw his authority is void *ab initio*. Locke Lord has had a motion making that argument pending unopposed for over a year.¹

Rather than blessing the Receiver’s conduct in other cases through a vague, unsubstantiated “motion to clarify” in this case, the Court should reconsider its November 5th Order, vacate it, and either dismiss Locke Lord from this matter for lack of personal jurisdiction or vacate the prior order appointing the Receiver in the first place and discontinue the receivership without delay.

¹ Locke Lord has also had motions to dismiss it from this case due to the complete absence of personal jurisdiction, the absence of subject matter jurisdiction, the Receiver’s failure to state a claim, and the Receiver’s violation of Rule 14 pending unopposed for over a year.

The Receiver himself is estopped as a matter of law from taking a position contrary to that which the actual “Cape” successfully advanced on its own behalf in *Adams* nearly 35 years ago, and the entire “alter ego” and “veil-piercing” theory on which the receivership is based (and on which the claims alleged against Locke Lord are based) has already been thoroughly debunked after extensive trials and appeals in the *Adams* case. *See, e.g., Aaron v. Mahl*, 674 S.E.2d 482, 486 (S.C. 2009) (giving a preclusive effect to judgments rendered in California and Indiana to prevent re-litigating the same issue in South Carolina); *Carolina Renewal, Inc. v. S.C. DOT*, 684 S.E.2d 779, 782–83 (S.C. Ct. App. 2009) (enforcing collateral estoppel to prevent re-litigating an already-decided issue); *Quinn v. Sharon Corp.*, 540 S.E.2d 474, 475–76 (S.C. Ct. App. 2000) (plaintiff who had previously asserted that his daughter owned a corporation he had formed and transferred to her was judicially estopped from asserting that he was its sole owner in a subsequent action because such position was in “direct contravention to his assertions in the prior litigations”). The Court should not endorse this unlawful situation any longer.

CONCLUSION

The Court should grant this motion, vacate its prior order granting the Receiver’s “motion to clarify,” dismiss Locke Lord from this matter for lack of personal jurisdiction, and discontinue the receivership.

Signature Page Attached

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

**TURNER PADGET GRAHAM & LANEY,
P.A.**

/s/ M. Elizabeth O'Neill

M. Elizabeth O'Neill (S.C. Bar No. 104013)
301 S. College Street, Suite 3500
Charlotte, North Carolina 28202-6037
(704) 350-6310

Elizabeth.ONeill@wbd-us.com

WBD.SCASBESTOS@wbd-us.com

Kevin A. Hall (S.C. Bar No. 015063)
M. Todd Carroll (S.C. Bar No. 74000)
1221 Main Street, Suite 1600
Columbia, South Carolina 29201
(803) 454-7710

kevin.hall@wbd-us.com

todd.carroll@wbd-us.com

Mark Goddard (S.C. Bar No.: 73965)
1901 Main Street, 17th Floor
Columbia, South Carolina 29201
(803) 227-4334

mgoddard@turnerpadget.com

J. Kenneth Carter (S.C. Bar No.: 12812)
Post Office Box 1509
Greenville, South Carolina 29602
(864) 552-4611

kcarter@turnerpadget.com

Attorneys for Third-Party Defendant Locke Lord LLP

November 15, 2024

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

ISABELLA PARK,

Plaintiff,

v.

ARMSTRONG INTERNATIONAL, *et al.*,

Defendants.

In Re: Asbestos Personal Injury Litigation
Coordinated Docket

Civil Action No: 2021-CP-40-02727

**ORDER ON RECEIVER'S MOTION TO
ENFORCE SUBPOENAS AGAINST
CERTAIN UNDERWRITERS AT
LLOYD'S LONDON, CONTINENTAL
INSURANCE COMPANY, AND
LIBERTY MUTUAL INSURANCE
COMPANY**

This matter came before the Court on the Receiver for Cape's Motion To Enforce Subpoenas Against Certain Underwriters at Lloyd's London, Continental Casualty Company, and Liberty Mutual Insurance Company ("Insurers") Pursuant to Rule 45, SCRCF. Having considered the Motion, related memoranda, including all opposition and reply briefing, and all supporting materials submitted to the Court, in addition to extensive argument on August 12, 2025, the Court rules as follows.

BACKGROUND

1. Park Plaintiffs filed an amended complaint naming Cape

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

On June 9, 2021, less than five months after her diagnosis, and only five days after filing her lawsuit, Ms. Park died from mesothelioma. On August 4, 2021, Ms. Park's son, Keith Park, was appointed as representative of Isabella Park's estate (the "Park Estate") by the Spartanburg Probate Court. *See* Certificate of Appointment in the matter of *Isabella F.D.R. Park*, Case No. 2021ES4201296, in the Probate Court for Spartanburg, South Carolina (Aug. 4, 2021).

On November 17, 2021, following his appointment as personal representative of Ms. Park's estate, Ms. Park's son, Keith, amended the complaint, appearing individually and as personal representative of the Park Estate (the "Park Plaintiffs"), to assert a wrongful death action. *See* First Amended Compl. *Park v. Armstrong Int'l, Inc., et al.*, No. 2021-CP-4002727 (Nov. 17, 2021). The amended complaint named "Cape Intermediate Holdings Limited f/k/a Cape Intermediate Holdings plc, individually and as successor-in-interest to Cape Asbestos Company" and "Cape plc, individually and as successor-in-interest to Cape Asbestos Company" as defendants. *Id.*

On December 23, 2021, Keith Park, again appearing individually and as personal representative of Ms. Park's estate, filed his second amended complaint. *See* Second Amended Compl. *Park v. Armstrong Int'l, Inc., et al.*, No. 2021-CP-4002727 (Dec. 23, 2021). The second amended complaint again named "Cape Intermediate Holdings Limited f/k/a Cape Intermediate Holdings plc, individually and as successor-in-interest to Cape Asbestos Company" and "Cape plc, individually and as successor-in-interest to Cape Asbestos Company" as defendants. *Id.* The second amended complaint added allegations and defendants unrelated to Cape.

2. Park Plaintiffs properly served Cape

In December 2021, the Park Plaintiffs served Cape Intermediate Holdings Ltd. and Cape plc with the First Amended Complaint through an English process server.¹ Neither Cape entity responded to the complaint. At the time that Cape was served with the complaint, Keith Park remained the personal representative of the Park Estate.

Third-Party Defendants to the *Tibbs* action notified this Court that on August 26, 2022, the Spartanburg Probate Court entered an order closing the Park Estate. It appears from the record that counsel for the Park Plaintiffs only became aware of this closure when the Third-Party Defendants in *Tibbs* raised the matter in filings in this Court. Once counsel were made aware that the estate had been closed, they took immediate steps to have Mr. Park reopen the Park Estate. At the time of this Court's August 12, 2025 hearing, the Park Estate had been reopened.

3. Park Plaintiffs moved to appoint a Receiver over Cape

On March 6, 2023, the Park Plaintiffs filed a motion for “this Court to appoint a receiver over Cape PLC and its subsidiaries, affiliates, successors, and assigns.” Motion to Appoint Receiver, *Park v. Armstrong Int’l, Inc., et al.*, No. 2021-CP-4002727 (Mar. 6, 2023) (“Appointment Motion”), at 1. The Appointment Motion was made under S.C. Code §§ 15-65-10(4) and (5), on the basis that Cape plc “is the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.” and, with “its subsidiaries and affiliates...were and are private companies organized and existing under the laws of the United Kingdom, with its principal place

¹ The Park Plaintiffs ostensibly served only the First Amended Complaint and not the Second Amended Complaint on Cape because the First Amended Complaint was the complaint that named Cape for the first time in the action. The Second Amended Complaint was not served on Cape, ostensibly because Cape had already been served with an operative summons and complaint identifying the facts relevant to Cape and the claims asserted against Cape, and no such facts or claims were added in the Second Amended Complaint.

of business in England.” *Id.* Park Plaintiffs provided notice of the Motion to Appoint a Receiver to the Cape entities using international carrier DHL.

The Appointment Motion described Cape’s moral fraud in detail, referencing 34 exhibits from prior litigation that demonstrated Cape’s calculated decision to escape U.S. product liability litigation after decades of sales of raw asbestos fibers into the U.S. market, including specifically into South Carolina, while at the same time continuing sales to U.S. customers through a new Lichtenstein company, but using the same U.S. office and staff to interface with customers. *Id.* at 1-6. As the Park Plaintiffs described, Cape “concocted a scheme to avoid its legal responsibilities to persons injured from using those end products because, startlingly, Cape deemed itself as having—in its own words—no “moral responsibility” to those end users. Rather than defending its conduct in front of juries in the United States, Cape decided to simply accept default judgments in asbestos lawsuits and ultimately flee the country, knowing that nearly all the Company’s assets were in jurisdictions (namely, the U.K., South Africa, and Lichtenstein) where judgments in those lawsuits could not be enforced.” *Id.* at 1-2.

4. This Court appointed Peter D. Protopapas as Receiver over Cape

Based on the Park Plaintiffs’ detailed presentation of Cape’s moral fraud, and specifically Cape’s failure to respond to the Park Plaintiffs’ complaint as was expected by Cape’s course of conduct in U.S. litigation beginning in 1978, this Court appointed Peter D. Protopapas as Receiver over Cape, pursuant to S.C. Code §§ 15-65-10(4) and (5) on March 17, 2023. *Park v. Armstrong Int’l, Inc., et al.*, No. 2021-CP-4002727 (Mar. 17, 2023) (the “Cape Appointment Order”). The Cape Appointment Order granted the receiver “the power and authority [to] fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape whatever they may be.” *Id.* at 1.

The Cape Appointment Order provided for a process by which the Receiver would investigate insurance coverage protective of Cape as follows:

Based on the Court's experience in other receivership matters, and in an effort to streamline these proceedings, the Court expects the Receiver to investigate the existence of all insurance coverages potentially available to the company in receivership. The Receiver will provide potential insurers with lists of work sites, contractors, and insurance brokers and agents to facilitate the insurers' searches for coverage (specifically including coverage provided to any related or subsidiary companies of the company in receivership or any company for whom the company in receivership did work as an "additional insured" under coverage written to another entity). The Court expects all insurers to comply with subpoenas issued by this Court and its receiver in effectuating these thorough searches.

Id. at 2-3.

5. The Receiver served subpoenas on Insurers

Pursuant to this Court's Appointment Order, the Receiver issued subpoenas to the Insurers through the South Carolina Department of Insurance on April 28, 2025. On May 13 and 15, 2025, the Insurers responded to the subpoenas with objections only, refusing to respond with any policy information for a list of reasons including that (1) the Receiver was not properly appointed, (2) the High Court of England and Wales entered an order enjoining Mr. Protopapas from acting as Receiver, (3) the Receiver improperly served the subpoenas through the South Carolina Department of Insurance, (4) and the subpoenas were overly broad.

ORDERS

1. Validity and effect of reopening Park Estate

The Insurers complain to this Court that because the Park Estate probate order lapsed on August 26, 2022, nothing done in this case during that period, including the motion to appoint a receiver, had any effect. In support of that theory, counsel cite this court to *Glenn v. E.I. DuPont de Nemours & Co.*, 254 S.C. 128, 134, 174 S.E. 155, 158 (1970) as well as *McCullar v. The Estate of Dr. William Cox Campbel*, 381 S.C. 205, 672 S.E.2d 784 (2018). Those cases addressed whether

a wrongful death lawsuit could move forward when a personal representative of an estate had not been appointed. That is not the case here.

Here, Isabella Park brought suit against Cape. Following her death, Keith Park was properly appointed and filed two amended complaints, each time naming Cape. Mr. Park filed these complaints while the Park Estate was open. While it is true that the Park Estate lapsed, this Court finds that the Park Estate was validly reopened on July 30, 2025. Pursuant to South Carolina Code § 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.”

A personal representative, pursuant to the Code, “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.* The reporter’s comment to S.C. Code § 62-3-701 observes that “the authority of the personal representative relates back to death and stems from his appointment,” and that “[t]he personal representative may ratify acts done by others prior to appointment.”

Therefore, all actions taken by or on behalf of the Personal Representative for the Park Estate, including service of the first amended complaint on Cape, the Park Plaintiffs’ motion to appoint the Receiver over Cape, and this Court’s order appointing the Receiver over Cape in the *Park* matter are valid.

2. Validity of the appointment of the Receiver for Cape

a. Analysis of alleged moral fraud on behalf of Cape

At the August 12 Hearing, Insurers argued that the Receiver could not issue the subpoenas because the Cape Appointment Order was invalid and therefore the receivership was an absolute nullity. Specifically, Insurers argued that the Court did not find that Cape engaged in moral fraud

sufficient to appoint a Receiver under S.C. Code § 15-65-10(5). Likewise, the South Carolina Supreme Court Order in *Tibbs v. 3M Company*, Appellate Case Nos. 2024-001423, 2024-001499, 2024-000916, 2024-002114, 2024-002116, 2024-002117, and 2025-000052 remanded the cases to this Court and directed the Court to ensure that the Cape Receivership Order “is based on findings of fact sufficient under *Welch* to justify the order.” Slip Op. at 4 (June 26, 2025).

This Court has evaluated the alleged moral fraud of Cape based on information received from two sources: (1) Plaintiff’s original Motion to Appoint the Receiver over Cape, filed on March 6, 2023 in *Park*, and (2) the Receiver’s Report, filed on July 11, 2025 in *Tibbs*.² This Court finds the following facts, as presented by Plaintiffs and the Receiver, respectively, constitute moral fraud sufficient to appoint a Receiver under S.C. Code § 15-65-10(5):

1. Moral fraud facts as presented in Plaintiffs’ March 6, 2023 motion

a. Cape establishes American presence and operations through NAAC

At its peak, from mines in Apartheid-era South Africa, Cape produced approximately 90%³ of the world’s supply of amosite asbestos, including asbestos imported and used in South Carolina.

For the “purpose of expediting and facilitating the movement” of asbestos from South African mines, on October 14, 1953, Cape Asbestos Company Ltd. (a U.K. entity) established the North American Asbestos Corporation (“NAAC”), a direct subsidiary that was part of the

² Having considered the timing of Plaintiffs’ presentation of the initial moral fraud facts prior to the appointment of the Receiver, the exhibits to which are not marked Confidential and appear to be Bates labeled and contain exhibit stickers from prior litigation; and the information provided by the Receiver in his Report of July 11, including that certain exhibits attached to the Report that contained communications between lawyers and their clients were obtained from an archive of materials from the University of Strathclyde in Glasgow, Scotland, this Court finds that all facts contained in Plaintiffs’ Motion and the Receiver’s Report, on which this Court relies in the following recitation of facts, were obtained from publicly available sources.

³ *Hammond v. North American Asbestos Corp.*, 454 N.E. 2d 210, (Ill. 1983)(confirming that Cape Asbestos supplies 90% of the world’s supply of amosite asbestos and virtually the sole supplier of longer fiber grades).

Company's "mining division" and domiciled in Illinois.⁴ NAAC had both marketing and distribution roles: (i) serving as Cape's sales agency in the United States, with sole authority to offer Cape products and responsibility for transmitting information about customer needs to Cape mines, and (ii) ensuring proper distribution of asbestos products and that shipments from Africa made it "all the way through to the customer's plant," including, on information and belief, to plants in South Carolina or through South Carolina ports.⁵ NAAC "effect[ively] . . . put the Mines at every U.S. port"⁶ and by 1970 was the "largest U.S. importer of Amphibole Fibres," which were "re-distributed from . . . warehouse locations in East Coast, Gulf Coast and West Coast Ports."⁷

Over its history, NAAC was "essentially a one-man operation" consisting of one salesman supported by four office clerical personnel (overseen by a board of directors made up of largely of Company lawyers or other Cape executives, until all Cape officials resigned in 1975 as a "sensible

⁴ See NAAC's Answers to Plaintiff's Requests for Production in *Paello v. Johns Manville Corp.*, in the District Court for Boulder County, Colorado, Case No. 80-cv-0089-2 (describing NAAC's history); CAPE000177, List of Cape Divisions (identifying NAAC as the sole U.S.-based entity of the Cape mining division); Letter from NAAC President C. Morgan to President of C-X Products Corp., Sept. 26, 1973, CAPE000869 (describing NAAC as "a division of Cape Asbestos Co. Ltd., with corporate offices in London").

⁵ See Letter from Cape Director to Lord Bissell & Kadyk, Oct. 6, 1953, CAPE000263–66 (describing intended business of NAAC, including that the company would receive a 2.5 percent commission or work on behalf of the Cape mining companies, "it being made clear that [NAAC] will have no authority to negotiate or make contracts, but shall act as a source of information and provide general assistance to the South African business"); Letter from Cape Group General Counsel A.J. Penna to Max Meyer of Lord Bissell, July 15, 1975, CAPE000333 (informing Cape's U.S. lawyer, "we feel that it would be a sensible precaution against Cape involvement in any future proceedings for [Cape's executives] to resign from the N.A.A.C. Board and I accordingly enclose their resignation letters"); NAAC Appointment Announcement, CAPE000729 (describing NAAC as "specialize[d] in marketing and distribution of Blue and Amosite asbestos in the United States, Canada, Mexico and the Caribbean"); NAAC Internal Memorandum dated Oct. 27, 1969, CAPE000988–89 (describing customer services).

⁶ NAAC Internal Memorandum dated Oct. 27, 1969, CAPE000988–89

⁷ Cape Newsletter, No. 5, No. 12, Dec. 1970, CAPE000878–79 at 1.

precaution” in light of U.S. litigation).⁸ In coordination with the global Cape network, however, NAAC sold asbestos to Cape’s numerous American-based clients, including, but not limited to, the U.S. Government, Keene Corporation (f/k/a Baldwin-Ehret-Hill), Carey, Fibreboard, GAF (f/k/a Ruberoid), Owens Corning, Johns-Manville and Pittsburgh Corning.⁹ These companies were giants among asbestos product manufacturers, and on information and belief, their products were used extensively in South Carolina. In addition, NAAC tried to influence public and corporate opinion about the safety of asbestos, including, but not limited to, rebutting emerging medical critiques of its safety.¹⁰ Cape Asbestos, moreover, dominated NAAC’s decision-making, with NAAC, for example, unable to “borrow one dollar without [Cape Asbestos’s] approval” and routinely forced to withdraw cash from the United States to pay dividends to Cape Asbestos (minimizing the assets on NAAC’s balance sheet).¹¹

⁸ See NAAC’s Answers to Plaintiff’s Requests for Production in *Paello v. Johns Manville Corp.*, in the District Court for Boulder County, Colorado, Case No. 80-cv-0089-2 CAPE000110–12 (describing NAAC’s lean staffing); Letter from J. Holtze (NAAC Secretary) to J. Morris, Group Chief Management Accountant of Cape Industries Ltd., Dec. 3, 1975, CAPE001514 (“Despite the volume of sales and profits of NAAC, our operation is a very small one, with only a total of 5 employees”); The Cape Asbestos Company Limited Notification of Subsidiary’s Particulars for NAAC, CAPE001528 (identifying six directors in 1970).

⁹ Letter from R. Cryor, President of NAAC, to R. Gaze of Cape, July 8, 1969, CAPE000994–95.

¹⁰ See, e.g., Letter from R. Gaze, Cape Chief Scientist to C. Morgan, NAAC President, July 7, 1977, CAPE000130 (discussing prioritizing efforts of Asbestos International Association to “organise a body of medical opinion that is prepared to stand up” to critical opinions).

¹¹ See, e.g., Letter from C. Morgan, NAAC President, to M. Meyer, Cape U.S. Lawyer, Feb. 25, 1976, CAPE001507 (“If I interpret this correctly, we are not entitled to borrow one dollar without [Cape’s] approval, which would severely limit NAAC’s management flexibility to extend credit to customers, maintain warehouse stocks and make prompt monthly payments to [Cape]” to meet dividend requirements); Letter from R. Dent of Cape to R. Cryor of NAAC, Apr. 13, 1959, CAPE000261–62 (1959 letter suggesting that Cape was “extremely cautious” in picking NAAC personnel who would “fit into [the Company’s] scheme of things . . . without causing embarrassment all around”); NAAC Annual Board Meeting Minutes, April 23, 1976, CAPE000816 (showing payment of \$250,000 dividend “which may be paid in monthly installments on or before December 1, 1976 to shareholders of record on June 1, 1976); Letter from R. Cryor of NAAC to Malcom Reid of Cape, Dec. 28, 1956, CAPE000931–32 (stating in 1956 that NAAC “think[s] of ourselves as being part of a coordinated group with responsibilities

b. Cape accepts default judgments and liquidates NAAC to evade claimants

After the onset of asbestos-related product liability litigation in the 1970s, Cape became especially concerned with its own liability.¹² Thus, Cape Asbestos went through tortured machinations to make it appear it was reducing oversight over NAAC, but in reality, NAAC continued to operate as a mere division or instrumentality under Cape's domination and control.¹³

In addition, Cape began to engage in a campaign of litigation avoidance by refusing to accept process or appear in any proceedings in the United States, including failing to respond to the Second Amended Summons in this action, as properly served pursuant to Article 10 of the

to the whole, even though this may mean subordinating other and more profitable interests of NAAC," and expressing offense at being called "commission agents," which "implies an independent, lack of responsibility, and an emphasis on local self-interest").

¹² See, e.g., Letter from Cape's U.S. Lawyers at Lord Bissell to A.J. Penna, Cape General Counsel, Oct. 3, 1975, CAPE000351-56 (detailing "the objective under consideration," which was "an attempt to limit NAAC's and Cape's exposure to future United States litigation," in a six-page letter, with section headings including "INSURANCE," "STATUTE OF LIMITATIONS," "NAAC LIQUIDATION," "REPLACEMENT FOR NAAC," and "ENFORCEMENT of U.S. JUDGMENTS BY FOREIGN COURTS").

¹³ See Letter from C. Morgan of NAAC to S.M. Dougherty, of Cape's South African Mining subsidiary, Cape Asbestos South Africa (Pty.) Ltd., Feb. 2, 1978, CAPE000123 (NAAC discouraging Cape visits to the U.S. in 1978 or else negate "maneuvers" related to "continued problems with product liability litigation"); Letter from R. Gaze, Cape Chief Scientist, to C. Morgan, NAAC President, July 4, 1975, CAPE000152 (suggesting to "disassociate the Parent Company as fully as possible from the operating companies," and noting, "It would I think be as well for this letter not to appear on the office file and so I am sending it to your home"); Letter from R. Gaze, Cape Chief Scientist, to C. Morgan, NAAC President, June 20, 1975, CAPE000154 (raising whether to "do something to change the identity of NAAC in order to avoid exposing the company unnecessarily," while doing "everything possible to maintain a successful selling operation in the United States," and therefore requesting that Morgan reduce physical inventory at the NAAC warehouse, again sent to Morgan's home address); Letter from M. Meyer, Cape's U.S. Lawyer, to R. Dent of Cape, May 6, 1974, CAPE000166-67 (suggesting that "no one from Cape be an officer of NAAC since we want it to be as independent as possible **in order to avoid any contention that it is the alter ego of Cape** and that Cape is doing business in the United States" (emphasis added); Letter from Cape Group General Counsel A.J. Penna to Max Meyer of Lord Bissell, July 15, 1975, CAPE000333 (stating "that it would be a sensible precaution against Cape's involvement in any future proceedings for [Cape personnel] to resign from the N.A.A.C. Board," and enclosing resignation letters).

Hague Convention on March 8, 2022.¹⁴ According to Cape executives, this strategy was warranted because they “really cannot be said to have a moral responsibility [to respond to the suits] and are simply victims of [a] US product liability cult.”¹⁵

Ultimately, to avoid paying damages to workers whom were made sick or died as the result of using its asbestos, Cape resolved to liquidate NAAC, effective January 31, 1978.¹⁶ Existing debts of NAAC were paid, with remaining assets transferred upstream to NAAC’s direct parent company at the time, Cape Industries Overseas Ltd. (a U.K. entity wholly owned by Cape Industries Ltd.).¹⁷ NAAC’s liquidation was central to Cape’s litigation-avoidance strategy, based on legal advice that no British or South African court would enforce a judgment against a Cape entity if it never appeared again in the United States.¹⁸

¹⁴ See Letter from Lord Bissell to T. Penna, Cape General Counsel, March 6, 1978, CAPE000550–51 (opining in 1978 “that it is most unlikely that any plaintiff would bother to pursue collection of any default judgments against Cape”); Telex from Lord Bissell, Cape’s U.S. lawyers, to A.J. Penna, Cape General Counsel, March 7, 1979, CAPE000702 (confirming receipt of correspondence stating that “U.K. and South African lawyers confirm that any resulting judgments will not be enforceable against Cape’s U.K. and South African assets” and that “the potential loss of all NAAC’s outstanding assets is not material in the Cape Group context”).

¹⁵ Piercing the Corporate Veil: Cape Industries and Multinational Corporate Liability for a Toxic Hazard, 1950–2004; Tweedale and Flynn, *Enterprise & Society*, June 2007, Vol. 8 No. 2 at 268–296 (1977 letter from Cape’s counsel).

¹⁶ See, e.g., Letter from J. Holtze of NAAC to J. Sparkes, Group Financial Controller of Cape Industries Ltd., Apr. 19, 1978, CAPE001035 (noting “[o]fficially, North American Asbestos Corporation closed on January 31, 1978” and requesting Cape Asbestos official to stop sending accounting memoranda to former NAAC officials, “for safety’s sake,” as “we are not supposed to be receiving any main that would tie us to Cape after the January 31, 1978 deadline”).

¹⁷ See Lord Bissell Internal Memorandum dated Aug. 24, 1979, CAPE000593 (noting “[a]fter payment of NAAC’s debts, it is intended that the assets of NAAC will be distributed to NAAC’s sole shareholder,” identified as “Cape Industries Overseas Ltd.”).

¹⁸ See, e.g., Letter from S. Milwid of Lord Bissell to A.J. Penna, Cape General Counsel, Dec. 23, 1975, CAPE000141–43 (advising Cape on default-judgment risk); Telex from S. Milwid of Lord Bissell to A.J. Penna, Cape General Counsel, May 24, 1978, CAPE000566 (agreeing that it would be in the “best interests of Cape companies other than NAAC” to make “no response” to litigation); Confidential and Work Product Memorandum from S. Milwid of Lord Bissell to E. Burkholder of Lord Bissell regarding Deposition of Geoffrey A. Higham (Cape executive), Nov. 28, 1984, CAPE000617–19 (summarizing 1984 deposition testimony regarding litigation strategy, and

Yet, Cape continued to contemplate schemes to facilitate the sale of asbestos to U.S. customers while minimizing its product-liability risk.¹⁹ For example, Continental Products Corporation (using the same physical address as NAAC in Chicago, Illinois) was formed to “act as a commission agent for the future sales of asbestos from South Africa” in the United States, with South African mines selling to a new Lichtenstein subsidiary called Associated Mines Company, which in turn sold asbestos to the United States under its own invoices.²⁰ The express “purpose of this corporate arrangement [was] to eliminate or reduce as much as possible the exposure in the United States of [South African mining companies] to lawsuits brought against it under theories of strict liability concerning products liability on the sale of asbestos in the United States.”²¹

2. Moral fraud facts as presented in the Receiver’s Report

On July 11, 2025, the Receiver submitted a report to this Court in *Tibbs* detailing the results of research performed into the moral fraud of Cape. *See Tibbs v. 3M Company, et al.*, No. 2023-CP-4001759 (July 11, 2025). The Receiver’s detailed presentation covered much of the same

concluding, “[o]n the whole, from my review of this Abstract, it does not appear that Walker, in the 89 pages of the deposition, uncovered very much, particularly pertaining to the decision for the dissolution of NAAC”).

¹⁹ *See, e.g.*, Memorandum to File, Dec. 12-14, 1977, Cape Industries London, CAPE000728 (1977 meeting memorandum “to discuss liquidation of NAAC and formation of new off-shore company to service North American market”)

²⁰ Lord Bissell Memorandum dated April 7, 1978, CAPE000386 (also noting “Gerry Morgan [former NAAC President, now CPC President] was in Mexico City in January of this year and is supposed to have explained the new corporate arrangement to the Eureka group of companies’ officers”); *see also* Announcement of Continental Products Corporation, CAPE000531 (introducing Continental Products Corporation as “Agent to handle the North American requirements for Amosite and Crocidolite asbestos fibre,” and noting “our location will be the same as the former North American Asbestos Corporation,” and that “[a]lthough operating as a new organization, bot Joan Holtze and myself will endeavor to maintain the same service to our many customers and friends as offered at North American Asbestos Corporation.”).

²¹ Memorandum from A. Sarabia of Lord Bissell to M. Meyer of Lord Bissell, Jan. 23, 1978, CAPE000377–79.

ground as was presented in the Park Plaintiffs' Appointment Motion, supplemented with information the Receiver uncovered through his detailed investigation into Cape and its affiliates in carrying out his charge to marshal the assets of Cape. Because of the significant overlap between the Receiver's report and the Park Plaintiffs' factual recitation, the Court recounts the facts the Receiver presented in its July 11 Report related only to four categories: (1) Cape's concealment its early knowledge of asbestos health hazards from U.S. customers, (2) Cape's suppression of a 1962 report of the South African Pneumoconiosis Research Unit ("PRU"), (3) Cape's creation of a fake Lichtenstein company to continue its sales of asbestos to the U.S. market following the closure of NAAC, and (4) information related to Cape's modern moral fraud.

i. Cape obtains early knowledge of asbestos dangers from disease in its own manufacturing plants and lies about that knowledge to its U.S. customers

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

In 1953, immediately before Cape opened its NAAC sales operation in Chicago,²² Cape published an 85-page brochure describing the company's origin, organization and operations.²³ Cape diagrammed its operations in the brochure.²⁴ Cape had four principal groups under its head

²² Prior to 1953, Cape used an "agent" in New York City to assist in marketing to U.S. buyers. *See* Letter from R. Dent to Lord Bissell (Sept. 18, 1953) ("We have recently discontinued our representation in America, which has hitherto been carried on in New York by Mr. A.W. Koehler, who runs a small selling agency, in which we were by far the largest of his principals.").

²³ *Cape asbestos, the story of the Cape Asbestos Company Limited, 1893-1953*.

²⁴ *Id.* at 50.

London office: branch selling offices (NAAC joined this branch when Cape formed it later the same year), UK product manufacturing factories, miscellaneous "English subsidiary companies," and overseas subsidiary companies.²⁵ Every one of these operations involved the exploitation of asbestos as a commercial raw material, from mining, to processing into finished products, to the sale of the fiber overseas.²⁶ The "overseas" companies, according to the diagram, were the asbestos mining operations in South Africa.²⁷ Cape noted that it would dispatch executives from London to "control [] the whole of Cape's operations in that country," meaning, South Africa.²⁸

Cape Asbestos Company began advertising its asbestos for sale in the United States in 1920. It advertised mainly in *Asbestos Magazine*, which was a monthly trade journal published in Philadelphia, Pennsylvania, and circulated nationally from 1919 to 1983. Cape advertised in virtually every issue until 1978—almost 600 issues. At the same time Cape began selling asbestos to U.S. customers, it developed first-hand knowledge about the dangers of asbestos exposure. In the early 1900s, workers at its Barking Plant in London began developing asbestosis, a noncancerous but often fatal lung condition.²⁹

Among other products, Barking manufactured a pre-formed pipe and block insulation named "Caposite".³⁰ Anthony Mendelle (who was deposed in 1984) was the Plant Manager at Barking from 1960 to 1968, following his work as the Production Manager at the same plant from

²⁵ *See id.*

²⁶ *See generally id.*

²⁷ *See generally id.*

²⁸ *Id.* at 56.

²⁹ *Cape Asbestos, the story of the Cape Asbestos Company Limited*, 1893-1953, at 50, 62; Cape Inquests (1929-1938) (summaries of coroner inquests revealing early recognition of asbestos-related worker deaths at Cape's U.K. facilities.).

³⁰ *Cape Asbestos, the story of the Cape Asbestos Company Limited*, 1893-1953, at 62.

1956 to 1960.³¹ Mendelle saw first-hand the effects of asbestos exposure on plant workers—the plant had a "running total" of about 60 asbestosis cases a year, and more ominously, workers were also contracting mesothelioma, an incurable cancer of the lining of the lung that is usually fatal within a year of diagnosis.³² Mendelle was instrumental in the closure of the Barking Plant because of the number of workers dying from exposures at the Plant.³³ Mendelle testified that Caposite was a "major department" at Barking.³⁴ Caposite was made with 100% amosite asbestos.³⁵ Other operations used the two other types of asbestos, crocidolite and chrysotile.³⁶

It is here that two principal antagonists enter the Cape story—Richard Gaze and Walter Smithers. Smithers was the Barking Plant doctor starting in 1956 and was still working for Cape as of 1984, when Mendelle was deposed.³⁷ Richard Gaze worked at Barking from 1943 to 1963.³⁸ After 1963, Gaze rose to become the "Chief Scientist" at Cape and held senior management roles across the entire Cape asbestos operation for many years.³⁹ These included membership on the Board of Directors of numerous Cape asbestos subsidiaries.⁴⁰ The minutes of a "special meeting of the board of directors of the North American Asbestos Corporation" held on April 7, 1970, note that "[t]he chairman reported that Dr. Richard Gaze of Cape Asbestos, Ltd will have direct

³¹ Deposition of Anthony Mendelle at 3, *Smith v. Pittsburgh Corning Corp.*, Nos. GD81-20383 & GD81-20381 (Pa. Ct. Com. Pl. Allegheny Cnty. Nov. 13, 1984).

³² *Id.* at 11.

³³ *Id.* at 48-49.

³⁴ *Id.* at 40.

³⁵ *Id.* at 37.

³⁶ *Id.* at 41-42.

³⁷ *Id.* at 5.

³⁸ *Id.* at 7. The evidence in this case will place Gaze and Smithers squarely at the center of Cape's efforts to exploit asbestos for profit, to mislead others about the dangers of asbestos, and to hide what Cape actually knew about effects of asbestos exposure.

³⁹ *Id.* at 6.

⁴⁰ *Id.*

responsibility on behalf of the parent company for the operations of North American Asbestos Corporation.”⁴¹

Mendelle testified that Cape knew about asbestos and mesothelioma at Barking—because workers were dying of both asbestos-related diseases in the 1950s.⁴² Mendelle, Gaze and Smithers discussed mesothelioma and asbestosis at Barking, and that low exposures could cause mesothelioma.⁴³ Mendelle testified that “we knew there was an association” between amosite and mesothelioma well before a seminal article on asbestos disease was published in 1965 by Dr. Muriel Newhouse.⁴⁴ Newhouse spent time at Barking, and much of her data for the article came from her time investigating disease at the plant.⁴⁵ Mendelle said that he and Newhouse had numerous conversations about amosite as a cause of mesothelioma at Barking.⁴⁶ Mendelle was asked if workers in the Caposite operation—which used only amosite, as noted above—had developed mesothelioma, and he said “yes, many.”⁴⁷ Mendelle acknowledged that all three types of asbestos were used at Barking, and that the workers may have worked in departments other than the main Caposite operation.⁴⁸

Despite this knowledge, Dr. Gaze repeatedly told Cape's customers that “it is a fact that not one authenticated case of mesothelioma has been associated with amosite anywhere in the world.”⁴⁹ This letter was passed on to the President of one of Cape's major amosite customers in

⁴¹ NAAC Special Meeting Minutes (April 7, 1970).

⁴² Deposition of Anthony Mendelle at 11-12, *Smith v. Pittsburgh Corning Corp.*, Nos. GD-91-20838 & GD81=20381 (Pa. Ct. Com. Pl. Allegheny Cnty. Nov. 13, 1984).

⁴³ *Id.* at 11-12, 69.

⁴⁴ *Id.* at 56-57; Muriel L. Newhouse, *Asbestos in the Workplace and the Community*, 16 Ann. Occup. Hyg. 97 (1973).

⁴⁵ Mendelle Deposition, *supra*, at 58.

⁴⁶ *Id.* at 56-57.

⁴⁷ *Id.* at 66.

⁴⁸ *Id.* at 68.

⁴⁹ Letter from Gaze to Cryor (March 22, 1966) (emphasis in original).

the United States—Robert Buckley, of Pittsburgh Corning Corporation—and in his reply to Dr. Gaze, Mr. Buckley wrote: “. . . from your letter, I am assured that no customer's worker need be concerned about mesothelioma.”⁵⁰ In a memorandum to over twenty managers and sales personnel at Cape along with Dr. Gaze, the Cape Sales Director gave advice to the addressees of the memorandum “who are faced with questions on the possible dangers of to health involved in the use of asbestos based materials.”⁵¹ The Sales Director repeated exactly what Dr. Gaze wrote to Mr. Buckley at Pittsburgh Corning, noting first that Cape's Caposite line of products made solely with amosite “are now our principal asbestos products,” the Sales Director then stated that “not one case of mesothelioma [has been] associated with amosite asbestos.”⁵² Dr. Gaze later died from mesothelioma.

ii. Cape's suppression of a 1962 Report involving its mining operations in South Africa that shows mesothelioma incidence from mining asbestos or living near asbestos mines.

Cape had been mining asbestos in South Africa for over 50 years when it created NAAC. Scientists began seeing sporadic cases of the disease “mesothelioma” (also called “endothelioma” or “pleural sclerosis”) in the late 1940s and early 1950s. But it was a young pathologist from South Africa who first recognized the relationship between asbestos exposure and mesothelioma. Dr. Chris Wagner was appointed by the South African Government in 1954 as a research fellow to the Pneumoconiosis Research Unit (PRU) in Johannesburg. He took an interest in mesothelioma, visiting the Cape asbestos mines in South Africa, and then meeting with management officials at Cape and another asbestos mining company (Turner and Newell) in London where he was

⁵⁰ Letter from Buckley to Gaze (March 30, 1966).

⁵¹ Letter from Galloway (Aug 19, 1966).

⁵² *Id.*

“assured . . . that I was following a line of research which seemed to them to be of little value, and that I would be advised to follow other lines of investigation.”⁵³

Dr. Wagner reported a series of 33 mesothelioma cases in South African mine workers, and in people living near the mines, at the 1959 Pneumoconiosis Conference in Johannesburg. The formal scientific paper was published in 1960.⁵⁴ Wagner's investigation triggered the PRU to investigate mesothelioma at the South African asbestos mines.⁵⁵ Cape and other mining companies partially financed the study, which meant the mining companies were copied on all reports and had input on designing study parameters.⁵⁶

The investigators saw troubling indications of disease soon after the study began.⁵⁷ An October 6, 1961 memorandum of the PRU noted that it discussed early results with the "asbestos industry"—Cape, and others—and that the results showed that the incidence of asbestosis amongst miners and the ordinary population was "alarmingly high," and further that the incidence of mesothelioma, “although perhaps not large in terms of actual numbers—is very high from an epidemiological point of view.”⁵⁸ On April 30, 1962, the PRU memorialized its findings, recording mesothelioma numbers that startled researchers: “[a]n alarmingly high number of cases with mesothelioma of the pleura has been discovered in people who live or have lived in the North Western Cape and that there is evidence to suggest that this condition is associated with an exposure to asbestos dust inhalation which again need not be industrial.”⁵⁹ In other words,

⁵³ Letter from Christopher Wagner to Cape (November 30, 1994).

⁵⁴ *Id.*; see also Wagner, J.C., Sleggs, C.A., and Marchand, P, *Diffuse Pleural Mesothelioma and Asbestos Exposure in the North West Cape Province*, Br. J. Ind. Med. 17:260-65 (1960).

⁵⁵ Memo from Gear re: Proposed Study of Mesothelioma in South Africa (Nov. 29, 1960).

⁵⁶ *Id.*

⁵⁷ Letter from Naude to Diederichs (Oct. 6, 1961).

⁵⁸ *Id.*

⁵⁹ PRU Preliminary Report (April 30, 1962).

mesothelioma occurred not only in miners, but also in the general population that lived near the asbestos mines.⁶⁰ The investigators revealed that they were aware of 90 cases of mesothelioma, but they theorized that more cases existed that the study failed to capture due to its methodology.⁶¹

The preliminary results were equally alarming to Cape. Soon after Cape saw the October 1961 PRU results, it dispatched Dr. Smither to South Africa for an "investigation" even before the more detailed April 1962 report was circulated. The Receiver has located the 48-page report that Dr. Smither prepared for the company on his return from South Africa.⁶² The report opens:

[a]s a result of a decision taken at a meeting between Dr. R Gaze, Dr. J McKeurtan and myself at Park Street, London, on 31st October 1961, I was sent by the company to South Africa. My terms of reference were to study all aspects of mesothelioma and asbestosis reported in South Africa on medical matters, and generally to learn as much as possible about conditions in the industry in that country.⁶³

The Smither report is notable for several conclusions, but a few stand out. Dr. Smither (a physician) recommended that, despite the "alarming" conclusions that the PRU researchers had come to:

[m]y recommendation would be that the company should not support any future wide ranging survey of the industry with a view to discovering either asbestosis or mesothelioma. The reason for this is that the company is well aware of the problem and has some idea of its extent.⁶⁴

At that point, Cape's support for the PRU ended.⁶⁵ Smither aligned with Dr. McKeurtan—the top executive over Cape's mining subsidiaries in South Africa—who was "vigorously attacking" the conclusions of the PRU researchers.⁶⁶

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Smither, *Visit to South Africa* (August 1962).

⁶³ *Id.* at 2.

⁶⁴ *Id.* at 34.

⁶⁵ *See, e.g., id.*

⁶⁶ *Id.* at 35.

Another document the Receiver discovered shows the scope of Cape's assault on the PRU study. In a letter from L.G Walters, the Director of the PRU, to M. F. Baxter at the South Africa Council for Scientific and Industrial Research, Walters addresses a memorandum of the "asbestos producers committee."⁶⁷ Cape was a member of that committee.⁶⁸ Walters quotes from the "committee memorandum" in which it critiques the PRU investigation: "The whole survey appears to have been undertaken with the underlying object of implicating crocidolite asbestos as being directly responsible for the comparatively rare tumor known as mesothelioma of the pleura."⁶⁹

Walters noted that Smither identified 10 additional cases of mesothelioma during his visit to the Cape Prieska mine during his visit.⁷⁰ Smither's 48-page report notes that a local doctor named "Van Rooyen" was caring for "10 cases among colored people of what he now calls the 'Prieska picture.'"⁷¹ Smither advocated for removing the patients to Johannesburg for "investigation."⁷² Dr. Smither's recommendation was not medical or altruistic. He wrote in his Report that:

the advantage from the standpoint of the company is that these cases will be treated as a group, will be removed from the area of the conflict, if one may call it that, and will be taken some hundreds of miles away.⁷³

Smither went on to note that this move would bring "less attention from the politicians."⁷⁴ Dr. Smither was covering up the health hazards of Cape's asbestos by hiding Cape's victims.

⁶⁷ Letter from Walters to Baxter (July 19, 1962).

⁶⁸ *Id.* at 2 (the letter reveals Cape's membership by noting that the committee "recently brought their London Branch Medical Office (Dr. Smither) to this country to investigate the problem on their behalf.").

⁶⁹ *Id.* at 2.

⁷⁰ *Id.*

⁷¹ Smither, *Visit to South Africa* (August 1962) at 11-12.

⁷² *Id.*

⁷³ *Id.* at 13.

⁷⁴ *Id.*

Dr. Matthys van Rooyen—the local Prieska doctor caring for 10 mesothelioma patients—was deposed in 1996.⁷⁵ He testified that Cape periodically dispatched “executives” and doctors (presumably, Smither) from London to visit asbestos mines in South Africa.⁷⁶ Dr. Van Rooyen testified that he tried to warn Cape about the dangers of asbestos exposure, but met a chilly response: “I experienced opposition[] . . . whenever we talked about asbestos as a danger, people saw us as dangers . . . we had a lot of opposition from these people. But very definitely, from the chief executives of Cape Blue Mines.”⁷⁷

Dr. Van Rooyen's interest in mesothelioma began in 1957 then he wrote an article discussing two mesothelioma cases for the *South African Medical Journal*, explicitly attributing them to Prieska's blue-asbestos dust.⁷⁸ He then screened the community—miners and civilians alike—by taking thousands of chest X-rays and even persuaded the Pneumoconiosis Bureau to dispatch a mobile radiography unit to Cape's Prieska mine.⁷⁹ Determined to force action, he armed South African parliamentary member A.H. Stander with data and a speech describing Cape's mill as “spraying asbestos fiber” over the town, thus placing the issue before Parliament.⁸⁰ These uncompromising interventions—and the frank discussions he had with Cape managers—made him a “pest,” as Dr. Van Rooyen described the situation, in Cape's eyes.⁸¹

Cape retaliated against Dr. Van Rooyen. According to Van Rooyen's sworn deposition testimony, Cape threatened his livelihood:

Q: Was there any discussion about other doctors coming to Prieska?

⁷⁵ Deposition of Dr. Matthys van Rooyen, *In re Asbestos Personal Injury Cases, Arrington Lead*, No. 93-9-114 (Ms. Cir. Ct. Jones County, 1996).

⁷⁶ *Id.* at 135.

⁷⁷ *Id.* at 116.

⁷⁸ *Id.* at 24.

⁷⁹ *Id.* at 38, 63.

⁸⁰ *Id.* at 11-12, 30.

⁸¹ *Id.* at 40, 57.

A: That was one of the threats used very regularly. Now, why do I call it a threat? If you live in an area where you have a population of 16,000, there are two doctors there. They are still fit, and they can work hard. They do work. And if you take away a quarter or more of their practice by introducing a doctor or more in that area, you can definitely break them. And that is -- so that threat was used to me, personally, on more than one occasion. I don't accept it nicely, and I still don't.

Q: Did you have occasion to specifically have a conversation with one of the Cape executives regarding the effect of this discussion would have on the company?

A: Yes. . . . I remember distinctly that this was treated in a very superficial way. And the chap . . . he said that with our directors in London earning a million a year, do you think they would listen to you?⁸²

The final PRU report was published 1964 but it was not circulated outside of the PRU and the mining companies.⁸³ For reasons unknown, but perhaps to protect powerful industrial mining and economic interests in South Africa, the final report also said little about mesothelioma. Whatever the reason for this extremely limited circulation, Cape had copies of the final report and the preliminary reports, but never mentioned them publicly, and certainly never breathed a word of it to its U.S. customers. In fact, Cape disseminated exactly the opposite story. While it is true that the PRU was aware of what the mesothelioma survey revealed, and did not publicize the results, the PRU also was not in the business of selling raw asbestos for profit around the world. Cape certainly was. The PRU report was not discovered for 20 years until an enterprising journalist researching the Cape story for a documentary located it in an archive in South Africa.

Dr. Smither returned from South Africa on June 30, 1962.⁸⁴ Less than two weeks later, on July 12, 1962, Drs. Smither and Gaze attended a meeting in London of the Asbestosis Research

⁸² *Id.* at 41.

⁸³ Letter from Walters to Baxter (July 19, 1962).

⁸⁴ Smither, *Visit to South Africa* (August 1962) at 42.

Council (ARC).⁸⁵ The ARC was an industry group founded by Cape and another mining and asbestos products company, Turner & Newell.⁸⁶ The ARC sponsored research into asbestos disease and had a hand in shaping final reports given its funding of the studies.⁸⁷ Scientists and physicians from Queen's College in Cambridge, Reading University, and Cambridge University, and some industry representatives attended the July 12 meeting.⁸⁸ The Receiver located the 6-page detailed memorandum reporting the detailed minutes of the meeting.⁸⁹ As this group met to discuss asbestos disease, Dr. Smither and Dr. Gaze remained silent and reported nothing about the PRU study, nor even that Dr. Smither just returned from a three-week trip to South Africa to investigate mesothelioma in the mines.⁹⁰

i. Cape continues selling asbestos to the U.S. market through a fake Lichtenstein company – evading liability but continuing to profit.

As the Park Plaintiffs presented in their Appointment Motion, when Cape closed NAAC, it did *not* stop selling asbestos in the United States. The Receiver presented additional facts in its Report detailing the scheme to conceal its identity to U.S. litigants and continued selling the same South African asbestos fibers with the use of a Lichtenstein pass-through entity, Associated Minerals Corporation (“AMC”), to the same list of customers in the U.S. market. Anthony Penna, in-house counsel for Cape, referred to this scheme, which also included re-branding the entire

⁸⁵ ARC-19th meeting (July 12, 1962).

⁸⁶ See generally Geoffrey Tweedale, *Science or Public Relations? The Inside Story of the Asbestosis Research Council, 1957–1990*, 38 AM. J. INDUS. MED. (2000).

⁸⁷ *Id.* at 723-29.

⁸⁸ ARC-19th meeting (July 12, 1962).

⁸⁹ *Id.*

⁹⁰ See generally *id.*

NAAC operation as an independent entity under a new name, Continental Products Company (“CPC”), as only “a difference in form.”⁹¹

Cape disguised this scheme even from NAAC’s then-president, Charles Morgan, when Penna asked Morgan to consider opening CPC. While Cape averred that Morgan was well aware of the connection to Cape,⁹² in reality, the true scheme was on a need-to-know basis, and Morgan did not need to know anything. He was simply Cape’s U.S. puppet. Morgan testified that Penna “said he was the attorney representing Associated Minerals Corporation.”⁹³ Morgan testified that he did not know that Penna was contacting him on behalf of Cape.⁹⁴ He did not know who owned AMC, and no one had suggested to him that there was a relationship between Cape and it.⁹⁵

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

⁹² *Id.* at Cape_Receiver_00132215 (“Q. And also the reason why you did not wish the new arrangements [related to Cape’s involvement in setting up CPC] to become publicly known? A. Yes, I did. I think that it probably omitted one additional reason – that certainly Mr. Morgan in his new entity would not have wanted it to be disclosed that he was dealing with a company that was still related to Cape.”).

⁹³ Deposition of C. Morgan, Feb. 20, 1981, at Cape_Receiver_00096003.

⁹⁴ *Id.* at Cape_Receiver_00096063-4 (“Q. When Tony Penna contacted you on behalf of the Lichtenstein corporation you knew, did you not, in fact he was actually contacting you on behalf of Cape Asbestos? A. No, Sir, I did not know that.”).

⁹⁵ *Id.* at Cape_Receiver_00096064 (“Q. Do you know who owns the Lichtenstein corporation? A. No, Sir. Q. Has anyone ever suggested to you that Cape Asbestos has some ownership in the Lichtenstein corporation, Associated Minerals Corp.? A. Definitely not. Q. Has anyone ever suggested to you that any of the principals of Cape Asbestos had some interest in that Liechtenstein corporation? A. No, Sir.”).

Once Morgan agreed to establish CPC, Cape's lawyers at the Lord Bissell firm in Chicago drew up the incorporation documents.⁹⁶ Rather than establishing a direct connection between the newly formed CPC and a Cape-named company, Penna spearheaded the creation of a Liechtenstein company, AMC, a seemingly unrelated entity, which was in truth an Oppenheimer subsidiary. As Penna described, "everyone was concerned whether they were mining companies or Cape Industries or any company that was a party to these sales should not by its actions put either the mining companies or Cape at risk."⁹⁷ "The Lichtenstein company was a separately constituted company but it certainly had no direct employees of its own. . . . It was primarily an invoicing company."⁹⁸ Cape's involvement was pervasive. Confronted with evidence, Penna was forced to admit, "Yes, it seems to be contemplated that Cape Asbestos Fibres would subscribe the initial capital."⁹⁹

Even before NAAC closed, Morgan reached out to customers to let them know of the formation of CPC, thereby ensuring a seamless sales transition between the companies.¹⁰⁰ To

⁹⁶ *Id.* Cape_Receiver_00095988 ("Q. Who drew the Articles of Incorporation? A. Mr. Max Meyer. At least I asked him to do this work for me. Who actually did the work I couldn't say.").

⁹⁷ Cape_Receiver_00132246.

⁹⁸ *Id.* at Cape_Receiver_00132239-40.

⁹⁹ *Id.*

¹⁰⁰ Deposition of C. Morgan, Feb. 20, 1981, at Cape_Receiver_00096022. ("I advised them that North American Asbestos was being liquidated, it was no longer to be in the position to supply them with fiber, I had made a connection where I thought I could supply them with fiber, I would like their consideration very much."); Ex. 81, Deposition of C. Morgan, Feb. 20, 1981, at Cape_Receiver_00096003, Cape_Receiver_00096063-4 ("Q. When Tony Penna contacted you on behalf of the Lichtenstein corporation you knew, did you not, in fact he was actually contacting you on behalf of Cape Asbestos? A. No, Sir, I did not know that."); *id.* at Cape_Receiver_00096064 ("Q. Do you know who owns the Lichtenstein corporation? A. No, Sir. Q. Has anyone ever suggested to you that Cape Asbestos has some ownership in the Lichtenstein corporation, Associated Minerals Corp.? A. Definitely not. Q. has anyone ever suggested to you that any of the principals of Cape Asbestos had some interest in that Liechtenstein corporation? A. No, Sir.").

ensure the success of the new venture, Morgan testified that CPC received a \$12,000 check “[c]are from North American Asbestos” to start the company.¹⁰¹

CPC’s offices were in the same building as NAAC had previously had its offices: “North American Asbestos was on the 29th floor and Continental Products Corporation took a lease on the 12th floor.”¹⁰² All of the NAAC filing cabinets that had been on the 29th floor were moved to the 12th floor, and all of the NAAC employees—Joan Holtze, Jean Canzoneri, and Sue Purrington—moved with Morgan to CPC.¹⁰³ CPC also took over the NAAC employees’ pension plan.¹⁰⁴ Joan Holtze testified that she sat at the same physical desk at CPC as she had when she worked for NAAC.¹⁰⁵ In this way, Cape hoped to escape liability, but continued selling asbestos fibers to virtually the same contact list using a shell game and companies in Liechtenstein and South Africa to conceal any connection between it and the United States.

A.R. Sarabia wrote a memorandum contained in the Lord Bissell client file to memorialize the new sales arrangements for the sale of Cape asbestos to the United States from Liechtenstein through CPC.¹⁰⁶ On June 26, 1978, Meyer wrote Penna advising that the Cape Mines would be protected from default judgments with the Liechtenstein company “between them and any operations in the United States.”¹⁰⁷ Penna described the Liechtenstein company—which had no employees and was just an invoicing entity, as being camouflaged to disguise from “plaintiffs in

¹⁰¹ *Id.* at Cape_Receiver_000 96000.

¹⁰² *Id.* at Cape_Receiver_00095991.

¹⁰³ *Id.* at Cape_Receiver_00095992-3.

¹⁰⁴ *Id.* at Cape_Receiver_00096066.

¹⁰⁵ Deposition of J. Holtze, Apr. 12, 1979, at Cape_Receiver_00097838-9.

¹⁰⁶ Memo to NAAC File re Liquidation of NAAC (April 7, 1978).

¹⁰⁷ Letter from M. Meyer to A. Penna (June 26, 1978). Meyer was in the thick of the plan to create CPC and in fact formed the corporation, according to Gerry Morgan, the President of NAAC at the time. *See* Dep. of C. Morgan May 18, 1982 at 39. In a memo dated Dec 19, 1983, a Lord Bissell Partner inquired of Meyer about his formation of CPC in 1978 but noted that there were no billing records at LBB relating to this work, Letter from Ingersoll to Meyer (Dec. 19, 1983).

future U.S. asbestos litigation” (Cape's words) the fact that the company was still selling asbestos in this country. On July 29, 1980, Mr. Meyer wrote Richard Gaze at Cape advising on a variety of issues, but in closing Meyer wrote on Lord Bissell letterhead: “My deposition was taken last Thursday in the four Bloomington cases. I guess the main thing that came out was that I know nothing or that I can’t remember anything.”¹⁰⁸

iii. More recent activities of Cape, including its activities parallel to this action, demonstrate continued moral fraud

Cape maintained its position of not appearing in U.S. courts when a complaint was filed against it in *Park*. Rather than completely ignoring the U.S. proceedings, however, Cape engaged in a course of conduct to attempt to weaken the effectiveness of this Court’s appointed receiver – *outside* of this Court.

First, Cape instituted a Part 8 Proceeding in the High Court of England and Wales against the Receiver personally to seek injunctions against his further work as the court-appointed receiver of Cape in South Carolina.¹⁰⁹ In support of its Part 8 Proceeding, Cape filed a series of sworn statements of Ran Oren¹¹⁰ and Cape’s U.K. lawyers. These sworn statements set forth Cape’s position on the facts that would require the English court to enjoin Mr. Protopapas from acting as the Receiver for Cape in South Carolina. This one-sided presentation included many incomplete statements as to the work of the receiver and this Court, including at least one incomplete statement

¹⁰⁸ Letter from M. Meyer to R. Gaze (July 29, 1980).

¹⁰⁹ While the *Tibbs* Third Party Defendants assert that improper service of Cape renders the Cape receivership an absolute nullity, Cape’s activities in foreign courts, including the Part 8 Proceeding in England and a parallel proceeding in France, make clear that Cape is fully apprised of this action, including all filings made in these proceedings, which are described in filings in the foreign proceedings, including in affidavits by Cape’s director.

¹¹⁰ Mr. Oren is the sole director of Cape Intermediate Holdings Limited and also serves as CEO of Altrad Investment Authority S.A.S, a third-party defendant in the Receiver’s declaratory judgment action in the *Tibbs* asbestos personal injury action.

from this Court during a hearing in September 2024. In his witness statement, Ran Oren stated to the U.K. Court:

It bears mentioning that at [the September 24, 2024] hearing, Toal J indicated her expectation that the Receiver's role would be "*to marshal the assets, including the bank accounts*" of the Cape Group. I have set out at length in Section I of Oren 1 the serious consequences this might have on the Cape Group, for example, under the power to obtain the financial records belonging to or pertaining to the Claimants, the Receiver could make direct contacts 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.¹¹¹

This Court did not state in the September 24 hearing that the Receiver should gain control of and use the Cape bank accounts. Mr. Oren took this Court's statements regarding the broad statutory authority given to receivers in South Carolina out of context. In the hearing, this Court engaged with counsel for Anglo American and De Beers (defendants in the Receiver's third-party declaratory judgment action in *Tibbs*), Scott Balber, regarding the authority of the receiver to obtain documents from various sources relevant to the Cape receivership. The exchange occurred in the context of Mr. Balber noting that the Court had granted the Receiver the power to review and obtain documents from any financial institution, bank, credit union, or savings and loan, among other entities.¹¹² The Court responded that finding all relevant documents is not uncommon, and continued as follows:

The Court: But these corporations are alleged to be part of a single group that is financially responsible for the supply to places in North and South Carolina of asbestos that harmed you. **And part of what the receiver of the corporation is to do is to verify that by looking at financial records.**

The first receivership I was ever involved in was as a practitioner. . . when we put [a life insurance company] into a state receivership, a South Carolina receivership, to marshal its assets, pay its creditors,

¹¹¹ Ran Oren Witness Statement 2 at ¶ 50 (emphasis in original) (citations omitted).

¹¹² Transcript of Sept. 24, 2024 hearing at 42.

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

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

Mr. Balber: Understood, Judge. And my point was exactly that – not to be presumptuous, but **I suspect in the receivership scenario you just described, you and your partners obtained access to the insurance company's documents, right, as part of the exercise and used those documents for the purpose of marshaling assets, identifying and paying creditors, et cetera. That's all we want here.** All we want is the same thing. We want this receiver to obtain the documents of the entity in its receivership, Cape, and provide the documents to us that are relevant. Because I think we all want to know . . . what does Cape's documents say about this liability avoidance scheme. [What] do Cape's documents say about whether my clients were controlling it, directing it, part of it or not. . . . I'm pretty optimistic they will not say that, but I think we all need to know what Cape's documents say.

The Court: Right. Also, of course, **part, again, of what the receiver must do is to marshal the assets, including bank accounts and others. And that's why that is in there . . . And it seems to me that you two groups of lawyers to to be able to figure out a fair way to navigate that without totally disrupting the privacy of your clients.** And protective orders are a way to do that. Some limitations on scope [] are a way to do that. But that's why those provisions are there.¹¹³

This explanatory exchange was made in the context of how and why South Carolina receivers marshal *documents*. Both Mr. Balber and this Court were well aware that the discussion was about the general powers of South Carolina receivers and, more specifically, the role and nature of the Cape receiver here. In that context, the discussion was about how best to access relevant historical financial records to determine the validity of the allegations that “these corporations are alleged to be part of a single group that is financially responsible for the supply to places in North and South

¹¹³ *Id.* at 44-45 (emphasis added).

Carolina.”¹¹⁴ While both parties were aware that South Carolina receivership law does allow the actual marshalling of a company’s bank accounts, neither the Court nor Mr. Balber were discussing whether the Receiver could take over Cape’s financial accounts in England or elsewhere.¹¹⁵

Based in part on Cape’s inaccurate portrait of this Court as acting beyond the scope of South Carolina law in the appointment of the Receiver, on November 22, 2024, Cape obtained an injunction against this Receiver individually and in his personal capacity in the High Court of England and Wales. The order purportedly enjoined the receiver from acting as receiver for Cape worldwide, including before this court. This was done in direct violation of the Barton Doctrine and the explicit language in the receivership order that the receiver “may not be sued outside this court without obtaining the receiver's consent or an order of this court prior to doing so.”

The South Carolina Supreme Court characterized the U.K. Order as "shocking and indefensible.”

Second, Cape’s English lawyers have used the U.K. Order to intimidate the Receiver from continuing to act in his court-appointed capacity as the Receiver for Cape. In a series of letters starting in November 2024, the lawyers have threatened the Receiver with personal financial penalties and criminal sanctions with one objective in mind—to stymie the judicial process here in South Carolina that exists to serve South Carolina claimants.

¹¹⁴ *Id.* at 44.

¹¹⁵ This was not the only statement of this Court that the Altrad UK subsidiaries took out of context. Paragraph 19 of the second Paul Brehony witness statement not only references the same statement of this Court explained above but also takes the statement that the Court will “pray the biggest prayer I have we don’t have any other people involved in this matter who try to appeal my order” out of context. Second Witness Statement of Paul Brehony, at 19(d). It is not clear what Brehony suggests with this quote, but it is likely something other than what those familiar with the receiverships understand in the context of the serial appeals of nearly every order of this Court in this action.

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

Third, Cape has threatened insurance companies against providing the Receiver with insurance information relevant to the Cape receivership in response to subpoenas issued by the Receiver. Ran Oren, in his capacity as sole director of Cape Intermediate Holdings Limited, threatened at least four insurance companies against responding to a subpoena for insurance information issued from this court and in these proceedings.

Cape's actions in the last year can best be described as a "conscious intent to defeat, delay, or hinder" creditors of Cape.

b. The facts as presented are sufficient to establish Cape's moral fraud

In *Welch v. Advance Auto Parts*, the South Carolina Supreme Court upheld this Court's appointment of a receiver over Atlas Turner under S.C. Code § 15-65-10(5), finding that "Atlas Turner engaged in moral fraud against the trial court, the state of South Carolina, and Respondent." 916 S.E.2d at 332. Third-Party Defendants argue that *Welch* requires that a defendant engage in fraudulent conduct during the course of a case, including failure to comply with a trial court's orders, or concealing information from an opposing party and the court in discovery. Neither *Welch* nor the authorities on which *Welch* rely require the type of discovery abuse Third-Party Defendants suggest.

To the contrary, *Welch* explains that the South Carolina Supreme Court has “upheld the appointment of a Receiver before judgment where the plaintiff has made a prima facie showing that the defendant intends to fraudulently avoid or defeat the plaintiff’s recovery.” *Welch*, 916 S.E.2d at 330. *Welch* cited the South Carolina Supreme Court’s decision in *Virginia-Carolina Chemical Co. v. Hunter*, 84 S.C. 214, 66 S.E. 177 (1909), for the proposition that “when a debtor is trying to defeat his creditors by an act or course of conduct which indicates moral fraud—a conscious intent to defeat, delay, or hinder his creditors in the collection of their debts—then a court of equity will grant any relief within its jurisdiction appropriate and effective to protect creditors against the fraud without requiring the creditor to run the risk of losing his debt from the delay of obtaining judgment and a return of nulla bona on the execution.” 84 S.C. 214, 220-21, 66 S.E. 177, 179.

Welch notes that Atlas Turner’s first line of defense “when faced with lawsuits—for allegedly causing serious injury and death to American workers and citizens related to the pernicious products it sold for profit even after the lethal risk these products posed was known—its tactic has been to claim that, if the courts exerted jurisdiction over them, it would offend the traditional notions of fair play and substantial justice due process guarantees. When that ploy fails, Atlas Turner’s version of due process is to refuse to abide by court orders requiring it to answer basic information. It is alleged that Atlas Turner has come into our state, turned profits by selling its hazardous wares in our state, and inflicted grievous harm on citizens in our state. Then, when the shadow of the courthouse door falls upon it, it insists it was never here, and if a court asks anything about it, it responds: we have nobody who knows anything.” *Welch*, 916 S.E.2d at 331 (internal citations omitted). While Third-Party Defendants argue that moral fraud must present during the pendency of South Carolina litigation, the Supreme Court’s explanation of Atlas

Turner's conduct indicates that Atlas Turner's moral fraud began decades before the Welch case came into being—both in terms of the company's conduct related to the sale of its products *and* its development of a litigation strategy designed to ignore orders of courts that properly exercised jurisdiction over it.

Cape's conduct, like Atlas Turner's, was the product of company policy. Cape, however, was far more ruthless and deliberate than Atlas Turner.

Cape mined and distributed the most dangerous forms of asbestos in a manner far outstripping the damage done by Atlas Turner. Asbestos is a mineral that is mined from the ground.¹¹⁶ There are three commercial types of asbestos: chrysotile, amosite and crocidolite.¹¹⁷ Amosite and crocidolite—which are by far the most harmful to humans—were mined by Cape in South Africa.¹¹⁸ Asbestos fiber is processed at the mines and then sold to manufacturers of asbestos-containing products, such as pipe insulation and brake linings.¹¹⁹

Cape had a near monopoly on the global supply of amosite and crocidolite.¹²⁰ There were fewer than five principal asbestos mining companies world-wide, such as Cape.¹²¹ Unlike the small group of miners, the defendant in *Welch*—Atlas Turner—was one product manufacturer of many hundreds.¹²² Most of the manufacturers of asbestos-containing thermal insulation products in the

¹¹⁶ Robert L. Virta, *Asbestos: Geology, Mineralogy, Mining, and Uses*, U.S. Geological Survey Open-File Rep. 02-149, at 5 (2002).

¹¹⁷ *See Id.*

¹¹⁸ Jock McCulloch, *Surviving Blue Asbestos: Mining and Occupational Disease in South Africa* 115 (2002).

¹¹⁹ Virta at 13.

¹²⁰ Jock McCulloch, *Asbestos Blues: Labour, Capital, Physicians & the State in South Africa* 27 (James Currey 2002).

¹²¹ *Id.* at 30.

¹²² *See, e.g.,* "Asbestos Manufacturers," The Mesothelioma Center (Nov. 14, 2024), <https://www.asbestos.com/companies/>.

United States filed for bankruptcy, and more than 60 of these companies established trusts to compensate asbestos victims.¹²³

Certain asbestos mining companies, like Cape, were the source of all the amosite and crocidolite asbestos fibers used in South Carolina and the rest of the United States.¹²⁴ Cape was the spigot through which hundreds of thousands of tons of asbestos flowed from its mines to almost 40 states, over 500 individual customers such as Johns-Manville Corp. and Pittsburgh Corning, and to 750 manufacturing plants.¹²⁵ Cape sold asbestos direct to customers in South Carolina, as well.¹²⁶ Cape was aware that its asbestos could ultimately expose people in any of the 50 states, regardless of where the products were manufactured.¹²⁷ Cape is therefore fundamentally different from Atlas Turner, which manufactured a product, spray limpet insulation, from the asbestos fiber it mined and sold that product to customers in the United States, including in South Carolina.

¹²³ Ex. U.S. Gov't Accountability Off., GAO-11-819, *Asbestos Injury Compensation: The Role and Administration of Asbestos Trusts Highlights* (2011) (report noting that “about 100 companies have declared bankruptcy at least partially due to asbestos-related liability” and that “since 1988, 60 trusts have been established to pay claims”).

¹²⁴ J.S. Harington & N.D. McGlashan, *South African Asbestos: Production, Exports, and Destinations*, 1959–1993, 33 AM. J. INDUS. MED. 321, 323 (1998) (reporting that in the early-1960s North America was a major recipient of South-African amosite and crocidolite exports). Karen Selby, *Mesothelioma in South Africa*, ASBESTOS.COM (Apr. 17, 2025), <https://www.asbestos.com/mesothelioma/south-africa/> (noting South Africa supplied 97 % of the world’s crocidolite and “practically all” amosite and that the mines were owned by companies including Cape Asbestos); *See also, e.g.*, North American Asbestos Corporation, “States Where Suits Have Been Filed and States We Shipped Asbestos To,” at Cape_Receiver_00138819–21; North Am. Asbestos Corp., Customer List, at Cape_Receiver_00138265–282) (Oct. 6, 1976).

¹²⁵ *See id.*

¹²⁶ N. Am. Asbestos Corp., NAAC Sales List, NAAC-ML-025040; Ex. 69.

¹²⁷ Deposition of Richard Gaze at 26, *Yandle v. PPG Indus., Inc.*, No. TY-74-3-CA (E.D. Tex. June 4–5, 1975).

Further, the conduct of Atlas Turner touched people who used or worked around its products. Cape is different—its conduct touched every person who used or worked around ***any asbestos-containing product*** made by a multitude of manufacturers containing Cape asbestos.¹²⁸

The scale of Cape's asbestos fiber sales into the U.S. market, its indifference to the harm these sales would cause in light of the scope of its unique, early knowledge of the health hazards of asbestos, and the ruthlessness of its campaign to avoid U.S. liability from the raw asbestos fibers it sold to be used in every state in this country—a campaign that continues to this day—provides the foundation for Cape's unparalleled moral fraud.

On this foundation, Cape concocted a scheme to fully conceal assets that could be answerable to U.S. asbestos claimants to whom Cape deemed it has no "moral responsibility" more egregious than Atlas Turner's conduct in terms of its current and past disrespect for the South Carolina judicial system. Rather than appear in South Carolina to answer the *Park* complaint, or to object to the appointment of the Receiver, Cape ignored the existence of the action. Instead of engaging with the U.S. court system, it instituted parallel proceedings in England designed to ensure that if *Park*, any other plaintiff, or the Receiver sought to enforce any future judgment in England, it would be barred from doing so because another court already had considered the issues presented in an un rebutted presentation by Cape. Most recently, to further solidify its position should any party attempt to domesticate a U.S. order in England, Cape and Altrad, both entities within the same corporate group, entered into a settlement agreement to avoid a ruling against Altrad. Altrad's lawyers requested that a proceeding to confirm the appropriateness of that settlement agreement – again a one-sided presentation to an English court –take place before this

¹²⁸ Receiver for Cape PLC's Proposed Amended Third-Party Complaint, *Tibbs v. 3M Co.*, No. 2023-CP-40-01759 (S.C. Ct. Com. Pl. June 20, 2025).

Court's scheduled trial on the Receiver's third-party action against Altrad. All of these actions are undertaken to avoid enforcement of any judgment against Cape, without the risk of engaging in proceedings in a U.S. court.

Cape's conduct, as documented at length by both the Park Plaintiffs and the Receiver, demonstrate precisely the type of moral fraud – “a conscious intent to defeat, delay, or hinder his creditors in the collection of their debts” – the South Carolina Supreme Court held was sufficient to justify the appointment of a receiver in *Welch*.

c. Analysis of facts related to the danger of Cape's insolvency under S.C. Code § 15-65-10(4)

This Court appointed the Receiver over Cape under S.C. Code §§ 15-65-10(4) and (5). In addition to this Court's finding that Cape's moral fraud was sufficient to justify the appointment of a receiver over Cape under § 15-65-10(5), this Court finds that Cape's financial position renders it in danger of insolvency under § 15-65-10(4). The publicly available information regarding Cape suggests that Cape Intermediate Holdings Limited (“CIHL”) is in danger of insolvency for two reasons.

First, CIHL is in imminent danger of insolvency because it is a non-operating shell company in a corporate structure subject to the full control of an ultimate parent – Altrad Investment Authority S.A.S. – that could eliminate, shift, or move the company at any time. This means that even though CIHL appears to declare an annual dividend each year, those are the profits of another company that are being funneled up the corporate chain to Altrad, and those profits easily could be shielded from plaintiffs. This is how the system was designed.

CIHL is a UK-registered holding company with no employees, physical assets, customer contracts, or operational footprint.¹²⁹ It exists solely as a corporate shell.¹³⁰ Ran Oren, Altrad Investment Authority S.A.S.’s CEO, is the sole officer and director of CIHL.¹³¹ CIHL acts as a pass-through entity for profits of four entities it wholly owns: Cape Insulation Ltd., Cape Industries Ltd., Cape Building Products Ltd., and Altrad Services Ltd.¹³² Importantly, though, the three Cape entities – Cape Insulation Ltd., Cape Industries Ltd., and Cape Building Products Ltd. – are legacy Cape companies that generate no revenue.

Altrad Services Ltd., which became a CIHL subsidiary *after* Altrad purchased Cape in 2017, is the only operational entity in the CIHL structure. In 2024, for example, Altrad Services Ltd. declared a £ 24,769,000 dividend based on its operating profits for that year.¹³³ Because CIHL wholly owns Altrad Services Ltd., that full dividend went to CIHL. CIHL, in turn, did not hold any portion of the dividend itself, but instead declared the full £ 24,769,000 as a dividend to its shareholder.¹³⁴ Because of this, it is unclear whether CIHL holds any funds at all at any given moment – let alone sufficient funds to pay a judgment in the *Park* claim.

Indeed, the CIHL annual reports in the years prior to the Receiver’s appointment demonstrate a shift in CIHL’s ability to pay its own debts. In evaluating CIHL as a going concern, the 2020 Annual Report stated, “the director believes that the company is well placed to manage

¹²⁹ See CIHL Annual Report 3, 12, 14 (2025) (“Cape Intermediate Holdings had no employees in the current or prior year.”); *id.* at 3 (“The Company is a non-trading holding company”).

¹³⁰ See *id.* at 13 (“the director was not remunerated for his services to the Company during the year. No director accrued retirement benefits . . . during the current or previous year. [CIHL] had no employees during the current or prior year.”).

¹³¹ *Id.* at 8.

¹³² See *id.* at 13; see also Altrad Services Ltd. Annual Report 33 (2025); Cape Insulation Ltd. Annual Report 9 (2025); Cape Industries Ltd. Annual Report 9 (2025); Cape Building Products Ltd. Annual Report 9 (2025).

¹³³ See Altrad Services Ltd. Annual Report at 9 (2025).

¹³⁴ See CIHL Annual Report at 7 (declaring 24,769,000 as dividends received for 2024).

its business risks in the coming years.”¹³⁵ The same section in the 2021 CIHL Annual Report, however, relied on Altrad to pay any CIHL debts in order for CIHL to remain a going concern: “The director has a reasonable expectation that [CIHL] will continue in operational existence for the foreseeable future having received a letter of support from [AIA]. This letter confirms continuing support for 12 months from the date of signing of these financial statements. The director has reviewed the resources of [AIA] and have concluded there is sufficient scope and headroom in its resources to adequately support [CIHL] over the next 12 months.”¹³⁶

This is further supported by the Altrad Group financial statements, which establish that CIHL has no money to pay asbestos claims other than a limited claim fund for asbestos claims of certain former Cape U.K. employees – funds that are untouchable for U.S. plaintiffs who sue CIHL for their asbestos-related diseases.

Altrad purchased Cape in 2017. Altrad publishes financial results are part of a “Group” filing of all entities related to Altrad. According to Altrad’s Interim Consolidated Financial Statements dated February 28, 2025, CIHL does not appear to maintain funds to pay any asbestos claims. Instead, Altrad reports only that “Management believes that, assuming no significant deterioration in business performance and no material change in legal precedence or judgments, the Group will be able to fund its subsidiary Cape Claims Services Limited to meet all claims to be settled under the Scheme of Arrangement settlement plan and the Group has sufficient funds to satisfy all other *UK claims* settled outside the Scheme of Arrangement.”¹³⁷

¹³⁵ CIHL Annual Report at 6 (2020).

¹³⁶ CIHL Annual Report at 6 (2021).

¹³⁷ Altrad Grp., Interim Consolidated Financial Statements at 32 (Feb. 28, 2025) (emphasis added).

The Scheme of Arrangement to which Altrad refers is a 2006 court-ordered scheme for the payment of asbestos disease claims from former UK employees of certain Cape subsidiaries.¹³⁸ According to a 2022 annual report, Altrad Group had set aside £118 million to address certain *non-U.S.* historical claims relating to asbestos exposure, but also disclosed AIA's letter of support of it as a going concern.¹³⁹ However, according to an April 2025 news article, "Altrad's spokesperson told *The Times* it had never manufactured or sold asbestos but continues to support Cape's compensation scheme, which has paid over £60m to former employees who developed cancer following asbestos exposure, with a further £70m set aside."¹⁴⁰ This would mean Altrad only has £70m left to pay asbestos claims under the Scheme of Arrangement, and again, that is a restricted fund designed to pay certain UK claimants. A complete lack of clarity exists as to the actual amount of funds available to pay Cape claims as well as whether CIHL actually can access those funds. What is clear, though, is *none* of those funds are intended for U.S. plaintiffs.

CIHL is only funded for a limited period each year – theoretically the time between when Altrad Services pays its dividend and CIHL declares that money fully as a dividend to its parent - and even that structure is subject to change by Altrad at any time. Further, any funds earmarked for payment of asbestos claims by any Cape-related structure are not within CIHL and are limited to certain *non-U.S.* claimants. This narrow definition of future claims, combined with the fact that CIHL is a non-operational holding company, establishes the danger of imminent insolvency for CIHL.

¹³⁸ *See id.*

¹³⁹ Altrad Services Limited Annual Report (2022), at Cape_Receiver_00248438 ("The Group continues to receive claims, from both individuals and insurance companies, in connection with historical alleged exposure to asbestos. Where claims are determined to have merit, the costs are provided for and claims are settled in the ordinary course, otherwise claims are defended.").

¹⁴⁰ <https://www.healthandsafetyinternational.com/article/1913269/former-asbestos-firm-offers-victims-3m-gag-clause>

Second, since 1978, Cape has avoided liability to U.S. litigants by refusing to appear in U.S. courts. As demonstrated above, Cape has gone to great lengths to protect itself against these liabilities, including creating a Liechtenstein offshore company. Faced with the possibility that U.S. litigants may now be able to access funds to pay future claims, and given that Cape is not a stand-alone company, but instead is a holding company within a large corporate structure, one should expect that Altrad will do anything to avoid its historical liabilities, including rendering the company fully insolvent. Indeed, Altrad already has informed the Receiver that it has entered into a “settlement agreement” with itself (between two Altrad entities) to release Mohed Altrad from any liabilities not only in *Park* and *Tibbs* but also in every other future U.S. personal injury action against any Cape entity.¹⁴¹

3. Grant of Receiver’s Motion to Enforce Subpoenas Against Insurers

In addition, the Insurers opposed the Receiver’s Motion to Enforce on the contention that the Receiver’s subpoenas requiring production were invalid. Sections 15-9-270 and 38-5-70 of the South Carolina Code, however, allow subpoenas to be served upon insurers registered with the South Carolina Department of Insurance by service on the Department of Insurance as the Insurers’ statutory agent for service of process.

Section 38-5-70 provides in pertinent part that

Every insurer shall, before being licensed, appoint in writing the director and his successors in office to be its true and lawful attorney upon whom all legal process in any action or proceeding against it must be served and in this writing shall agree that any lawful process against it which is served upon this attorney is of the same legal force and validity as if served upon the insurer . . .

¹⁴¹ Cape, Altrad, and Sparrows, Agreement for Full and Final Settlement and Release of Claims (2025).

Section 15-9-270 explains the procedure required for a party to serve an insurance company and if met “[t]his service is considered sufficient service upon the company.” The procedures outlined in sections 15-9-270 and 38-5-70 “were intended by the legislature to be methods of obtaining jurisdiction over a foreign insurance company.” *Equilease Corp. v. Weathers*, 275 S.C. 478, 483, 272 S.E.2d 789, 791 (1980); see also *White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 9, 753 S.E.2d 537, 541 (2014) (holding the purpose of sections 15-9-270 and 38-5-70 is “provide an insured with a method to obtain service of process on insurance companies.”).

This Court further relies 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, which states, “It is this Office’s opinion that a court would likely find the language used in S.C. Code §§ 15-9-270 and 38-5-70 is broad enough to include subpoenas within the types of process that are subject to the substituted service procedures thereunder,” and advises the Department of Insurance to “act in accordance with the present broad language of the statute.” Based in part upon the Attorney General’s analysis, I find that the Receiver properly served the subpoenas through the Department of Insurance.

Finally, the Insurers argue that the Receiver’s request for information related to Cape beginning in 1930 is overly broad. Pursuant to the Insurers’ arguments and the Receiver’s agreement, this Court orders that the Insurers must search for and produce all materials related to Cape beginning in 1964 to 1993.

Accordingly, the Receiver's Motion to Enforce Subpoenas is **GRANTED**, and Insurers have until 30 days to provide fulsome responses to the Receiver.

IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Richland Common Pleas

Case Caption: Isabella Park , plaintiff, et al vs Armstrong International Inc ,
defendant, et al

Case Number: 2021CP4002727

Type: Order/Other

So Ordered

Jean H. Toal

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CIVIL ACTION NO: 2021-CP-40-02727

ISABELLA PARK,

Plaintiff,

v.

ORDER

ARMSTRONG INTERNATIONAL, et al.,

Defendant.

This matter comes before the Court on the motion of certain unnamed Underwriters at Lloyd's, London; Continental Casualty Company; and Liberty Mutual Insurance Company (collectively, "Certain Insurers"), pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, to Reconsider or, in the Strict Alternative, to Alter or Amend, this Court's October 13, 2025 Order on Receiver's Motion to Enforce Subpoenas Against Certain Underwriters at Lloyd's London, Continental Insurance Company, and Liberty Mutual Insurance Company (hereinafter, the "October 13 Order").

The October 13 Order related to April 28, 2025 subpoenas from Peter Protopapas, as the Court's appointed receiver for Cape PLC, to Certain Insurers (hereinafter, the "Subpoenas"). Certain Insurers raised numerous substantive and procedural objections to the Subpoenas. On June 2, 2025, Mr. Protopapas filed a Motion to Enforce the Subpoenas. After significant briefing and a lengthy hearing on the Motion to Enforce, the Court entered the October 13 Order granting the Receiver's Motion to Enforce.

On October 20, 2025, Certain Insurers filed a timely Motion to Reconsider. The Court scheduled a hearing on the Motion to Reconsider to take place on October 29, 2025. Prior to the scheduled hearing, the Receiver reported to the Court and counsel that he no longer believed the

Subpoenas were necessary and indicated that he would ask the Court to vacate the October 13 Order. The Receiver subsequently confirmed this request on the record at the October 29, 2025 hearing. In light of the recent settlement between the Receiver and certain Anglo American and related entities in connection with third-party claims asserted in *Tibbs v. 3M Co.*, 2023-CP-40-01759, the Receiver reported that he no longer believed that the Subpoenas in this case are necessary. As a result, he asked that this Court deem the Subpoenas and his Motion to Enforce as withdrawn and that the Court vacate the October 13, 2025 Order. Without waiving their prior objections, Wesley Sawyer, counsel for Certain Insurers, confirmed that an Order vacating the October 13, 2025 Order and deeming the Subpoenas and the Motion to Enforce as withdrawn would resolve the issue. Certain Insurers are only involved in this litigation as recipients of non-party subpoenas. Therefore, if the Court's October 13, 2025 Order is vacated and the Subpoenas and Motion to Enforce are withdrawn, then Certain Insurers no longer have a connection with this litigation.

The Court finds that the relief requested by the Receiver is appropriate and would end a dispute that has been thoroughly litigated in this matter. Therefore, for good cause shown, the Court ORDERS, ADJUDGES AND DECREES:

- (1) The Court's October 13, 2025 Order is hereby vacated;
- (2) The Receiver's June 2, 2025 Motion to Enforce Subpoenas Against Certain Insurers Pursuant to Rule 45 is deemed withdrawn and stricken;
- (3) The Receiver's April 28, 2025 Subpoenas to Continental Casualty Company, Liberty Mutual Insurance Company, and Underwriters at Lloyd's London are deemed withdrawn and stricken.

IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Richland Common Pleas

Case Caption: Isabella Park , plaintiff, et al vs Armstrong International Inc ,
defendant, et al

Case Number: 2021CP4002727

Type: Order/Other

So Ordered

Jean H. Toal

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