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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, Circuit Court Judge

Civil Action No. 2023-CP-40-01759
Appellate Case Nos.: 2025-002104

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 Corandp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited; ASCO, L.P.; Atlas Asbestos Co; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries Of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas Ct, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Inc.; SPX Corporation; Stafford Insulation Company; Standard Insulation Company Of N. C., Inc.; Starr Davis Company, Inc.; Starr Davis Company Of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable LLC; Thermo Electric Company, Inc.; Union Carbide

Corporation; Valves And Controls Us, Inc.; Velan Valve Corp.; Viking Pump, Inc.; Vistra Intermediate Company LLC; The William Powell Company Wind Up, Ltd.; Yuba Heat Transfer LLC; Zurn Industries, LLC.....DEFENDANTS,

And

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

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa LTD., De Beers PLC, individually and as successor in interest to De Beers S.A., De Beers Centenary AG, De Beers Consolidated Mines Ltd., n/k/a De Beers Consolidated Mines Proprietary Ltd., De Beers UK Ltd., De Beers Jewellers LTD., De Beers Jewellers US, Inc., Anglo American US Holdings Inc., Element Six US Corp., Element Six Technologies US Corp., Element Six Technologies (OR) Corp., First Mode Holdings, Inc., Platinum Guild International (U.S.A.) Jewelry Inc., Lightbox Jewelry Inc., Forevermark US Inc., Anglo American Crop Nutrients (U.S.A.) LLC, Charter Consolidated Ltd., ESAB Corporation, Central Mining & Investment Corporation Ltd., Cape Holdco Ltd., The Law Debenture Corporation PLC, Cape Industrial Services Group Ltd., Mohed Altrad, Altrad UK Ltd., Cape UK Holdings Newco Ltd., Altrad Services, Ltd., f/k/a Cape Industrial Services Ltd., Altrad Investment Authority S.A.S., Sparrows Offshore Group Ltd., Hawk Bidco US Inc., Arran Co US, LLC, Sparrows Offshore, LLC, and The Sparrows Group, LLC.....THIRD-PARTY DEFENDANTS,

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

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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,)

Plaintiffs,)

vs.)

3M COMPANY, ET AL.,)

Defendants.)

Case No.
2023-CP-40-01759

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

Third-Party Plaintiff,)

vs.)

ANGLO AMERICAN PLC, et al.,)

Third-Party Defendants)

TRIAL BEFORE: THE HONORABLE JEAN H. TOAL
VOLUME III, PAGES 435 - 534
DATED WEDNESDAY, OCTOBER 22, 2025

RICHLAND COUNTY JUDICIAL CENTER
1701 MAIN STREET
COURTROOM 3B
COLUMBIA, SOUTH CAROLINA

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I N D E X

WITNESS: JAMES TAYLOR HUGHEY BUXTON, ESQUIRE

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P R O C E E D I N G S

- - -

THE MARSHAL: All rise. Court come to order.

THE COURT: Please be seated.

Mr. Protopapas, we'll talk about this later.

MR. PROTOPAPAS: Yes, Your Honor. May I approach with Mr. Rawl and Mr. Carroll to the bench for a moment?

THE COURT: Yes.

MR. PROTOPAPAS: May we have this part off the record, Your Honor?

THE COURT: Yeah, why don't you come back here for a moment.

(Discussion was held off the record.)

THE COURT: All right. Ladies and gentlemen, before we commence, let me advise y'all of this. I have got something I've got to do at 12:30 with my cousin and I who run all the yarks and snarks that are at the end of the family business of a property we are closing something, and he is leaving town, so I need to go over to his office and sign something.

So I want to, wherever we are in the proceedings, halt things at 12:15 so I can get over to his office on Richland and sign the stuff. So just



1 kind of be advised on the front end that's where we are
2 going.

3 MS. JOYNER: Understood.

4 THE COURT: All right. Mr. Lay not here?

5 MS. JOYNER: He's not here yet, Your Honor.
6 I mean, I'm going to start.

7 THE COURT: Are you prepared to proceed?

8 MS. JOYNER: Yes, ma'am, I'm -- yes.

9 THE COURT: All right.

10 MS. JOYNER: Receiver calls James Buxton.

11 THE COURT: All right. Mr. Buxton, please
12 come around and be sworn.

13 MR. CARROLL: Your Honor, while Mr. Buxton is
14 taking his seat, the Altrad defendants want to note our
15 continued objections to these proceedings, the
16 receivership, the nullity, the absence of jurisdiction.
17 The same objections we've been making throughout, just
18 want to have it on record for day three.

19 THE COURT: Very good. Noted on the record.

20 Mr. Rawl.

21 MR. RAWL: Your Honor, my clients as well and
22 preserving personal jurisdiction.

23 THE COURT: Very well. All right.

24 /////

25 /////

1 Thereupon--

2 JAMES TAYLOR HUGHEY BUXTON,
3 was called as a witness, and having been first duly
4 sworn, was examined and testified as follows:

5
6 THE WITNESS: I do.

7 THE CLERK: Please have a seat. State your
8 full name for the record.

9 THE WITNESS: Name is James Taylor Hughey
10 Buxton.

11

12 DIRECT EXAMINATION

13 BY MS. JOYNER:

14 Q. Mr. Buxton, could you please tell the Court
15 about your educational background.

16 A. Yes. I'm a graduate of Princeton University
17 1995, with a bachelor's in history. And I received a
18 juris doctorate from the University of South Carolina
19 School of Law in 2002.

20 Q. And can you provide us some of your
21 professional experience?

22 A. Yes. After I graduated from law school, I
23 worked in Atlanta, Georgia, in the firm called Alston &
24 Bird, in a practice in the capital markets group there
25 for approximately three and a half years. And we

1 practiced in the areas of public and private
2 securities, corporate governance, mergers and
3 acquisitions, and general outside corporate counsel for
4 companies.

5 Q. And after Alston & Bird, where did you go
6 next?

7 A. Next went to another large firm called Hunt &
8 Williams in Richmond, Virginia, and continued similar
9 practice areas in what's called real estate investment
10 trust and specialty finance group.

11 Q. And after Hunt & Williams, where did you go?

12 A. Returned home to my hometown of Charleston,
13 South Carolina, and there I worked as special counsel
14 for business transactions for a firm called Young
15 Clement Rivers. I did that for about three and a half
16 years. During that time, I taught as an adjunct
17 professor for Charleston School of Law where I taught
18 mergers and acquisitions.

19 Q. And in 2010, what did you do?

20 A. In 2010 I got a wild hare and started my own
21 business and formed Buxton & Collie, a corporate
22 boutique in Charleston.

23 THE COURT: Say the last name.

24 THE WITNESS: Buxton & Collie, like the dog.

25 THE COURT: Spell the last name.

1 THE WITNESS: C-o-l-l-i-e.

2 THE COURT: All right.

3 BY MS. JOYNER:

4 Q. And you're at Buxton & Collie currently?

5 A. I am.

6 Q. And apart from your practice, have you been
7 involved in any leadership roles in service of the
8 profession in South Carolina?

9 A. Yes. Two of note. I'm the immediate past
10 chair of the South Carolina bar as a corporate banking
11 and security section counsel. I'm an immediate past
12 chair of that counsel. We advise -- we advise the --
13 the section -- the practitioners on things such as
14 legal -- FINRA and corporate transactions and related
15 matters.

16 Also served as the corporate law
17 representative for an entity called the South Carolina
18 Law Initiative, which is housed at the University of
19 South Carolina School of Law. That's run by Dean
20 Wilcox, and I served as the counsel representative for
21 corporate law advising on matters pending legislation
22 in the general assembly and -- and for reports of the
23 uniform law commissioner pending legislation.

24 Q. And at Buxton & Collie, what does that law
25 firm do?

1 A. We are namely a business transaction
2 boutique, and we also practice in the real estate area
3 as well, my partner. We -- my practice, in particular,
4 involves, similar to what I have done most of my
5 career, general outside corporate counsel to small and
6 medium-sized businesses, mergers and acquisitions. We
7 do private equity and private security. No longer do
8 public security work.

9 Q. And have you written any books related to
10 corporate transactions and corporate governance?

11 A. I have. Along with some coauthors, we
12 published through the state bar "The South Carolina
13 Business Lawyers Handbook." It's a guide for
14 entrepreneurs -- for business owners, entrepreneurs,
15 and their counsel.

16 Q. And how many editions has that book had?

17 A. We just printed our second edition of that
18 February of this year.

19 Q. And what was the purpose of publishing that
20 book?

21 A. Maybe somewhat self-serving, but also helpful
22 for other practitioners. We find a lot of clients
23 would come to seek counsel of lawyers for a lot of
24 information about basic legal fundamentals of business
25 that they otherwise should have access to on their own,

1 not have to pay a lawyer for.

2 If you are going to read dense treatises that
3 are out there like the LLC treatise published to the
4 bar or the corporate practice manual, those are not
5 really accessible to the general public. It was our
6 effort to have something that would be a public book, a
7 handbook for everyone involved in the business
8 community to tackle issues such as formation,
9 capitalization, employment law, state and local tax,
10 workers' compensation, insurance, all the items that
11 you might incur on a daily basis in running a business.

12 Q. And where are you licensed to practice law?

13 A. I'm licensed to practice law in
14 South Carolina, Georgia, and Virginia.

15 Q. Have you ever worked as an expert or a
16 consultant in litigation?

17 A. I have.

18 Q. And in what types of cases?

19 A. Those have namely been in construction defect
20 or in personal injury cases.

21 Q. And what sorts of issues have you been asked
22 to look at in those cases?

23 A. Those issues we examine corporate governance,
24 looking at personal jurisdiction issues, successor
25 liability issues, and transactions that occurred

1 sometime within that ownership structure of the obligor
2 that's being examined, amalgamations, single-business
3 enterprise theory, others of the like.

4 Q. And how much of your work is related to that
5 expert work?

6 A. On an annual basis, I would say less than
7 10 percent of my practice.

8 Q. How do you divide up that remaining
9 90 percent in your practice?

10 A. Much like I said before, I'd probably divide
11 it in thirds. I would say a third's general corporate
12 advise, so outside general counsel for small and middle
13 market companies. A substantial third right now is
14 mergers and acquisitions or other types of financing
15 transactions for businesses. And the remaining third
16 is representing sort of private securities transactions
17 or private equity.

18 MS. JOYNER: And, Your Honor, at this time,
19 the receiver tenders Mr. Buxton to be qualified as an
20 expert in corporate form and corporate governance.

21 THE COURT: Say again.

22 MS. JOYNER: Corporate form and corporate
23 governance.

24 THE COURT: Just a second. I have to do two
25 things. To tender, I've got to qualify him.

1 First, Mr. --

2 MR. CARROLL: Carroll.

3 THE COURT: I know you. I'm just trying to
4 figure out what I'm qualifying him in. Mr. Carroll,
5 the witness to you for voir dire.

6 MR. CARROLL: Your Honor, the Altrad
7 defendants stand on their many objections --

8 THE COURT: All right.

9 MR. CARROLL: -- that have been stated on the
10 record.

11 THE COURT: Mr. Rawl.

12 MR. RAWL: The same as what Mr. Carroll said,
13 Your Honor. We are preserving personal jurisdiction by
14 not moving forward. So we do not waive personal
15 jurisdiction, Your Honor.

16 THE COURT: All right. So, by reason of his
17 training, education, and experience, James Buxton is
18 qualified as an expert witness in this matter, in the
19 fields of corporate form and corporate governance, and
20 therefore may render both testimony and opinions with
21 respect to the qualified areas of expertise.

22 You may continue.

23 BY MS. JOYNER:

24 Q. Mr. Buxton, what was the purpose of your
25 retention in this matter?

1 A. I was retained by the receiver to examine
2 documents of record that have been produced in this
3 matter for issues related to personal jurisdiction,
4 successor liability, amalgamation, corporate
5 governance.

6 Q. And are you familiar with the corporation
7 Cape Intermediate Holdings?

8 A. I am.

9 Q. And how so?

10 A. That's the successor to Cape PLC.

11 Q. And what about Cape PLC?

12 A. To my understanding, Cape PLC is the
13 organized form of Cape Asbestos Industries Company
14 Limited.

15 Q. And the entity that's been referred to as
16 NAAC or North American Asbestos Corporation, what is
17 your understanding of that?

18 A. That is a wholly-owned subsidiary of Cape.

19 Q. And what about Charter Consolidated Limited?

20 A. Charter is the majority owner in the Cape
21 group companies that owned Cape and the -- and the
22 formation of the subsidiaries.

23 Q. Are you seeking to opine on liability at all
24 in this case?

25 A. I am not.

1 Q. South Carolina, does it have a corporate
2 code?

3 A. Yes, it does.

4 Q. And in your experience, what's the purpose of
5 the corporate code in South Carolina?

6 A. The purpose of the corporate code on a very
7 simple level is to create statutory legal framework for
8 corporations, separate jural persons from their owners.
9 It allows them to conduct lawful business and separate
10 those personal actions of the owners from those actions
11 of the corporation. They can separately fulfill their
12 obligations.

13 Q. And the phrase "corporate governance," can
14 you explain to us what that means?

15 A. Yes. That's a legal framework, so set of
16 rules, practices, and procedures by which a corporation
17 is administered or directed, and that if followed will
18 lead to transparency within the organization for its
19 stakeholders.

20 Q. What is the purpose of corporate governance?

21 A. The purpose of corporate governance is it to
22 tell a narrative story of the corporate actions and
23 history throughout the course of its existence.

24 Q. Does it work as a check on anything?

25 A. Sure. The corporation is not its actual

1 physical person; so it's made up of those stakeholders
2 I mentioned. And so times that arise where there may
3 be conflict within the organization, whether conflict
4 of interest or a risk management issue, corporate
5 governance will allow for check with the officers,
6 directors, and shareholders to accommodate that.

7 Q. Who are the stakeholders in a corporation's
8 governance?

9 A. Stakeholders initially are a shareholder who
10 will elect the directors of a company. The board of
11 directors then would turn around and appoint officers
12 who execute the day-to-day affairs of the company.

13 Q. Are there outside stakeholders for a
14 corporation's governance as well?

15 A. Sure. Outside stakeholders could be those
16 that are contracting with the corporation, or anyone
17 with whom the corporation may form an obligation.

18 Q. Does a corporation have to have certain
19 documents in place to set up its governance?

20 A. It does. Statutorily, corporations are
21 required to have a few basic items. They're required
22 to have bylaws, articles of incorporation. They have
23 to adopt bylaws and it has to be at least one shared
24 issued and at least one director.

25 Q. What's the purpose of the bylaws?

1 A. Bylaws are sort of the rules of the road,
2 much like civil procedure in litigation, you might say.
3 This is how a corporation would administer itself.
4 It's a -- you might say a handbook. It would deal with
5 items such as the composition of the board. It would
6 deal with the roles and responsibilities of its
7 officers. It would deal with how the corporation
8 actually takes its actions through meetings, notice of
9 those meetings, voting, and then would also deal with
10 items such as the duties of the directors and officers
11 and conflicts of interest.

12 Q. So if a corporation has those documents, does
13 it have good corporate governance?

14 A. It's got a great start. That's really the
15 form of the documents and it's the function of the
16 actions over time that actually would dictate whether
17 or not corporate governance is followed.

18 Q. And are certain duties imposed on directors
19 and officers of the corporation?

20 A. Yes, there are two statutorily mandated
21 duties, the duty of care and the duty of loyalty.

22 Q. Do you advise clients on those duties?

23 A. I do regularly.

24 Q. And how do you advise your clients on the
25 duty of care?

1 A. Well, on the duty of care, I advise clients
2 on stating that they have a responsibility to act in
3 the best interest of the corporation when they make
4 informed decisions such that a reasonably prudent
5 person would do in similar circumstances.

6 Q. And how do you see that come up in practice?

7 A. Comes up a good bit in practice. For
8 example, you may have a board of an implicitly-held
9 company that's trying to deal in a financial
10 transaction. Perhaps they are trying to ascertain a
11 value of the company. They may not be qualified to do
12 that from a financial accounting perspective; so I
13 would encourage them to engage a certified valuation
14 analyst to ascertain that. They can rely upon that and
15 then they're afforded something called a business
16 judgment rule which allows them to rely on outside
17 experts to make those informed decisions.

18 THE COURT: Say that new word.

19 THE WITNESS: They are --

20 THE COURT: The business.

21 THE WITNESS: Business judgment rule.

22 THE COURT: Judgment rule; right.

23 BY MS. JOYNER:

24 Q. How do you advise your clients on the duty of
25 loyalty?

1 A. Duty of loyalty is a similarly mandated
2 fiduciary responsibility to act in the best interest of
3 the corporation, but the note on this one is that
4 you're to prioritize the corporation's interest over
5 any personal interest or gain.

6 Q. And how do you see that come up in practice?

7 A. In representing a lot of smaller, closely
8 held businesses, it comes up quite a bit in conflicts
9 of interest transactions.

10 (Clarification by the reporter.)

11 BY MS. JOYNER:

12 Q. Sure. How do you see your advice to the duty
13 of -- as to the duty of loyalty coming up in practice?

14 A. It comes up in conflict of interest
15 transactions where you may have an opportunity of the
16 corporation and the person who's actually a director or
17 officer or even principal shareholder of that
18 organization.

19 So an example might be -- comes up in real
20 estate. A corporation owns a piece of real estate, and
21 there's an adjacent real estate piece for sale, then,
22 before an officer or director or stakeholder would be
23 able to pursue that transaction, he must disclaim the
24 opportunity to the corporation. That's an example of
25 something that there's an interested transaction. The

1 bylaws should speak to a manner of how to address that.
2 And if not, it falls back to the statute which has a
3 process.

4 Q. How do you advise your clients on the ways
5 for officers and directors to maintain these duties?

6 A. Sure. There are -- there are ways to
7 maintain the duties both in statute and through the
8 bylaws that are actually predicated on how to act. But
9 some of the factors would be to recognize the corporate
10 formality of the corporation as its own separate jural
11 person.

12 What that means is open a separate bank
13 account. Take a record of the actions of the
14 corporation, you know, properly authorizing those who
15 are going to act on behalf as an agent to be the
16 authorized to do so. To enter into the contracts in
17 the name of the corporation and not personally.

18 Another -- once things are going well and you
19 are in business, another aspect would be what to do
20 with the money; right? So making sure that a
21 corporation's properly capitalized, that they are
22 reserving enough cash for their obligations. And in
23 the absence of that, that they are ensuring somehow
24 those obligations.

25 And if there's profitability, to declare

1 distributions and pay dividends to shareholders. We
2 want to make sure there's not a syphoning off of its
3 funds that should otherwise be used for corporate
4 purpose.

5 Q. Is there an expectation that to maintain
6 proper governance, a corporation will be truthful in
7 making public disclosures?

8 A. Yes.

9 Q. And why is that?

10 A. Well, quite simply, all of life comes down to
11 really two things, notice and disclosure, giving notice
12 of your actions and disclosing all materials facts.
13 Works in corporations, works in marriages, works on any
14 given organization.

15 To do so otherwise would misrepresent
16 material fact upon which the investor is making a
17 decision to invest in the company or perhaps a
18 contracting third party that would be in a fraud.

19 Q. Can you give some examples of what makes a
20 fact material to you?

21 A. Material fact would be anything that would
22 affect the actual operation of the business. For
23 example, whether or not you have enough funds to
24 operate. Whether or not you are the actual contracting
25 party with someone you're doing business with. Those

1 are material facts.

2 Q. And why is it important for a corporation to
3 maintain its corporate governance in these duties?

4 A. If a corporation follows its corporate
5 governance, as prescribed for by the statute, bylaws,
6 and perhaps even the shareholder agreement, and they
7 have accurate records of their minutes, then it will
8 afford and avail what's called limited liability, and
9 that shields the owners and even the directors and
10 officers from being personally held accountable for the
11 obligations of the corporation.

12 Q. And one of the ways that you just mentioned
13 that officers and directors can maintain proper
14 corporate governance is through proper capitalization.
15 Can you -- how do you typically advise clients on
16 proper capitalization?

17 A. Well, some of this involves a business
18 decision, but the minimal standard in the law of South
19 Carolina to be properly capitalized is you have to
20 reserve enough capital or have enough capital to
21 finance debt in the business to operate your business.
22 In the absence of that, you must have -- at least have
23 minimum available insurance to cover your risk and
24 obligations.

25 Q. In turning toward NAAC, do you have an

1 understanding of the capitalization of NAAC?

2 A. I do.

3 Q. And how did you come to that understanding?

4 A. From the correspondence in the records around
5 its initial formation.

6 Q. And what is your understanding of NAAC's
7 capitalization?

8 A. My understanding is NAAC was formed with a
9 nominal \$1,000 for its initial share issuance, and that
10 it was to receive commissions on the sale of raw
11 asbestos fibers in the United States market for the
12 rest of its capital.

13 Q. Do you have an opinion on whether NAAC was
14 properly capitalized?

15 A. I do.

16 Q. And what is that?

17 A. I don't believe it was.

18 Q. And what is your basis for that opinion?

19 A. The basis is from the corporate record of the
20 establishment of the corporate record over time from
21 the minutes and correspondence.

22 Q. All right. And we are going to take a look
23 at some of that corporate record. So the first
24 document that I'd like to put on the screen is a
25 document that's not been moved into evidence yet.

1 Mr. Buxton, the document on the screen, can
2 you explain what that document is?

3 A. Yes. These are minutes of the annual meeting
4 of the directors of NAAC in May of 1975.

5 Q. And did these minutes assist you in forming
6 your opinion on the capitalization of NAAC and its
7 corporate governance?

8 A. It did.

9 Q. And how did it do so?

10 A. This one drew my attention here was that it
11 appears that business was brisk. They -- but they
12 needed some additional credit to be financed in order
13 to fulfill their obligations; so they increased their
14 credit line from 300,000 to half a million dollars.
15 After that, they went through election of their
16 directors, and then following that, they immediately
17 declared dividend of \$150,000 to their sole
18 shareholder.

19 Q. Does anything stand out to you in these
20 minutes as being not proper governance?

21 A. Not necessarily, but I would probably --
22 probably question -- it doesn't square that you're
23 declaring dividends while you're also trying to
24 increase your credit line.

25 Q. And why is that?

1 A. That would tend to possibly be a
2 capitalization issue.

3 MS. JOYNER: And, Your Honor, at this time,
4 we would like to move this set of exhibits, the 1975
5 set, into evidence as Exhibit 215.

6 THE COURT: Which is going to be these two
7 pages?

8 MS. JOYNER: Yes, ma'am, just those two
9 pages.

10 THE COURT: All right. Mr. Carroll or Rawl,
11 reservation -- same objection?

12 MR. CARROLL: Yes, ma'am, you read -- you
13 read my mind. Same objections. Thank you.

14 MR. RAWL: Thank you, Your Honor.

15 THE COURT: All right. I will admit it. I
16 will continue to do that, though, because I think it's
17 very important for your position to continue to
18 preserve these things as we move along.

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

20 THE COURT: Yes, sir.

21 (Whereupon, Plaintiffs' Exhibit 215 was
22 admitted into evidence.)

23 MS. JOYNER: Next, if you'd pull up Trial
24 Exhibit 33, please.

25 THE COURT: Now, what -- what number is this

1 going to be?

2 MS. JOYNER: 215.

3 THE COURT: All right. You may proceed.

4 BY MS. JOYNER:

5 Q. Mr. Buxton, have you reviewed this document
6 previously?

7 A. Yes.

8 Q. Can you explain to the Court what this is?

9 A. This is a letter from Mr. AJ Penna, who's the
10 group solicitor for the Cape group companies and for
11 Cape, directing this letter to Max Meyer, who is an
12 attorney at Lord Bissell Brook. He's also a director
13 and officer of the corporation.

14 Q. Does anything in particular about this
15 correspondence stand out to you?

16 A. Yes. The first paragraph about -- discussing
17 that it may be advisable to change the identity of NAAC
18 in order to limit its exposure to future US litigation.

19 Q. Why is that statement -- why does that
20 statement stand out to you?

21 A. Typically when a company is facing increased
22 risk, they don't want to immediately try to change
23 their identity. They'll consummate the risk -- or
24 figure out the risk and consummate an action that would
25 actually make provisions for those risks.

1 Q. If you were advising NAAC, how would you
2 advise here?

3 A. I would advise them not to do this.

4 Q. All right. We are going to take up the next
5 document that has also not been moved into evidence
6 yet.

7 Mr. Buxton, can you explain what this
8 document is?

9 A. Yes. This is a letter from Dr. Richard Gaze
10 to --

11 THE COURT: Just a second. Has that been
12 offered, or are you going to have a series of letters
13 offered?

14 MS. JOYNER: I'm going to have -- the last
15 one has been offered. This one has not been in
16 evidence yet. I will do that after. I was going to
17 get him to identify it.

18 THE COURT: Well, I got 215, which is the
19 NAAC --

20 MS. JOYNER: Minutes.

21 THE COURT: -- minutes. I've got -- is this
22 216 that we're looking at now, or have you --

23 MS. JOYNER: It will be.

24 THE COURT: Well, let's -- you're now going
25 to another document is what I'm trying to get at.

1 MS. JOYNER: Yes, ma'am.

2 THE COURT: Are they all going to be put
3 together as one?

4 (Whereupon, Plaintiffs' Exhibit 216 was
5 admitted into evidence.)

6 MS. JOYNER: No. I was going to go
7 individually because they're just four that have not
8 previously been --

9 THE COURT: You're going to move them into
10 evidence and label them?

11 MS. JOYNER: Yes, ma'am.

12 THE COURT: All right. I understand.

13 THE WITNESS: So this is a letter from
14 Dr. Richard Gaze to Mr. Morgan who is the president of
15 NAAC, and this is July of 1975.

16 BY MS. JOYNER:

17 Q. And did this document assist you in coming to
18 your opinions on NAAC's corporate governance?

19 A. It did.

20 Q. And how so?

21 A. This is a letter sent to Mr. Morgan letting
22 him know that Mr. Higham and he were going to be
23 resigning from the board of directors of NAAC. And the
24 second part of that paragraph is talking about
25 disassociating from the parent company as fully as

1 possible. Yeah, there you go. And that the idea is
2 that although they are disassociating, they're not
3 changing the method of operations or any
4 responsibilities of any individuals concerned.

5 Q. And so why is that important to you?

6 A. Usually when you resign, you leave and no
7 longer have an affiliation with the business.

8 Q. Did you find anything in the record that
9 Mr. -- or Dr. Gaze left the business after this?

10 A. No. I found the opposite, actually. He had
11 pretty direct control of what was happening with NAAC.

12 MS. JOYNER: We are now going to bring up
13 Trial Exhibit 35 that is already in evidence.

14 BY MS. JOYNER:

15 Q. Mr. Buxton, can you give us your
16 understanding of this document?

17 A. Yes. My understanding of this is a letter
18 back to the group's solicitor Tony Penna or AJ Penna of
19 Cape Industries Limited from Max Meyer of Lord Bissell.

20 Q. When is this letter dated?

21 A. This is in October of '75, so it's -- Penna
22 letter was in June.

23 Q. And what about this document stands out to
24 you?

25 A. Well, this is Mr. Meyer responding to the

1 inquiries of Mr. Penna, and he is advising about how to
2 deal with potential liquidation, which essentially he's
3 giving decent advice here. He's saying, "Directors may
4 not actually know of additional claims, but if they
5 should know that there's a good chance that there will
6 be additional claims, they too must be provided for."

7 And this next line was, in particular, caught
8 my attention, which is, "There have been cases where
9 the Court held that the liquidation of the corporation
10 was not effective where claims which were known or
11 should have been known were not provided for, thus the
12 corporation remained in being for purposes of being
13 sued, and the claims are now limited to the two-year
14 period after liquidation."

15 Q. And so why is that important to you?

16 A. That's important given the idea that, you
17 know, Penna and the group companies were potentially
18 wanting to change their identity to purposefully avoid
19 future obligations that they knew were coming.

20 MS. JOYNER: We are going to move to Trial
21 Exhibit 115.

22 BY MS. JOYNER:

23 Q. Mr. Buxton, can you explain what this
24 document is at Trial Exhibit 115?

25 A. Yes. We are continuing with the corporate

1 governance story, and this is -- these are minutes from
2 the annual meeting of the directors of NAAC following
3 April 1976.

4 Q. Did these minutes assist you in forming your
5 opinion on the capitalization and corporate governance
6 of NAAC?

7 A. They did.

8 Q. And how is it that they assisted your
9 opinions?

10 A. Well, in these set of minutes here, you have
11 obviously increasing -- decreasing sales from demand
12 and you also highlight a portion here that there are
13 potential public -- there's public knowledge of health
14 hazards and the increased prices. That portends that
15 things are not going as well as they were in the prior
16 year.

17 If you go back to the prior minutes, you
18 would see that they were financing a robust operation,
19 but they may be undercapitalized in doing so. Here, if
20 you go a little further down, you'll see that the
21 president's reporting that the company's having
22 difficulty renewing its products liability insurance at
23 a great -- it's a greatly increased cost.

24 The good thing here is that the directors
25 unanimously agreed that the cover should be bound

1 regardless of the cost; however, there's no evidence in
2 these minutes or supplemental to this that's on the
3 record that coverage was actually bound.

4 Q. Would you expect to see a document in the
5 corporate record providing that confirmation of bound
6 coverage?

7 A. At least see some sort of report back to the
8 board that this was confirmed done. I mean, this is an
9 essential function of the board is to make sure the
10 company is properly capitalized.

11 Q. Is there anything else about these 1976 NAAC
12 minutes that stands out to you as concerning?

13 A. Yes. What's concerning here is that even
14 though they don't have reserves for capital or they
15 haven't confirmed that bound coverage that they are
16 turning around and distributing half a million dollars
17 through dividend. Those don't square with one another.

18 MS. JOYNER: Moving on to Trial Exhibit 202.

19 BY MS. JOYNER:

20 Q. Can you explain what this document is?

21 A. Yes. These are the minutes of the annual
22 meeting of directors of NAAC the following year 1977.

23 THE COURT: Is this another exhibit or is
24 this --

25 MS. JOYNER: It is the next.

1 THE COURT: I worry about you keeping up with
2 these exhibits now. Okay. What is this?

3 MS. JOYNER: This is Trial Exhibit 115, so
4 it's already in evidence.

5 THE COURT: Well, this is another part of
6 Trial Exhibit 115 because you just got finished saying
7 that --

8 MS. JOYNER: Oh, sorry, 202.

9 THE COURT: The minutes of NAAC 4/23/76 were
10 Trial Exhibit 115.

11 MS. JOYNER: Yes, ma'am. These are
12 Exhibit 202.

13 THE COURT: It's this one is Trial
14 Exhibit 202?

15 MS. JOYNER: Yes, ma'am.

16 THE COURT: All right. And that's minutes
17 4/28/1977?

18 MS. JOYNER: Yes, ma'am.

19 THE COURT: All right.

20 BY MS. JOYNER:

21 Q. Mr. Buxton, are these -- is Trial Exhibit 202
22 a document that you use in forming the basis of your
23 opinions as they relate to corporate governance and
24 capitalization of NAAC?

25 A. Yes.

1 Q. And why is that?

2 A. Dovetailing with the prior two annual meeting
3 minutes, you'll see in the second paragraph here
4 significant issue where the company's products
5 liability insurance has actually expired prior to this
6 meeting and that new coverage has not been bound.

7 If you continue on, you'll see that even
8 though coverage has not been bound or reservations for
9 capital being made for those obligations that they know
10 are existing or anticipated, they are still declaring
11 dividend of \$200,000 to the sole shareholder.

12 Q. Is a dividend declaration an action you would
13 expect to see from a corporation that had not been able
14 to confirm bound coverage during its annual meeting?

15 A. No.

16 Q. And why is that?

17 A. Well, going back to one of the fundamental
18 corporate governance practices of making sure
19 everything is properly capitalized, you would do that
20 either through cash or insurance. And absent any
21 discussion or supplement to the corporate governance
22 records when they have a known issue of not being bound
23 for insurance, they would have to make a reservation of
24 capital to cover any potential obligations.

25 I don't see anything supplemental to that to

1 show that they actually got another analysis done or
2 that they had enough capital that was actually in the
3 business to do so. Absent having those things, I would
4 recommend they not or withhold making a dividend
5 declaration at that time.

6 Q. How does whether a company pays dividends
7 affect its overall corporate governance?

8 A. Whether the company pays dividends?

9 Q. Yes.

10 A. To the point of capitalization, they can do
11 that if -- if the company has enough net profit for
12 distribution while maintaining reserves for any
13 obligations that they must fulfill.

14 MS. JOYNER: And, Michael, will you pull 202
15 back up again, please?

16 BY MS. JOYNER:

17 Q. Apart from the capitalization discussion we
18 were having, is there anything else about these meeting
19 minutes that stood out to you in coming to your
20 opinion?

21 A. Yes. Something that's been highlighted here
22 in each of these meeting minutes are who attended these
23 meetings. And in this here you'll see that Mr. Morgan
24 acted as chairman and Jonah Holtze, H-o-l-t-z-e, acted
25 as secretary of the meeting. I have seen deposition

1 testimony where Mr. Holtze never attended any of these
2 annual meetings.

3 Furthermore, at the initial outset of the
4 organization, it was sent from Mr. Penna, or I think
5 even Mr. Dent, someone from the Cape group companies,
6 the formal minutes to Mr. Meyer that would be used for
7 these meeting minutes. It's my understanding that
8 Mr. Meyer actually prepared the minutes for the record.

9 Q. Would you have expected the company's
10 secretary and assistant treasurer to attend annual
11 meetings?

12 A. Yes.

13 Q. Who has the ability to make decisions on
14 behalf of the corporation or bind a corporation in
15 contract?

16 A. A corporation will designate an agent.
17 That's typically done through either resolutions,
18 authorizing resolutions. For example, shareholders
19 were authorized -- the board elect and authorize the
20 board of directors to manage the affairs of the
21 business, and then the board of directors will
22 authorize certain officers to act as an agent to
23 execute those affairs.

24 Q. Are corporations able to act on their own
25 accord?

1 A. No, not without proper authorization.

2 Q. Are there any instances in which a
3 corporation can take action upon the authority of a
4 third party or someone who is not designated as an
5 agent or shareholder or officer?

6 A. Absent a court order, no.

7 Q. And why is that?

8 A. Any actions that would be taken out of the
9 corporate governance chain of command by statute or
10 prescribed by the issuance of the business would be
11 considered -- it's a Latin term called ultra vires
12 where it's prohibited.

13 Q. Have you ever seen a third party -- in your
14 review of this record, have you seen a third party
15 telling NAAC what action to take?

16 A. Yes. I have seen significant correspondence
17 from Dr. Richard Gaze to Mr. Meyer about actions that
18 NAAC should take.

19 Q. Did you have an understanding that NAAC paid
20 Cape dividends regularly?

21 A. Yes.

22 Q. And where did you gain that knowledge from?

23 A. From the documents the record provided that
24 were meeting minutes and correspondence.

25 Q. I'm now going to show you a chart that we

1 created. Can you explain what is happening here in
2 this graph?

3 A. Yes. I'd probably start with the portion on
4 the left that shows the history of the dividends from
5 the mid-'60s all the way to 1977, which as far as I
6 understand was the last year prior to the attempted
7 liquidation.

8 And then the other column showing the net
9 earnings of the company, and then the graph is showing
10 those two in comparison to each other. If you -- if
11 you look early '64, '65, '66, and going forward, that
12 dividends and net earnings are in balance. When we
13 review those minutes from '75 to '76 and '77, this
14 graph shows the share of business was robust there in
15 '75, and dividends were declared.

16 But then about this time is when the
17 discussion of a potential voluntary liquidation is
18 brought up in the correspondence that we mentioned in
19 the prior exhibits. Given that's the context of the
20 discussion or circumstances, I would expect that if a
21 company is having difficulty obtaining insurance, that
22 they would be reserving capital for potential
23 obligations that existed or that they anticipated.

24 Here you actually see an acceleration of the
25 dividend payments all the way through until the final

1 year they're made while net earnings are declining.
2 And while I'm not an economist, I would advise the
3 company to say that, "You probably should not be making
4 dividend declarations at that time knowing these
5 obligations are coming."

6 Q. Do corporate governance standards differ if
7 the shareholder is -- of a corporation is a foreign
8 individual or an entity?

9 A. No. They may -- there may be differences in
10 potential tax implications, but from the corporate
11 governance standpoint, a jural person is a jural
12 person, and those duties are applied to them uniformly.

13 Q. And as we've been discussing the corporate
14 formalities related to NAAC, I want to shift a little.
15 Do you have an understanding of the corporate
16 formalities of Cape?

17 A. I do. Only from what's in the record.

18 Q. What about the corporate formalities of
19 Charter Consolidated Limited?

20 A. I do. There's limited production in the
21 record. To my understanding, Charter hasn't produced
22 that corporate governance records in this matter. I
23 have seen a few items.

24 MS. JOYNER: Okay. We're now going to move
25 to Trial Exhibit 84.

1 BY MS. JOYNER:

2 Q. Can you explain what you see in Trial
3 Exhibit 84?

4 A. Yes. This is minutes of the executive
5 committee of Charter Consolidated Limited, which is the
6 ultimate owner of Cape, and this is adding three
7 directors to the Cape board, and then also suggesting
8 the addition of the executive committee of the board to
9 be appointed.

10 Q. And what -- can you orient us as to the date
11 and time of these minutes?

12 A. Yes. On the left there, that's April 25th,
13 1967.

14 MS. JOYNER: All right. And next to this
15 Exhibit -- Trial Exhibit 84, I want to pull up Trial
16 Exhibit 19.

17 BY MS. JOYNER:

18 Q. Mr. Buxton, Trial Exhibit 19 is on the
19 right-hand side of your screen. Can you explain what
20 that is?

21 A. Yes. These are meeting minutes of the board
22 of directors of Cape Asbestos Company Limited. These
23 are the same day, actually 11:00 a.m. in the morning,
24 April 25th, 1967.

25 Q. And can you explain what's occurring in the

1 Cape Asbestos meeting minutes?

2 A. What's occurring here is that that executive
3 committee that was suggested by Charter is being formed
4 at the Cape level with select individuals.

5 Q. Now, is appointing an executive committee
6 unusual?

7 A. No. Bylaws can make way for them. Those can
8 happen. What's typical is this is a fairly broad
9 executive committee charge saying it can manage the
10 business of the company with only a tight form of two
11 of the four individuals listed.

12 In my practice, when -- any time an executive
13 committee is authorized to take any kind of action,
14 it's usually done so for a limited purpose. It's
15 usually an interim purpose between meetings of
16 directors. An example might be during the pandemic, a
17 lot of clients that had to take actions. They couldn't
18 meet in person and had to figure out how to do that,
19 usually would consolidate power and authority of the
20 business to act on day-to-day affairs within that
21 executive committee.

22 That executive committee in turn would have
23 to honor the reporting back. They'd have to tell a
24 tale of their actions that they took and report that
25 back to the board back at the chain. And so if there's

1 a formal vote that would need to happen at the director
2 level, they would inform that any material items that
3 occurred during that time with their authority.

4 Q. And here, have you seen any evidence that the
5 executive committee is for a limited purpose?

6 A. I saw nothing after this point in time from
7 1967 until what was then effective dissolution of NAAC
8 that showed the executive committee who was giving
9 power back to the board.

10 Q. Do these documents assist -- did they assist
11 you in coming to your opinions in this matter?

12 A. Yes.

13 Q. Why and how so?

14 A. It formed my opinions around corporate
15 governance that the control of NAAC was tightly handled
16 from Charter all the way through Cape to NAAC, and that
17 the other directors really were pointless. That -- to
18 me, this really solidified that NAAC was a facade for
19 Cape.

20 Q. Do you have an understanding of why NAAC was
21 created initially?

22 A. I do.

23 Q. And what is that understanding?

24 A. That understanding is from correspondence in
25 the early 1950s when NAAC was trying to not be subject

1 to U.S. tax authority.

2 MS. JOYNER: All right. Let's pull up trial
3 Exhibit 4, please.

4 BY MS. JOYNER:

5 Q. Mr. Buxton, is this part of the
6 correspondence that you were referring to in your
7 testimony?

8 A. Yes.

9 Q. And can you explain what is going on in this
10 correspondence?

11 A. So this is a letter on September 18th, 1953.
12 It's from Richard Dent, who's a director of Cape
13 Asbestos Limited Company -- Company Limited, excuse
14 me -- Cape Asbestos Company Limited -- to Lord Bissell,
15 which is the law firm in Chicago, ultimately the one
16 representing the entity.

17 Q. And what is Cape Asbestos Company asking of
18 Lord Bissell?

19 A. They're asking Lord Bissell to figure out a
20 way that they can still maximize business in the United
21 States but not be subject to or minimize their taxation
22 in the United States. That they're also talking about
23 how to -- how NAAC should be formed, which we covered a
24 little bit of this earlier, was the initial
25 capitalization for its income would be derived purely

1 from the commission of sales. They're looking to form
2 an agent of Cape in the United States.

3 Q. Is this something you would expect to see?

4 A. It's -- it can be innocuous, but if someone
5 is trying to actually -- actually have business in the
6 United States, they can do so. If they want to have an
7 agent, they can have an arm's length transaction with
8 an independent contractor that can be their
9 representative. Typical cases like this, the tension
10 in the law is between independence and control.

11 And if someone wants to have an agent in the
12 United States that has its own independent function,
13 they can certainly do that. In this case, this wasn't
14 the issue. This was something that was going to be a
15 subsidiary of the actual organization in the United
16 States for the purpose of making these sales.

17 Q. And so what importance does this document
18 have to your opinions in this matter?

19 A. This is the initial inception of NAAC in the
20 United States, and this is for the purpose of potential
21 evasion or avoidance of U.S. tax liability. There's no
22 inclination that they're not participating in the
23 United States market. Matter of fact, they want to do
24 so at the minimization of any liabilities.

25 MS. JOYNER: And if you would bring up Trial

1 Exhibit 5, please.

2 THE COURT: Wait a minute now. What is this
3 exhibit number?

4 MS. JOYNER: Trial Exhibit 4.

5 THE COURT: That's the September 18, 1953,
6 letter from Cape to Lord Bissell law firm?

7 MS. JOYNER: Yes, ma'am.

8 THE COURT: All right. And then what's this
9 next one?

10 MS. JOYNER: Trial Exhibit 5.

11 THE COURT: Okay.

12 BY MS. JOYNER:

13 Q. Mr. Buxton, is this a document that you used
14 in coming to your opinions in this matter?

15 A. Yes, it is.

16 Q. And can you explain what this document is?

17 A. This is a letter in response to the initial
18 inquiry that's accepting the representation on behalf
19 of Lord Bissell for Cape Asbestos -- excuse me, to
20 represent Cape. Lord Bissell accepting this.

21 I'm inferring that this was written by Max
22 Meyer based on the initials at the bottom, even though
23 it's unsigned, but he is the person that eventually
24 becomes the general counsel for NAAC. And this is
25 advising as to the inquiry that was made prior.

1 Q. And what stands out to you about this
2 document as it affects your opinions here?

3 A. Well, Myers, based on the facts presented,
4 was giving his legal advice and, essentially, that the
5 establishment of this subsidiary corporation, acting as
6 an agent for Cape, that this would constitute a
7 permanent establishment only if it had a general power
8 to negotiate the terms of a contract and conclude its
9 contracts on Cape's behalf. Now, it did, in fact, do
10 that.

11 Q. How would you have advised the client in this
12 situation?

13 A. I would advise the client they are going to
14 be a permanent establishment if they are going to
15 operate business in the United States in this fashion.
16 Otherwise, like I mentioned before, if they did not
17 want to have a subsidiary that was going to be subject
18 to U.S. taxation, they actually just contract a third
19 party to be their sales representative.

20 Q. We are going to turn now to dissolution, and
21 the dissolution of NAAC, but first, in general, how do
22 corporations dissolve?

23 A. So dissolution, it's a statutorily prescribed
24 process in South Carolina. Typically how that might
25 come to be is that the company's having some issues or

1 they are at the end of their life cycle, and so
2 management would recommend to the board that they enter
3 into a voluntary liquidation. The board would then
4 recommend to the shareholders to vote on that matter,
5 and that's the statutorily required vote of the
6 supermajority to do so.

7 Q. What happens after the vote occurs?

8 A. If the vote's successful, then the company
9 can file articles of dissolution with the Secretary of
10 State's office. Once that's done, a business ceases to
11 operate any business in the public forum. After that,
12 it needs to continue in existence as it winds up its
13 affairs. So that may be marshaling assets. It's going
14 to be making provisions for the obligations, a
15 statutorily prescribed process, or reserving cash for
16 those obligations.

17 And, ultimately, if there's anything left
18 over, those items of cash or otherwise could be
19 distributed to the owners or shareholders.

20 Q. Can a corporation with liabilities
21 voluntarily dissolve to expunge its obligations and
22 then simply form a new corporation and continue
23 business?

24 A. No. That would be fraud.

25 Q. In your opinion, did NAAC dissolve in a

1 manner consistent with proper corporate governance?

2 A. It did not.

3 Q. And can you explain why?

4 A. I don't see any evidence in the record that
5 they actually followed those procedures, whether that
6 was in the Illinois code, presuming it would be similar
7 to South Carolina, which they did not have an actual
8 meeting to discuss this. It was not brought forth by
9 the president or officer of the organization who had
10 been presenting these financials to the board.

11 This was basically a declaration that we
12 found and also other testimony from Mr. Morgan that
13 Dr. Gaze was told it was just going to be liquidated.
14 I'm not aware of any publication to creditors. I'm not
15 aware of any other publication to unknown creditors.

16 Q. And why is that important to your opinions
17 here?

18 A. It's important to my opinions here because
19 from the inception to -- to what is essentially the
20 effective dissolution of NAAC, that they realized they
21 were having anticipated liabilities coming and that
22 this organization all along was a facade for Cape.
23 That if you're going to have a voluntary liquidation
24 that you have to make provisions for those potential
25 liabilities.

1 And there's evidence that I saw from -- from
2 Mr. Meyer that was discussed in that prior exhibit, 35,
3 that even if you try to liquidate, you know the
4 anticipated liability, and you still must provide for
5 them and the Court can reach back and undo that
6 liquidation.

7 MS. JOYNER: Moving now to a document that
8 has not been entered, but that we'll ask to be entered
9 as 217.

10 BY MS. JOYNER:

11 Q. Mr. Buxton --

12 THE COURT: Just a second.

13 MS. JOYNER: Okay.

14 THE COURT: All right. Ma'am, that's exactly
15 why I got -- you know, I've got 217 as the July 4,
16 1975, Cape to Morgan of NAAC with the Dr. Gaze and
17 Higham resignation from the board of NAAC. So that's
18 where I got that. That was a letter that was put in
19 right after Cape to AJ Penna of 6/25/75 changing the
20 identity of NAAC. And I asked you at that time what we
21 were doing here.

22 So we need to be sure -- I'm sorry to
23 interrupt you like this, but I've got to be sure these
24 documents do like they are supposed to.

25 Ms. Valek, you got any thoughts about this?

1 MS. VALEK: Yes, ma'am. That July 4th letter
2 of '75 was actually 216.

3 THE COURT: All right. Now I've got as 216
4 Cape to Max Meyer.

5 MS. JOYNER: That document was already in
6 evidence as Trial Exhibit 33.

7 THE COURT: Oh, okay. All right. That is
8 33. And then 217 is Cape to Morgan 4th of July 1975?

9 MS. VALEK: 216.

10 MS. JOYNER: 216.

11 THE COURT: That's 216. And now we are going
12 to 217 that you're doing right now?

13 MS. JOYNER: Yes, ma'am.

14 THE COURT: I'm sorry. Thank you, Ms. Valek.

15 All right. You may proceed.

16 (Whereupon, Plaintiffs' Exhibit 217 was
17 admitted into evidence.)

18 BY MS. JOYNER:

19 Q. Mr. Buxton, were you -- will you please tell
20 us what the proposed Exhibit 217 is?

21 A. This is a letter from Max Meyer on letterhead
22 back to Dr. Richard Gaze on July 29th, 1980. At this
23 time, he's -- he is being deposed in what our four
24 Bloomington cases -- from my recollection, Bloomington
25 Illinois, cases. And this one struck me pretty --

1 pretty hard because also as a practicing lawyer, but
2 the fact that Mr. Meyer here, these anticipated
3 liabilities they talked about in prior minutes, they're
4 actually coming to fruition because he's being deposed
5 in these cases.

6 I recall Mr. Meyer also was the lawyer for
7 NAAC at its inception, its formation, was the director,
8 and officer of this entity. This was his entire legal
9 career of practice for 23 years. I can say that if I'm
10 being deposed on my primary client in that time period
11 that I'm not going to suddenly not recall everything
12 that happened with that company.

13 Q. Are there any other reasons you believe that
14 NAAC did not have proper corporate governance?

15 A. Well, not otherwise in the record.
16 There's -- there's nothing in here that's going to
17 state that this -- at this point, NAAC's no longer in
18 existence.

19 Q. And so will you -- do you hold the opinion
20 you have offered as to NAAC, Charter, and Cape, to a
21 reasonable degree of professional certainty as a
22 corporate lawyer?

23 A. Yes.

24 Q. Shifting a little bit, in your practice, have
25 you advised foreign companies to set up a subsidiary in

1 South Carolina?

2 A. I have.

3 Q. And when advising such corporations, what do
4 you tell them?

5 A. I tell them if they are going to operate
6 business in South Carolina, it needs to be in the form
7 of a subsidiary that's domiciled here, or they need to
8 file with the Secretary of State to register as a
9 business and they'd be issued a certificate of
10 authority to transact in the state.

11 Q. And in your experience, why do you advise
12 that corporations are registered and get a certificate
13 of authority?

14 A. On a very basic level, the corporate code is
15 essentially a consumer protection code. If businesses
16 are interacting with the public in South Carolina, the
17 public needs to know with whom they're actually
18 interfacing. So this establishes the proper name from
19 which the parties can contract and fulfill their
20 obligations.

21 Q. Have you had an occasion to determine if
22 Altrad exists in South Carolina?

23 A. I have.

24 Q. Does Altrad exist in South Carolina?

25 A. It does.

1 Q. And how do you know that?

2 A. I did an online search.

3 MS. JOYNER: Can we pull up Trial

4 Exhibit 208?

5 BY MS. JOYNER:

6 Q. Mr. Buxton, do you recognize this document?

7 A. I do.

8 Q. Is this document reflective of the search

9 that you first ran on Altrad?

10 A. It is.

11 Q. And what does it show you?

12 A. This shows on the contact page how to contact

13 Altrad. It shows their three branch offices, one in

14 Denver, Seattle, and one located in Williamston,

15 South Carolina. It has an out-of-state area code

16 number and an Altrad email address.

17 Q. So in looking at that on a regular search,

18 how do you know if they are doing business in

19 South Carolina?

20 A. From a legal standpoint, I would take the

21 name on there and go search the Secretary of State's

22 website.

23 Q. And is going to the Secretary of State's

24 website something you do in your practice when

25 determining if a company is registered to do business

1 here?

2 A. On any contract I draft, I always ensure that
3 the proper name of the party is on that contract. The
4 way I do that is searching the Secretary of State site
5 to make sure they actually exist.

6 Q. So in this instance, did you do that?

7 A. I did.

8 Q. And what did you find?

9 A. I searched various forms of Altrad RMD
10 Kwikform -- researched in the Secretary of State site
11 various combination of Altrad RMD Kwikform, and I found
12 that RMD Kwikform North America, Inc., is registered in
13 the state of South Carolina and has a certificate of
14 authority to transact business.

15 MS. JOYNER: All right. And if you would
16 show that screenshot. Thank you.

17 Your Honor, this, we are going to propose to
18 be Exhibit 218.

19 THE COURT: All right. Proceed.

20 (Whereupon, Plaintiffs' Exhibit 218 was
21 admitted into evidence.)

22 BY MS. JOYNER:

23 Q. Mr. Buxton, does this document screenshot
24 reflect what you found on your search?

25 A. It does.

1 Q. And what does it show you?

2 A. It shows the formal name of the entity. It
3 shows its registered agent and the fact that it was --
4 it applied and received a certificate of authority to
5 transact business in early 2025.

6 Q. Now, did you use this document in determining
7 whether, in your opinion, Altrad is present in
8 South Carolina?

9 A. I went one step further and actually reversed
10 my search, and then I searched this entity's name on
11 the internet.

12 Q. What came up?

13 A. The same website. Altrad RMD Kwikform.

14 MS. JOYNER: And if you would show 208 again.

15 BY MS. JOYNER:

16 Q. In your opinion, is the Altrad group holding
17 themselves out as having a presence in South Carolina?

18 A. On its face, yes.

19 Q. Turning now to ESAB Corporation. In your
20 role as outside counsel or outside general counsel, do
21 you draft standard contracts?

22 A. On a daily basis.

23 Q. And do those contracts contain choice of law
24 provisions?

25 A. They all do.

1 Q. In your experience, are there standard
2 jurisdictions that parties choose for choice of law
3 provisions?

4 A. Standard jurisdiction would likely be where
5 the company is located or where the services under the
6 contract or obligations are to be performed or even
7 where considerations are paid.

8 Q. And so, if a company is not located in
9 South Carolina, and the other side is not located in
10 South Carolina, in your experience, would you use
11 South Carolina as a choice of law provision?

12 A. I don't know why you would.

13 MS. JOYNER: If you would please pull up
14 Trial Exhibit 209.

15 THE COURT: 309?

16 MS. JOYNER: 209.

17 THE COURT: 209. All right.

18 BY MS. JOYNER:

19 Q. Mr. Buxton, what is Trial Exhibit 209?

20 A. This is what is a standard uniform commercial
21 code terms of sale purchase order agreement.

22 Q. And do you have an understanding of where
23 this document was located?

24 A. As of Sunday night, it was on the ESAB
25 website.

1 Q. And have you reviewed it?

2 A. Yes.

3 Q. I'm going to direct you to paragraph 14 of
4 that document. And what is this?

5 A. This is a standard choice of law provision
6 for that contract.

7 Q. And does it reflect South Carolina as the
8 choice of law?

9 A. It does.

10 Q. Would you advise a company to put
11 South Carolina as the choice of law in a contract if
12 they did not want to be subject to the jurisdiction of
13 South Carolina?

14 A. I don't know a lawyer at any level that would
15 choose this jurisdiction as a choice of law provision
16 and not intend to be subject to this jurisdiction.

17 Q. And, Mr. Buxton, do you hold your opinions
18 about Altrad and ESAB to a reasonable degree of
19 professional certainty as a corporate lawyer?

20 A. I do.

21 MS. JOYNER: Thank you for your time. Stay
22 until you're released.

23 THE COURT: All right. All right. The
24 witness is passed for cross-examination, Mr. Carroll.

25 MR. CARROLL: Yes, ma'am, just want to -- I

1 don't know if all those exhibits that were new that
2 were just put on the screen, I don't know if they have
3 been moved in. If they were, then we want to make sure
4 our objection attaches to those.

5 MS. JOYNER: I was going to move --

6 THE COURT: Just a second. I understand that
7 when they have been reading Trial Exhibits 209 and so
8 forth that those are preadmitted exhibits, but am I
9 right or wrong about that?

10 MS. JOYNER: Yes, ma'am. So through 214
11 would be -- I think 213 and 214 were entered yesterday,
12 so from 215 through 218, which I introduced during
13 this, I would like to move those into evidence at this
14 time.

15 THE COURT: Right. But let's deal right now
16 with Mr. Carroll. He knows about preadmitted exhibits,
17 and I presume he registered his objections to them at
18 the time, like most lawyers do, to preserve their
19 position. This 209, we need to be sure his objection
20 is preserved as to the admission of that exhibit. Am I
21 right?

22 MR. CARROLL: That's right. Just whatever --
23 can we -- can we put a pin in the record and let her
24 move in whatever the new stuff is and then make my
25 objection?

1 THE COURT: Then you can make whatever you
2 want to make by way of objections. All right.

3 MS. JOYNER: All right. So, Your Honor, at
4 this time, the receiver would move Exhibits 215, 216,
5 217, and 218, which were presented during Mr. Buxton's
6 testimony, into evidence.

7 THE COURT: All right. Now we're going to
8 then have to come back to the one he's -- all right.
9 And that includes the Altrad documents; correct?

10 MS. JOYNER: The Altrad document was already
11 in evidence.

12 THE COURT: Well, what I've got marked is the
13 Altrad search that had Williamston in it is 209, and
14 that was already in, presumably over his objection, and
15 y'all took care of that in preadmissions. Am I right?

16 MS. JOYNER: He has objected to that
17 previously. Yes, Your Honor.

18 MR. CARROLL: Yes, ma'am.

19 THE COURT: That's preserved.

20 MR. CARROLL: And I just wanted to take that
21 prior objection to the entirety of the proceedings and
22 attach it to this new set of documents that -- that
23 they're introducing.

24 THE COURT: Which is 215, 216, 217, and 218?

25 MR. CARROLL: Your Honor, I will trust your

1 records on that.

2 THE COURT: All right. That would -- that
3 includes both the ESAB documents, but more
4 particularly, the RMD Kwikform documents.

5 MR. CARROLL: And I think some more
6 correspondence.

7 THE COURT: And some other correspondence.
8 That's correct.

9 MR. CARROLL: Yes, ma'am, but -- yes.

10 THE COURT: So it's all over his objection?

11 MS. JOYNER: Yes, ma'am.

12 THE COURT: And Mr. Rawl.

13 MR. RAWL: Your Honor, on behalf of ESAB,
14 Charter, and Central Mining, we again preserve our
15 personal jurisdiction objections, and we do not want to
16 waive those objections. We will stand on the
17 objections that we made pretrial and filed with this
18 Court.

19 THE COURT: Right. And these are new
20 exhibits that are coming in, so if you want to put a
21 pin in the record for those, you may.

22 MR. RAWL: Which we're standing on the same
23 objections we filed previously.

24 THE COURT: All right. Thank you very much.

25 MR. CARROLL: Then as far as the witness was

1 passed, my clients, again, are standing on their myriad
2 objections to --

3 THE COURT: To the validity of the
4 proceedings --

5 MR. CARROLL: You got it.

6 THE COURT: -- et cetera?

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

8 MR. RAWL: And, Your Honor, I just --
9 Mr. Carroll said we are standing on our validity
10 objections we have already made and do not want to
11 waive personal jurisdiction on; so we will not ask any
12 questions. Thank you.

13 THE COURT: All right. Is that the end of
14 Mr. Buxton's testimony, ma'am?

15 MS. JOYNER: Yes, ma'am.

16 THE COURT: Mr. Buxton, thank you very much
17 for your participation in this trial. You are excused.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: Took me down memory lane. I full
20 led the adoption of the Model Business Corporation Act
21 as a member of the house.

22 THE WITNESS: So you have some familiarity.

23 THE COURT: Yes, sir.

24 MS. JOYNER: Your Honor.

25 THE COURT: Yes.

1 MS. JOYNER: Can we have one housekeeping --
2 may we take up a housekeeping issue with you?

3 THE COURT: Yes.

4 MS. JOYNER: There are some additional
5 documents that we would like to move into evidence not
6 related to but to inform to the pretrial brief. And I
7 have them here and would like to explain them to the
8 Court. Or however you would like to maybe go about.

9 THE COURT: I would like to see them.

10 MS. JOYNER: Okay.

11 THE COURT: These are the offering of
12 additional exhibits?

13 MS. JOYNER: Yes, ma'am.

14 THE COURT: I am right about that? All
15 right. Let me see them.

16 MR. CARROLL: Lindsay, do we have these?

17 THE COURT: All right. I would like for you
18 to go through them individually and do whatever you're
19 going to by way of moving them. And is this your copy?

20 MS. JOYNER: Yes, ma'am. The Court -- this
21 is the Court's copy.

22 THE COURT: All right. And let's identify
23 each of them and then put on the record what the
24 exhibit number is going to be and have some objections
25 like we normally do.

1 MS. JOYNER: You want to stand?

2 MR. CARROLL: We'll very impolitely stand
3 over counsel so we can see what these are.

4 THE COURT: Right.

5 MS. JOYNER: All right. So the first
6 document that we would like to move in is Exhibit 219.
7 And this is just a copy of your May 23rd, 2024, order
8 as to the adverse inferences.

9 THE COURT: All right.

10 MS. JOYNER: Do you want -- we'll just do all
11 the objections at the end or do you want to --

12 MR. CARROLL: Let's just --

13 THE COURT: That makes sense.

14 MR. CARROLL: -- do the whole pile at once.

15 THE COURT: That's Exhibit 219. Keep going.

16 MS. JOYNER: All right. Exhibit 220 is a
17 deposition transcript of Francis Howard. And it's from
18 the Barber v. Pittsburgh Corning matter from
19 Pennsylvania in November of 1980.

20 THE COURT: Give me the date.

21 MS. JOYNER: November 13th, 1980.

22 THE COURT: Who is Francis Powers?

23 MS. JOYNER: Francis Howard, H-o-w-a-r-d.

24 THE COURT: All right.

25 MS. JOYNER: And he is a director of Cape

1 Industries.

2 THE COURT: All right. And that's November
3 the 15th, 1980?

4 MS. VALEK: November the 13th, 1980.

5 THE COURT: All right. All right. That's
6 Exhibit 220. Keep on going.

7 MS. JOYNER: Okay. Exhibit 221 --

8 THE COURT: Yes, ma'am.

9 MS. JOYNER: -- is the annual report of
10 Charter Consolidated PLC from March 31st, 1982.

11 THE COURT: All right.

12 MS. JOYNER: Exhibit 222 is a portion of a
13 deposition transcript of Matthys Van Rooyen.

14 THE COURT: First name is Matthys?

15 MS. JOYNER: Yes, ma'am. M-a-t-t-h-y-s.

16 THE COURT: Van Rooyen.

17 MS. JOYNER: Yes.

18 THE COURT: R-o-o-y-e-n?

19 MS. JOYNER: Yes, ma'am.

20 THE COURT: Is he a doctor?

21 MS. JOYNER: Yes, ma'am.

22 THE COURT: Doctor. All right.

23 MS. JOYNER: And it is from November 6th of
24 1996.

25 THE COURT: And what's the name of the case

1 in which it's involved?

2 MS. JOYNER: It is "In Re: Asbestos Personnel
3 Injury Cases Arrington Lead No. 93-9-114."

4 THE COURT: In what state?

5 MS. JOYNER: It is in Mississippi.

6 THE COURT: All right. All right. Next
7 exhibit.

8 MS. JOYNER: Yes, ma'am. It's Exhibit 223.

9 THE COURT: All right.

10 MS. JOYNER: This is a portion of a
11 deposition from Charles G. Morgan from May --

12 THE COURT: And Morgan, just for
13 identification purposes, is on the board of --

14 MS. JOYNER: He's the second president of
15 NAAC.

16 THE COURT: NAAC.

17 MS. JOYNER: Yes, ma'am.

18 THE COURT: All right.

19 MS. JOYNER: And this is from May 19th, 1982.

20 THE COURT: In what proceeding?

21 MS. JOYNER: In -- oh, this is a -- okay.
22 Bonfiglio, B-o-n-f-i-g-l-i-o, v. Bell Asbestos Mines.

23 THE COURT: Which asbestos mine?

24 MS. JOYNER: Bell.

25 THE COURT: B-e-l-l?

1 MS. JOYNER: B-e-l-l, et al.

2 THE COURT: What state or jurisdiction?

3 MS. JOYNER: This is United States District
4 Court, Cook -- oh, no -- in -- yes, so state of
5 Illinois.

6 THE COURT: All right.

7 MS. JOYNER: That would be Exhibit 223.

8 THE COURT: All right.

9 MS. JOYNER: The last one is Exhibit 224.

10 THE COURT: All right.

11 MS. JOYNER: And this is a Colfax
12 C-o-l-f-a-x, annual report from March of 2021.

13 THE COURT: All right.

14 MS. JOYNER: And that would be Exhibit 224.
15 And that is -- those are the exhibits we would like to
16 move into evidence at this time.

17 THE COURT: All right. Mr. Carroll.

18 MR. CARROLL: Yes, ma'am. The Altrad
19 defendants stand on their prior objections to the
20 overall status of the proceeding as being nullity and
21 being conducted without jurisdiction.

22 THE COURT: Very good.

23 Mr. Rawl.

24 MR. RAWL: Your Honor, Charter, ESAB, and
25 Central Mining adopt Mr. Carroll's objections, but also

1 state that they are reserving their personal
2 jurisdiction objections and that they incorporate the
3 filed objections they made prior to the trial.

4 THE COURT: Very good. All right. Does that
5 complete the exhibits?

6 MS. JOYNER: Yes, ma'am.

7 (Whereupon, Plaintiff's Exhibits 219 -
8 224 were admitted into evidence.)

9 THE COURT: All right. Where do we stand?

10 MS. JOYNER: Your Honor, I think it might be
11 a good idea, if you don't mind, for us to take a brief
12 break to discuss motion practice and then we can move
13 into closing, if you would like.

14 THE COURT: Yes, sir. All right. I've got
15 to be some place at 12:30. Can we accomplish all this
16 including closing?

17 MR. LAY: I don't think that we can.

18 THE COURT: Well, here's what I would like to
19 do, then. I would like to do all the technical things
20 that have to be done right now. Then when we get to
21 the next thing on the list, which would be closing
22 arguments, then maybe tell you the way I would like to
23 proceed.

24 MR. LAY: Yes, ma'am.

25 THE COURT: All right. You may go forward.

1 MR. ROBINSON: Your Honor.

2 THE COURT: All right. All right. In recess
3 until 5 after 11:00.

4 MR. ROBINSON: Your Honor, before the
5 break --

6 THE COURT: Yes, sir.

7 MR. ROBINSON: One of the things I think that
8 may also dictate this afternoon, I don't know if the
9 defendant is going to put a case on.

10 THE COURT: I guess -- I am guessing that I
11 can assure you that the defendant won't be, but I don't
12 want to make that decision for the defendant.

13 MR. ROBINSON: Okay. So after the break, you
14 will take up motions? Is that --

15 THE COURT: That's correct.

16 MR. ROBINSON: All right.

17 THE COURT: Or I will -- I will -- the next
18 thing on the list would be after the plaintiff's case
19 would be motions, then we would go to the defendant's
20 case, and we'll see what defendant wants to do about
21 that. And closing would not take place until after
22 that. So we have some technical things we need to put
23 on the record in that regard.

24 MR. ROBINSON: And, Your Honor, I think just
25 from -- we just want to make sure we preserve the

1 ability after the defendant case, if there is one, that
2 we would have another opportunity for motions.

3 THE COURT: Yes, sir. I realize all that. I
4 know how to stages and the things took off, but let's
5 get the first part of this done.

6 MR. ROBINSON: Very good. Thank you, Your
7 Honor.

8 THE COURT: All right. Court will be in
9 recess.

10 (Whereupon a short recess was taken.)

11 THE MARSHAL: Court come to order, please.

12 THE COURT: All right. Please be seated. I
13 know you've still got people filing in, but this is
14 when I told you I would be here, so here I am.

15 MR. PROTOPAPAS: Yes, Your Honor. Folks are
16 being brought back.

17 THE COURT: All right. Counsel are -- all
18 right. All counsel are present. And y'all have wanted
19 to do some technical things.

20 Mr. Robinson.

21 MR. ROBINSON: Your Honor, just from the --
22 from a procedural standpoint, as I understand it, the
23 posture of the case is that the plaintiff has presented
24 its case and has tendered the case -- has concluded the
25 prosecution of its case.

1 There will be an opportunity, as I
2 understand, for the defense to perhaps make a -- make
3 an opening or present evidence to the Court -- that was
4 not -- that has not yet been decided, but since we are
5 at the stage of the conclusion of the plaintiff's case,
6 I would like to present several motions.

7 THE COURT: All right, sir. And let me just
8 say this. Here is my thinking about this matter, the
9 more I have kind of thought about it on the break.
10 These motions on your behalf might well be the
11 dispositive motions in light of the framework of this
12 case from the standpoint of the participating --
13 participation by the remaining defendants.

14 This is an extremely complex matter tried
15 before me without a jury. There are thousands of pages
16 of exhibits. I have tried to keep up with exhibits,
17 and I think I do a fair job with that. But in order
18 for me to evaluate not just the case as a whole, but
19 the motions that are made, such as your motions at this
20 point in time, and I can at least imagine what they
21 might entail, I'm sure they entail your position that
22 dispositive motions may now be received and should be
23 acted upon from the plaintiff's point of view.

24 I want to be sure that I am in complete
25 command of the material that has come into evidence and

1 the testimony that has been made in this case. So here
2 is what I would like to suggest to the parties even
3 though I get a lot of fuss sometimes just talking about
4 it and taking matters under advisement.

5 There's no fuss about the fact that I
6 generally rule from the bench. Not going to do that,
7 even if all dispositive motions are presented to me
8 today, because I would prefer to have a chance to
9 examine this record in detail.

10 So what I'm going to suggest be done is this,
11 is that I recess the proceedings. I ask that the
12 transcript of the proceedings be prepared for me and
13 obviously for the parties. That I verify at some point
14 that I'm in possession of all the exhibits, which I
15 think can most easily be done after I receive the
16 transcripts. All right.

17 Our clerk is very adept at taking these
18 prettiest handwriting and penmanship I have seen since
19 I was taught by the nuns. I didn't learn like she did.
20 But in any event, I would take all that and be sure I
21 have everything and then get myself in position to hear
22 the various dispositive motions that both sides would
23 make. And preceding that, any closing statement that
24 the plaintiffs would wish to make and any closing
25 objections and statements of a more detailed nature

1 about these proceedings that the defense would may wish
2 to make.

3 So that's how I would propose we proceed. I
4 know that's a little unusual, but this case is a very
5 complex and unusual case; so I'm throwing that out
6 there for y'all's' consideration, and I turn first to
7 you, Mr. Robinson and Mr. Lay, for your thoughts about
8 what I'm proposing.

9 MR. ROBINSON: Your Honor, I think that is an
10 excellent proposal. I do believe that at this stage in
11 the -- in a trial, as the Court knows, at the end of
12 the plaintiff's case and at the end of the defense, the
13 motions are entertained, and even post trial there are
14 motions entertained.

15 And you are correct, this is a stage where we
16 would anticipate possibly dispositive motions, and I do
17 believe that some of them are probably going to be
18 based on the evidence that's been presented over the
19 past two days. So I would certainly join in -- in --
20 in consent to a recess that would allow both the Court
21 and the plaintiff to take in the evidence that -- and
22 we could, I presume, we'd come back this afternoon or
23 in the morning or what would the Court's ...

24 THE COURT: No. I would adjourn these things
25 for 30 days at this moment and recess the proceedings.

1 That's my proposal. Let me get a transcript of the
2 record of these proceedings. Let me get my hands on
3 all the exhibits in these proceedings, and then we
4 would come back. That's my proposal.

5 Because we're at the end of the presentation
6 of the plaintiff's case, and the plaintiff, if they
7 want to, can note the motions without arguing them if
8 that's what you wish to do. And I will note them. And
9 then I will turn to the defendants and see how they
10 want to note their situation.

11 But what I'm trying to do is avoid having
12 anything that asks me to make a dispositive decision
13 about the case, even preliminarily, until I have got a
14 better grasp on the testimony and the records that have
15 been submitted in this case.

16 MR. ROBINSON: Very well, Your Honor. So I
17 can note our -- some of the motions that we or the
18 motions that we intended to present at this stage of
19 the proceedings. Of course since we are recessing at
20 this stage, I think that when we reconvene, we would
21 still be at the same stage so we would be able to
22 present whatever motions --

23 THE COURT: That's correct.

24 MR. ROBINSON: -- that would be applicable.

25 THE COURT: In other words, what I'm telling

1 you is that if I recess now, before you note those
2 motions, then you are free to make whatever motions at
3 the -- what you've done is you've rested the
4 plaintiff's case. That, we've got in -- in the barrel.

5 MR. ROBINSON: Right.

6 THE COURT: But I am stopping at this time,
7 or that's what I propose to do, and let you, then --
8 let us all get this material in hand and then reconvene
9 in 30 days to move forward with the end of the trial.

10 MR. ROBINSON: Very good.

11 THE COURT: That's how I would propose to do
12 it.

13 MR. LAY: Would you anticipate the motion or
14 one of the motions that's going to be made is the
15 motion to conform to the evidence?

16 THE COURT: Of course.

17 MR. LAY: And is that a motion you would hear
18 today or would you push that off as well?

19 MR. ROBINSON: Well --

20 THE COURT: I don't see any need for it.
21 But -- well, let's come back. That is a motion that
22 you would make before you make dispositive motions
23 about the trial itself. So if there's some need to at
24 least place upon the record and note those motions,
25 that ought to be done before Mr. Robinson speaks any

1 further about dispositive motion. You ought to make
2 what motions you would like about -- that place the
3 pleadings in whatever stage you want them to be in.

4 And I assume what that is is the motion you
5 referred to at the beginning of this case when we had
6 the dispute about the amendment of the complaint, and
7 you withdrew the request for an amendment, and now what
8 you are going to do before you rest your case is to
9 move to conform the pleadings to the evidence produced.

10 MR. LAY: Yes, ma'am.

11 THE COURT: And I am sure that defendant is
12 going to have a myriad of objections to that which I
13 want to have placed upon the record. But that's the
14 next thing that ought to happen before Mr. Robinson
15 gets up.

16 MR. ROBINSON: That was the first thing on my
17 list, Your Honor. That was the first question that I
18 was going to address before we got into it, but I'm
19 happy to address that now.

20 THE COURT: All right. I think that would
21 be -- well, I don't think it has to be lengthy, but I
22 would go on and get that on the record so that our
23 record will reflect that and its grounds as we then
24 move forward. So you may proceed.

25 MR. ROBINSON: Your Honor, Jon Robinson here

1 on behalf of the receiver. As the Court has noted, we
2 have -- the plaintiff has presented its case --
3 third-party plaintiff, the receiver, has presented its
4 case and has rested.

5 Pursuant to Rule 15(b) --

6 THE COURT: Let me stop you right there. You
7 haven't rested yet. All right. I would -- I would
8 tell you I don't think that's right.

9 MR. ROBINSON: Sorry. We haven't rested. We
10 prepped our case.

11 THE COURT: You presented your case; now
12 you're going to make the motions to conform the
13 pleadings. Right?

14 MR. ROBINSON: Thank you, Your Honor. You're
15 correct, Your Honor.

16 Based on the evidence presented, at this
17 stage in the case, we are moving to amend our pleading
18 to conform to the evidence pursuant to Rule 15(b). As
19 this Court is aware, Rule 15(b) allows an amendment to
20 conform to the evidence when, quote, "issues not raised
21 by the pleadings or tried by expressed or implied
22 consent of the parties they shall be treated in all
23 respects as if they had been raised in the pleadings."

24 Your Honor, we are requesting the amendment
25 add the cause of action for amalgamation and

1 single-business enterprise as to all remaining parties.
2 And I say "all remaining parties." As the Court is
3 aware, on Monday, the Anglo defendants were dismissed
4 from the case.

5 THE COURT: That's right. The Anglo -- the
6 factor of the Anglo defendants is, as I announced at
7 that time, is I have granted the motion to dismiss, but
8 I have held in abeyance the finalization of that until
9 I deal with the written finalization of that in a
10 signed order until I receive the settlement materials.
11 I received them; there's some tweaks that need to be
12 made in my view. But you are correct that Anglo has
13 been dismissed from the case.

14 MR. ROBINSON: Yes, Your Honor. And just for
15 clarity and for the record, the motion is to add cause
16 of action for amalgamation and single-business
17 enterprise as to all remaining parties, excluding those
18 that have already been dismissed for the case.

19 MR. LAY: And just for clarity, Your Honor,
20 that cause of action is effectively pled in the
21 original complaint. This is to provide clarity,
22 additional clarity on that single-enterprise business
23 enterprise theory.

24 MR. ROBINSON: That's correct, Your Honor.
25 On Monday, as you may recall, there was much discussion

1 about the amended pleadings. Mr. Lay pointed out to
2 the Court that I believe amalgamation was actually
3 discussed, I think, 15 times or so in the original
4 complaint. There was a cause of action that was added
5 in the amended complaint, a stand-alone cause of action
6 relating to single-business enterprise and
7 amalgamation.

8 During the course of this trial, Your Honor,
9 we have -- the Court has received testimony among
10 Dr. Press, who testified yesterday, that these
11 remaining parties, these entities were amalgamated as a
12 single-business enterprise. There were no evidentiary
13 objections to this testimony.

14 THE COURT: Well, now, I think in fairness,
15 it needs to be said the position of the defendants is
16 that the whole thing is a nullity because the receiver
17 is -- receiver's appointment is a nullity. So they
18 aren't consented to anything about it. They -- they
19 have continued to lodge their objections.

20 Now, whether they're effective to prevent the
21 amendment of the complaint may be a different matter,
22 but they have certainly preserved at every moment in
23 time their objection to these proceedings in general
24 and in specific.

25 MR. ROBINSON: That's correct, Your Honor.

1 THE COURT: We had the arguments at the
2 beginning about whether to amend the complaint or
3 withdraw the amendment. They put on the record
4 abundant objections, which I presume continue.

5 MR. ROBINSON: So, Your Honor, I've gone
6 through the transcript of the beginning of this trial
7 forward, and I have identified each objection that they
8 have raised. And their objection is to personal
9 jurisdiction, subject matter jurisdiction, the fact
10 that this case is a nullity, the fact that this Court
11 does not have jurisdiction under Rule 205 to move
12 forward.

13 Both Mr. Carroll and Mr. Rawl have asserted
14 that there is a release that applies to them, and that
15 that would be an additional defense, presumably, and a
16 part of the objection to the trial moving forward. I
17 will note there's nothing in evidence regarding any
18 release that has been discussed up to this stage or
19 introduced up to this stage.

20 So I want to make sure it's clear on the
21 record exactly what they are objecting to because I
22 think it could be relevant down the road, perhaps if
23 this case is ever on appeal.

24 They have objected to jurisdiction and they
25 have objected to this Court moving forward under

1 Rule 205. And -- but they have not launched any
2 evidentiary objections under our rules of evidence,
3 under our rules of civil procedure.

4 And I think that's because, as we saw in the
5 Welch case, there was a party who did not agree with
6 this Court's jurisdictional findings and decided, as a
7 result, they simply were not going to participate in
8 the case. And our Courts and I think our laws has made
9 clear multiple times that if you lose a jurisdictional
10 motion at the trial court, you don't get to pretend you
11 won it and not participate in the case.

12 If you lose the jurisdictional motion in the
13 trial court, you have an obligation under our rules of
14 evidence and under our law to participate in the case,
15 comply with court orders, and comply with our rules of
16 evidence and our rules of civil procedure.

17 You don't get to unilaterally decide that
18 there is no jurisdiction, and therefore, you are not
19 required to comply with the rules of evidence, the
20 rules of court, court orders. And that is the
21 situation, as in Atlas, that we have here.

22 This Court has grant -- has denied their
23 motion to dismiss for jurisdiction, and has made an
24 affirmative finding that there is jurisdiction. In
25 fact, although it was not an appealable order, that

1 matter, along with, I believe, six other -- five others
2 went to the Supreme Court. And all of the
3 jurisdictional arguments were made in part of that
4 appeal, and those appeals have been remanded to this
5 Court for all purposes, including this trial.

6 So despite this Court's finding of
7 jurisdiction, the fight with the Supreme Court at this
8 point's refusal to dismiss the case at the Supreme
9 Court level, in fact, as it relates to the
10 jurisdictional question, I believe the Court took
11 original jurisdiction and then remanded it back to this
12 Court.

13 Now, I understand that the third-party
14 defendants are not -- let's say don't agree with what
15 this Court has -- how this Court has proceeded since
16 the remand, but the fact of the matter is there is a
17 remand. And it was given to this Court with a
18 subsequent order telling this Court to go ahead and
19 proceed. And that is what we have done here this week
20 is proceed.

21 THE COURT: Right. And in addition, they
22 also sought, after I ruled -- I had jurisdiction to go
23 forward on remand, they also appealed to the Court of
24 Appeals with the position that that stop the
25 proceedings. And the Court of Appeals remanded or

1 denied the appeal and sent the remittals down with a
2 written order that specifically talks about the fact
3 that it was a frivolous appeal to begin and refuses to
4 entertain anything about the jurisdiction of this Court
5 to hear this case.

6 MR. ROBINSON: That's correct, Your Honor.
7 As it relates to -- just on that point, Justice Hill
8 stated in the Atlas opinion, we take a moment to
9 discuss that with turn of conduct in these cases and
10 how it affects receiverships. As conduct fits the
11 strategy when -- you mentioned earlier to shun the
12 civil process of the South Carolina Court to the point
13 of being declared in default, and then fight the
14 enforceability of the default on foreign, friendlier
15 soil. Sorry, my computer has -- let me see if I can
16 switch it up. Get a different view on it.

17 So, Your Honor, the -- as you may recall, in
18 that case, Justice Hill discussed this very case. And
19 in the context of attempts to try to attack
20 jurisdiction of this Court on foreign soil and as a
21 reason not to comply with our laws is not an
22 appropriate response under our system of justice.

23 So back to the objections, Your Honor, and
24 the evidence that was presented.

25 Yesterday, Dr. Press was asked, "Are these

1 entities amalgamated? Were they all amalgamated?" His
2 answer was "Yes."

3 "Were they all the acting as a
4 single-business enterprise?" His answer was "yes."

5 "And is that your opinion, to a reasonable
6 degree of professional certainty, as a historian who
7 specialized in South African business interest and the
8 governments of companies and the geopolitics of South
9 Africa, is that your opinion?"

10 And, Your Honor, it was next asked, "Any
11 question that they were acting as an amalgamated,
12 single-business enterprise as it relates to shutting
13 down in NAAC -- NAAC to try to escape liability in the
14 United States?" The answer was "no."

15 Your Honor, what we are specifically asking
16 the Court to, as I said, amend the complaint to assert
17 the cause of action for amalgamation of interest from a
18 single-business entity against all parties. In the
19 case -- all remaining parties.

20 In the case of Walbeck, W-a-l-l-b-e-c-k (as
21 spelled), versus I'On, Court 39-SC-568, the Court
22 outlined what the single-business enterprise
23 amalgamation standard is. And it says, Your Honor, "A
24 single-business enterprise theory permits all --
25 permits veil-piercing where, No. 1, the various

1 entities' operations are intertwined, and No. 2, there
2 is further evidence of bad-faith, abuse, fraud,
3 wrongdoing, or injustice resulting from the blurring of
4 the entities' legal distinctions." That's a 2023 South
5 Carolina case, Your Honor.

6 Here these issues, as I said, were tried by
7 implied consent, and I want to understand that there
8 are objections, but I want to, with the Court's
9 permission, talk about what objections were actually
10 made and what has been tried -- our position by
11 consent.

12 First of all, there were no objections to the
13 questions that Mr. Press asked -- there were no
14 objections at all during his testimony other than
15 jurisdiction, nullity, release. There were no
16 evidentiary objections. So for the purpose of appeal,
17 if, Your Honor, the Court determines that this Court
18 had jurisdiction to proceed with this trial, there are
19 no evidentiary objections on record. It's either all
20 coming in or all coming out.

21 And so for that reason, and as we are -- the
22 standing order of the Court is there is jurisdiction,
23 therefore, it is our position they had an obligation to
24 make evidentiary objections in order to preserve them
25 for the record. The only objections that are preserved

1 for jurisdiction, nullity and a release.

2 Your Honor, second, as I have said, Altrad
3 and Charter defendants have not objected to making any
4 evidentiary objections to the admission of evidence
5 other than the jurisdiction, nullity, and release.
6 They have not participated in this case. They have not
7 asked any questions in this case, Your Honor. And as I
8 said, they have not made any objections.

9 Now, we talked a moment -- objections
10 evidentiary. We talked a moment ago about the running
11 objections. So just to be clear what those running
12 objections are.

13 Yesterday Mr. Carroll says, and this is on
14 page 5 and 6 of the rough transcript. I presume there
15 will be a full transcript, but I will quote the rough
16 transcript. "Yes, ma'am, Your Honor. I was just -- is
17 reiterating -- sorry, I'll speak louder. Just
18 reiterating our standing objections to all this
19 happening without jurisdictional" -- I'm sorry --
20 "without jurisdiction, personal subject matter
21 jurisdiction, appellate under Rule 205 or fundamental
22 jurisdiction. Everything the receiver is putting
23 forward, the punitive" -- although I believe that it
24 means -- refers to him as putative receiver -- "is
25 putting forward is a nullity, and we just want the

1 record to reflect our running objection on that."

2 So when we have heard the repeated running
3 objection, that is the running objection. It is not
4 evidentiary, it's not hearsay, it's not assumes facts
5 not in evidence, Your Honor. It is simply this is a
6 nullity.

7 As it relates to the qualifications of
8 Dr. Press, Mr. Lay offered Dr. Press as an academic
9 historian with particular expertise in the history and
10 business practices and governance of mining enterprises
11 in Europe and South Africa, and also, specifically in
12 the historical organization of Cape, Anglo-American,
13 De Beers, Charter, NAAC, and how they relate to each
14 other.

15 Mr. Press was tendered as an expert and the
16 only objection raised by the Altrad defendants was,
17 quote, "Your Honor, we stand on the many jurisdictional
18 objections we have been making throughout. The
19 putative receiver is a nullity, and therefore, he has
20 no authority to even proffer the witness."

21 THE COURT: Right. Now, I will note there,
22 and, again, would have had to have been made, renewed
23 since it was an MIL motion. But an MIL motion was made
24 pretrial by the defendants, and specifically my memory
25 is by Mr. Carroll, as to the qualifications of

1 Dr. Press, and I overruled the motion or declined to
2 grant the motion in limine.

3 It is correct that when the case began, the
4 jurisdictional position was the one that's been
5 reiterated.

6 MR. ROBINSON: Correct, Your Honor. There
7 were no contemporaneous jurisdictions to Mr. Press's
8 qualifications or to his testimony for that matter.
9 They were simply just that the receiver did not have
10 the ability because as he had been referred to as a
11 nullity to even proffer the evidence.

12 Now, here again, that is not an evidentiary
13 objection; that is a jurisdictional objection.

14 On the cross of Dr. Press, when he was going
15 to -- asked to cross Dr. Press, Mr. Carroll stated,
16 "Your Honor, Altrad defendants again reiterate their
17 position, these proceedings are done without
18 jurisdiction. The receiver is a nullity as a matter of
19 law. The claims against my client have already been
20 released. All of the objections we put in the record
21 we've been told -- and we've been told any kind of
22 participation amounts to a waiver of various things.
23 We do not intend to risk that, so that is our
24 position."

25 Now, Your Honor, I don't know who told them

1 that. We disagree with that. We -- we believe that
2 they have waived certain things by not participating in
3 this trial, and we believe this -- the law is fairly
4 clear that if a jurisdictional motion is not granted,
5 you have the obligations of participating in the case.
6 And we believe that is the law.

7 Your Honor, in Woods versus Raven 295-SC-343,
8 a 1988 Court of Appeals opinion, the Court of Appeals
9 also in addressing a Rule 15(b) amendment, stated that,
10 quote, "a claim of prejudice must be preserved by a
11 prior objection to admission of the evidence."

12 Here, during the course of this trial, there
13 has been no claim of prejudice that during the course
14 of this trial and contemporaneous with the evidence
15 that has been introduced.

16 So, Your Honor, I do have -- I also just want
17 to put on the record, just as it relates to the
18 amendment. We're not getting into the dispositive
19 motions.

20 As it relates to the amendment, prior to the
21 beginning of this trial, the receiver's motion to amend
22 was pending since October of 2024. There was a hearing
23 on that motion to amend on October 6th, 2025. The
24 Court granted that motion to amend from the bench on
25 October 6th, 2025, and directed the receiver to prepare

1 a formal order.

2 The amended complaint was in the record at
3 the time the Court granted the motion to amend on
4 October 6th, and it was attached to the amended motion
5 for relief. All participating parties in the case have
6 been trying the amalgamation and single-business
7 enterprise issue by consent expressly since the
8 receiver first sought to amend the complaint.

9 According to Mr. Balber's witness statement
10 that was submitted in the UK and is part of this --
11 this record, he says in paragraph 10 -- and this is a
12 participating -- at this time a participating party,
13 "My expectation is that South Carolina trial court will
14 go forward with the trial on 20 October 2025,
15 notwithstanding the filing of the amended complaint for
16 at least two reasons as set forth below. First, the
17 amended complaint does not change in any way the
18 evidence that I anticipate will be presented at trial.
19 Specifically, the amended complaint adds a fifth cause
20 of action against the third-party defendants for
21 amalgamation of interest and single-business enterprise
22 liability. The allegations underlying that cause of
23 action are the same as those underlying the existing
24 cause of action for alter ego and veil-piercing
25 liability which has been the subject of the South

1 Carolina proceedings since the filing of the original
2 complaint on June 30th, 2023. Further, the legal and
3 factual issues specific to the amalgamation cause of
4 action have been litigated since Mr. Protopapas filed
5 his motion for leave to amend the pleadings on
6 October 3rd, 2024, almost a year ago. For example, the
7 applicants briefed the anticipated amalgamation cause
8 of action in their motions for summary judgment filed
9 January 6th, 2025. A true and correct copy of the
10 motion for summary judgment filed by De Beers
11 Consolidated Mines is attached. Likewise,
12 notwithstanding purported disapproval of the
13 jurisdiction of the South Carolina Court, the Altrad
14 and Charter third-party defendants briefed the
15 anticipated amalgamation cause of action in their
16 oppositions to Mr. Protopapas' motion for summary
17 judgment filed November 22nd, 2024. True and correct
18 copies of these opposition briefs are attached. The
19 nonparticipating" --

20 So, Your Honor, that is what was -- has been
21 put into the record. And that is -- was one of the
22 participating defendants' position. So the idea that
23 this evidence that was presented or even the legal
24 theories that are presented are somewhat -- are a
25 surprise or in any way have prejudiced any of the

1 parties, No. 1, there hasn't been any contemporaneous
2 argument that any evidence prejudiced any party. But
3 as Mr. Balber stated, the issues have been in the
4 complaint since its inception.

5 And, Your Honor, we believe that the evidence
6 has been consistent with the issues that were in the
7 complaint, and therefore, we ask that the Court simply
8 amend the pleadings to include that cause of action.

9 I want to point out that the nonparticipating
10 defendants that have not participated in this case at
11 all, no discovery, et cetera, the receiver was unaware
12 until the morning of October 20th, the beginning of
13 this trial, that the nonparticipating defendants were
14 arguing that the trial could not proceed due to the
15 amended third-party complaint.

16 We believe that they waived any right to
17 object because of their failure to participate. You
18 can't selectively participate in a case. And --
19 however, in response to those first raised arguments,
20 the receiver did move for this Court to vacate the
21 order and proceed on the original complaint. The Court
22 still had the authority under Rule 59 and under Rule
23 54(b) to reconsider the order granting the motion to
24 amend the complaint.

25 There was some talk that there had been no

1 filed motions. Of course, we all know, I believe it's
2 under Rule 7, that motions can be made in open court
3 and often are in trial. We believe the issues have --
4 were raised in the original complaint, but they have
5 now also been raised in the evidence of trial, and
6 therefore, we'd ask the Court to grant our motion to
7 conform the pleadings to the evidence that's been
8 presented.

9 THE COURT: All right, sir.

10 All right. Mr. Carroll.

11 MR. CARROLL: Yes, ma'am. We've stated our
12 position contemporaneously on October 20th regarding
13 this notion of amending the pleadings -- amending the
14 pleadings, withdrawing the amendment, and putting that
15 all back in at the end. We have noted our objection on
16 October 20th. We filed a similar objection this
17 morning, a written memorialization to that objection.
18 It incorporates this -- the nullity, jurisdictional,
19 and release arguments as well.

20 Our position has not changed. I do have -- I
21 have a clarification question that I would -- I would
22 present to the Court, but hopefully the receiver's team
23 can respond. When the Court allowed the receiver to
24 amend their pleadings to formally make the amalgamation
25 claims that they said was necessary to put into the

1 pleadings. Those were their words, "This is necessary;
2 we have to add it as a stand-alone claim."

3 When they put it in their amended complaint,
4 they specifically noted that it did not apply to my
5 client, Mr. Altrad. That was in the amended pleading
6 that they did file.

7 THE COURT: My -- my understanding is
8 Mr. Altrad alone was identified as the party to whom it
9 did not apply.

10 MR. CARROLL: That's right, but what I just
11 heard from the lecturn was no, now we want it to apply
12 to everybody so I would love that point of
13 clarification. It doesn't change any of my objections,
14 it just changes what I have to report to my client.

15 THE COURT: Right.

16 MR. CARROLL: Thank you.

17 THE COURT: Understood. All right.

18 All right. Mr. Rawl.

19 MR. RAWL: Your Honor, on behalf of my
20 clients Charter, ESAB, and Central Mining, we
21 incorporate the arguments we made at the time of the
22 pretrial hearing on these issues, and, again,
23 incorporate the written, you know, objections that we
24 filed, I believe -- I think it was on October the 20th.
25 And I think we also incorporate the arguments that --

1 that -- or incorporate what Mr. Carroll put in the
2 objections, which were basically summarizing the
3 positions that were made at the pretrial hearing.

4 THE COURT: Right. In other words, you want
5 to associate yourself with the additional material he
6 filed today as he just outlined again reiterating the
7 objections that were made at the time the Court allowed
8 the parties to withdraw their amended complaint.

9 MR. RAWL: Your Honor, just -- we incorporate
10 the position that as he described what happened on --
11 at the pretrial motion.

12 THE COURT: Right. And in addition, he's
13 filing something now, he did this morning, that
14 incorporates that again into what he was saying today,
15 as I understand it. And as I understand it, you are
16 associating yourself with that as well?

17 MR. RAWL: Yes, Your Honor. Just to be
18 clear, my understanding of that what was filed was only
19 a reiteration of what was said on -- at the pretrial
20 and there was not anything additional, any additional
21 arguments made in there. If they were, I'm only
22 incorporating what was -- what was made at the pretrial
23 hearing.

24 THE COURT: All right.

25 MR. RAWL: Thank you, Your Honor.

1 THE COURT: All right. Mr. Robinson.

2 MR. ROBINSON: So, Your Honor, just for
3 clarity, as it relates to Mr. Altrad, the -- it is
4 correct, it is our motion to amend the pleading to
5 conform to the evidence as it relates to
6 single-business enterprise and amalgamation as to all
7 remaining defendants, with the exception of Mr. Altrad.

8 THE COURT: That's kind of what I thought
9 would be the case.

10 MR. ROBINSON: Yes, ma'am. And just I will
11 put on the record, we do have dispositive motions and
12 Rule 37 motions, which I understand the Court will take
13 up at another time.

14 THE COURT: Right. All right. Now, anything
15 further? All right. Then, again, just so we
16 understand where we are now.

17 All right. Mr. Carroll.

18 MR. CARROLL: So -- so has the third-party
19 plaintiff rested or is that where you were going --

20 THE COURT: I'm trying to prevent them from
21 resting.

22 MR. CARROLL: Okay.

23 THE COURT: And, therefore, allowing you to
24 have some time now or at a future time to say whatever
25 else you want to say. I think I know what it's going

1 to be. All right. But I am pausing the proceedings at
2 this time and leaving that situation open.

3 In other words, he's submitted his
4 plaintiff's motions at the close of his case, he's
5 rested his case, but I have not ruled on his motions
6 yet.

7 MR. RAWL: Thank you, Your Honor.

8 THE COURT: He does not intend to submit any
9 further evidence, as I understand it. The -- what he
10 does intend to do is to make a closing argument when we
11 come back 30 days from now.

12 MR. CARROLL: Okay.

13 THE COURT: And that is generally what
14 happens if you make your motions at the end of the case
15 and the Court then rules on them, then you make your
16 closing argument and proceed. And what I'm doing is
17 halting it before that takes place.

18 MR. CARROLL: Very good.

19 THE COURT: All right. Does everybody
20 understand where we are?

21 MR. CARROLL: So, Your Honor, so when -- when
22 you gavel us out, we are done for the day? Is that --

23 THE COURT: You're done for the day.

24 MR. CARROLL: That was the confusion on my
25 face.

1 THE COURT: That's right. You're done for
2 the day. And when we come back, we would not receive
3 anything further by way of evidence. We would simply
4 come back and deal with dispositive motions and with
5 closing statements and the opportunity for the defense
6 to present its case if it intends to. I think I know
7 what's going to happen with that, but I say that's
8 where we are now.

9 MR. ROBINSON: Can we ask if the defense
10 intends to present a case?

11 THE COURT: I don't think it's necessary to
12 do that because, again, I'm in the position I want to
13 be prepared for dispositive motions that you present
14 before we move forward to see what will happen with
15 their case. Am I making sense?

16 MR. ROBINSON: Yes, ma'am.

17 THE COURT: All right. Very good.

18 All right. Ladies and gentlemen, very
19 difficult and hard fought case. What I'm going to do
20 is look on my calendar and see what kind of dates would
21 suit for the resumption of this matter and get some
22 advice from the court reporter as to when our
23 transcript might be available, and then we'll go from
24 there. All right. As soon as I know when I'm going to
25 get the transcript, then I will send something out to

1 both sides telling you suggested dates.

2 I do have a November block of asbestos cases,
3 but right now, very close to resolving the block.

4 Unfortunately, Carl Pierce had a heart attack at -- at
5 a deposition in the matter, and is okay now, but -- or
6 not a heart attack, but a stroke. He's okay, as best
7 we know, but we are going to continue the cases he's in
8 until, I think, a March block of next year, but I have
9 few more cases in that block, so I don't think that
10 would prevent me some time in November from resuming
11 this thing. But let's just see what happens with the
12 court reporter and everything else to see when that
13 will take place.

14 Is that -- is it okay to leave it open like
15 that as far as y'all are concerned?

16 MR. RAWL: Yes, Your Honor.

17 MR. CARROLL: Well, since we are all here, I
18 know I have some conflicts with part of the week that
19 you had had for that block.

20 THE COURT: No worries. We will work with
21 all that and probably go beyond the trial block itself
22 before we schedule this thing.

23 MR. CARROLL: Very good. I have a trip to
24 McCormick County for an argument, which is a hard thing
25 to find.

1 THE COURT: Yes, it is.

2 MR. CARROLL: Thank you, Your Honor.

3 THE COURT: All right. Anything further for
4 the record?

5 MR. LAY: No.

6 THE COURT: Court will be in recess.

7 (Whereupon the proceedings were
8 adjourned at 11:49 a.m.)

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CERTIFICATE OF REPORTER

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I, Kristy Clark, Registered Professional Reporter and Notary Public for the State of North Carolina, do hereby certify: That the proceedings and evidence are contained fully and accurately in the notes taken by me in the above cause and that it is a correct transcript of the same.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof. Witness my hand, I have hereunto affixed my official seal this 29th day of October, 2025, at Chapin, Lexington County, South Carolina.

Kristy Clark

Kristy Clark
Registered Professional Reporter
Notary Public
State of North Carolina
My Commission expires:
March 20, 2028

3. That a damages hearing will be scheduled upon request by Plaintiffs' counsel.

AND IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Richland Common Pleas

Case Caption: Jerry P Ross , plaintiff, et al vs Ascend Performance Materials
Operations Llc , defendant, et al
Case Number: 2024CP4003710
Type: Order/Entry of Default

So Ordered

Jean H. Toal

Electronically signed on 2025-12-10 11:13:32 page 3 of 3