

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2025-002104

RECORD ON APPEAL
(VOLUME XIX)

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

Plaintiffs,

v.

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

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

of which

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

and

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

v.

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

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

of which

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

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NEUTRAL CITATION NUMBER: [2025] 2470 (Ch)

Case No: BL-2025-000785

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: 30 September 2025

Before:
MR JUSTICE MARCUS SMITH

Between:

- (1) ALTRAD INVESTMENT AUTHORITY SAS
(2) ALTRAD UK LIMITED
(3) CAPE UK HOLDINGS NEWCO LIMITED
(4) CAPE INDUSTRIAL SERVICES GROUP
LIMITED
(5) CAPE HOLDCO LIMITED
(6) ALTRAD SERVICES LIMITED
(7) MR MOHED ALTRAD

Claimants

-and-

- (1) PETER D PROTOPAPAS
(2) CAPE INTERMEDIATE HOLDINGS
LIMITED
(3) CAPE PLC

Defendants

Heard on 23 and 24 September 2025

Mr Derrick Dale, KC and Angus Groom (instructed by Enyo Law LLP) for the Claimants
Mr William Willson (instructed by Signature Litigation LLP) for the Second and Third
Defendants

The First Defendant was not represented and did not appear

Approved Judgment

MR JUSTICE MARCUS SMITH

A. Introduction

1. This Judgment disposes of a Part 8 Claim issued by the Claimants on 24 June 2025. The trial of the claim was expedited by order of Trower J on 25 July 2025, and was heard by me on 23 and 24 September 2025.
2. The matters before me are closely related to a Part 8 Claim heard by and disposed of by Mann J (sitting in retirement) in Cape Intermediate Holdings Ltd v. Protopapas [2024] EWHC 2999 (Ch) in a judgment dated 22 November 2024, which I shall refer to as the “Mann J Judgment”. The terms and abbreviations used in this Judgment, including this term just used, are set out and defined in Annex 1 to this Judgment.
3. As was the case in the Mann J Judgment, the matters before me concern the relationship between proceedings in the courts of South Carolina, USA and the courts in this jurisdiction. By these proceedings, the Claimants seek various declarations and injunctive relief. These are described and ruled upon below. But before I come to the substance of the matters before me, it is necessary to begin with a description of the relevant proceedings and events, both in South Carolina and here. Sections B to N of this Judgment, accordingly, set out and (where necessary) make findings in relation to events and proceedings taking place in the US and the UK, not merely over the last months, but over the last decades. It is only at Section O that the substance of the matters at issue can directly be addressed, so dependent are they on the prior history. The substance of the Part 8 Claim before me is addressed in Sections O to U. Section V describes how I dispose of the matters before me.

B. The Park Proceedings (proceedings commenced in South Carolina)

4. On 4 June 2021 a claim was issued by Ms Isabella Park in South Carolina against a large number of companies. Ms Park claimed to have sustained asbestos-related injuries derived from her husband, who had worked with asbestos: Mann J Judgment/[42]. I shall refer to these proceedings as the “Park Proceedings”. One of the many defendants named in the Park Proceedings was “Cape plc”.
5. On 17 November 2021, the complaint in the Park Proceedings (now being pursued by Ms Park’s son as her personal representative) was amended to add a further party, Cape Intermediate Holdings Ltd or “CIHL”: Mann J Judgment/[42].

C. The “Cape” defendants to the Park Proceedings

6. “Cape plc” is the Third Defendant in these proceedings and Cape Intermediate Holdings Ltd – CIHL – the Second Defendant. They were the only Claimants in the proceedings before Mann J. The Mann J Judgment provides a description of the corporate personalities relevant to the proceedings before him, which I gratefully adopt, and summarise in the following sub-paragraphs:

- i) The Cape group is a group of companies that was formerly involved in asbestos mining and distribution. Those activities have now ceased, and the business of the group centres on the provision of critical industrial services focused on the energy and natural resources sectors. The group employs 12,800 employees across 17 countries. In the year ended 31 August 2023, the group had recorded revenue of £848.4m and a profit of £62.6m: Mann J Judgment/[8].
- ii) CIHL was incorporated in December 1893 under the name “The Cape Asbestos Company”. The Cape group has, historically, been involved in the mining and manufacture of asbestos until the group started to curtail those activities when the associated health risks became more widely known. Originally, CIHL conducted all of the business, but (over time) parts of its business were devolved to other companies in the group: Mann J Judgment/[9].
- iii) By 1961, CIHL was essentially a holding company. In May 1974, it changed its name to “Cape Industries Ltd” and changed it again to “Cape Industries plc” when it re-registered as a public company. There was a further name change to Cape plc in July 1989. In June 2011, the company’s name was changed once more to “Cape Intermediate Holdings plc” and then – on de-registration as a public company in December 2013 – to “Cape Intermediate Holdings Ltd”: Mann J Judgment/[10]. I shall use the term CIHL to refer indifferently to this company whatever name it may have used over its long history.
- iv) Cape plc was – as I have described – a former name of CIHL, abandoned as long ago as June 2011: see [6(iii)]. There is a Cape plc within the Cape group, but this is a company incorporated in Jersey in 2011: (Mann J Judgment/[1]). Mann J referred to this company as “Cape Jersey”) in preference to the term Cape plc (Mann J Judgment/[1]) because it appears that there is no intention, in the South Carolina proceedings, to bring claims against Cape Jersey, and that the reference to Cape plc is a reference to CIHL, but by an older (and now inaccurate) name: Mann J Judgment/[1], [138].
- v) Because of the confusion surrounding the constitution of the South Carolina proceedings, it is necessary (i) to say something about Cape Jersey and (ii) to stress that it was entirely right and proper that Cape Jersey was a claimant in the proceedings before Mann J and is now a defendant before me. The uncertainties in the constitution of the South Carolina proceedings render it necessary that the protection of the English courts (to the extent that such protection is appropriate) be considered not merely in relation to CIHL but also in relation to Cape Jersey.
- vi) Cape Jersey was formed in 2011. By virtue of a scheme of arrangement in that year it became the holding company of the Cape group, and has remained so ever since. It was incorporated in Jersey, but listed on the London Stock Exchange, with a tax residence in Jersey and Singapore: Mann J Judgment/[11].

- vii) In 2017, the share capital of Cape Jersey was acquired by Altrad UK Ltd (the Second Claimant), an English company which is part of the Altrad group. That group is a very substantial group, employing over 60,000 employees worldwide. Its parent company is Altrad Investment Authority SAS (the First Claimant in these proceedings), incorporated in France. The founder and President of the Altrad group is Mr Mohed Altrad (the Seventh Claimant in these proceedings): Mann J Judgment/[11].

D. Constitution of the Park Proceedings in South Carolina

7. As I have noted (at [6(iv)]), the reference to Cape plc in the Park Proceedings appears to be an erroneous reference to CIHL. The matter is not completely clear, because the manner in which “Cape plc” is said to be liable is not clearly articulated in the Park Proceedings, and the naming of the parties in those (and other proceedings) is much less clear than it ought to be. Nevertheless, the First Defendant to these proceedings – Mr Protopapas, whose role I shall come to describe – has indicated that the reference to “Cape plc” is intended to refer to CIHL. Of course, Mr Protopapas cannot actually speak for the plaintiffs in either the Park Proceedings or any other proceedings originated against the Cape group in the US.
8. I proceed on the basis that Cape Jersey has been joined to these proceedings (as it was to the proceedings before Mann J) for the avoidance of doubt because of the uncertainties in the constitution of the South Carolina proceedings. Cape Jersey has never been served in those proceedings and (again for the avoidance of any doubt) has not submitted to South Carolina jurisdiction.
9. So far as CIHL is concerned, (i) it is contended that the Park Proceedings have been properly served on CIHL, (ii) which contention is disputed by CIHL, but (iii) in any event CIHL has never responded to the process and has never submitted to the jurisdiction: Mann J Judgment/[42].

E. Apparent conclusion of the Park Proceedings

10. Chief Justice Toal is a retired Chief Justice in the State of South Carolina, but she retains her title. Like Mr Justice Mann (Mann J Judgment/[3]), I will refer to the judge by her title as Chief Justice Toal.
11. By an order of Chief Justice Toal dated 1 December 2021, the Park Proceedings were listed for trial on 20 June 2022. However, on 3 June 2022, the court was informed by counsel that the Park Proceedings had been fully resolved. The terms of that resolution are unknown to CIHL, which was not involved. There has been no trial of the Park Proceedings in the South Carolina Courts, and it is difficult to understand how (as they clearly are: see the receivership order considered further below) the Park Proceedings are continuing in the South Carolina Courts: Mann J Judgment/[43].

F. The receivership application in the South Carolina courts

12. On 6 March 2023, the plaintiff in the Park Proceedings issued a “Receivership Motion” seeking to appoint a receiver over CIHL: Mann J Judgment/[44]. According to the terms of the South Carolina Code (set out by Mann J at Mann J Judgment/[46]), “a receiver may be appointed (i) when a corporation has been dissolved, is insolvent or in imminent danger of insolvency or has forfeited its corporate rights and, in like cases, of the property within this State of foreign corporations and/or (ii) in such other cases as are provided by law or may be in accordance with the existing practice”.
13. The jurisdictional basis for the receivership motion against CIHL was said to be the presence and operation in the US of an entity referred to as “NAAC”. On that basis, the appointment of a receiver over CIHL was justified for all purposes, including but not limited to marshalling available assets of CIHL and its subsidiaries, successors and assigns: Mann J Judgment/[45]. NAAC stands for the “North American Asbestos Corporation”, a directly and wholly owned subsidiary of CIHL established by CIHL in October 1953. NAAC was incorporated in the State of Illinois in the US to assist in the marketing of asbestos in the US, to act as a liaison between Egnep Pty Ltd (the principal asbestos mining company in the Cape Group until 1979: Mann J Judgment/[9]) and another Cape company (Casap) on the one hand and US purchasers of asbestos on the other, and to purchase and re-sell asbestos into the US market on its own account: Mann J Judgment/[12].
14. From the early 1970s, NAAC was the defendant in numerous product liability claims. It eventually ran out of insurance cover and was liquidated and then dissolved in 1978. It has never been restored: Mann J Judgment/[13].
15. Continental Productions Corporation or “CPC” took over from NAAC on its liquidation: Mann J Judgment/[32(ii)].
16. In the Mann J Judgment/[47], Mann J recorded:
 - i) That the fundamental factual basis for appointing a receiver was the assertion that CIHL was operating through NAAC and CPC in the US. The Mann J Judgment refers to the confusion in the South Carolina proceedings regarding the entities within the Cape Group that are implicated in the Receivership Motion. It seems to me clear that the Receivership Motion can only (in the first instance) be directed to CIHL and not any other Cape group entity, including in particular Cape Jersey. That is because: (i) NAAC was a subsidiary of CIHL and not of Cape Jersey; (ii) Cape Jersey was incorporated (in 2011: see [6(iv)]) after NAAC was dissolved (in 1978: see [14]). Accordingly, I shall refer to CIHL from hereon, but any orders or declarations that I make will have to reflect the confusing way in which the South Carolina proceedings have been framed.
 - ii) That the receivership was not merely sought against CIHL, but also over (i) its subsidiaries and global affiliates; and (ii) its successors and assigns, with an objective of “marshalling” the assets of CIHL: see

Mann J Judgment/[47]. Thus, although the nexus between NAAC and CIHL is the initial basis for the Receivership Motion, the Receivership Motion then builds on that relationship to stretch to many other entities in the Cape group.

17. The receivership order sought in the Park Proceedings was made on 16 March 2023, without a hearing and without any substantive judgment stating the reasons for the making of the order: Mann J Judgment/[48]. I shall refer to it as the “Receivership Order”. The order is appended to the Mann J Judgment.
18. Mr Peter Protopapas (the First Defendant in these proceedings) was appointed the receiver by way of the Receivership Order.

G. Exorbitant nature of the Receivership Order

19. As I shall come to describe, for the reasons given in the Mann J Judgment, Mann J declined to recognise the Receivership Order. This is an important holding for the purposes of this Judgment, and for that reason it will be necessary is summarise below (hopefully at not too great a length) the terms of the Mann J Judgment in this regard. Of course, the Mann J Judgment stands and should be read in its own right, but a summary is nevertheless necessary and appropriate in this Judgment. Of course, nothing in this Judgment can or is intended to detract from anything said by Mann J in the Mann J Judgment.
20. Mann J also observed that the Receivership Order – leaving on one side the question of recognition – was a remarkably wide one for any court to make:
 - i) It would appear from the terms of the Receivership Order itself and from what Mr Protopapas had said that the Receivership Order has a “long-arm” effect, that is to say it can apply extra-territorially beyond the South Carolina territorial jurisdiction. Mann J observed (Mann J Judgment/[134]):

...The powers given to the receiver are apparently very long-arm and would be capable of being exercised worldwide, including this jurisdiction. He has not disavowed any intention so to use them. They are oppressive and have already been used to the disadvantage of CIHL. CIHL could seek to challenge them in South Carolina, but is, for very good reason, not willing to do acts which would, or might, amount to a submission to the jurisdiction when it laboured long and hard 35 years ago to demonstrate that it was not subject to it...

Receivership orders generally without more do not have extraterritorial effect, as has been recognized in e.g. Re Whitaker Clark & Daniels Inc (a decision of the US Court of Appeals (Third Circuit)); Re Asbestos Corporation Ltd (a decision of the Superior Court in the Province of Quebec, Canada); and Masri v. Consolidated Contractors International (UK) Ltd (No 2) [2008] EWCA Civ 303 at [28] (Court of Appeal, England). The approach of most jurisdictions is that receiverships operate locally and where a receiver seeks to take steps in a foreign jurisdiction, (i) the receivership order must expressly so state and (ii)

the receiver will have no power to act even so unless their title to act has been recognized by the foreign jurisdiction in question: see, e.g., Robinson and Walton, Kerr & Hunter on Receivership and Administration, 21st ed (2020), chapter 7.

- ii) Mann J expressed the view that Mr Protopapas, at least, was seeking to deploy the Receivership Order “with the object of marshalling assets in some sort of less than complete insolvency proceedings”: Mann J Judgment/[135]. If this is the way the Receivership Order is intended by Mr Protopapas to operate, then it runs contrary to generally accepted rules of corporate insolvency, which would indicate (i) an English jurisdiction (for CIHL is incorporated in England and this is where it has its centre of business) and (ii) that South Carolina is an inappropriate jurisdiction (because not only is CIHL not incorporated there, it does no business there either).

H. Mr Protopapas as the First Defendant in these proceedings

- 21. It is convenient, at this point, to deal with this court’s jurisdiction over Mr Protopapas. Mr Protopapas is the First Defendant in these proceedings. The Part 8 Claim initiating these proceedings was issued on 24 June 2025, permission for service out of the jurisdiction on Mr Protopapas was granted by Master Pester on an expedited basis by orders dated 25 June 2025 and 2 July 2025, and service was duly effected on Mr Protopapas on 2 July 2025.
- 22. Mr Protopapas has not acknowledged service nor filed any evidence. Nor has he sought to contest jurisdiction in these proceedings or to aver, in these proceedings, that this court has no jurisdiction over him.
- 23. I therefore hold that this court has personal jurisdiction over Mr Protopapas.
- 24. There is one point that (had he appeared before me on the question of jurisdiction) Mr Protopapas might have deployed, which is the provision at the end of the Receivership Order which provides:

The Court further orders that, as the Receiver Court, that the Receiver or Cape may not be sued outside this Court without obtaining the Receiver’s consent or an order of this Court prior to doing so.
- 25. Properly, the Claimants in these proceedings drew this provision to my attention. Clearly, Mr Protopapas has not consented to these proceedings being brought against himself (or, for that matter, CIHL). The provision in the Receivership Order reflects the doctrine articulated in Barton v. Barbour, 104 US 126 (1881)), on which Mr Protopapas would doubtless rely. The Claimants contended, and I agree, that this “Barton” provision in the Receivership Order does not assist Mr Protopapas for reasons given by Mann J (Mann J Judgment/[124]):

One of the points that he [Mr Protopapas, in the South Carolina proceedings] takes is that the “Barton doctrine” requires that the permission of the court be obtained before suing a receiver in respect of his acts, and that therefore no

action can be taken against him without the permission of the South Carolina court. Judge Wilkins [a US-law expert retained by the Claimants before Mann J] has given his opinion on the extent of the application of this doctrine, and his report is uncertain on the extent of its application. However, assuming it does apply in South Carolina, I consider that it does not stand in the way of the present proceedings because the present proceedings are governed by English law, and the whole premise of the proceedings is that the receiver has no recognition under English law. Accordingly it does not recognize the office which would otherwise give him protection. It is therefore not a bar to the relief claimed against him in these proceedings.

26. As I shall come to describe, Mann J held that the Receivership Order was not capable of recognition in this jurisdiction. That being the case, this non-recognition is a complete answer to the “Barton” provision. Accordingly, the “Barton” provision cannot affect my holding at [23] as to this court’s personal jurisdiction over Mr Protopapas.

I. The Tibbs Proceedings

27. On 5 April 2023, a Mr and Mrs Tibbs commenced proceedings in the South Carolina courts (the “Tibbs Proceedings”). The claims advanced are similar to those made in the Park Proceedings and a similarly broad, scattergun, approach has been taken to the naming of defendants. One of these defendants is “Cape plc”: Mann J Judgment/[51]. Precisely the same confusion as to defendant identity arises here. For the reasons I have given, it is appropriate to refer to CIHL as the primary Cape group target, and not Cape Jersey.
28. The Tibbs Proceedings have, apparently, been dismissed by consent: Mann J Judgment/[52]-[53]. Like the Park Proceedings, it is thus difficult to understand how the Tibbs Proceedings can continue. Yet (as I shall describe) that is what appears to be happening.

J. Third party claims

29. Relying upon the Receivership Order made in the Park Proceedings, Mr Protopapas, on 30 June 2023, initiated (by way of a “summons”) third party proceedings on behalf of CIHL within the Tibbs Proceedings (the “Third Party Claim”). The Third Party Claim is advanced (to quote from the Mann J Judgment/[54]) “...against a number of companies, including a number of Cape group companies...The Cape related companies included Altrad companies (the group that had acquired the Cape group in 2017), and the Sparrows entities that were brought within the group much more recently (despite its being hard to see how they can be held responsible for acts done before they were brought into the group). Mr Mohed Altrad, founder of the Altrad group, is also sued personally...”.
30. A number of points need to be made in relation to the Third Party Claim:
- i) Subsequent to the Mann J Judgment, Mr Protopapas produced a draft amended Third Party Claim, to which I propose to refer. A motion to amend the Third Party Claim is due to be heard by Chief Justice Toal

at a pre-trial hearing due to take place on 6 October 2025: see the Notice of Pretrial Hearing in the Tibbs Proceedings.

- ii) It is the Third Party Claim that provides the basis for my statements (in [11] and [28]) that both the Park Proceedings and the Tibbs Proceedings are (in some way) on-going, contrary to the plaintiffs in those proceedings not actually pursuing their claims. The Park Proceedings are on-going because Mr Protopapas is, in the Tibbs Proceedings, deploying the Receivership Order made in the Park Proceedings. To the eyes of an English lawyer this would appear to be irregular, but this is a matter of South Carolina procedural law on which I cannot and do not comment further.
- iii) Self-evidently, by virtue of the Third Party Claim, the Tibbs Proceedings are progressing, but again in what would appear to be an irregular way. Whilst this is again a procedural matter for the South Carolina courts, it is a matter that is of some relevance to the matters before me in these proceedings, and it is therefore necessary to say more.
- iv) Receivers are agents of the company in respect of which they are appointed, and they have a basic duty “to act in its proper interests” (Mann J Judgment/[120]). In this case, Mr Protopapas appears to be doing the very reverse of this. As I have described, the plaintiffs in the Tibbs Proceedings do not have a judgment in their favour against CIHL, and do not appear to be pursuing their claims against CIHL. The Tibbs Proceedings have been dismissed by consent (Mann J Judgment/[52]). The trial before Chief Toal is not the trial of the plaintiff’s allegations in the Tibbs Proceedings, but the trial of the Third Party Claim. It is – self-evidently – extremely odd for a third party claim to be tried in advance of the main action. This is very much “putting the cart before the horse”.
- v) What is more, the “defence” pleaded by Mr Protopapas on behalf of CIHL in the Tibbs Proceedings contains a denial in these terms (Mann J Judgment/[53]):

To the extent that it is not inconsistent with the allegations of the Third Party Complaint, Cape hereby denies each and every allegation contained in the Amended Complaint.

Since the Third Party Claim effectively accepts that CIHL is liable to the plaintiffs in the Tibbs Proceedings and seeks to reflect those allegations or pass them on to the defendants to the Third Party Claim the “defence” of CIHL is no defence at all, but in fact a disguised set of admissions made contrary to the interests of CIHL in circumstances where the plaintiffs to the action are not pursuing their claims. It is to be inferred that Mr Protopapas is seeking to hide the fact that he is acting in disregard of his duties as receiver, for the allegations made in the Third Party Claim are extreme and extremely damaging to CIHL (as well as to the Claimants in these proceedings). Thus, by way of

example, the opening paragraph of the unamended Third Party Claim states:

This lawsuit seeks to finally hold accountable three groups of Third Party Defendants (including their predecessors in interest) who are responsible for the sale and use of asbestos or asbestos containing products throughout the United States, including South Carolina, and which caused or materially contributed to thousands of deaths from mesothelioma or other asbestos-related disease, and billions of dollars of past, present, and calculable future damages. For decades, certain of these Third Party Defendants created sham transactions to feign exits of the asbestos industry in the United States, leaving shells and an absence of insurance coverage to account for their massive liability exposure. And also for decades, they hid behind (or within) byzantine collectives of limited liability and other holding companies internationally, avoiding responsibility while continuing to reap the profits from the sales of asbestos and asbestos-containing products throughout the United States including South Carolina. In sum, these three groups of Third Party Defendants have wreaked havoc in the United States, padding their already massive coffers with blood money on top of blood money, and amused themselves with the supposed ingenuity of their scheme to avoid any responsibility. This lawsuit is their reckoning.

Perhaps belatedly recognizing that this immoderation is inconsistent with a receiver's duties, Mr Protopapas now seeks to delete this passage from the Third Party Claim and to substitute for it language that is less (but nevertheless still) immoderate.

- vi) Mann J's conclusions as to Mr Protopapas' conduct is one in which I respectfully concur (Mann J Judgment/[120]):

This is a case where the law of England and Wales, where CIHL is incorporated, plainly will not recognise the receivership. It is also quite apparent that the receiver will not himself recognise that fact, and that he is pursuing his receivership vigorously and beyond what one would normally expect of a receiver. He has purported to make admissions, and to run a positive case, which is positively damaging to the legitimate interests of the company over whose assets he has been appointed, despite the fact that one of his obligations is to act in its proper interests. Instead, he has been utilising his appointment as a vehicle which some of the Third Party Defendants have aptly described as a "crusade". All this is without the consent of the legitimately appointed board of CIHL and, for the reasons given above, is potentially and unjustifiably damaging to the legitimate interests of the company...

K. “Single economic unit”: the factual basis for the Receivership Order and the Third Party Claim

31. The various parties in what can loosely be called the Cape group were described at [6] (including in particular the status and position of CIHL) and [13]-[16] (dealing with NAAC and CPC). An understanding of the legal and factual relationship between CIHL and NAAC (and, to a limited extent, CPC) is critical to understanding the basis for both the Receivership Order and the Third Party Claim. The basis for making of the Receivership Order was briefly described in [16(i)]. It is now necessary to expand on this, and to explain how the same point drives the Third Party Claim.
32. Both the Receivership Order and the Third Party Claim are founded upon a theory that NAAC is part of a “single economic unit” that includes not only CIHL but later acquirers of the Cape group like Altrad UK Ltd (the Second Claimant), Altrad Investment Authority SAS (the First Claimant) and Mr Altrad (the Seventh Claimant).
33. These parties, and their acquisition of the share capital in Cape Jersey in 2017, were described in [6(vii)]. It is now appropriate, before coming to the single economic unit point, to describe the nature of the acquisition of Cape Jersey in greater detail. This is best done by quoting from the evidence of Mr Alcock in “Alcock 1”/[63]-[69]:

[63] In 2017, Altrad UK acquired Cape Jersey through a public tender offer, which resulted in Cape Jersey becoming a wholly owned subsidiary of Altrad UK.

[64] In late 2016 the Altrad Group entered discussions with the board of directors of Cape Jersey about a potential acquisition of the Cape Group.

[65] The acquisition process, including due diligence, began in early 2017, ending in mid-2017 when a public tender offer (“PTO”) was made – reflecting the fact that Cape Jersey was a publicly listed company on the London Stock Exchange. The terms of the PTO are set out in a Bid Conduct Agreement dated 7 July 2017. In this regard, the PTO stated that:

[65.1] The cash offer for each share in Cape plc was 265 pence, which valued the entire issued share capital at £332.3 million.

[65.2] The cash consideration would be financed by acquisition debt provided by BNP Paribas SA.

[66] As part of the Bid Conduct Agreement, the Altrad Group confirmed an intention to procure that each member of the Cape Group honours its obligations under, or in connection with, the Cape Scheme.

[67] The offer was conditional upon, among other matters, obtaining the required number of votes cast in favour of the acquisition. Subsequently, over 90% of the votes were cast in favour of the acquisition and Altrad UK was able to proceed to purchase 100% of the issued share capital of Cape Jersey

(the 90% trigger entitled Altrad to complete a “squeeze out” of the minority who either did not consent or did not respond).

[68] As a result of this transaction, Altrad UK purchased Cape Jersey (and so the Cape Group as a whole) in an arm’s length transaction and at an arm’s length price.

[69] In operational terms, the companies within the Cape Group have their own boards of directors and corporate governance.

34. I was shown a great deal more evidence than this summary, including in particular the rest of Alcock 1 and also “Oren 1” and “Alcock 2”, as well as voluminous exhibits to these statements. On the basis of this evidence – which is helpfully encapsulated in the paragraphs quoted at [33] – I make the following findings of fact:
- i) The Altrad group has itself had no involvement in the sale or distribution of asbestos or asbestos-related products in any part of the world, including in particular in the US. That is implicit in Alcock 1, but is explicitly stated in Oren 1/[54].
 - ii) The acquisition of the shares in Cape Jersey by Altrad UK Ltd was on an arms’ length basis, where a commercial or market price for those shares was agreed between a willing buyer and willing sellers (or at least 90% willing sellers, based on Alcock 1/[67] as quoted above).
 - iii) The value paid by Altrad UK Ltd reflected or took into account the Cape group’s exposure to asbestos claims. Every arms’ length corporate acquisition involves an assessment (as part of the due diligence process) of the liabilities (actual and potential) of the to-be-acquired company. Altrad UK Ltd’s acquisition of the shares in Cape Jersey expressly involved an evaluation of the Cape group’s exposure to asbestos claims, which had been the subject of significant (and binding on me) judicial consideration in England. It will be necessary in due course to refer to and describe (i) the decision of Scott J and the Court of Appeal in Adams v. Cape Industries [1990] Ch 433 (“Adams v. Cape”), (ii) the “Cape Scheme” referred to in Alcock 1/[68] and (iii) the sanctioning of the Cape Scheme by David Richards J in an order dated 9 June 2006 (the “David Richards J Order”). For the present I confine myself to finding that the acquisition of the shares in Cape Jersey and the price that was paid for those shares was informed by each of Adams v. Cape, the Cape Scheme and the David Richards J Order. Doubtless there were many other factors informing the decisions of Altrad UK Ltd, but these three factors were all (both individually and in the aggregate) material to the decisions of Altrad UK Ltd and the wider Altrad group.
35. The basis for the making of the Receivership Order against CIHL was its corporate relationship with NAAC. Thus, the Receivership Motion states (at 4-5):

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

In addition, Cape began to engage in a campaign of litigation avoidance by refusing to accept process or appear in any proceedings in the United States, including failing to respond to the Second Amended Summons in this action, as properly served pursuant to Article 10 of the Hague Convention on March 8, 2022. According to Cape executives, this strategy was warranted because they "really cannot be said to have a moral responsibility [to respond to the suits] and are simply victims of [a] US product liability cult."

36. The basis for the allegations against the various "Cape" defendants in the Third Party Claim is similarly NAAC. Referring to the proposed draft amendments to the Third Party Claim (which represent the latest expression of Mr Protopapas' thinking, albeit unapproved by the court as yet):

Today, the assets of Cape are effectively with others. This case seeks declarations to establish that the historical entities intertwined with Cape – Anglo American plc, ESAB, Altrad, and certain De Beers entities – are together responsible for the historical and ongoing fraud perpetrated on the US market. Such a finding will allow the Receiver to administer the full assets of Cape, including all insurance coverage for these amalgamated entities. This litigation, squarely within the Receiver's charge, ultimately will marshal assets for the payment of legitimate claims brought by US workers against Cape. This Receivership, and particularly this third party action, represents the last opportunity for these entities to be held to account for their fraud on the US market. [at 8-9]

...

23. Specifically, on information and belief, each of the third party defendants is subject to this Court's jurisdiction because each entity is part of an amalgamation with, part of a single business enterprise with, or an alter ego of North American Asbestos Company ("NAAC"), over which this court has personal jurisdiction. NAAC purposefully availed itself of the South Carolina market through direct sales of asbestos fiber into South Carolina...

37. The basis for the alleged liability of the Claimants in these proceedings who are defendants to the Third Party Claim is the same as the basis on which the Receivership Order was made: namely the operation of NAAC in the US. This conclusion accords with the similar conclusion of Mann J: Mann J Judgment/[55]. Although Mr Protopapas uses a variety of labels to tie CIHL and the Claimants in these proceedings to NAAC ("amalgamation with", "single business enterprise", "alter ego") I shall use the label "single economic unit" compendiously to describe the various ways in which the operations of

NAAC in the US are used as a device to ensnare in US litigation CIHL and the Claimants in these proceedings.

L. Declarations and orders made by Mann J in the proceedings before him

38. The trial of the Part 8 Claim before Mann J sought declaratory and injunctive relief as to Mr Protopapas' status as receiver as a matter of English law. As Mann J noted (Mann J Judgment/[6]), "...it is not part of my function to sit as some sort of appellate court from the South Carolina judge, and overrule her decisions...". Mann J's duty was to consider the position under English law and (as appropriate) ensure that the claimants before him (CIHL and Cape Jersey) received due process and justice according to the laws of this jurisdiction.
39. By an order dated 22 November 2024 (the "Mann J Order"), Mann J made the following declarations and orders:

IT IS DECLARED THAT

1. The receivership order of the Court of Common Pleas for the Fifth Judicial Circuit of the State of South Carolina, County of Richmond ("the South Carolina Court") dated 16 March 2023 appointing Mr Peter Protopapas ("Mr Protopapas") as a receiver over CIHL ("the Receivership Order") is not recognised and has no legal effect in England and Wales and worldwide.
2. Mr Protopapas has and had no power or authority to act on behalf of CIHL in England and Wales or worldwide and has no power to or authority in respect of CIHL in England and Wales or worldwide to carry out the acts referred to in paragraphs 6-10 below.
3. The rights and duties of the directors of CIHL remain unaffected by the appointment of Mr Protopapas as receiver of CIHL pursuant to the Receivership Order.
4. Mr Protopapas has and had no power or authority of behalf of CIHL to act for or to bind CIHL in the South Carolina Court in respect of Park Claim and the Tibbs Claim...and has or had no power or authority on behalf of CIHL to issue or pursue third party claims including in the Tibbs claim against any of the third party defendants in those proceedings ("the 3P Complaint"), including (i) Mohed Altrad, (ii) Altrad Investment Authority SAS, (iii) Altrad UK Ltd, (iv) Cape UK Holdings Newco Ltd, (v) Cape Industrial Services Group Ltd, (vi) Cape Holdco Ltd, (vii) Altrad Services Ltd.
5. Mr Protopapas has and had no power or authority to accept service on behalf of CIHL in the claim brought in the South Carolina Court by a summons dated 11 November 2024 with claim number C/A No 2024-CP-40-06639 or any other legal proceedings issued against CIHL in the South Carolina Court or worldwide

AND IT IS ORDERED THAT

6. Mr Protopapas be restrained in England and Wales and worldwide from acting or purporting to act as agent or otherwise on behalf of CIHL pursuant to the Receivership Order.
 7. Mr Protopapas be restrained in England and Wales and worldwide from appropriating, interfering with or usurping (in any way whatsoever) the lawful exercise of the rights and duties of the directors of CIHL.
 8. Mr Protopapas be restrained from acting or purporting to act on behalf of CIHL in the Park Claim and the Tibbs Claim...
 9. Mr Protopapas be restrained from continuing to prosecute the 3P Complaint...
 10. Mr Protopapas be restrained from purporting to act of CIHL in the claim brought in the South Carolina Court by a summons dated 11 November 2024 and with claim number C/A No 2024-CP-40-06639 or in any other legal proceedings issued against CIHL in the South Carolina Court or worldwide.
40. The reasons for the Mann J Order are fully set out in the Mann J Judgment. That Judgment stands for itself and it would be inappropriate for me to repeat Mann J's reasoning in any detail. However, a summary is both appropriate and necessary for the purposes of this Judgment:
- i) The basis for making the Receivership Order against CIHL was the operation of NAAC (and possibly CPC) in the US in circumstances where CIHL was operating through NAAC and CPC.
 - ii) This precise question was brought before the English courts and resolved by them in Adams v. Cape when a Mr Adams sought to enforce a default judgment in his favour obtained in the Federal Courts of Texas based on injuries said to have been caused by asbestos. One of the defendants against whom Mr Adams sought to enforce was CIHL: Mann J Judgment/[18].
 - iii) A court of a foreign country (here: the Texas courts) has jurisdiction to give a judgment in personam capable of enforcement or recognition as against the person against whom it was given where (in the only case relevant here: Mann J Judgment/[19]) the person against whom the judgment was given was, at the time the proceedings were instituted, present in the foreign country. For a natural person, this requires physical presence in the territory, and for a legal person it requires a fixed place of business in the territory: Mann J Judgment/[18].
 - iv) After a trial on the merits, Scott J held in Adams v. Cape that CIHL did not have a fixed place of business in the US, whether by itself or through the operations of NAAC or CPC: Mann J Judgment/[32]. As a consequence, there was no basis upon which Mr Adams could enforce

his judgment in default against CIHL. It is to be stressed that these findings were findings of fact made by an English court of competent jurisdiction after an extensive trial on the merits. None of these factual findings was successfully challenged by Mr Adams in the Court of Appeal: Mann J Judgment/[33].

- v) Mann J identified a fundamental inconsistency between the (unreasoned) Receivership Order and the (evidence and merits-based) decision in Adams v. Cape (Mann J Judgment/[90]):

...At the heart of the receiver's case in his Third Party proceedings, and underpinning his appointment, is the proposition that NAAC and CPC were essentially to be treated as being one with CIHL for the purposes of founding liability and getting into the rest of the group. That encapsulation is flat contrary to the findings of the courts in Adams v. Cape when they found that they were not effectively one entity, there was no justification for piercing the corporate veil and that CIHL did not operate through NAAC or CPC. CIHL did not control NAAC in any meaningful sense, and the participation of CPC was not a ruse or a sham. The receiver (and the applicant for the receivership, who may well have been motivated and prompted by the receiver) simply ignores this and advances the opposite case.

- vi) All matters concerning the constitution of a corporation are governed by the law of the place of incorporation: Mann J Judgment/[93]. That in the case of CIHL is England. But the question before Mann J was not whether an English court could appoint a receiver over CIHL, but whether and to what extent a foreign receiver, such as Mr Protopapas, will be recognised in this jurisdiction: Mann J Judgment/[93]. In order to recognise a foreign receivership, the English court must be satisfied of a sufficient connection between the company and the jurisdiction in which the foreign receiver was appointed so as to justify recognition of the foreign court's order, on English conflict principles, as having effect outside such jurisdiction: Mann J Judgment/[94], citing Schemmer v. Property Resources Ltd [1975] 1 Ch 273.

- vii) Mann J held (Mann J Judgment/[98]):

Applying the "sufficient connection" principle, it is quite clear that the South Carolina receivership would not, should not and could not be recognised here for all the reasons which led to the US judgment in Adams v. Cape not being enforceable here. All the facts which led to the conclusion that CIHL did not have a presence in the US in that case mean that there is no sufficient connection for the purposes of recognition of the receivership. As a matter of private international law, CIHL did not have a presence in South Carolina (or anywhere in the United States) at the time which was relevant in Adams v. Cape and it has not had one since. Nothing in the facts alleged in any of the court documents relating to the receivership demonstrate a change in the facts between then and now. They tend to ignore the facts as found at great length in Adams v. Cape.

41. Mann J concluded (Mann J Judgment/[100]:

...in the present case, the receiver is not currently seeking recognition of his receivership in this jurisdiction, so this decision is not in the nature of an actual refusal of recognition. Rather, mine is a decision at a higher level to the effect that the receivership is not capable of recognition in this jurisdiction with the consequence that the receiver's acts should not be recognised for English law purposes. This goes to the question of the relief that should be afforded to the claimant, which I deal with in a later section of this judgment. As will appear, the fact that the receiver is not seeking recognition in this jurisdiction does not mean that this judgment is pointless.

42. Mann J then explained why the orders I have set out at [39] were appropriate in this case. I do not need to set out his reasoning in this regard, which appears at Mann J Judgment/[113] ff.

43. Drawing the threads together:

- i) Recognition of a foreign receivership such as that made in the Receivership Order requires a "sufficient connection" between the company over whom a receiver has been appointed and the jurisdiction in which the appointment is made.
- ii) In this case for the reasons articulated by Mann J in Mann Judgment/[101] ff (on what may loosely be called "judicial estoppel") the facts found in Adams v. Cape were binding on CIHL and Mr Protopapas (as soi-disant receiver) – see Mann Judgment/[110].
- iii) Applying the law (i.e. the "sufficient connection" test) to the facts (i.e. the absence of a connection between NAAC and CIHL found in Adams v. Cape) Mann J was compelled to conclude that there was no sufficient connection to justify the recognition of the Receivership Order.

M. The Cape Scheme and the David Richards J Order

44. The judgment in Adams v. Cape – after a hearing on the merits, and affirmed on appeal before the Court of Appeal – is that the Cape group had so structured its corporate affairs as to ring-fence the rest of the group from the conduct, in selling asbestos in the US, of its US subsidiaries. The effect was that only NAAC and CPC were liable as defendants in the US. NAAC has long since closed its doors (see [14]) – and I anticipate the same is true of CPC.

45. It is worth noting that various plaintiffs in the US successfully recovered from NAAC in regard to asbestos-related claims. The payments made by NAAC to such plaintiffs are described by Scott J in Adams v. Cape at [1990] Ch 433 at 446-449. To the extent that Mr Protopapas insinuates that US plaintiffs have been deprived of all compensation, that is wrong. NAAC has paid significant monies (including to the exhaustion of its insurance cover) to such plaintiffs.

The problem for such US plaintiffs is that NAAC has run out of money and was dissolved long ago (see [14]).

46. Mr Protopapas chooses to characterise this shortfall in the assets of NAAC as a form of “moral fraud”, but in reality it is no such thing. The question of whether a parent is liable for the acts of its subsidiary is a question of fact and law, and one with which the US courts are very familiar. On 3 December 1984, over 500,000 people in the vicinity of the Union Carbide India Ltd pesticide plant in Bhopal, India were exposed to the toxic gas methyl isocyanate. The accident caused around 16,000 deaths and over half a million injuries. The Indian company responsible for the accident was majority-owned by a US corporation, the Union Carbide Corporation. Although civil cases seeking compensation were filed in the US, they were dismissed by the US courts on the basis that the Indian company was a separate entity and that there was no “single economic unit” to enable US proceedings against US parents.
47. It was precisely this question that was before the English courts in Adams v. Cape. As I have described, Mr Adams was seeking to enforce a judgment in default obtained in his favour against NAAC in Texas against CIHL in England. The Court of Appeal held that NAAC (and indeed CPC) were not a “single economic unit” and that Mr Adams’ enforcement action must therefore fail. In dismissing Mr Adams’ appeal, the Court of Appeal said this in Adams v. Cape ([1990] Ch 433 at 544:

Mr Morison [leading counsel for Mr Adams] submitted that the court will lift the corporate veil where a defendant by the device of a corporate structure attempts to evade (i) limitations imposed on his conduct by law; (ii) such rights of relief against him as third parties already possess; and (iii) such rights of relief as third parties may in the future acquire. Assuming that the first and second of these three conditions will suffice in law to justify such a course, neither of them apply in the present case. It is not suggested that the arrangements involved any actual or potential illegality or were intended to deprive anyone of their existing rights. Whether or not such a course deserves moral approval, there was nothing illegal as such in Cape arranging its affairs (whether by the use of subsidiaries or otherwise) so as to attract the minimum publicity to its involvement in the sale of Cape asbestos in the United States of America. As to condition (iii), we do not accept as a matter of law that the court is entitled to lift the corporate veil as against a defendant company which is the member of a corporate group merely because the corporate structure has been used so as to ensure that the legal liability (if any) in respect of particular future activities of the group (and correspondingly the risk of enforcement of that liability) will fall on another member of the group rather than the defendant company. Whether or not this is desirable, the right to use a corporate structure in this manner is inherent in our corporate law. Mr Morison urged on us that the purpose of the operation was in substance that Cape would have the practical benefit of the group’s asbestos trade in the United States of America without the risks of tortious liability. This may be so. However, in our judgment, Cape was in law entitled to organise the group’s affairs in that manner and (save in the case of AMC to which special considerations apply)

tom expect that the court would apply the principle of Saloman v. A Saloman & Co Ltd [1897] AC 22 in the ordinary way.

The plaintiffs submitted (paragraph 7 of their notice of appeal) that the motive of the defendants in setting up the arrangements regarding NAAC, AMC and CPC as revealed in the documentary evidence were “consistent only with an acceptance by Cape that they were present in the United States through NAAC and CPC”. We think there is no substance in this point. These arrangements at most indicated an apprehension on the part of the defendants that they might be held to be so present and a desire that they should not be. They involved no admission or acceptance of such presence.

48. It is worth stressing (as Mann J did – Mann J Judgment/[39]) that the Court of Appeal reached this conclusion after a careful consideration of the facts that had been before the trial judge (Scott J):

The Adams v. Cape notice of appeal listed 25 findings of fact (some of them multiple) which it was said Scott J should have made but did not make, and which were said to go to the main questions in the case. The Court of Appeal dealt with that part of the appellant’s case in a separate Appendix to its judgment, again not published in the report. The Appendix runs to 40 pages and I will not reproduce it here. It can appropriately be summarised by saying it is a thorough consideration of each of the “facts” in question, and it either accepts them as being true but not affecting the decisions on the main points or rejects them as being inconsistent with actual findings of Scott J as being unsustainable on the evidence. Overall it shows the comprehensiveness of the case advanced by Mr Adams, the comprehensiveness of its consideration and the clarity and firmness of the rejection of that case. When put together with the first instance and appeal judgments, it effectively covers the same ground as the claims as to the effect of relationships and trade made in South Carolina and firmly rejects them on the facts and the attempt to tie the claims to the US in terms of jurisdiction.

49. The unequivocal position (i) under English law (ii) on the facts of this case (iii) as found on the merits by a competent court of record in this jurisdiction and affirmed on appeal is that US plaintiffs are confined in their remedies to claims against NAAC as opposed to the wider Cape group.
50. The Cape Scheme described by Mann J in Mann J Judgment/[14]-[17] is predicated on the correctness and bindingness of the Court of Appeal’s decision in Adams v. Cape. As a direct result of the decision in Adams v. Cape the Cape Scheme is limited to the compensation of UK claims against UK entities like CIHL.
51. The “Scheme of Arrangement” by which the Cape Scheme was implemented is very clear on this point. There is no need to set out the Scheme in detail. It is sufficient to refer to the definition, in the Scheme of Arrangement, of “Asbestos Personal Injury Claim”, which means:

...any claim (not being an Asbestos Contribution Claim or an Excluded Claim) against one or more of the Scheme Companies, whenever brought, of

which the governing law is the law of any of England and Wales, Scotland or Northern Ireland brought either:

- (a) by an individual resident in the United Kingdom on the Record Date; or
- (b) by an individual not resident in the United Kingdom on the Record Date but whose claim is attributable or is alleged to be attributable to his exposure to Asbestos in the United Kingdom in the course of his employment by any Scheme Company or any Additional Company,

in either case for debt, damages or other relief in respect of death or personal injury or in respect of a Financial Dependency Claim arising out of or connected in any way with exposure to Asbestos attributable, or alleged to be attributable, wholly or in part to any act or omission on the part of any Scheme Company (or for which any Scheme Company is liable or is alleged to be liable) occurring prior to the Record Date...

- 52. To be clear, neither NAAC nor CPC is a “Scheme Company” within the meaning of the Scheme of Arrangement. The Scheme of Arrangement articulating the Cape Scheme was approved by the David Richards J Order.
- 53. The Scheme of Arrangement is still running (Mann J Judgment/[14]). Indeed, it remains subject to the supervision of this Court, and (as I have described) the Altrad group committed to supporting the Cape Scheme when the group acquired Cape Jersey.

N. The Settlement Agreement

- 54. Proceedings and procedural steps based upon the Receivership Order continue in the US. The adverse effects of these steps as described by Mann J (Mann J Judgment/[113] ff) thus continue, notwithstanding the Mann J Order (which has been disregarded by Mr Protopapas).
- 55. On 11 April 2025, a “Settlement Agreement” was concluded between (i) the targets of the litigation in the US, as evinced by the Park Proceedings and the Tibbs Proceedings), namely CIHL and (for the avoidance of doubt) Cape Jersey and (ii) various the defendants to the Third Party Claim brought by Mr Protopapas. The parties to the Settlement Agreement are (without differentiation) referred to by me as the “Parties”.
- 56. Following a series of detailed recitals (which I do not set out) the Settlement Agreement provides for the compromise and release of any and all disputes subsisting between the Parties and to dismiss all proceedings in respect of the “Allegations”. The Allegations are broadly defined as meaning:

...both (i) the claims asserted in the Tibbs claim (including in the Third-Party Complaint made within it), and (ii) any claims made in the future in any asbestos-related personal injury claims that may be asserted in the USA based in part or in whole upon alleged liability for the acts of CIHL, and in either case including but not limited to the claim that each of the Parties is, or is a successor in interest to an entity that was, the alter ego of or part of a single

business enterprise with CIHL and any claim on the right to pierce the corporate veil of CIHL.

57. The Settlement Agreement is governed by English law and there is an exclusive jurisdiction clause in favour of England.

O. The claims in the present proceedings

58. By this Part 8 Claim, the Claimants and the Second and Third Defendants seek the following declarations and orders. I quote from the draft order that was prepared by these parties, as presented to me before the commencement of oral submissions as a convenient way to set out what orders are sought. Whether I am prepared to make these orders is, of course, an altogether different matter. The operative parts of the draft order read as follows:

IT IS DECLARED THAT

1. The Settlement Agreement has been entered into by lawfully authorised officers of the Claimants and of the Cape Parties and is lawfully binding on the parties to it.
2. The terms and legal effect of the Settlement Agreement are such that it releases and settles any claims (whether known or unknown) that the Cape Parties have against the Claimants related to or arising (i) from the claims and allegations made in the Tibbs Claim (including in the Third-Party Complaint made within it) and (ii) from any other claims made after the date of the Settlement Agreement in any asbestos-related personal injury claims that may be asserted in the USA based in part or in whole upon the Claimants' alleged liability for the acts and/or omissions of CIHL (all such claims together being "Settled Claims") (and for the avoidance of doubt it also releases and settles any judgments (and any claims based on or related to any judgments) obtained pursuant to the making of any such claims).
3. Pursuant to the terms of the Settlement Agreement, the Claimants have no liability to the Cape Parties for any Settled Claims and the Cape Parties have no lawful claims against any of the Claimants arising out of or in relation to any Settled Claims.

AND IT IS DECLARED THAT

4. The powers and lawful authority of the directors of CIHL are unaffected by the Receivership Order (which is not recognised and has no legal effect in England and Wales and worldwide).
5. Mr Protopapas has and had no power or lawful authority to take any steps or acts for, on behalf of, or in the name of CIHL, including (but without prejudice to the generality of the foregoing) in any Settled Claims.

AND IT IS ORDERED THAT

6. CIHL shall not take any step in the proceedings in the Third-Party Complaint (or in relation to any Settled Claims).
 7. Mr Protopapas be restrained from taking any further step in the Third-Party Complaint (or in relation to any proceedings, including but not limited to any Settled Claims) in the name of or on behalf of CIHL.
 8. Mr Protopapas shall forthwith take all and any steps to effect a final and with prejudice dismissal of the Third-Party Complaint against the Claimants with immediate effect and, in any event, Mr Protopapas is to have effected such a dismissal of the Third-Party Complaint against the Claimants within 14 days of the date of this order.
59. The orders and declarations sought in this draft can be grouped under the following heads:
- i) Declarations as to the effect of the Settlement Agreement: see paragraphs 1 to 3 of the draft order.
 - ii) Declarations as to the status or powers vesting in (respectively) CIHL and Mr Protopapas so far as their power to act for CIHL is concerned: see paragraphs 4 and 5 of the draft order.
 - iii) Orders obliging a party (either CIHL or Mr Protopapas) to do or not do something: see paragraphs 6 to 8 of the draft order.
60. I shall consider these groups of orders and declarations in the order set out above, beginning with the declarations as to the effect of the Settlement Agreement.

P. The power in this court to make declarations

61. This court has a discretionary jurisdiction to grant declaratory relief under section 19 of the Senior Courts Act 1981 and rule 40.20 of the English Civil Procedure Rules or “CPR”. In Rolls Royce plc v. Unite the Union [2009] EWCA Civ 387 at [120], the Court of Appeal summarised the approach to be taken in regard to the granting of declarations as follows:
- i) The power of the court to grant declaratory relief is discretionary.
 - ii) There must, in general, be a real and present dispute between the parties before the court as to the existence or extent of a legal right between them. However, the claimant does not need to have a present cause of action against the defendant.
 - iii) Each party must, in general, be affected by the court’s determination of the issues concerning the legal right in question.
 - iv) The fact that the claimant is not a party to the relevant contract in respect of which a declaration is sought is not fatal to an application for a declaration, provided that it is directly affected by the issue.

- v) The court will be prepared to give declaratory relief in respect of a “friendly action” or where there is an “academic question” if all parties so wish, even on “private law” issues. This may particularly be so if it is a “test case”, or it may affect a significant number of other cases, and it is in the public interest to decide the issue concerned.
- vi) However, the court must be satisfied that all sides of the argument will be fully and properly put. It must, therefore, ensure that all those affected are either before it or will have their arguments put before the court.
- vii) In all cases, assuming that the other tests are satisfied, the court must ask: is this the most effective way of resolving the issues raised? In answering that question it must consider the other options of resolving this issue.

I shall refer to these points as Rolls Royce Principles (i) to (vii).

Q. Is this a case where it is appropriate for this court to consider making declarations?

(i) The effect of the declarations (if granted)

- 62. Generally speaking, a court will consider whether the declarations sought are correct in law before turning to consider whether the court should exercise its discretion to make those declarations. In this case, because the declarations are so intrusive into the processes of a foreign court, it is appropriate to consider the question of whether the court should exercise its discretion to make declarations at all first.
- 63. The first declaration sought (paragraph 1 of the draft order: the Settlement Agreement has been lawfully entered into) can be regarded as merely an articulation of a specific consequence of the Mann J Judgment and the Mann J Order. That is not the case so far as the second declaration sought (paragraph 2 of the draft order: the claims on which the Third Party Claim rests have been compromised/released/settled) nor of the third declaration sought (paragraph 3 of the draft order: the Claimants are under no liability in respect of the Third Party Claim) are concerned. Quite clearly, the declarations have the effect of extinguishing the very subject-matter of the dispute that will be considered by Chief Justice Toal at the trial of Third Party Claim. Given that the declarations have such an effect on proceedings in another jurisdiction, they must be closely considered and be justifiable as a matter of international law, and having due regard to questions of comity.
- 64. Although there are considerations that point in different directions, I have reached the firm conclusion that (assuming the points of law articulated by the Claimants are correct) it is appropriate for me to make the declarations sought. I set out the various factors that have informed this conclusion in the paragraphs below.

(ii) The absence of Mr Protopapas

65. The fact that Mr Protopapas failed to appear before me is a relevant factor against the granting of declarations, but one of limited weight. As I have described (see Section H), Mr Protopapas is properly before the court (i.e. this court has personal jurisdiction over him). Mr Protopapas has not sought to challenge this court's jurisdiction.
66. Of course, I have not had the benefit of argument from Mr Protopapas, but I have a very good sense of the points that Mr Protopapas would make if he were before me from my consideration of the papers in the South Carolina proceedings, in particular (but not limited to) the Receivership Motion, the Receivership Order and the Third Party Claim. The Claimants and the Second and Third Defendants have been assiduous in putting before me the sort of points that Mr Protopapas might be inclined to take. I am satisfied (see Rolls Royce Principle (vi)) that all sides of the argument have been fully and properly put in the written and oral submissions that I have received.

(iii) A "friendly action"

67. Mr Protopapas' absence does mean that the hearing before me had aspects of a "friendly action" (Rolls Royce Principle (v)). The Claimants and the Second and Third Defendants were united in urging that I make the declarations sought. As Rolls Royce makes clear, there is no reason why a declaration may not be given in a "friendly action". What matters are the reasons why the declarations are sought. I will be coming to such considerations in due course. I consider the fact that these proceedings might be classed as a "friendly action" to be entirely neutral as to whether the declarations should or should not be made.

(iv) Comity

68. The strongest indicator against declaratory relief is the fact that the declarations (as I have described) are materially interfering with the processes of a foreign court. The reaction in the US to the Mann J Order has been strong. In Welch v. Advance Auto Parts, the Supreme Court of South Carolina said (of the Mann J Order):

...The English court went so far as to issue an injunction against the Receiver, purporting to bar him from action even in South Carolina.

The English court reasoned that English law may restrain a foreign court to prevent "injustice". It quoted a decree that gave as an example a foreign court whose standard for personal jurisdiction was so wide as to be against accepted international law principles. The English court then proceeded to note that the powers given to the Receiver stretched worldwide. It reasoned that the English company could not risk fighting its case in South Carolina because it would then be submitting to the jurisdiction here.

Shocking to American eyes, the English court enjoined the Receiver “from acting or purporting to act for or on behalf of” the English company in default, even in a South Carolina court.

We appreciate that the laws of different countries may differ, even countries that have a special relationship with each other. Our respect and spirit of commit – not to mention our duty to follow the law – does not permit us to enjoin a court of another sovereign nation from interfering with our rulings on the propriety of a Receivership. As it would with any court, such a ruling by us would be in the words of Lord Scarman, a *brutum fulmen* (an empty noise).

69. English courts do not interfere lightly with the jurisdiction of foreign courts. Although the law in this area has mainly been stated in the context of anti-suit injunctions, the points made in these cases have as much force in the case of a declaration that interferes with the processes of a foreign court. Thus, in a statement that has been approved many times in the English courts, Hoffmann J said this in Re Maxwell Communications Corp plc (No 2) [1992] BCC 757 at 762:

In the last 20 years, however, there has been a shift in the attitude of the English court to foreign jurisdictions...Today the normal assumption is that an English court has no superiority over a foreign court in deciding what justice between the parties requires and in particular that both comity and common sense suggest that the foreign judge is usually the best person to decide whether in his own court he should accept or decline jurisdiction, stay proceedings or allow them to continue. The principle, as Lord Scarman said in Laker...is that:

“[The] equitable right not to be sued abroad arises only if the inequity is such that the English court must intervene to prevent injustice.” (emphasis added)

In other words, there must be a good reason why the decision to stop the foreign proceedings should be made here rather than there. Although the injustice which can justify an anti-suit injunction must inevitably be judged according to English notions of justice, it will usually be assumed that a similar quality of justice is available in the foreign court. So the fact that the proceedings would, if brought in England, be struck out as vexatious or oppressive in the domestic sense, will not ordinarily in itself justify the grant of an injunction to restrain their prosecution in a foreign court. The defendant will be left to avail himself of the foreign procedure for dealing with vexation or oppression: Midland Bank plc v. Laker Airlines Ltd [1986] 1 QB 689 per Lawton LJ at 700.

It is the exceptional cases in which justice requires the English court to intervene which cannot be categorised or restricted. But a theme common to certain recent decisions is that the foreign court is, judged by its own jurisprudence, likely to assert a jurisdiction so wide either as to persons or to subject-matter that to English notions it appears contrary to accepted principles of international law. In such cases the English court has sometimes felt it necessary to intervene by injunction to protect a party from the injustice of having to litigate in a jurisdiction with which he had little, if any,

connection, or in relation to subject-matter which had insufficient contact with that jurisdiction, or both. Since the foreign court is per hypothesi likely to accept jurisdiction, this is a decision which has to be made here if it is to be made at all. These are cases in which the judicial or legislative policies of England and the foreign court are so at variance the comity is overridden by the need to protect British national interests or prevent what it regards as a violation of the principles of customary international law.

70. Applying these considerations by analogy to the discretion that I have in regard to declarations, it is incumbent upon me to set out why I must, in this case, set aside the important question of comity and (assuming they are well founded) make the declarations sought.
- (v) Reasons why the South Carolina proceedings must be interfered with: interests of the Claimants and the Second and Third Defendants
71. The shock expressed by the Supreme Court of South Carolina in Welch v. Advance Auto Parts at the infringement of comity apparently committed by the Mann J Order would (in my judgment) abate on a proper understanding of the facts and matters lying behind the Mann J Order. These facts and matters, in my judgment, entirely justify the Mann J Order. They also – together with other facts and matters relevant to these proceedings – justify the jurisdiction to make declarations that I am minded to exercise, provided of course the declarations sought are otherwise sound in law.
72. The Receivership Order is (for the reasons stated in [19]-[20]) exorbitant in nature. It has a “long-arm” effect that is highly unusual in receivership orders. Indeed, the Receivership Order appears to be more like a half-baked form of insolvency process, operating in clear disregard of internationally accepted standards of corporate insolvency. The reference in the draft amended Third Party Claim (see [36]) to administering and marshalling the full assets of Cape is particularly troubling.
73. Mr Protopapas has asserted a connection between NAAC and CIHL so as to justify the making of the Receivership Order in terms which are both bombastic and immoderate and very far from the objective parsing of the facts that a court is entitled to expect. The Receivership Motion (see [35]) makes sweeping and subjective allegations in regard to this connection.
74. It is a matter of serious concern that Mr Protopapas has failed to draw to the attention of Chief Justice Toal (or, if he has, Chief Justice Toal has failed to consider the point) the significance of the decision of the English Court of Appeal in Adams v. Cape. It appears to be common ground between the English and the South Carolina jurisdictions that some form of connection must exist between the company over which a receiver is appointed and the jurisdiction ordering the receivership. That being the case, a decision on the merits of a court of competent jurisdiction deciding this very issue of “connection” ought to have been placed before Chief Justice Toal by Mr Protopapas. The decision of the Court of Appeal in Adams v. Cape could then have received the careful and respectful consideration by the South Carolina court at the outset. That would have afforded the opportunity at the relevant

time (i.e. when the Receivership Order was made) to have considered the comity issues involved in this case.

75. In these circumstances, one can see exactly why CIHL and Cape Jersey took the view that the court in South Carolina was purporting to exercise a jurisdiction so wide as to be an affront to notions of comity between courts of cognate jurisdiction. For the reasons outlined in the Mann J Judgment, and summarised in this Judgment, the Mann J Order was entirely justified and (if I may respectfully say so) the only order that Mann J could have made in these circumstances.
76. Moreover, there are a number of procedural concerns in regard to the conduct of the South Carolina receivership (in addition to the failure properly to consider the question of “connection”) so as to justify CIHL and Cape Jersey in applying to the English courts for protection. They are clearly described in the Mann J Judgment and I have summarised them in this Judgment. Specifically:
- i) Mr Protopapas appears to be acting in breach of the basic duties of a receiver: see [30(iv)]. Indeed, Mr Protopapas is expressing himself with an immoderation that is regrettable, to say the least: see the content of the Third Party Complaint set out at [30(vi)].
 - ii) Mr Protopapas is litigating the Third Party Claim without having established whether any liability exists against CIHL. Neither the claim in the Park Proceedings nor the claim in the Tibbs Proceedings has resulted in any judgment on the merits as against CIHL: see [11] and [28].
 - iii) Mr Protopapas is not properly defending proceedings brought against CIHL. I have referred to the disingenuous “defence” of CIHL in the Tibbs Proceedings at [30(v)]. This is no defence, but rather a conduit by which the immoderate assertions made in the Third Party Claim can operate as disguised admissions by CIHL vis-à-vis the plaintiffs in the Tibbs Proceedings: see [30(vi)].
 - iv) It is not understood how the Receivership Order made in the Park Proceedings can be deployed in the Tibbs Proceedings: see [30(ii)].
77. The Mann J Order has not been respected in South Carolina: instead, it has been characterised as a *brutum fulmen*, an empty noise: see [68]. Thus, it is no surprise that Mr Protopapas is pressing on with the Third Party Claim and that the courts in South Carolina are indulging him in this regard. This is quite plainly the sort of exceptional case considered in Re Maxwell Communications Corp plc (No 2) (see [69]) where the English court must intervene.
78. The progression of the Third Party Claim is doing real harm to the Claimants. They are faced with a claim – the Third Party Claim – which overtly threatens their financial standing, makes reputationally damaging (and unfounded) allegations, and threatens the Cape Scheme by which a class of victims of

asbestosis related disease are being compensated. This is a case where there is a real and present dispute which the proposed declarations will assist to resolve (Rolls Royce Principle (ii)), where all of the parties before the court will be affected by the court's determination (Rolls Royce Principle (iii)) and where all are party to the relevant contract (viz, the Settlement Agreement, Rolls Royce Principle (iv)).

79. I consider the declarations sought to be an extremely effective way of controlling the conduct of Mr Protopapas: for the declarations, if made, will have the effect of extinguishing the very claims Mr Protopapas seeks to advance by way of the Third Party Claim. I bear in mind that – as yet – the Claimants have received no protection from the English court. I consider that if the declarations can properly be made, they should for this reason alone be made. Although the Second and Third Defendants have the benefit of the Mann J Order, I consider that the declarations, if made, will confer substantial and necessary additional protection on these parties.
80. For these reasons, I conclude that if they can appropriately be made, I should exercise my discretion to give the declarations sought, notwithstanding the interference with the South Carolina proceedings that those declarations would give rise to.
81. So far, I have been considering the important need to protect the position of the Claimants and of the Second and Third Defendants. There is, however, an even weightier consideration in favour of exercising the discretion to make the declarations (if they can appropriately be made), to which I now turn.
- (vi) Protecting the integrity of the English jurisdiction
82. One of the justifications for the grant of an anti-suit injunction is that such an injunction can serve to protect the jurisdiction of the English court. That justification applies with equal force to the declarations sought in the present case. This rationale in support of anti-suit injunctions is well-established in English law: see, for example, Raphael, The Anti-Suit Injunction, 2nd edition at [5.32]-[5.34].
83. The liability issues raised by the Third Party Claim constitute a collateral attack on the decision of the Court of Appeal in Adams v. Cape. As I have described, the question of “single economic unit” that lies at the heart of the Third Party Claim, whereby it is alleged that the Claimants and CIHL can be dragged into US proceedings by virtue of their connection with NAAC, is a matter that has already been decided by the English Court of Appeal in Adams v. Cape. The Third Party Claim thus constitutes the clearest possible collateral attack on a prior decision of a court of competent jurisdiction and thus constitutes a clear abuse of court process: see e.g. the decisions in Hunter v. Chief Constable of the West Midlands Police [1982] AC 529; Arthur JS Hall & Co v. Simons [2002] 1 AC 615; Secretary of State for Trade and Industry v. Bairstow [2003] EWCA Civ 321; Laing v. Taylor Walton (a firm) [2007] EWCA Civ 1147; Allsop v. Banner Jones Limited [2021] EWCA Civ 7. Although these cases concerned collateral attacks by the bringing of later English cases by a party, the anti-suit jurisdiction shows that the same

principle operates where the collateral attack arises out the bringing of foreign proceedings.

84. The Court of Appeal not only articulated the law in regard to “single economic unit” but (much more importantly for present purposes) decided on the facts that NAAC and CIHL were not part of the same “single economic unit”. That point remains true of CIHL, and is a fortiori so far as subsequent joiners of the group (such as the Altrad parties) are concerned. The effect of the factual decision in Adams v. Cape is that liability for US claims for asbestos related disease begins and ends with NAAC. The re-litigation of this factual point in South Carolina is an attack on the English jurisdiction which the declarations sought will, if granted, protect.

(vii) Conclusion

85. I conclude that (i) if they are soundly based and (ii) subject to reviewing the drafting, the declarations sought by the Claimants should be granted. I now turn to the logically anterior question of whether the declarations sought are soundly based in law. Obviously, I can only make the declarations if I find them to be properly and soundly based.

R. Are the declarations properly and soundly based?

(i) General points as to validity

86. A settlement agreement is a contract, and so the ordinary principles of contract law apply. Consideration must exist. The agreement must be complete and certain. The parties to the contract must intend to create legal relations. Having considered the Settlement Agreement, it clear (as a matter of English law) that consideration exists in the mutual releases and other promises (going in all directions between the parties) made. The Settlement Agreement is formally drafted, clear on its face, and expressed to be entire. It is thus complete, and certain and intended to create legal relations.

87. I have dealt with these points quickly because (i) they are obvious (far greater detail on the law appears in the written submissions of the Claimants, which I accept) and (ii) because although Mr Protopapas has asserted that “no consideration” was given for this “farcical and self-dealing agreement”, the assertion is unparticularised and unevicenced. The mutuality of the releases in the Settlement Agreement clearly (as a matter of English law) constitutes consideration. I reject the suggestion that the Settlement Agreement is ineffective for any of the (unparticularised) reasons advanced by Mr Protopapas.

(ii) Points taken by Mr Protopapas

88. It is more important to focus on the points that Mr Protopapas would take had he chosen to appear before me. There are three such points:

- i) First, and most obviously, Mr Protopapas would contend that the Settlement Agreement was concluded without authority because the

Receivership Order deprived CIHL of any power or authority to enter into the Settlement Agreement. It is very possible that he would assert that, in concluding the Settlement Agreement, the board of CIHL was usurping his functions.

- ii) Secondly and thirdly, Mr Protopapas has asserted in the South Carolina proceedings that the Settlement Agreement is both a “sham” and a “fraudulent device”. In their written submissions, the Second and Third Defendants summarise Mr Protopapas’ position in the following terms (D2/D3 Written Submissions/[89]):

In his recent court filings, Mr Protopapas has “doubled-down” on his previous position and has made a series of further allegations about the Cape Parties which are simply inaccurate...By way of example:

- (1) First, he maintains that the commencement of the CIHL Declaratory Claim (and the proceedings/judgment arising out of it [which resulted in the Mann J Judgment] are a further example of “moral fraud” (which justify the continuance of the Receivership Order). This is misconceived (and seriously misunderstands/misstates the clear legal principles and purpose upon which the Mann Judgment is based).
- (2) Second, he alleges that CIHL is a “shell” company which acts as a mere conduit (or “pass through entity”) to channel dividends/profits to its ultimate parent, AIA SAS (which is registered/located in France) – such that it is insolvent/at imminent risk of insolvency (such that it should be the subject of an insolvent receivership). Again, this is completely misplaced. The risk to the Cape Parties’ financial position – and any potential cause of their insolvency -is Mr Protopapas (and his unprincipled/unreasonable conduct, and any other claims which his conduct has encouraged).

He asserts, based on these sorts of points, but without any particularity, that the Settlement Agreement is both a “device” and a “sham”. I will consider these three points in turn below.

(iii) Authority to conclude the Settlement Agreement

89. I do not understand Mr Protopapas to be contending that absent the Receivership Order the Settlement Agreement was concluded without proper authority. However, the Parties in the evidence before me demonstrated that the Settlement Agreement – apart from the question of the Receivership Order, to which I will come – was duly and properly concluded by persons with the authority to do so: see the Claimants’ written submissions/[145]-[151]; the written submissions of the Second and Third Defendants/[82]-[87], as well as the references to the evidence set out in these paragraphs, which I accept.
90. The significance of the Receivership Order on those otherwise authorised to enter into the Settlement Agreement is shortly dealt with. The Mann J

Judgment and the Mann J Order make clear, in a manner binding on me, that the Receivership Order is not capable of recognition in this jurisdiction. As is plain from the detailed consideration I have given to the Mann J Judgment and the Mann J Order in this Judgment, I should say (to the extent that it matters) that I am completely satisfied that the Mann J Order was correctly made.

(iv) Sham

91. In Snook v. London and West Riding Investments Ltd [1967] 2 QB 786 at 802, Diplock LJ defined a “sham” as “acts done or documents executed by the parties to the “sham” which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create”.
92. I do not consider it to be seriously arguable that the Settlement Agreement is a “sham” in this sense. I am in no doubt that the Parties’ intentions are exactly in line with the effect of the Settlement Agreement, namely to extinguish the causes of action on which the Third Party Claim relies. I am sure that the Parties’ intentions are exactly in line with what the Settlement Agreement in fact and in law achieves.
93. If, as I rather suspect, Mr Protopapas is using the term “sham” to make the point that the Settlement Agreement is done without authority because of the Receivership Order, the “sham” point makes more sense. But, for the reasons I have given, the point is a bad one. The Receivership Order is entirely ineffective before this court, applying (as it must) the relevant law, which is English law as the law determining CIHL’s corporate functions and operation.

(v) Device

94. Mr Protopapas is obviously using this term pejoratively, to suggest that the Settlement Agreement is a part of the “moral fraud” whereby persons entitled to compensation from the Cape group are having that compensation illegitimately taken away. This is no more than another example of the collateral attack being made on Adams v. Cape. The fact is that the Cape group is properly compensating those entitled by way of the Cape Scheme. It is Mr Protopapas who is – through his conduct in the US – causing prejudice to CIHL, the Cape group, the Altrad group and anyone seeking to claim under the Cape Scheme.
95. I reject any suggestion that the Settlement Agreement is an illegitimate device. It is in fact an attempt by the Parties to mitigate the consequences of Mr Protopapas’ conduct in the US.

(vi) Other points

96. It is difficult to prove a negative. The Claimants assert (see their written Submissions/[152] ff) that there is no other basis for seeking to impeach the Settlement Agreement. I have considered the matter, and for what it is worth,

can identify no arguable basis for contending that the Settlement Agreement is of no effect.

97. I hold that the Settlement Agreement has the effect of extinguishing the claims articulated on behalf of CIHL in the Third Party Claim.

S. Conclusion in relation to declaratory relief

98. I conclude that declarations along the lines of those set out at paragraphs 1 to 3 of the draft order (see [58]) can and should be made.

T. Declarations at paragraphs 4 and 5 of the draft order

99. I can deal with these two declarations (set out at [58]) very quickly in light of the foregoing analysis:

- i) For the reasons that I have given, it is appropriate to exercise this court's power to make declarations, even though they have (and are intended to have) extraterritorial effect and interfere (and are intended to interfere) with the processes of a court in another jurisdiction. The courts of this jurisdiction – like the US courts – place an extremely high value on comity between courts of different jurisdictions. However, those considerations are comprehensively outweighed by the need to ensure that (i) the interests of this jurisdiction, (ii) the interests of the Parties, the Claimants, the First and Second Defendants and those of the wider Cape and Altrad groups and (iii) the interests of existing and future claimants under the Cape Scheme are protected.
- ii) The declarations at paragraphs 4 and 5 of the draft order really do no more than articulate the consequences of the Mann J Judgment and the Mann J Order. The proceedings before Mann J involved only CIHL and Cape Jersey, and only they have the benefits of the Mann J Order. It is appropriate, given their interests, that the benefits of the Mann J Order extend to the Claimants, and I can see no harm in these declarations being repeated in the case of CIHL and Cape Jersey.

100. Accordingly, I am prepared to make declarations along the lines of these framed at paragraphs 4 and 5 of the draft order.

U. The injunctions at paragraph 6, 7 and 8 of the draft order

101. I would be prepared to make the order at paragraph 6 of the draft order, save for the prudential considerations that I raised with the Parties during the course of the hearing, and which they accepted. Paragraph 6 seeks to enjoin CIHL, preventing it from taking any step in the proceedings in the Third Party Claim.
102. To be clear, I consider that I have the jurisdiction to make an order of this sort, but it seems to me that the draft order at paragraph 6 should not be made, for pragmatic reasons. Mr Protopapas has shown a disregard of comity between nations, failing even to draw the implications of the anterior Cape litigation (specifically Adams v. Cape, the Cape Scheme and the David Richard J Order)

to the proper attention of the South Carolina courts. I have every expectation that Mr Protopapas will continue in this conduct, and there is every risk that he will cause CIHL to take steps in the proceedings in South Carolina. Were that to occur, there would be a potential for arguing that CIHL was in breach of the very order that I am being invited to make by the Claimants. The capacity for mischief is considerable. Whilst I have every sympathy for the parties before me, this is an order I am not prepared to make, but for this reason only.

103. Paragraphs 7 and 8 seek to enjoin Mr Protopapas from taking steps in the South Carolina proceedings. The effect of these orders is (at least indirectly) to inform the courts in South Carolina as to what is now required of Mr Protopapas. Mr Protopapas is, after all, the beneficiary of the Receivership Order, and there is obviously an expectation in the South Carolina courts that he act pursuant to that receivership. This is, therefore, a highly unusual form of anti-suit injunction because it is maintained not against an ordinary litigant but against a receiver appointed by a foreign court. Nevertheless, it is my conclusion that these orders should be made:

- i) Mr Protopapas is properly before this court – although he has chosen not to exercise his right to be heard. Notwithstanding his choice in this regard, this court has personal jurisdiction over him.
- ii) I do not need to rehearse the reasons why an anti-suit injunction is appropriate in this case, because those reasons are exactly the same as the remedy of the declarations at paragraphs 1-3 of the draft order. I refer to my earlier consideration.
- iii) Whereas the declarations regarding the Settlement Agreement extinguish the subject-matter of the Third Party Claim, the injunctions at paragraphs 7 and 8 merely personally restrain Mr Protopapas from continuing with a claim that actually has no substance, because it has been extinguished by the Settlement Agreement.

That is why these orders are less aggressive than the orders I have already stated I am prepared to make. I have considered whether – pragmatically – it is pointful to make these orders in support of the other orders I am prepared to make. It seems to me that these orders do appropriately reinforce each other, and so I conclude that these orders too ought to be made along the lines of those articulated in the draft order at [58].

- iv) Mr Protopapas is properly before this court – although he has not chosen to exercise his right to be heard. Notwithstanding his choice in this regard, this court has personal jurisdiction over him.
- v) I do not need to rehearse the reasons why an anti-suit injunction is appropriate in this case, because those reasons are exactly the same as the somewhat more aggressive remedy of the declarations at paragraphs 1-3 of the draft order. I refer to my earlier consideration.
- vi) Whereas the declarations regarding the Settlement Agreement extinguish the subject-matter of the Third Party Claim, the injunctions

at paragraphs 7 and 8 merely personally restrain Mr Protopapas from continuing with a claim that actually has no substance, because it has been extinguished by the Settlement Agreement.

- vii) That is why these orders are less aggressive than the orders I have already stated I am prepared to make. I have considered whether – pragmatically – it is pointful to make these orders in support of the other orders I am prepared to make. It seems to me that these orders do appropriately reinforce each other, and so I conclude that these orders too ought to be made along the lines of those articulated in the draft order at [58].

V. Disposition

104. For the reasons, I have given, I am going to make an order along the lines of the draft order, except for paragraph 6 of the draft.

Annex 1

TERMS AND ABBREVIATIONS USED IN THE JUDGMENT

([2] of the Judgment)

Adams v. Cape	The decision of Scott J and the English Court of Appeal in <u>Adams v. Cape Industries</u> [1990] Ch 433	[34(iii)]
Alcock 1	Evidence of Mr Alcock in these proceedings.	[33]
Alcock 2	Evidence of Mr Alcock in these proceedings.	[34]
Allegations	A term of art defined in the Settlement Agreement.	[57]
Cape Jersey	Another – and better – reference to Cape plc.	[6(iv)]
Cape plc	A claimant in the proceedings before Mann J and the Second Defendant in the proceedings before me. For reasons given in [6(iv)], Cape plc is better referred to as Cape Jersey.	[6]
Cape Scheme	A compensation scheme based upon the findings and holdings made in <u>Adams v. Cape</u> .	[34(iii)]
CIHL	The England-incorporated company, whose full title is Cape Intermediate Holdings Ltd. CIHL was a claimant in the proceedings before Mann J and the Second Defendant in the proceedings before me.	[5]
CPC	A company whose full title is Continental Productions Corporation.	[15]
CPR	The English Civil Procedure Rules.	[61]

David Richards J Order	An order of David Richards J approving the scheme of arrangement whereby the Cape Scheme is implemented.	[34(iii)]
Mann J Judgment	Judgment of Mann J (sitting in retirement) dated 22 November 2024 in <u>Cape Intermediate Holdings Ltd v. Protopapas</u> [2024] EWHC 2999 (Ch).	[2]
Mann J Order	Mann J's order dated 22 November 2024, made consequential on the Mann J Judgment.	[39]
NAAC	An Illinois-incorporated company and former subsidiary of CIHL, whose full title is North American Asbestos Corporation.	[13]
Oren 1	Evidence of Mr Oren in these proceedings.	[34]
Park Proceedings	Proceedings commenced in the courts of South Carolina by Ms Isabella Park.	[4]
Parties	The parties to the Settlement Agreement.	[55]
Receivership Motion	A motion made by the plaintiffs in the Park Proceedings seeking the appointment of a receiver over "Cape plc".	[12]
Receivership Order	The order made by Chief Justice Toal consequential upon the Receivership Motion.	[17]
Rolls Royce Principles	Principles as to the granting of declarations stated in the decision of <u>Rolls Royce plc v. Unite the Union</u> [2009] EWCA Civ 387.	[61]
Scheme of Arrangement	The scheme of arrangement implementing the Cape Scheme	[51]
Settlement Agreement	An agreement between the Claimants and the Second and Third Defendants in these proceedings causing the causes of action relied upon in the Third Party Claim to be extinguished.	[55]
Third Party Claim	A claim initiated by summons by Mr Protopapas in the Tibbs Proceedings, relying upon the Receivership Order made in the Park Proceedings.	[29]
Tibbs Proceedings	Proceedings commenced by Mr and Mrs Tibbs in the South Carolina courts.	[27]



Claim No.: BL-2025-000785

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)**

BEFORE THE HON MR JUSTICE MARCUS SMITH

BL-2025-000785

30 SEPTEMBER 2025

BETWEEN:

**(1) ALTRAD INVESTMENT AUTHORITY SAS
(2) ALTRAD UK LIMITED
(3) CAPE UK HOLDINGS NEWCO LIMITED
(4) CAPE INDUSTRIAL SERVICES GROUP LIMITED
(5) CAPE HOLDCO LIMITED
(6) ALTRAD SERVICES LIMITED
(7) MR MOHED ALTRAD**

Claimants

and

**(1) PETER D. PROTOPAPAS
(2) CAPE INTERMEDIATE HOLDINGS LIMITED
(3) CAPE PLC (a company incorporated under the laws of Jersey)**

Defendants

ORDER

UPON THE CLAIM brought by the Claimants against Cape Intermediate Holdings Limited (“CIHL”) and Cape plc (“Cape Jersey”, and together with CIHL, the “Cape Parties”) and Peter D Protopapas (“Mr Protopapas”) by a Part 8 claim form dated 24 June 2025

AND UPON the Court noting that, on 16 March 2023, the Court of Common Pleas for the Fifth Judicial Circuit of the State of South Carolina, County of Richland (the “South Carolina Court”) made an order appointing Mr Protopapas as a receiver over CIHL (the “Receivership Order”)

AND UPON Mr Protopapas having (purportedly in the name of CIHL) brought third party proceedings in the claim brought in the South Carolina Court by John A. Tibbs and Margaret B. Tibbs with claim number C/A No. 2023-CP-40-01759 by a summons and complaint first

issued on 30 June 2023 (the “**Third-Party Complaint**”, brought as third-party proceedings in the “**Tibbs Claim**”)

AND UPON the Cape Parties having brought a claim by a Part 8 claim form dated 6 September 2024 and with claim number BL-2024-001337 against Mr Protopapas

AND UPON the judgment and order in those proceedings of Mr Justice Mann, sitting in retirement, on 22 November 2024

AND UPON various parties, including the Claimants and the Cape Parties having entered into a settlement agreement dated 11 April 2025 (the “**Settlement Agreement**”)

AND UPON the Court noting that the Settlement Agreement contains a jurisdiction clause under which the Courts of England and Wales have exclusive jurisdiction in respect of any dispute or issue in any way arising from or relating to the Settlement Agreement

IT IS DECLARED THAT

1. The Settlement Agreement has been entered into by lawfully authorised officers of the Claimants and of the Cape Parties and is lawfully binding on the parties to it.
2. The terms and legal effect of the Settlement Agreement are such that it releases and settles any claims (whether known or unknown) that the Cape Parties have against the Claimants related to or arising (i) from the claims and allegations made in the Tibbs Claim (including in the Third-Party Complaint made within it) and (ii) from any other claims made after the date of the Settlement Agreement in any asbestos-related personal injury claims that may be asserted in the USA based in part or in whole upon the Claimants’ alleged liability for the acts and/or omissions of CIHL (all such claims together, being “**Settled Claims**”) (and for the avoidance of doubt it also releases and settles any judgments (and any claims based on or related to any judgments) obtained pursuant to the making of any such claims).
3. Pursuant to the terms of the Settlement Agreement, the Claimants have no liability to the Cape Parties for any Settled Claims and the Cape Parties have no lawful claims against any of the Claimants arising out of or in relation to any Settled Claims.

AND IT IS DECLARED THAT

4. The powers and lawful authority of the directors of CIHL are unaffected by the Receivership Order (which is not recognised and has no legal effect in England and Wales and worldwide).
5. Mr Protopapas has and had no power or lawful authority to take any steps or acts for, on behalf of, or in the name of CIHL, including (but without prejudice to the generality of the foregoing) in any Settled Claims.

AND IT IS ORDERED THAT

6. Mr Protopapas be restrained from taking any further step in the Third-Party Complaint (or in relation to any proceedings, including but not limited to any Settled Claims) against the Claimants in the name of or on behalf of CIHL.
7. Mr Protopapas shall forthwith take all and any steps to effect a final and with prejudice dismissal of the Third-Party Complaint against the Claimants with immediate effect and, in any event, Mr Protopapas is to have effected such a dismissal of the Third-Party Complaint against the Claimants within 14 days of the date of this order.

Liberty to apply

8. The parties shall have liberty to apply for further or related relief if necessary.

Costs

9. The Claimants, Mr Protopapas and the Cape Parties shall (if so advised) file and serve written submissions on the issue of costs by 4pm on Tuesday 7 October 2025.

Service

10. The Claimants shall serve this order and the judgment of the Court (the “**Order and Judgment**”) on the Defendants.
11. The Claimants may serve the Order and Judgment on Mr Protopapas by email to pdp@rplegalgroup.com or otherwise in accordance with the service orders of Master Pester dated 25 June 2025 and 2 July 2025, and service by any of these methods shall

be regarded as valid and sufficient service for all matters of English law and procedure
(but without prejudice to the position as a matter of South Carolina law and procedure).

The Court has provided a sealed copy of this order to the solicitors for the Claimants, Enyo
Law LLP, One Tudor Street, London EC4Y 0AH (reference: JTL/ALT1.1)

STATE OF SOUTH CAROLINA

IN THE COURT OF

COMMON PLEAS

COUNTY OF RICHLAND

FOR THE

FIFTH JUDICIAL CIRCUIT

- - -

JOHN A. TIBBS AND MARGARET B.)

TIBBS,)

Plaintiffs,)

vs.)

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

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DATED MONDAY, OCTOBER 20, 2025

RICHLAND COUNTY JUDICIAL CENTER

1701 MAIN STREET

COURTROOM 3B

COLUMBIA, SOUTH CAROLINA

REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708,

CA CSR #13529

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ALSO PRESENT: LINDSAY VALEK

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I N D E X

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TRIAL EXHIBIT 4

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TRIAL EXHIBIT 5

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COURT EXHIBIT 1

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2 P R O C E E D I N G S

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5 THE MARSHAL: Court come to order.

6 THE COURT: Please be seated.

7 Court reporter, do you have a copy of the
8 caption of this thing?

9 THE COURT REPORTER: Yes.

10 THE COURT: All right. It's a two-part
11 caption, but what we are considering, the Tibbs versus
12 3M matter, the third-party complaint of Cape PLC and
13 others by its duly-appointed receiver Peter Protopapas
14 against Anglo-American and many others, third-party
15 defendants.

16 I have received communications from you folks
17 late last night well after I went to bed, I don't stay
18 up at 10:00 o'clock at night like you, but I have read
19 what I have been supplied with. I'd like to receive
20 copies of those things if you have them here at this
21 time.

22 MR. CARROLL: May I approach, Your Honor?

23 THE COURT: Yes, sir.

24 MR. CARROLL: This is the Altrad defendants'
25 objections and petition with the Supreme Court.

1 MR. RAWL: Your Honor, may I approach? Vic
2 Rawl for the charter defendants.

3 THE COURT: I have not read yours yet. It's
4 been pretty much a carbon copy of what Mr. Carroll
5 filed.

6 MR. RAWL: It is not. There are additional
7 objections.

8 THE COURT: What I got from you, Mr. Rawl, is
9 trial objections; correct?

10 MR. RAWL: Objections to the trial, and for
11 this Court for you to proceed in this jurisdiction and
12 responses to the --

13 THE COURT: Have you filed materials with the
14 South Carolina Supreme Court for the court of appeals?

15 MR. RAWL: I have and I just provided that to
16 you.

17 THE COURT: All right. This is -- all right.
18 This is the document that you provided and you served
19 it to the Supreme Court?

20 MR. RAWL: Your Honor, yes, that's the
21 certiorari issue.

22 THE COURT: Okay. That's a petition for a
23 writ of probation or a writ of certiorari, and
24 Mr. Carroll is supplying me with Altrad's omnibus
25 response to receiver's numerous filings accompanied by

1 a petition for a writ of prohibition and writ of
2 certiorari to the Supreme Court.

3 All right. And I also take notice of a
4 notice of appeal to the court of appeals of 10/13/25 on
5 this very same matter. I don't know how that plays in
6 relation to these filings before the Supreme Court, but
7 I have it -- I referred to it in the letter of the
8 email to counsel I sent out last Friday. I understand
9 by an email from either Mr. Lay or Mr. Protopapas that
10 the English court has ruled. Do we have a copy of that
11 order?

12 MR. PROTOPAPAS: Your Honor, Peter Protopapas
13 for the receiver. Your Honor, we do not have a copy of
14 the order. It should be coming by email; however, my
15 understanding, Your Honor, is that the Court is -- is
16 not standing in the way of Anglo's settlement.

17 THE COURT: That's what I understand too from
18 what your communication is. I would be interested to
19 receive the order.

20 Why are you standing, Mr. Carroll? Do you
21 have a copy of it.?

22 MR. CARROLL: I have a copy, Your Honor.

23 THE COURT: Oh, good. Have you given a copy
24 to Mr. Protopapas?

25 MR. CARROLL: No, ma'am. He reported it to

1 you; so I assumed he had it. So I will give him one
2 right now.

3 THE COURT: Well, he says in that he does not
4 have it. He says in that email that he did not have
5 it.

6 MR. CARROLL: I just got it.

7 THE COURT: He says that you have it and he
8 does not have it. Okay. All right. Court be in
9 recess. I'm going to take a moment to read this.

10 (Whereupon a short recess was taken.)

11 THE COURT: All right. All right. I think I
12 got a pretty good grasp on what the judge has said in
13 his order. And, essentially, what the bottom line is
14 is that Anglo is permitted to enter into a settlement
15 with the receiver in the format that was submitted to
16 me previously. And for purposes of the proceedings
17 today, I am prepared to indicate that the Court will
18 sign the settlement agreement between the parties.

19 Obviously, there's a little bit more work to
20 be done in terms of submissions made to me, and I have
21 to make a separate proceeding, which I put all out on
22 the record. But for purposes of this trial, I will
23 dismiss Anglo from this proceeding. But before I do
24 that, I will hear from the parties about that.

25 MR. PROTOPAPAS: I agree, Your Honor, with

1 your conclusion. Having just read the order, I had
2 spoken with Anglo's counsel before the hearing just
3 briefly before the hearing.

4 THE COURT: Thank you for your attendance
5 today, Mr. Balber.

6 MR. BALBER: Always a pleasure, Your Honor.

7 THE COURT: Yes, sir.

8 MR. PROTOPAPAS: And what he and I have
9 worked loosely to create a timeline to present to this
10 Court the information it needs for subsequent final
11 approval orders and such.

12 THE COURT: Exactly. As I understand,
13 Mr. Balber sticks by the recommendation -- I will turn
14 to you in a minute, Mr. Balber -- that the recital that
15 he made at my last hearing that the parties had reached
16 agreement, but there were certain details that still
17 had to be accommodated, and of course, the specter of
18 this matter at the English Court.

19 So I understand that there are various things
20 that have to be done to run a final agreement forward
21 for my consideration, but I will ask Mr. Balber, when
22 Mr. Protopapas is finished confirming for the record,
23 that the matter is settled and may be dismissed with
24 confidence.

25 Go ahead, Mr. Protopapas.

1 MR. PROTOPAPAS: Yes, Your Honor. So as the
2 Court said two weeks ago, exactly two weeks ago, we
3 present the 43K, a draft settlement agreement. That
4 settlement agreement has been finalized. In fact, it
5 appears it was presented to the Court in England. We
6 will now file a motion to approve with the Court
7 redacting confidential information that we're putting
8 into the public record, the qualified settlement
9 fund -- the LLC operating agreement and such so that we
10 do in all cases so that anyone in the public can see
11 exactly what we're doing for South Carolina claims.

12 And I was happy to see in the order from the
13 High Court in England and Wales that it recognized we
14 are talking about South Carolina claims, not anything
15 else.

16 THE COURT: At least they're familiar with
17 the vehicle, because that's exactly what was set up
18 over there for English claimants in, what, 1990?

19 MR. PROTOPAPAS: Yes, Your Honor. I think,
20 in fact, 2001 was the first year, and then it was
21 modified subsequently through 2007. I don't believe I
22 have the latest run of that operating agreement for
23 their what they call scheme of arrangement perhaps, but
24 I'm hoping that one day I will get to look at it, but
25 it's very similar. Money is used and it's --

1 THE COURT: For a defined group of claimants,
2 in this case, claimants in South Carolina. And in that
3 case, English claimants only.

4 MR. PROTOPAPAS: Exactly, Your Honor.

5 THE COURT: Okay.

6 MR. PROTOPAPAS: Unless there's any questions
7 for the Court, Your Honor.

8 THE COURT: Nothing about this.

9 Mr. Balber.

10 MR. BALBER: Yes, Your Honor. I just want to
11 confirm that we have, in fact, reached agreement, as
12 Your Honor's aware, and we look forward to working with
13 Mr. Protopapas and his team to execute the necessary
14 documents to effect settlement.

15 THE COURT: Very good. I look forward to
16 receiving them from you.

17 All right. That being put squarely in front
18 of us, the matter of going forward with this trial, and
19 I am certainly prepared do that.

20 I am very disheartened to see that for the
21 third time since I have been handling the asbestos
22 docket, Mr. Carroll and his clients, in this case,
23 clients of this proceeding, but he's done it on behalf
24 of USF&G and others, and the Nichols' operating form in
25 the 2024 proceeding, but the first one was December of

1 2020, right at Christmastime, couldn't have come at a
2 worst time.

3 The USF&G sought an emergency petition for a
4 writ of prohibition, and we had much going back and
5 forth over the Christmas holidays, right after
6 Christmas, and of course the Court did not grant that
7 writ of prohibition, very unsurprising to me.

8 Then we have a writ of prohibition in 2024
9 where I was named specifically along with
10 Mr. Protopapas in our capacities in this litigation,
11 and, of course, that gave me some additional concern.
12 Judges have all kind of hoops they have to jump through
13 when they're named in a suit and even in their capacity
14 and especially in their capacity as a judicial officer.
15 All right. The Court again denied the use of that kind
16 of tactic in this case.

17 In this case, this case has got the history
18 of -- in terms of Altrad, of numerous submissions to
19 the court of appeals and the Supreme Court attempting
20 to appeal matters that had been determined to be not
21 appealable matters. Huge volumes of them. And the
22 final resolution for this particular case came when the
23 Supreme Court remanded this case back to me for trial.

24 The Court had given certain directives in
25 Welch about how a receivership should be organized.

1 The Court had a layer of order that it submitted to me
2 about instructions on remand, and I am attempting to
3 obey those instructions as I try this case. In fact,
4 the very last thing the Court has sent to me by way of
5 an order was a short order facilitating the very matter
6 in front -- that has been submitted for conclusive
7 activity today, which is settlements, and made it clear
8 that notwithstanding anything else that's going on with
9 these cases, I was not in any way restricted in the
10 ability to approve settlements.

11 And I am sure that occurred to them because
12 of the continuing plethora of filings with the court of
13 appeal and with the Supreme Court of matters that -- at
14 least if history is any judge -- are unappealable
15 matters. And -- but the filings in this particular
16 matter gave me some pause in terms of what my position
17 might be on -- taken under consideration and acting on
18 a petition for settlement. The Court has made it clear
19 that I am to proceed with those matters.

20 Now come these filings in this case. Altrad
21 has refused to participate in this matter at all, and
22 they have been sanctioned for that by the imposition of
23 certain presumptions in this matter. In the plethora
24 of filings from Mr. Carroll yesterday, late yesterday,
25 many challenges are made to the admissibility of

1 evidence in this proceeding. Of course, the challenge
2 is made again, as usual, to the whole legitimacy or
3 anything the receiver has said so on and so on.

4 I don't regard any of those activities as
5 activities which should derail this Court's not just
6 authority but obligation under the previous remand
7 orders of the Supreme Court from going forward with
8 this matter. Altrad was the vehicle for the Court
9 sending this back to me with an instruction that the
10 trial was to proceed.

11 All of Altrad's filings had been filings in
12 aid of various writs, petitions, and contentions that
13 the Court had no authority to try in this case. The
14 Supreme Court of South Carolina has made it clear that
15 I am to try to case and directed me do that and said in
16 their latest order and while we awaited the trial of
17 this case, we want to make it clear that settlements
18 are permitted to be considered by you as the presiding
19 judge.

20 So that's the posture I find myself in, and I
21 do not regard these attempts of naming or writs of
22 prohibitions or emergency petitions and matters of that
23 type as something that will prohibit me from going
24 forward with this trial.

25 I am willing to hear brief comments about

1 that from both sides, but my current inclination is to
2 go forward with these matters. I will -- the procedure
3 I will follow is to first look at the objections to
4 exhibits and evidence and all that kind of thing. I
5 don't intend to spend a great deal of time on that
6 because, quite frankly, the defendant Altrad has
7 forfeited its ability to have objections to those
8 things by not participating in discovery.

9 And these -- the materials that have been
10 submitted for evidentiary consideration in front of me
11 as the trial judge are governed by the opinions of the
12 Court in nonjury matters where a judge is not to worry
13 about the evidentiary rules to begin with. The judge
14 is to take all matters and look at them, and then make
15 a decision as the judge moves toward a judgment in the
16 matter as to which pieces of the proposed evidence will
17 be properly considered in rendering the judgment.

18 So pretrial consideration also in my view is
19 not proper given the framework the Supreme Court and
20 the court of appeals have given for how nonjury matters
21 are to be conducted in terms of evidentiary
22 considerations.

23 So as I say, I will entertain some brief
24 comment about these matters, but I don't intend to go
25 through each of these exhibits as suggesting, even

1 demanding by the filings of Altrad, because I don't
2 think that's the way I'm supposed to conduct this
3 matter.

4 I am also very taken aback by this late
5 filing on behalf of certain insurers at Lloyds. That
6 very group was involved in the very first 2020
7 emergency petition for writ of prohibition, and I think
8 the Court made it very clear what was to be done about
9 that. I don't think there is any proffer continuing to
10 make the same mistakes and rulings over and over again.
11 It's attributed to Einstein that that's a sign of
12 insanity, but it's really Edward Bulwer that likened it
13 that had that little bobble inscribed into everybody's
14 feelings about the utility of continuing to do the same
15 thing over and over again.

16 I think that's what I'm being asked to do.
17 Again, I'm not going to do it. If there's some reason
18 to believe that the Supreme Court is going to grant
19 these writs of prohibition, that can be addressed in
20 the brief comments on the remarks I have made and have
21 tried to proceed. So I first turn, Mr. Carroll, to
22 you.

23 MR. CARROLL: Thank you, Your Honor. Todd
24 Carroll on behalf of Altrad defendants. Your Honor, I
25 just want to make sure that Justice Mann's order from

1 this morning is actually part of the record. I know I
2 handed up a copy to Your Honor.

3 THE COURT: Well, if you want to make that
4 one of your exhibits, hand it to the court reporter
5 and --

6 MR. CARROLL: I have given out all my extra
7 copies. I will email it to the court reporter. I just
8 want to make sure that the order itself is part of
9 record because I don't think --

10 THE COURT: It's admitted.

11 MR. CARROLL: Thank you. It doesn't quite
12 relieve the De Beers' entities of what Mr. Protopapas's
13 email this morning suggested. So I just want to make
14 sure that that's noted. As far as our filings with the
15 Supreme Court, Your Honor, you took us down a walk down
16 memory lane, so I feel I'm obligated to respond o it.
17 The first time I filed a writ of prohibition was in the
18 USF&G case involving Coble, maybe you said back in
19 2020.

20 THE COURT: Oh, there's no question about it.

21 MR. CARROLL: I take you at your word.

22 THE COURT: December the 23rd, 2020, I think.

23 MR. CARROLL: Yes, ma'am. We had an appeal
24 pending. Your Honor sent the parties an email saying,
25 "We are going to have a trial even though there's an

1 appeal." We filed a petition for a writ of
2 prohibition, and then Your Honor sent the parties an
3 email saying, "I won't do anything until after the
4 appellate court ruled"; so we withdrew that petition.
5 So that's how that resolved. You made some remarks
6 about something -- you said Mr. Nichols filed. I don't
7 know anything about that.

8 THE COURT: You know a lot about it. You've
9 cited it before.

10 MR. CARROLL: Well, I've cited it, but that
11 wasn't -- that was in a case I wasn't even involved in.
12 I had nothing to do with it. I saw that it got filed.

13 THE COURT: Yes.

14 MR. CARROLL: But I just to -- I just want to
15 be very clear for the record that what I filed
16 yesterday was only the second one of these that I
17 filed. And as Your Honor knows, it's because --

18 THE COURT: All three that have been filed
19 using the very same tactic to achieve the very same
20 result, which is to prevent me from trying these
21 matters fully on the asbestos docket have not been
22 successful.

23 MR. CARROLL: Well, one was withdrawn. And I
24 don't know what Mr. Nichols' motivation -- I don't know
25 what the posture of that case was.

1 THE COURT: I'm not going to hear anything
2 more about that issue.

3 MR. CARROLL: Well, Your Honor, you're
4 attributing something to me, and I don't think that's
5 fair.

6 THE COURT: Mr. Carroll, you're not going to
7 talk over me, and when I ask you to move on, the rules
8 of civil procedure say when I have heard what I need to
9 hear about a matter that I can ask you to move on. I'm
10 asking you to do that.

11 MR. CARROLL: Yes, ma'am. So as far as
12 what's the contents of our petition that was filed
13 yesterday, they are in line with what we -- how we read
14 the Supreme Court's remand order in Tibbs. Your Honor
15 said they remanded Tibbs to you to have trial. That's
16 not what the remand order says. Your Honor indicated
17 that the Supreme Court issued an order a couple weeks
18 ago authorizing you to enter to approve settlement
19 agreements.

20 I saw that's what it said. It didn't say
21 anything about receivership cases. And, frankly, that
22 order came out of the blue to us, because we didn't
23 know anything about any supposed settlement agreements.
24 So I don't know how the Supreme Court would have been
25 able to write that order with this exact situation in

1 mind when this situation wasn't known to anybody as far
2 as my clients are aware. But that order doesn't say,
3 "I'm remanding to the circuit court for a trial." It
4 says, "As we await" --

5 THE COURT: This is not profitable for you to
6 make any further argument about that. The order said
7 what it did. It is an order in this case.

8 MR. CARROLL: Yes, ma'am.

9 THE COURT: So I think the Supreme Court well
10 knew which case it was talking about when it made this
11 order. But I think we can move on from that.

12 MR. CARROLL: Yes, ma'am. And that -- that
13 order says that, "As it awaits this Court's orders in
14 response to its remand from June." And those didn't
15 come out until maybe this time a week ago. And we
16 promptly appealed them because we have a right under
17 the rule -- under the statute to appeal it. So we
18 haven't delayed. All of our -- all of our procedural
19 filings have been done as expeditiously as possible on
20 the timeline that has resulted from this Court's
21 issuance of the order last Monday.

22 Now, as far as what's left of this case, if
23 Your Honor is going to respect Justice Mann's ruling of
24 this morning, then I think that my clients are done,
25 because my clients have been released from all of the

1 claims that the receiver is purporting to allege
2 against my clients. The actual company, CIHL, has
3 released all those claims against my client. And that
4 mutual release was presented to this same High Court of
5 Justice of England and Wales and same High Court of
6 Justice of England and Wales reviewed it and said this
7 is an appropriate contract, it's enforceable, and I
8 know that that ends the case in front of Chief Justice
9 Toal, but that's it.

10 THE COURT: Mr. Carroll, let me ask you this
11 question. It's a curious thing to me that you would
12 take that position about an action that was taken with
13 respect to CHIL as if you embraced in that
14 constellation of organizations, and yet you've argued
15 vociferously to this Court that you are independent of
16 them and so forth and so on. All right.

17 And that Mr. Protopapas is -- and Mr. Lay in
18 the trial of this particular matter are wildly out of
19 order to be making an argument in the case based on an
20 amalgamation of interest. So I don't regard those
21 arguments as very persuasive or consistent at all. I
22 understand what you have said, but you can move on.

23 MR. CARROLL: Well, Your Honor, all I'm
24 arguing is that CIHL and my clients have executed a
25 mutual release that was presented to the Court of --

1 the High Court of Justice in England and Wales, and it
2 was reviewed and deemed a valid contract under English
3 law.

4 THE COURT: I heard what you said. I have
5 read what you submitted, so I understand. It's not
6 persuasive to me in terms of this trial. So you can
7 move on.

8 MR. CARROLL: Well, Your Honor, there are no
9 claims, and I appreciate you said that's not
10 persuasive, but that's -- that's what a Court has
11 ordered and that's what the parties have agreed to, so
12 I don't understand how the receiver who, again, does
13 not exist as a matter of South Carolina law or of
14 English law, but ...

15 THE COURT: You don't need to repeat all
16 these arguments. They're in the record. I
17 understand --

18 MR. CARROLL: Thank you.

19 THE COURT: -- your position.

20 MR. CARROLL: But I don't understand how they
21 can come to you this morning and say, hey, an English
22 Court has said that De Beers -- that an English Court
23 is not going to stand in the way of De Beers -- what
24 Justice Mann called giving present to the receiver.

25 THE COURT: Well, in part, they rely on a

1 decision of the South Carolina Supreme Court written by
2 Judge Hill -- Justice Hill, in which he makes a
3 considerable evaluation of the authority that the
4 English Courts can act in this matter and concludes, as
5 does the Court, that it did not have authority in that
6 regard. So I assume that the receiver is relying on
7 what I am relying on, which is what our Court has said.

8 MR. CARROLL: Well, we began this hearing
9 today with a recitation of Justice Mann's ruling a
10 moment ago.

11 THE COURT: All his rulings of a moment ago
12 does as it impacts this Court at this time is to
13 indicate that Anglo and the receiver are not prohibited
14 by anything that he's done from settling, and that's
15 all it does, as I read it.

16 MR. CARROLL: Yes. It says that Anglo
17 exposed itself to tort in England for executing the
18 settlement agreement, but he is not going to formally
19 conjoin them.

20 THE COURT: Right.

21 MR. CARROLL: Your Honor, I'm delighted to go
22 through all our arguments why the Court doesn't have
23 jurisdiction.

24 THE COURT: Yes, sir.

25 MR. CARROLL: I don't intend to do that

1 unless you want me to.

2 THE COURT: No, sir.

3 MR. CARROLL: I'm glad to stand on my
4 filings, but we don't view this Court as having
5 jurisdiction to proceed as a matter of subject matter
6 jurisdiction, personal jurisdiction, fundamental
7 jurisdiction, and now Rule 205, which is independent of
8 what we filed in the State Supreme Court, as you know.

9 THE COURT: All right.

10 MR. CARROLL: Thank you.

11 THE COURT: Mr. Lay.

12 MR. LAY: I think Mr. Robinson is going to
13 handle this argument.

14 MR. ROBINSON: Good morning, Your Honor.
15 John Robinson here on behalf of Mr. Protopapas as the
16 receiver for Cape.

17 THE COURT: Yes.

18 MR. ROBINSON: Your Honor, I think your
19 recitation of the different appellate machinations over
20 the last now six years certainly encompasses most of
21 the types of tactics that have been employed to delay
22 trials before you. I just want to point out before I
23 get to the pending appeal at the moment, a couple of
24 things.

25 There was an order that you mentioned issued

1 on September the 25th by the Supreme Court. That order
2 is really just -- well, it's one sentence. It says,
3 "As we await the trial, Court ruling on the matters
4 referenced in this Court's order of June -- dated
5 June 26th, 2025, we issue this Court to clarify that
6 nothing in the June 26, 2025, order prevents trial
7 court proceedings from continuing in the normal course
8 in the asbestos litigation, including the filing of and
9 decisions on motions to approve settlement agreements."

10 Mr. Carroll said he's not sure where that
11 order came from, and I certainly take him for his word,
12 but the day before this order was issued, there was, I
13 believe, a filing by you which has since been provided
14 to all the parties. I don't know that we got it at the
15 time, but on September 24th, you submitted a report
16 to -- the day before that order -- submitted a report
17 to the Supreme Court talking about the trial that had
18 been set for October the 6th, 2025. You mentioned in
19 that report, among other things, that you were
20 exploring requiring mediation in the matter.

21 I don't think any of us can venture to say
22 why the Supreme Court does what it does, but it
23 certainly from the timing standpoint that order came
24 the day after the report that you submitted to the
25 Supreme Court dealing with the --

1 THE COURT: That's exactly what I assumed
2 because those reports -- and I guess I'm all out. The
3 next one I file will be my fourth report.

4 MR. ROBINSON: Yes, ma'am. That was your
5 third.

6 THE COURT: The Courts are required by the
7 Supreme Court in its order in connection with the
8 remand of the Tibbs case.

9 MR. ROBINSON: That's correct and in your
10 third order.

11 THE COURT: So in this very case, I am
12 continuing to make reports, and I made that report to
13 the Court to indicate what the progress had been, and
14 the Supreme Court, I assume, looked at it, and the very
15 next day sent the order that they sent. So there's
16 nothing nefarious about it at all. It's a direct
17 result of the mechanism they set up for overseeing the
18 conclusion of this matter that has plagued them with so
19 many invalid fields.

20 MR. ROBINSON: Correct, Your Honor. In fact,
21 your third report, which was dated the day before this
22 Supreme Court order came out, you specifically state
23 that the Cape matter is scheduled for trial on
24 October 20th, 2025, pursuant to a previous order. So
25 all of those things are laid out in your report and

1 your attempt to have a hearing on October 6th, which
2 you did, a trial on October 20th, which we are here for
3 today, and the idea that you were considering exploring
4 requiring mediation. So all of those things were
5 addressed in your report. It appears on September the
6 24th.

7 As it relates to the appeal, Your Honor,
8 there are two -- as this Court pointed out --
9 Mr. Carroll and I believe Mr. Rawl filed two appeals of
10 your orders denying motion to dismiss and dissolve the
11 receivership. It -- the -- the order and the appeal is
12 titled as an order on Altrad defendants -- I'm sorry.
13 The order you issued is an order on Altrad defendants
14 notice of recent Supreme Court authority voiding
15 third-party litigation renewed motion to dismiss and
16 motion to strike all filings in order to end the
17 third-party case and the receivers and Tibbs
18 plaintiffs' motion to confirm the appointment of the
19 receiver. That is what the order was titled.

20 They have -- in the notices of appeal, Altrad
21 Charter referred to this order as an order granting the
22 appointment of a receiver, of course, which it is not.
23 They filed on October 15th, the day after the appeal
24 was filed. The receiver filed a motion to dismiss
25 those appeals. We had the motion ready because it is

1 very similar to the last motion that we filed to
2 dismiss. And as this Court knows, the court of appeals
3 did, in fact, dismiss the appeals of those orders and
4 found that those were interrogatory orders.

5 The Supreme Court later remanded seven
6 appeals to you. They denied five of those as
7 interlocutory -- well, they determined they were all
8 interlocutory. They denied the petitions for cert on
9 five; they accepted original jurisdiction on two and
10 remanded those back to you. But they remanded them
11 back for all purposes. The Supreme Court did reserve
12 to itself consideration of a pending sanctions motion
13 against Altrad.

14 And that is, as far as we know, still before
15 the Court. And the remand order, the Supreme Court
16 indicated that it was going to rule on the sanctions
17 issued at a later date relating to Altrad. That same
18 order, of course, indicated that the parties, the
19 appellants, any further frivolous appeals or
20 interlocutory appeals would be summarily dismissed and
21 would result in sanctions, that same remand order.

22 We also know that these orders are not
23 appealable, Your Honor, because, in the Childers case,
24 which I believe you referenced, and Mr. Carroll was
25 certainly involved in that, that was an appeal of an

1 order denying the motion to dismiss and resolve the
2 receivership. The court of appeals on September the
3 8th of, I believe, 2023, issued an order that not
4 only -- that the receivership, No. 1, was not stayed,
5 during the course of this type of appeal, and they
6 cited in their ruling Rule 62, and it says, "Unless
7 ordered by the Court, an interlocutory or final
8 judgment in an action for an injunction or in
9 receivership action shall not be stayed during the
10 period after its entry and until an appeal is taken or
11 during the pendency of an appeal."

12 And we may recall Judge Verdin's order that
13 clarified that the receivership was not stayed. On
14 November 21st, 2023, the court of appeals issued a
15 second order rejecting the Rule 205 arguments, and they
16 denied an emergency motion to clarify and enforce rule
17 205. On March 27th, 2024, the Supreme Court issued
18 what is been called the Childers order that this Court
19 is certainly familiar with. It confirmed that order
20 was not immediately appealable. And as this Court may
21 recall, the Supreme Court took that case up at the
22 behest of Mr. Carroll's client and others and asked
23 them to take jurisdiction from the court of appeals
24 because the decision on that case would have
25 wide-reaching implications across the receivership

1 world on whether these types of orders are appealable.

2 The Supreme Court agreed to take it up but
3 ruled against them and then we are still talking about
4 that issue here today, some time three years later.

5 The court of appeals has also issued orders
6 in receivership appeals rejecting the Rule 205 motions
7 in Welch. On April 12th, 2024, they determined -- the
8 court of appeals said the appellant Continental
9 Insurance Company filed a motion to enforce this
10 Court's exclusive jurisdiction. That motion was
11 denied. In Mitchell, on April 12th, 2024, appellant
12 Continental Insurance filed a motion to enforce the
13 Court's exclusive jurisdiction; however, that motion is
14 denied.

15 This is not new. Our Courts have determined
16 on numerous occasions in the past that, No. 1, an
17 improper interlocutory appeal does not transfer
18 jurisdiction to the appellate courts. In the South
19 Carolina Public Service Authority versus Arnold, which
20 was issued by the Supreme Court in 1986, that's
21 287SC584, the Court stated since this Court granted
22 respondent's motion to dismiss on the grounds that the
23 consolidation order was interlocutory and not
24 appealable, the circuit court never lost jurisdiction
25 and properly proceeded to trial.

1 Your Honor, that case has been cited
2 throughout during the course of the asbestos appellate
3 litigation. There are other cases, Dibble versus
4 Shade, Brown versus Greenwood School, and Fickens
5 versus Fickens (phonetic), all finding interlocutory
6 orders did not stay the proceedings in the lower court.

7 In the Supreme Court -- so just to put that
8 together, Your Honor, I think you correctly stated, and
9 I just wanted to get on the record the number of times
10 this issue has come up in the appellate courts that
11 this appeal and the court of appeals does not stay this
12 case from going to trial. It's our position that the
13 case should move forward.

14 In the Supreme Court, as you know, last night
15 there was a filing in the original jurisdiction of the
16 Supreme Court. It was certiorari over -- well, it
17 was -- the two cases the Supreme Court granted original
18 jurisdiction and remanded back to you. And so what the
19 filing last night includes are the captions in the
20 appellate case numbers of those two cases in which the
21 Court granted original jurisdiction and remanded back
22 to you and also lists a yet defined or yet identified
23 caption as 2025, which appears to be seeking a new
24 appellate number be assigned.

25 And so what we have last night is Altrad and

1 Charter filed petitions for extraordinary writs with
2 the Supreme Court. As you've already noted on the
3 record, this is not the first time that Mr. Carroll or
4 Mr. Rawl's client has filed extraordinary writs. I
5 believe that Mr. Nichols, the one he was involved in,
6 was with Mr. Rawl.

7 And so the -- they are seeking a writ of
8 prohibition claiming this Court is exceeding its
9 jurisdiction, and seeking a writ of certiorari to
10 review the Court's October 13th, 2025, order. And,
11 again, they filed it in the two remanded cases and
12 appear to have initiated it at a new and separate
13 appellate case which does not have a number.

14 In that, they are seeking an original
15 jurisdiction. In the Supreme Court's extraordinary --
16 extraordinary powers, under Rule 24(b), there is really
17 no reasonable argument or legitimate argument that that
18 stays this case. In fact, our law and our rules state
19 otherwise. Under Rule 205 and 241, the automatic stay
20 only applies from the proper filing of a notice of
21 appeal. We know that notice of appeal they filed is
22 not proper and our Courts have repeatedly confirmed
23 that as it relates to the court of appeals. In the
24 Supreme Courts, it is a similar analysis but somewhat
25 different.

1 The petitions filed in the Supreme Court are
2 not notices of appeal. Again, the notices of appeal
3 are in the court of appeals. And they are appealing
4 your order. What they have filed in the Supreme Court
5 is not a notice of appeal. They filed petitions in the
6 Supreme Court that they're not seeking appellate
7 jurisdiction; therefore, they do not transfer appellate
8 jurisdiction. Instead, these new actions that are in
9 the Supreme Court -- well, the new actions that are
10 being pled -- filed in the Supreme Court are seeking
11 separate relief. No. 1, they're asking the Supreme
12 Court to take extraordinary jurisdiction.

13 Altrad would have need -- and Charter --
14 would have needed to move for a stay pending the
15 termination by the Supreme Court, and the Supreme Court
16 would need to grant the stay in order to prevent the
17 Court from moving forward. And we know that from State
18 versus Wakefield 442SC123, that's a 2024 Supreme Court
19 case.

20 In that case, the party filed an original
21 jurisdiction writ and a motion for the Supreme Court to
22 stay the proceedings in the circuit court and/or remove
23 the proceedings from the circuit court. So the filing
24 of these original jurisdiction filings that they did
25 last night, No. 1, they don't -- they are not seeking

1 appellate review. They're seeking original
2 jurisdiction. The appellate review is happening at the
3 court of appeals right now, and the court of appeals
4 has already repeatedly stated that doesn't stay this
5 case from moving forward and they have repeatedly
6 stated that the order itself is not appealable,
7 immediately appealable.

8 So for those reasons, Your Honor, we believe
9 that both the appellate filings in the court of appeals
10 and in the Supreme Court as they stand do not interfere
11 with the Court's ability to move forward.

12 I will point out, and you were asked to be
13 given copies of what was filed last night, and I don't
14 know that you have this, but I printed it out and I
15 brought it with me because this was also filed last
16 night. And this is Mr. Carroll's email to the Court
17 last night. May I approach?

18 THE COURT: Yes, please.

19 MR. ROBINSON: This is Mr. Carroll's email to
20 the Court last night. And it struck me, as did -- that
21 he had the -- was the only person who had the order
22 from England this morning. But it struck me that in
23 his email to the Court last night, he says, that there
24 have been apparently some misstatements by my
25 co-counsel, Mr. Lay, regarding the attacks his clients

1 or threats they're making on Mr. Protopapas.

2 And, in fact, the last sentence of the first
3 paragraph says, "All of the messages and filings that
4 Your Honor has received regarding threats and so forth
5 being leveled by our clients are of course untrue nor
6 are we any such -- nor are we aware of any such threats
7 from anyone else."

8 And if I can direct your attention up to the
9 top of the body of the email, he identifies his clients
10 in the second sentence as Altrad Investment Authority
11 and Mr. Altrad individually.

12 And so it struck me that he does not believe
13 his clients are threatening the receiver. And, Your
14 Honor, we have already filed this in a notice of
15 filing, but I have a copy here of what Mr. Carroll's
16 client filed in England and two clients he identifies
17 as Altrad Investment Authority and Mr. Mohed Altrad.
18 If I may approach, they're named as the plaintiffs in
19 the UK proceeding.

20 And on the very first page of this, his
21 clients' order says, "If you, Peter Protopapas, disobey
22 this order, you may be held to be in contempt of court
23 and may be imprisoned for a time or have your assets
24 seized. Any person who knows of this order and
25 disobeys this order or does anything to help or permit

1 any person to whom this order applies to breach the
2 terms of this order may also be held in contempt of
3 court and may be imprisoned, fined, or their assets
4 seized."

5 So, Your Honor, when we talk about the
6 threats that Mr. --

7 THE COURT: Where is that in this document?

8 MR. ROBINSON: This is on the front page,
9 Your Honor, very front of page.

10 THE COURT: Oh, yeah, yeah, okay. I got you.

11 MR. ROBINSON: And so the -- it is baffling
12 to me that he's not aware that his clients are
13 threatening Mr. Protopapas nor is he aware of anybody
14 else threatening him. He had a copy of the record that
15 was issued by one of the settling parties regarding one
16 of the settling parties in this case, who apparently
17 had expressed some concerns in England that they would
18 also be threatened or imprisoned or fined if they
19 entered into a settlement agreement.

20 So, Judge, I just -- I would like to put this
21 in the record as well --

22 THE COURT: Yes, sir.

23 MR. ROBINSON: -- if I may, and I did bring
24 some extra copies. Also, there was one other thing.
25 His client -- if I may approach. Also on --

1 THE COURT: All right. Let's --

2 MR. ROBINSON: This is --

3 THE COURT: Exhibit No. 1 from Mr. Carroll is
4 already in your hands, Court Reporter, or will be, and
5 that is his exhibit of an order by Mr. Justice Mann
6 today, October the 20th, 2025. All right.

7 Mr. Robinson's first exhibit is the decision
8 of Mr. Justice Marcus Smith of September the 30th,
9 2025. It indicates a caption with the lead one and two
10 being Altrad Investment Authority SAS; two, Altrad UK
11 Limited; three, Cape UK Holdings Newco, Limited; four,
12 Cape Industrial Services Group Limited; five, Cape
13 Holdco Limited; six, Altrad Services Limited; seven,
14 Mr. Mohed Altrad.

15 All right. As claimants and Peter D.
16 Protopapas; two, Cape Intermediate Holdings Limited;
17 and three, Cape PLC as defendants.

18 MR. ROBINSON: Yes, Your Honor. And I will
19 hand this. This is Exhibit 2.

20 (Whereupon, Pretrial Exhibit 1 was
21 admitted into evidence.)

22 (Whereupon, Pretrial Exhibit 2 was
23 admitted into evidence.)

24 THE COURT: Well, that's your Exhibit 1.

25 MR. ROBINSON: My Exhibit 1. Thank you, Your

1 Honor. My Exhibit 1. And then my Exhibit 3 would be
2 the email correspondence with attachments in the
3 notebook.

4 THE COURT: That would be Exhibit 2. Our
5 Honor. Your Exhibit 2.

6 MR. ROBINSON: Yes, ma'am. What I present
7 now to the Court is Exhibit 3.

8 THE COURT: I'm going to say Receiver's
9 Exhibit 1 what you just referred to, which is what's in
10 the notebook.

11 MR. ROBINSON: Did you have this as 1?

12 So, Your Honor, you identified the actual
13 order as Exhibit 1 which is fine. We can use that.

14 THE COURT: That's Todd Carroll Exhibit 1.

15 MR. ROBINSON: Well, so we have two -- we
16 have two orders, Your Honor. His Exhibit 1 is what was
17 obtained today.

18 THE COURT: That's correct. And your
19 Exhibit 1 is what was obtained from Judge Marcus Smith
20 on September the 30th.

21 MR. ROBINSON: Correct, Your Honor. This is
22 Exhibit 1.

23 THE COURT: That is Receiver's Exhibit 1.

24 MR. ROBINSON: All right. Then Exhibit 2 is
25 the notebook. Mr. Carroll's email of October 19th and

1 attachments. Then Exhibit 3 I would like to present to
2 the Court.

3 THE COURT: Yes, sir.

4 MR. ROBINSON: I have given Mr. Carroll a
5 copy. This is a statement of cost filed by
6 Mr. Carroll's clients in England and in front of
7 Justice Smith relating to a September 23rd and 24th
8 hearing. And as the Court can see, the claimant is
9 Altrad Investment Authority No. 1, and No. 7 Mr. Mohed
10 Altrad, both of whom are parties to this case. And it
11 is a statement of costs seeking to obtain from
12 Mr. Protopapas, it appears personally, an amount of
13 512,000 pounds. And this would be receiver's Exhibit
14 No. 3.

15 THE COURT: Right.

16 (Whereupon, Trial Exhibit 3 was admitted
17 into evidence.)

18 THE COURT: I see it. Just for clarity, this
19 is an attempt by Altrad to have Mr. Justice Marcus
20 Smith impose costs of 512,694.98 pounds on
21 Mr. Protopapas; correct?

22 MR. ROBINSON: That is correct, Your Honor.

23 THE COURT: All right.

24 MR. ROBINSON: And, Your Honor, lastly,
25 obviously, we didn't get some of these late filings

1 until last night. But the receiver filed with the
2 Court on this case on October the 15th, 2025, a notice
3 of filing. And included in that notice of filing was a
4 number of the foreign proceedings and attachments, and
5 I just want to put it on the record by reference. And,
6 again, I don't have a copy, but I can -- there was a
7 notice of filing October 15th, 2025. And in that
8 notice of filing, it was, again, represented to the
9 British Court that the Altrad parties had issued
10 proceedings in the High Court -- this is paragraph
11 47 -- of Justice in England and Wales against
12 Mr. Protopapas and the claimants seeking declaratory
13 injunctive relief, including declarations, that a
14 settlement agreement had discharged the third-party
15 complaint against Mr. Altrad as well as an injunction
16 mandating Mr. Protopapas to discontinue the same -- I'm
17 sorry, discontinue the -- got to come down on this
18 one -- discontinue the third-party complaint against
19 the Altrad parties.

20 So in that filing that we provided to the
21 Court on October 15th, 2025, in those proceedings, it
22 included documents from those proceedings. And, again,
23 this would be paragraph -- beginning in paragraph 46
24 and 47 where they have acknowledged -- or the Altrad
25 group has presented as seeking an injunction that

1 mandate Mr. Protopapas discontinue his third-party
2 complaint in this case.

3 THE COURT: This very case we are about to
4 try?

5 MR. ROBINSON: That's correct against the
6 Altrad parties. And as part of that, of course, is the
7 penal notice associated with his refusal to abide by
8 the injunction that they sought.

9 THE COURT: That would be your Exhibit 4?

10 MR. ROBINSON: That would be my Exhibit 4.
11 But at the moment, I just incorporated it by reference,
12 our October 15th, 2025 -- receiver's October 15, 2025,
13 notice of filing. And that's, in this case,
14 2023CP4001759.

15 (Whereupon, Trial Exhibit 4 was admitted
16 into evidence.)

17 THE COURT: And you can just make it an
18 exhibit to these proceedings by reference. You are
19 wanting to make sure it's in an exhibit in the trial
20 proceedings as well as being a filing that you made. I
21 understand that. You don't need to -- you do not need
22 to refile it as an exhibit in my view. If you've got
23 some excerpts, like the ones you read that you would
24 like to make as a submission, that's fine, but I
25 wouldn't submit the whole thing again.

1 MR. ROBINSON: And, interestingly, Your
2 Honor, the affidavit or I think they call it something
3 else, the statement in support of it given by Mr. Ran
4 Oren, he talks on behalf of both Altrad and -- of which
5 he is the CEO, and on behalf of -- he also indicates in
6 his statement that he is the director of CIHL. And so
7 just that is all part of -- let's see here.

8 THE COURT: The record in the English Court.

9 MR. ROBINSON: Yes, ma'am. And is part of
10 this record. All of this was filed with the Court.

11 THE COURT: Right.

12 MR. ROBINSON: In our -- in our case. And I
13 just want to give this Court one additional piece from
14 it. And then I believe this is -- the title of that --
15 of that case, the October 15th, 2025, case -- I'm
16 sorry. The case in our October 15th, 2025, filing,
17 that is a separate English action against
18 Mr. Protopapas and that was Cape Intermediate Holding,
19 Limited and Cape PLC against Mr. Protopapas and all of
20 the codefendants, including Anglo, that are in this
21 case.

22 And so our October 15th filing with this
23 Court includes the statement from Mr. Ran Oren who in
24 his statement to the Court says that he is the director
25 of Cape Intermediate Holdings, and he is the group CEO

1 of Altrad Investment Authority.

2 THE COURT: And his last name is spelled?

3 MR. ROBINSON: I believe it's Ran O-r-e-n.

4 THE COURT: It's either Ran or Ron.

5 Sometimes it's referred to different ways in the
6 materials I've got, but I read that. I know that for
7 which you're talking about.

8 MR. ROBINSON: Yes. And, Your Honor, the
9 exhibit will speak for itself. It goes also
10 incidentally into some detail about the relationship
11 between the companies of Altrad and Cape.

12 So with that, Your Honor, I don't know -- I
13 believe --

14 Mr. Lay, if you want to ...

15 MR. LAY: Your Honor, can I add one thing
16 reacting to these filings last night, and I just want
17 to add a couple of things, if you don't mind.

18 THE COURT: Certainly.

19 MR. LAY: This idea -- I want to read this
20 again because I think it is incredibly important. This
21 issue, it has permeated this case for the last two
22 years, is really unbelievable to me as a practitioner
23 in this state.

24 And I'm looking at the actual language that
25 was used in the letter to the Court yesterday that all

1 of the messages and filings that Your Honor has
2 received regarding threats and so forth being leveled
3 by our clients are, of course, untrue nor -- nor are we
4 aware of any such threats by anyone else.

5 And they were responding to an email from me
6 to the Court suggesting that the Altrad defendants were
7 part of a lot of things. I mean, this disruption of
8 the entire litigation to making threats directly
9 against the receiver and law firms that are
10 representing him, both for judgments as well as
11 imprisonment, that has come over and over again.

12 And what we know from the facts of these --
13 of Altrad and also from Cape Intermediate, they really
14 are acting as one, and any suggestion that these are
15 separate companies and that counsel from Altrad is
16 unaware of threats being made, attempts to disrupt
17 settlements, and all of the other activity that has
18 occurred in this case simply cannot be correct or
19 they're badly mistaken.

20 Ran Oren is the CEO of Altrad group. He is
21 the sole director of Cape Intermediate. He used
22 Altrad -- Ran Oren used Altrad letterhead to threaten
23 Lloyds and told them not to produce information to the
24 receiver pursuant to a validly-issued subpoena. He
25 identifies himself both as CEO direct of Altrad,

1 director of Cape Intermediate and of Cape PLC in the
2 filings in England.

3 The annual statements of the companies relied
4 on by Altrad, Altrad says in their annual report that
5 Cape Intermediate debts, they're going to be paid Cape
6 Intermediate debts so that Cape Intermediate can be an
7 ongoing concern. These are separate companies. We
8 don't know anything about it, but Cape Intermediate, if
9 you're unable to pay your liabilities, we're going to
10 back up and we are going to pay for it with the same
11 director and the same CEO.

12 At the same time, the annual report takes
13 full responsibility -- the Altrad group's 2023 annual
14 report takes full responsibility for Cape's asbestos
15 liabilities, which they have what is effectively a QSF
16 set up in England under this scheme of arrangement to
17 pay UK claims as asbestos claims while ignoring the
18 U.S. -- based claims which are profound and that's
19 going to be part of this trial. And we have filled you
20 in on the details about that bad behavior.

21 We have Signature Litigation, which is
22 representing Altrad in France, and it is also
23 representing -- involved with the Cape Intermediate
24 claim in the UK. It's a European-based law firm. We
25 receive letters from Signature. We, as in the lawyers

1 and the receiver, receive letters from Signature saying
2 they that represented Cape, Cape Intermediate, Altrad,
3 Mr. Altrad. They're all the same lawyers and the same
4 letter saying we're representing all those parties.
5 These are one and the same and they are acting in
6 concert.

7 This suggestion that these threats haven't
8 been made, are not aware, I don't understand it. I
9 don't understand it. I have been practicing law in
10 this state for almost 35 years, and I have never seen
11 behavior like this where my client is getting accused
12 of criminal activity and threats of criminal activity,
13 and if any lawyers are involved in that, that really is
14 a problem. It is unprecedented in any case that I have
15 ever seen where we are getting this kind of feedback
16 from the other side.

17 We have rule of law. What I love about the
18 law is that, the rule of law. I'm a constitutionalist.
19 What we have here is a process, and when you get
20 involved in a lawsuit and you lose something, we have
21 an appropriate appellate process. You don't do a bunch
22 interlocutory appeals and call -- cause a problem. If
23 you lose something in a case, you don't make threats of
24 putting somebody in prison and trying to get millions
25 of dollars out of them in the litigation.

1 What you do is you follow the rule of law and
2 we have an appellate process to do that. I am taken
3 aback by what's going on in this. I have never seen
4 anything quite like it. We're ready to try this case
5 right now. We are ready to go forward with it. And
6 this idea that they have made threats is wrong. They
7 have. They have been part of it -- Altrad has been
8 part of it from the very beginning.

9 THE COURT: Thank you, Mr. Lay.

10 MR. LAY: Thank you.

11 THE COURT: All right. All right. Let's do
12 some bookkeeping, Mr. Carroll.

13 MR. CARROLL: Your Honor, may I respond to
14 all that?

15 THE COURT: You can respond briefly, but,
16 Mr. Carroll, let's -- wait a minute, Mr. Carroll.
17 Let's understand where we are in this process. He's
18 responding to you. You made a presentation to begin
19 with, and he's responding to that, and he's responding
20 specifically on your assertions written. And one of
21 the first things you uttered when you came before me
22 this morning that your client has not made any threats,
23 don't know where this comes from, so forth and so on.
24 That's what he is responding to. So yours is going --
25 yours is a reply and it needs to be a brief one.

1 MR. CARROLL: I will be brief, Your Honor.

2 THE COURT: Because I'm ready to go forward
3 with this case now as I told you before.

4 MR. CARROLL: Sure. So this -- there's an
5 email from me that was put into the record. It's
6 incomplete. I'll send the Court the full email so you
7 can put that in the record.

8 THE COURT: You can make that your second
9 exhibit and it will be accepted.

10 MR. CARROLL: Yes, ma'am, thank you. I'm
11 obviously responding in the email to the activity
12 before the English Courts that were finalized this
13 morning. My clients were not party to that. I was
14 responding to this notion that Mr. Altrad or Altrad
15 Investment Authority were somehow litigants in the
16 English Court that issued this ruling today. They were
17 not. That is the sole context of my email. So this,
18 you know, as always, I'm up here having to bat away
19 half truths and so forth.

20 Now, this concept of threats, as far as I can
21 tell, the only thing they're ever talking about --

22 THE COURT: Let me stop you for a minute and
23 just ask you this: The receiver's Exhibit No. 1 is in
24 the High Court of Justice, business and property courts
25 of England and Wales, before the Honorable Justice

1 Marcus Smith, September 30th, 2025, between Altrad and
2 names all these parties that have to do with it, and
3 it's an order --

4 MR. CARROLL: Yes, ma'am.

5 THE COURT: -- with respect to Peter
6 Protopapas, and Cape and Cape PLC, that says, "If you,
7 Peter Protopapas, disobey this order, you may be held
8 in contempt of court, may be imprisoned, fined, and
9 have your assets seized. Any person who knows of this
10 order and disobeys this order, or does anything which
11 helps or permits any person to whom this order applies
12 breaches the terms of this order may also be held in
13 contempt," and then it proceeds to deal with the
14 receivership and the matters before me.

15 That is what Mr. Lay is referring to when
16 says, yes, threats have been made by your client and
17 litigated before -- in part, before Justice Smith. In
18 fact, that's why it had to be modified to some extent
19 by Justice Mann in the order entered this morning so
20 that this trial could -- so this settlement could
21 proceed.

22 MR. CARROLL: So I just want to --

23 THE COURT: I must say I am too very
24 disheartened by the attempt to draw some kind of narrow
25 legalistic sort of line. Altrad is heavily involved

1 with the effort to stop these proceedings here, and
2 stop the receiver and bring actions against the
3 receiver that result in an act of penalty. No question
4 about that in the order that I see before me.

5 MR. CARROLL: So if the concept of a threat
6 is the Court -- the Court's cover page on its orders,
7 this penal notice, then, yeah, the penal notice says
8 what it says. This is a cover page.

9 THE COURT: Altrad is specifically involved
10 in this, and what you --

11 MR. CARROLL: Of course.

12 THE COURT: -- got up and tried to suggest to
13 me this morning, and again when you got up today, is
14 that somehow or another Altrad is not really involved
15 in all this. Altrad is directly involved in this.

16 MR. CARROLL: When I was up here at this
17 podium earlier, I said Altrad has entered into a mutual
18 release with CIHL that disposes of all the claims in
19 this litigation. And I told you that they took that to
20 a court in England, and the court in England looked at
21 it and said this is a valid contract. This mutual
22 release is legitimate.

23 I haven't hidden that. I told you that.
24 That was part of the reason why I have said we
25 shouldn't even be here. I'm not hiding that, but this

1 concept of a threat being the cover -- the Court's own
2 language on its cover page is if that's considered a
3 threat, then yes.

4 THE COURT: No, the threat is your threat to
5 do something to Anglo or to the receiver or both if
6 they settle, and they fortunately -- that's what you
7 took the position was going to be the case.
8 Fortunately, the English judge modified these orders,
9 this very penal order by saying, all right, it won't
10 affect the settlement by Anglo. That's a very direct
11 threat. I mean, on the civil side, South Carolina
12 definitely recognizes the old torts involving
13 interference with prospective contracts, economic
14 advantage.

15 And, you know, I don't understand fully
16 exactly why you and your clients are pursuing this
17 thing in the way you are pursuing it, but it comes with
18 enormous risks when you do that.

19 MR. CARROLL: Well, Your Honor, because like
20 Mr. Lay, we believe in the rule of law. And there's --

21 THE COURT: So do I. So let's not get --
22 let's not get off on a tangent there. If you got
23 something else to say specifically about Mr. Lay's
24 remarks, please confine yourself to that and then we'll
25 move on.

1 MR. CARROLL: Of course. The way that UK
2 Court decides to write the cover page for its orders is
3 not in any way my client's fault. And so that's my --
4 that was my Al point getting up here. This concept of
5 a threat because of what the Court puts on its cover
6 pages is completely unfair to attribute to my clients.

7 And I was entirely -- I meant it when I said
8 what I wrote last night. I was obviously referring to
9 the proceedings that are going -- that ended this
10 morning, I suppose. The Altrads are not involved --
11 the Altrad entities are not involved in that case, so
12 that was -- that is to what I was responding. I don't
13 want the record to be unclear on that.

14 THE COURT: All right.

15 MR. LAY: One quick point.

16 THE COURT: Yes.

17 MR. LAY: I do want to make it clear that,
18 you know, I heard counsel from Altrad walk in here
19 today, and say Anglo does not have any tort liability
20 according -- excuse me. He walked in here and said,
21 Anglo has tort liability according to Mann's order this
22 morning. So what he's suggesting is, okay, the jail is
23 off the table, but you still have tort liability. That
24 is a threat, and there's no other way to take it. He
25 walked into this courtroom today and made a threat.

1 THE COURT: No, sir, you don't -- no, sir.

2 No, sir, Mr. Carroll, no, sir. You don't just come
3 marching up to the podium. Mr. Lay is not -- I don't
4 know that he's finished or not, but until he's
5 finished, take your seat, please, sir.

6 MR. CARROLL: Yes, ma'am.

7 MR. ROBINSON: We submit for the record, and,
8 again, I will have to print this. Mr. Protopapas
9 received an email on October 3rd, 2025, following
10 Mr. Carroll's client obtaining the order, and it says,
11 "Mr. Protopapas, please see attached. By way of
12 service, the approved judgment and order of Mr. Justice
13 Marcus Smith, we draw your attention in particular to
14 the penal notice on the order as well as the deadline
15 for cost submission in paragraph 9 of the order,
16 Tuesday, October 7th. Sincerely yours," the Enyo Law
17 firm who represented Altrad in the UK proceedings.

18 So to take the position that Altrad was just
19 unconnected to this penal notice that is on the --
20 on -- that the Court just decided to put on the cover
21 page. Altrad's attorneys asked him to draw particular
22 attention to the penal notice on the order as well as
23 the deadline for him to pay the cost.

24 So this is not just, you know, a happenstance
25 of -- of dilatory language that's in an order. This

1 was the front page of the order, and their attorneys
2 wanted to make sure that Mr. Protopapas saw it, drew
3 his attention to it, and knew about it, and we put that
4 in the record. I have to print it.

5 THE COURT: That will be exhibit --
6 Receiver's Exhibit -- which one would it be now?

7 MS. JOYNER: Your Honor, I believe it's 5.

8 THE COURT: That would be Receiver's
9 Exhibit 5.

10 (Whereupon, Pretrial Exhibit 5 was
11 admitted into evidence.)

12 THE COURT: I have heard everything I need to
13 hear about this, Mr. Carroll. All right. We need to
14 move on.

15 All right. What I want to --

16 MR. RAWL: Your Honor, I represent Charter
17 defendants. I have not yet been able to be heard on --

18 THE COURT: What do you want to be heard on?

19 MR. RAWL: You asked the parties' position in
20 regard to the present appeals, and I also want to
21 correct some things said by Mr. Robinson.

22 THE COURT: I'll give you five minutes to do
23 that Mr. Rawl, but if it's a repeat of what has already
24 gone on, which I suspect it is, I'm not going to
25 entertain any great argument about it.

1 MR. RAWL: Your Honor, thank you very much.
2 I represent third-party defendants Charter Consolidated
3 Limited, ESAB Corporation, and Central Mining and
4 Investment Corporation Limited. They do not waive and
5 expressly preserve all objections to personal
6 jurisdiction in South Carolina and all previously
7 raised objections, Your Honor, with regard to the
8 appellate status here.

9 What Mr. Robinson said about the June 26th,
10 order was that it found that all of the seven appeals
11 were -- that were inappropriate interlocutory appeals,
12 and I disagree, Your Honor. What it said is it
13 dismissed five of them, but it granted a cert petition
14 on two of them. For the two of them where --

15 THE COURT: It granted the petition, and then
16 ruled that the things would go back. It wasn't any
17 grant of your request for relief at all. It sent the
18 thing back to me on the basis that it took the petition
19 to give it jurisdiction to then act. All right. So
20 that was no victory for you.

21 MR. RAWL: Your Honor, the -- my clients
22 appealed this Court's December 8th, 2023, order which
23 denied their motion to dissolve the receivership. That
24 appeal was filed on December the 18th, 2023. And
25 Mr. Robinson is correct that the court of appeals did

1 dismiss the -- did strike that appeal, did deny the
2 rehearing. My client then sought cert from the Supreme
3 Court. And the June 26th, 2025, order stated that it
4 granted my client's petition for certiorari.

5 THE COURT: And then what did it do?

6 MR. RAWL: It then stated it agreed with the
7 arguments that we made, which is that, you know, from
8 the very beginning that a receiver appointed in one
9 case can't act in another case, and so it issued a
10 specific order to this Court that said the receiver --
11 no receiver may act in a case where a receiver --

12 THE COURT: Well it didn't say those words,
13 but, I understand your argument about that. Don't hash
14 over that same ground. It sent the case back to me
15 with that order.

16 MR. RAWL: Your Honor --

17 THE COURT: It did not retain it for some
18 additional appellate activity on your certiorari. It
19 granted cert only to be able to rule on the things you
20 raised in the way that it did, which was not to make
21 any specific finding about correctness or incorrectness
22 of my orders but rather to direct the Court on remand
23 to cover those issues. That's what it did.

24 MR. RAWL: Your Honor, I respectfully
25 disagree.

1 THE COURT: That's fine, but we are not going
2 to have a big argument about that.

3 MR. RAWL: So part of my point here, Your
4 Honor, is that on the December 2 -- excuse me, December
5 the 18th of 2023, the remittitur in this case for any
6 issue resolving the appropriateness or authority of a
7 receiver, and frankly, my client's personal
8 jurisdiction, the remittitur went to the court of
9 appeals. That case has proceeded all the way to the
10 June 26th, 2023, order.

11 And so -- and what I have always been taught
12 from appellate standpoint is follow the remittitur,
13 which is in Christy v. Christy says, and -- and so
14 there's no question that this Court did not have
15 jurisdiction from December the 18th of 2023, at least
16 until June the 26th of 2025. But -- and I can't -- I
17 don't understand exactly why, Your Honor, but that
18 remittitur has still not been returned to this Court.
19 And so --

20 THE COURT: Well, I'm not going to get into a
21 big argument with you about that. I think the Supreme
22 Court made it clear what it felt about all these
23 machinations. It sent it all back to me.

24 MR. RAWL: Your Honor, the --

25 THE COURT: So that's the ground I'm

1 proceeding on. These arguments are not arguments I
2 need to hear. You can make those arguments someplace
3 else at the proper time, but I think what both
4 appellate courts have tried to tell you litigants on
5 many occasions about this matter is that it needs to be
6 tried here and reviewed on the basis of a trial record,
7 and that's what we are going to do.

8 MR. RAWL: And, Your Honor, respectfully,
9 the -- you know, at this point, I want to reiterate
10 that it doesn't appear the remittitur has been
11 returned, and we still think this Court does not have
12 jurisdiction under Rule 205. However, what the Court,
13 you know -- you know, it's our position -- this was
14 part of the position we made in the writs made to the
15 Supreme Court yesterday is that our position is this
16 Court didn't have jurisdiction to go beyond what the
17 June 26th order specifically said.

18 THE COURT: It remanded the case back to me.
19 And in connection with the complete remand of
20 everything except the sanctions activity, they made
21 certain directions as to what I would do. That's the
22 way I read what they have done. I don't want to hear
23 any more arguments about whether the remittitur has
24 something do with this or not. That's not for me to
25 say. All right. That's a matter that needs to be

1 pursued someplace else.

2 I know what the South Carolina Supreme Court
3 said to me directly in a remand order of this very
4 matter, and I intend to go forward with trying this
5 case pursuant to their directives. So you have made
6 your point. Apparently, you've got a bunch of material
7 in writing that makes it. Again, I don't need to hear
8 that again. It's not something I'm involved with
9 ruling on.

10 MR. RAWL: If I may, just two more points,
11 Your Honor, I will move forward from that issue. But
12 what Mr. Robinson pointed out is that this Court
13 said -- excuse me, the appellate court said that the
14 denial of a motion to dissolve a receivership is not
15 immediately appealable. And, Your Honor, what I would
16 like to point out is that in the October 13th order
17 that Your Honor issued, it did not rule on a motion to
18 dissolve a receivership. It specifically said it
19 wasn't ruling on that motion because that motion was
20 made by Anglo.

21 What the Court ruled on is the receiver's
22 request to be able to act as the receiver in that -- in
23 this case. And it did multiple specific changes to --

24 THE COURT: I'm not going to revisit that
25 order. All right? Mr. Rawl, I really am not.

1 MR. RAWL: Your Honor, thank you.

2 THE COURT: It's 11:00 now. I'm not going to
3 revisit that order again. You've got your filings and
4 they can speak for themselves. I do not intend to vary
5 from the directives I have been given by the Court to
6 try this matter.

7 MR. RAWL: Your Honor, thank you. My only --
8 the point I wanted to make is there's no appellate
9 court in any of these proceedings yet that has said
10 that the order that we appeal on October the 14th of
11 2023, which was this Court's order of October 13th,
12 2025, that an order, you know, modifying or an order,
13 you know, granting of the confirmation of a receiver to
14 act in that case.

15 THE COURT: No, my order was an order denying
16 the motion to dismiss the receivership on all the
17 grounds that y'all have cited. And, yes, it did then
18 confirm the authority of the receiver to act in this
19 particular matter. That's what I was asked to do by
20 the Supreme Court. That's what I did. The Supreme
21 Court has told you several times that the way to deal
22 with the arguments you're making is to wait till this
23 matter is tried and raise it on appeal. I'm not going
24 to hear anything further about it.

25 MR. RAWL: And it's my client's position that

1 that --

2 THE COURT: Mr. Rawl.

3 MR. RAWL: -- this court has no jurisdiction.

4 Thank you.

5 THE COURT: Mr. Rawl, I have heard what I
6 need to hear on this matter.

7 MR. RAWL: Last point and unrelated to the
8 appeals. Your Honor, to the extent this Court does
9 have jurisdiction, Your Honor, on October the 13th of
10 2025, granted the receiver's motion to amend the
11 complaint because they needed to make sure the
12 operative complaint was in this case. Your Honor
13 granted that motion on October the 13th, 2025.

14 THE COURT: I -- that is something that I was
15 going to get to in connection with the specifics about
16 trying this case, and I will get to that in the
17 fullness of time. If you want to say something briefly
18 about it, then that will be your appearance on that
19 matter.

20 MR. RAWL: Your Honor already granted that
21 motion --

22 THE COURT: I sure did.

23 MR. RAWL: -- and the amended complaint has
24 already been served on my clients, and the time for my
25 clients to respond to that amended complaint is not

1 until another week or more.

2 THE COURT: When did you say your time
3 expires?

4 MR. RAWL: Well, Your Honor, it's our
5 position that the Court doesn't have jurisdiction,
6 so ...

7 THE COURT: Please.

8 MR. RAWL: If the Court did have
9 jurisdiction, I believe that the time expires either on
10 October the 29th or -- 28th or 29th.

11 THE COURT: All right.

12 MR. RAWL: And, you know, if I may just
13 incorporate all the arguments that Mr. Carroll made,
14 you know, earlier. If -- and if I may incorporate all
15 of the arguments that I made and my client made in the
16 third-party Defendant's Charter Consolidated Limited
17 ESAB Corporation and Central Mining and Investment
18 Corporation Limited omnibus brief to receiver's filings
19 and objections to trial. That was filed today and
20 handed up today.

21 THE COURT: All right.

22 MR. RAWL: Thank you, Your Honor.

23 THE COURT: All right. All right. Now,
24 let's talk about moving forward with this trial. There
25 is the issue of -- I have allowed them to amend their

1 complaint, so that's not up for any further discussion.

2 The amendment -- I approved the amendment.

3 Mr. Lay, the first order of business is to
4 decide whether or not they have got the right that
5 Mr. Rawl is asserting, all right, to justice as if the
6 case of starting over again and have the 20 days that
7 they have to respond. Either you or Mr. Robinson, what
8 do y'all have to say about that?

9 MR. LAY: Well, I guess I would respond this
10 way, Your Honor. Any sort of objection on us going
11 forward because of the service of the amended complaint
12 would be participation. They have been
13 nonparticipatory this entire case, the ESAB defendants
14 and the Altrad defendants. They haven't responded to
15 one interrogatory, haven't produced one document,
16 refused to put witnesses up when we ask them to put
17 them up, refused to discuss anything on 30(b)(6).
18 Nonparticipatory.

19 They keep trying to walk to the line or cross
20 over the line and participate when they think it's
21 convenient and pull back when they think it's not.

22 THE COURT: Yeah, but the one --

23 MR. LAY: This isn't participation.

24 THE COURT: Well, Mr. Lay, that's so, but the
25 one thing they did do, they all answered the complaint,

1 did they not?

2 MR. LAY: They did all answer the complaints.

3 THE COURT: Yes, and now I have granted a
4 motion to amend the complaint. All right. And they
5 asked for the full time that one would normally get to
6 answer an amended complaint. That's what I want some
7 guidance on from y'all.

8 MR. LAY: Your Honor, if you look at Rule 15,
9 amended and supplemental pleadings.

10 THE COURT: Hang on. I'm reading.

11 MR. LAY: So "A party shall plead" -- this is
12 in 15A, Amendments.

13 THE COURT: Yeah.

14 MR. LAY: "A party shall plead in response to
15 an amended pleading within the time remaining for
16 response to the original pleading or within 15 days
17 after service of the named amended pleading, whichever
18 period may be longer" -- and this is the important
19 stuff -- "unless the Court otherwise orders."

20 So given the nonparticipation thus far, given
21 where we are ready to go forward in this case, the
22 Court can order them to go ahead and respond to the
23 complaint and we can move forward on this case this
24 week. So you have that within your purview, the rule
25 recognizes it's within your purview. We would ask you

1 to take advantage of that.

2 THE COURT: Well, this was an amendment that
3 the first part of this thing doesn't apply. That's
4 what you do if you want to amend within the initial
5 time period.

6 MR. LAY: Correct. Yes, ma'am.

7 THE COURT: But the other one, the rest of it
8 says, "Otherwise, the party may amend his pleading only
9 by leave of the Court" -- that is what you sought and
10 were granted -- "or by written consent of the adverse
11 party" -- that isn't the situation -- "and leave shall
12 be freely given when justice requires and does not
13 prejudice any other party."

14 I feel I evaluated that issue completely when
15 I granted the motion to amend. They refused to
16 participate in anything about it. You have had
17 extensive discovery. All right. You amended your
18 complaint in the light of the new information you've
19 gotten since the initial complaint was filed, and it's
20 on that basis that I allowed the amendment.

21 "A party shall plead in response to an
22 amended pleading within the time remaining for response
23 on the original pleading or within 15 days after
24 service of the amended pleading, whichever period may
25 be longer, unless the Court otherwise orders."

1 Now, what do you construe that means?

2 MR. LAY: That means, Your Honor, I think you
3 can tell them they need to go ahead and answer
4 immediately. There's also another method that you
5 could use here. We can vacate this order and you can
6 conform to the evidence as we present it, which happens
7 all the time in a case. But for them to squawk about
8 this when they have no intention in participating in
9 this case at all, they are not going to put a witness
10 up, they are not going to cross-examine, they can't --
11 they haven't had any documents they are going to put up
12 because they haven't produced anything to us. This
13 case is ready to go and you can order them to go ahead
14 and respond.

15 THE COURT: Well, just so we're sure about
16 this, remember, that what amendment conform to the
17 evidence says is, "When issues not raised by the
18 pleadings are tried by expressed or implied consent of
19 the parties, they shall be treated in all respects as
20 if they had been raised in the pleadings."

21 Now, I take it your argument is because they
22 have completely failed to participate in any aspect of
23 this thing other than to answer, that they have, in
24 effect, given the implied consent that would be
25 required. I think that's -- that's concerning to me.

1 MR. LAY: And also, you know, there are
2 adverse inferences there in place, so ...

3 THE COURT: Yes, now adverse inferences,
4 let's talk about that for a minute. What are they?

5 MR. LAY: Let me read that to you, Your
6 Honor. I have to read that to you in detail.

7 THE COURT: I think it's important we put
8 that in what we're talking about right here.

9 MR. LAY: So the Court's adverse
10 inferences -- and, again, these are adverse inferences
11 that came about because of their failure to participate
12 in this litigation in any way.

13 THE COURT: That's correct. In particular,
14 specifically, they came as a sanction for their abject
15 refusal to participate in any discovery on this.

16 MR. LAY: Under Rule 37, yes, ma'am.

17 THE COURT: That's right.

18 MR. LAY: The inferences as to Central
19 Mining, and I'm just going to click through these, soon
20 after it was formed in 1905, Central Mining controlled
21 Cape Asbestos Company Limited. Next, Central Mining
22 was responsible for and directed Cape's establishment
23 of the North American Asbestos Corporation, NAAC.
24 That's the U.S. subsidiary in the U.S. in 1953.

25 Next, NAAC was formed and acted as Cape's

1 wholly-controlled instrumentality for the purpose of
2 facilitating and expediting the movement of asbestos
3 from South Africa to the United States. Next, Central
4 Mining dominated and controlled Cape and its
5 subsidiaries including NAAC through 1965, including
6 with respect to their financing and capitalization.

7 Next, Central Mining was responsible for any
8 sale of asbestos in the United States by Cape through
9 1965 and Central Mining knew of certain health hazards
10 of asbestos exposure, including death, by 1920s, and
11 Central Mining was aware of medical literature authored
12 by JC Wagner, CA Sleggs, and Paul Marchand titled
13 "Diffuse Pleural Mesothelioma and Asbestos Exposure in
14 Northwestern Cape Province" as published in the British
15 Journal of Industrial Medicine at the time of its
16 publication in 1960 or soon thereafter. That's Central
17 Mining. Central mining is Mr. Rawl's firm.

18 THE COURT: Right.

19 MR. LAY: Inferences as to control of Cape in
20 the era of Charter Consolidated. So Central Mining is
21 the parent until 1965. In 1965, through series of
22 mergers, Charter became the parent of Cape. In 1965,
23 Central Mining merged with two other mining and
24 investment companies, the British South Africa Company
25 and the Consolidated Mine Selection Company and Charter

1 Consolidated LTD.

2 Charter Consolidated and Central Mining were
3 aware and responsible for the unsafe and unhealthy
4 working conditions at Cape asbestos mines. Charter
5 Consolidated and Central Mining were aware of and
6 responsible for Cape's labor practices, and there going
7 to be some that I'm not going to read, we'll put the
8 whole thing in. I wanted to -- some of the more
9 crucial ones.

10 Charter Consolidated and Central Mining was
11 responsible for the efforts to misinform companies,
12 persons and the general public about the health hazards
13 associated with asbestos. Charter Consolidated and
14 Central Mining were responsible for the operation of
15 NAAC and it undercapitalized manners, including through
16 the siphoning of funds from NAAC. Charter Consolidated
17 and Central Mining were responsible for NAAC's risk
18 management decisions and failure to purchase additional
19 liability insurance to adequately satisfy the
20 liabilities of Cape to asbestos personal injury
21 claimants.

22 Charter Consolidated owned, dominated, and
23 controlled Cape and its subsidiaries, including NAAC,
24 between 1965 and 1996 including with respect to their
25 financing and capitalization. Charter Consolidated and

1 Central Mining seconded employees and other officials
2 to work with Cape or otherwise financed and spent
3 resources for Cape, including for operational marketing
4 research, development, and monitoring activities.

5 Charter Consolidated and Central Mining were
6 both aware that Cape Asbestos was being sold or
7 ultimately distributed in the state of South Carolina.
8 Charter Consolidated and Central Mining were
9 responsible for a conscious pattern of production,
10 distribution, the sale of asbestos nationally in the
11 United States, including asbestos used in
12 South Carolina.

13 Charter -- just a couple more as it relates
14 to Charter. Charter Consolidated is responsible for
15 the decision to cease the appointment of Cape officials
16 to the board of directors of NAAC, so they're choosing
17 NAAC's directors. Charter Consolidated was responsible
18 for decisions to deplete NAAC's assets to avoid
19 claimants. Charter Consolidated was responsible for
20 the decision to close and liquidate NAAC.

21 I'm going to put the rest of these into
22 evidence as it relates to Charter.

23 I'm going to get to that.

24 Inferences as to South Carolina presence.
25 Control and responsibility of ESAB. From 1989 ESAB

1 became a client of Mr. Rawl. Maintained its principal
2 place of business in Florence, South Carolina. In
3 1994, ESAB group was acquired by Charter PLC, a new
4 holding company formed in '93, and continued to operate
5 primarily in Florence, South Carolina.

6 In and around October 2008, ESAB group became
7 an indirect subsidiary of Charter International PLC
8 through at least 2012. ESAB group has maintained its
9 principal place of business in Florence,
10 South Carolina, where it had a manufacturing plant,
11 executives offices, sales, engineering, and research
12 development divisions while operating in the United
13 States, principally in Florence, South Carolina. ESAB
14 group initiated multiple lawsuits in South Carolina.
15 ESAB versus Centrica, ESAB versus Centrica, another
16 version of it. ESAB versus Arrowwood Indemnity. All
17 lawsuits filed by ESAB of South Carolina.

18 In 2011, ESAB group employed 523 people in
19 its Florence facilities which included a manufacturing
20 plants, executive offices, the company's information
21 technology department, and on and on.

22 In 2011, Colfax acquired Charter and ESAB
23 along with ESAB groups North American headquarters
24 located in Florence, South Carolina, Colfax sold its
25 interest to Charter's businesses including those

1 associated with Cape-related liabilities, namely, ESAB
2 Corporation. ESAB group is currently a wholly-owned
3 subsidiary of ESAB Corporation. ESAB group's terms and
4 conditions of sale, which appear on the ESAB
5 Corporation's website, requires its buyers to expressly
6 submit to the exclusive jurisdiction of the state or
7 federal courts located in Florence, South Carolina,
8 with respect to all lawsuits arising under or anything
9 connection with this offer.

10 After this spin-off, ESAB served as the
11 ultimate parent of Charter and also central. ESAB is
12 the successor and interest of Central Mining and
13 Charter Consolidated.

14 General inferences is to alter ego liability,
15 the Charter third-party defendants with Cape prior to
16 1996 were subject to the total -- same total dominion
17 and control and ability to be influenced with respect
18 to major business decisions, and a mere
19 instrumentalities for the purpose of committing fraud
20 and other violations of statutory or legal duties,
21 namely by ESAB Corporation concurrently, and by Charter
22 Consolidation -- Consolidated previously.

23 The Charter third-party defendants with Cape,
24 prior to 1996, are part of a single business
25 enterprise, or a single enterprise, in fact, have

1 amalgamation of corporate interests, entities, and
2 activities and have unified, integrated, and
3 intertwined business operations in resources to achieve
4 and act with a common business purpose. The Charter
5 defendants with Cape prior to 1996 have acted with bad
6 faith, abuse, fraud, wrongdoing or injustice, resulting
7 from the blurring of legal distinctions among the
8 Charter defendants, and that in inequitable
9 consequences and fundamental unfairness have been cause
10 for such blurring of legal distinctions in their
11 activities and are sources of corporate separateness,
12 including and attempt to shield fraud, evasion of
13 existing obligation, circumvention of statutes, and
14 criminal conduct and the like with respect to Cape,
15 liability avoidance scheme and adherence to the
16 depiction of separate corporate identities to defeat
17 justice. That is for the Charter defendants.

18 Now, for the Altrad defendants. Soon
19 after --

20 THE COURT: Stop for a minute. How you
21 doing?

22 Go ahead.

23 MR. LAY: Inferences as to Central Mining.
24 Soon after it was formed in '95 -- excuse me. I need
25 to do Altrad. Give me one second, Your Honor, if you

1 don't mind.

2 THE COURT: Yes, sir. Sorry. You do all
3 this, Mr. Lay, but I think it is important to deciding
4 whether to --

5 MR. LAY: Here we go.

6 THE COURT: -- continue to go with the
7 amended complaint or to retract that order, and I want
8 you to get all this on the record before I make a
9 decision about that.

10 MR. LAY: Yes, ma'am.

11 Inferences as to against the Altrad
12 third-party defendants and, again, we have an entire
13 list. We'll put the entire list into evidence.

14 THE COURT: Yes, sir.

15 MR. LAY: Some highlights. Altrad AIA is the
16 head company of the Altrad group, and the ultimate
17 parent of all the Altrad third-party defendants.
18 Inferences as to Altrad and Cape, AIA and Mohed Altrad
19 dominate and control Altrad UK Limited. AIA and Mohed
20 Altrad were aware of Cape Asbestos liabilities and
21 liability avoidance scheme prior to the acquisition of
22 Cape. AIA and Mr. Altrad were aware of Cape Asbestos
23 related liabilities and liability avoidance scheme
24 prior to the acquisition of Cape.

25 AIA and Mr. Altrad acquired Cape with the

1 intent to continue Cape's liability avoidance scheme
2 and refusal to respond to litigation in the United
3 States has continued to this day; they're not
4 responding.

5 Since the acquisition of Cape, AIA and
6 Mr. Altrad have dominated and controlled Cape,
7 including with respect to financing and capitalization.
8 AIA and Mr. Altrad can appoint executive personnel and
9 directors of Cape. The Altrad group set aside
10 substantial proceeds to address certain non-U.S.
11 historical claims related to asbestos exposure. AIA
12 and Mr. Altrad are responsible for Cape's continued
13 failure to respond to litigation against Cape in the
14 United States.

15 Inferences as to all Altrad third-party
16 defendants. There's a common ownership between Altrad
17 and third-party defendants and Cape. The Altrad
18 third-party defendants intentionally designed
19 complexity in their corporate relationships in order to
20 obfuscate the relationships and ownership interests
21 while minimizing Cape's and/or their own liability
22 risk, including for asbestos.

23 The Altrad third-party defendants are part of
24 a scheme to facilitate Cape's escape from legal or
25 financial responsibility for people harmed from Cape

1 Asbestos. AIA and Mr. Altrad were responsible for
2 Cape's and nonresponding Altrad third-party defendants'
3 failure to respond to litigation involving Cape in the
4 United States, including with respect to the actions
5 brought by the party and the Tibbs plaintiffs in this
6 Court.

7 The Altrad third-party defendants have
8 refused to make adequate provisions or reserves of cash
9 for Cape and their own asbestos-related liabilities.
10 The Altrad third-party defendants have failed to
11 properly observe corporate formalities over their
12 existence. The Altrad third-party defendants have done
13 nothing to address Cape's massive unpaid responsibility
14 for the death and illness caused by Cape Asbestos
15 products in South Carolina and elsewhere in the United
16 States. The Altrad third-party defendants have taken
17 possession of property, including cash and other
18 assets, which they should not have taken from Cape.

19 General inferences as to alter ego. The
20 Altrad third-party defendants with Cape are subject to
21 the same total dominion and control and ability to be
22 influenced with respect to major decisions. The Altrad
23 third-party defendants with Cape are part of a
24 single-business enterprise or a single enterprise in
25 fact having amalgamation of corporate interest entities

1 and activities and have unified, integrated, and
2 intertwined business operations and resources to
3 achieve and act with common business purpose, that's
4 No. 40.

5 Mohed Altrad acts as the alter ego and guided
6 spirit of the Altrad group. Mohed Altrad controls the
7 decision-making within the Altrad group, including for
8 Cape.

9 And finally, the Altrad third-party
10 defendants with Cape have acted with bad faith, abuse,
11 fraud, wrongdoing, or injustice resulting from the
12 blurry legal distinctions amongst the Altrad
13 third-party defendants and that inequitable
14 consequences and fundamental unfairness have been
15 caused from such blurring of legal distinctions, and
16 their activities and assertions of corporate
17 separateness, including an attempt to shield fraud and
18 evasion existing obligations, circumvention of the
19 statutes, criminal conduct, and the like with respect
20 to Cape liability avoidance scheme and that adherence
21 to the depiction of separate corporate identities would
22 defeat justice.

23 And, frankly, in the time that the motion to
24 amend was made, we had a participating group of
25 defendants. The Anglo-Americans had participated. The

1 Anglo-American defendants participated in the
2 litigation when we did that. By the time the amendment
3 was granted, we resolved our differences with Anglo,
4 and these folks still had not participated. These
5 adverse findings, the rebuttal of presumptions that
6 they could have rebutted, they acted badly, they were
7 punished pursuant to Rule 37 and sanctioned for their
8 bad misconduct.

9 They were told over and over again if they
10 could participate and should participate. The court of
11 appeals has told them the same thing, and they
12 continued to not participate to this moment, except,
13 you know, excursions across the line every now and then
14 when it's convenient. But they should not be allowed
15 to participate now. They can answer this. We've got
16 these rebuttal -- these presumptions that have been put
17 before Your Honor. They're found. We're done. That's
18 what it is.

19 THE COURT: Well, that's my question: Why do
20 you need any amendments to the pleadings? Those
21 presumptions are presumptions. They are not rebuttal
22 presumption, anything else. They're presumptions that
23 will control that particular issue. And a bunch of the
24 objections they have to the exhibits that you have are
25 on exhibits that are foundational to the very

1 presumptions we are talking about. All right. So why
2 do you need to have the complaint amended?

3 MR. LAY: The only thing that we did, I
4 think, that it is more stylistic than substantive, but
5 we wanted to make sure there was an independent claim
6 for single-business enterprise amalgamation. The word
7 "amalgamation" is used in the original complaint, I
8 think, more than 15 times. But to make sure that there
9 was no debate later in this highly contested
10 litigation, we amended to make sure that the
11 amalgamation theory was set out separately. In
12 addition, there were lots of new facts, new things that
13 we discovered.

14 THE COURT: Those new facts, all right, are
15 embraced by what you just read?

16 MR. LAY: Yes, ma'am, they are.

17 THE COURT: So, really, it comes down to new
18 facts aren't embraced by the presumptions and those
19 presumptions can be flushed out by what you submit,
20 which clearly would be the case, putting aside any
21 tweaking of the idea of single-business enterprise
22 vis-a-vis amalgamation of interest, then why do you
23 need the amendment?

24 MR. LAY: Your Honor, I feel like everybody
25 on this side is pulling at my elbow. Can I confer with

1 my co-counsel?

2 THE COURT: Yeah. Why don't we take a
3 15-minute break.

4 MR. LAY: Thank you.

5 THE COURT: Return at quarter of 12:00.
6 Court will be in recess.

7 (Whereupon a short recess was taken.)

8 THE MARSHAL: Court will come to order.
9 Remain seated, please. Remain seated.

10 THE COURT: All right. Please be seated.
11 Mr. Lay.

12 MR. LAY: Yes, ma'am. I'm ceding my argument
13 to Mr. Robinson.

14 THE COURT: Mr. Robinson.

15 MR. ROBINSON: Thank you, Your Honor. John
16 Robinson on behalf of Mr. Protopapas.

17 THE COURT: Mr. Robinson, it might be wise if
18 you get close to the microphone at your desk or come up
19 to the podium.

20 MR. ROBINSON: Yes, ma'am. Your Honor, John
21 Robinson on behalf of the receiver, Mr. Protopapas.

22 THE COURT: Yes, sir.

23 MR. ROBINSON: We have had an opportunity
24 during the break to consult on the issue regarding the
25 amended complaint --

1 THE COURT: Yes.

2 MR. ROBINSON: -- that was filed in which
3 this Court granted the motion to amend the complaint on
4 October the 13th.

5 THE COURT: Yes, sir.

6 MR. ROBINSON: With the issues that have been
7 presented today before the Court along with the
8 presumptions that have been read into the record, the
9 receiver is prepared to submit that the order granting
10 the motion to amend the complaint be vacated and we
11 proceed with trial immediately.

12 We have our witnesses here prepared to go.
13 As this Court knows, they have flown in from all over
14 the country. And so we are prepared to move forward.

15 At the end of this trial, if this Court is
16 satisfied that the evidence presented and that the
17 presumptions that are in the record merit an amendment
18 to the pleadings, then the receiver at the end of this
19 trial can make that motion to amend the pleadings to
20 conform to whatever evidence is presented, and it would
21 be up to the trial court to determine whether to grant
22 a motion to amend the pleadings at the end of this
23 trial --

24 THE COURT: I understand.

25 MR. ROBINSON: -- to conform with the

1 evidence.

2 THE COURT: I understand. I'm not saying
3 what I would do one way or the other. I think that's
4 the wiser course. I really do. And I will grant your
5 motion to withdraw the complaint.

6 MR. ROBINSON: The amendment to the
7 complaint, not the entire complaint.

8 THE COURT: The amendment, that's correct.

9 MR. ROBINSON: Yes, Your Honor.

10 THE COURT: You don't want to get them too
11 excited.

12 MR. ROBINSON: The motion to amend, which
13 this Court granted on October 13th. The alternative,
14 of course, under Rule 15, as this court has already
15 seen, the Court can designate a time, if it determines
16 appropriate, outside of the 15 days. So the Court
17 could certainly order the -- the answer, the complaint
18 today, and we begin tomorrow.

19 But in any event, the receiver is prepared to
20 submit the request to vacate this Court's October 13th
21 order granting the motion -- amended motion to amend
22 the complaint to proceed with trial preserving any
23 motion at the end of the case appropriate under Rule 15
24 to conform any pleadings to the evidence presented.

25 THE COURT: All right, sir.

1 MR. RAWL: May I be heard, Your Honor?

2 THE COURT: Very briefly.

3 MR. RAWL: Thank you, Your Honor.

4 THE COURT: Are you opposing the motion to
5 vacate?

6 MR. RAWL: We are objecting to the motion to
7 vacate.

8 THE COURT: Mr. Rawl, if you're doing
9 something else besides dealing with this motion to
10 vacate, then I don't want to get into it.

11 MR. RAWL: No, I'm only dealing with the
12 issues that were just raised with regard to the -- the
13 request to vacate --

14 THE COURT: Right.

15 MR. RAWL: -- the amendment of the plaintiff.
16 So, Your Honor, you know, for the last several hearings
17 before this Court, the receiver has made it very clear
18 how important their motion to amend the complaint has
19 been, how crucial it is to amend the complaint, to make
20 the new complaint, even operate the complaint.

21 At the last hearing, after the receiver
22 announced the settlement with Anglo and said that Anglo
23 is no longer in this case, they again stated to this
24 Court how urgent it was for this Court to grant the
25 motion to amend the complaint, which Your Honor said

1 that it would do, and ordered them to submit a proposed
2 order, which they did. And you entered that order on
3 October the 13th.

4 At that time, of course, you know, my client,
5 you know, believed that there would be no trial that
6 would go forward because there would be no response due
7 to the amended complaint on -- by October 20th. And
8 that hearing, of course, Your Honor was asking what
9 should we do with the trial, when should we try the
10 case. It wasn't until, I believe, Thursday or Friday
11 of last week when Your Honor sent something that said
12 that this case is not stayed, but at the time when the
13 motion to amend was argued after the Anglo settlement,
14 there was no request for this Court to shorten the time
15 for any of the third-party defendants responses, which
16 is why my client didn't believe there would be any
17 trial because we are going to have a new operative
18 complaint. So, you know, on October the 13th of 2025
19 when Your Honor issued the order granting the motion to
20 amend, that same day the amended complaint was served
21 on all third-party defendants.

22 Your Honor, at that point, the original
23 complaint became no longer in the record. It is
24 annulled. And so, you know, if the receiver is asking
25 to withdraw it --

1 THE COURT: Are you saying I don't have the
2 authority to vacate the order amending the complaint?
3 Is that what you're saying?

4 MR. RAWL: I'm -- I am saying that, one,
5 because the order has already been fulfilled, you gave
6 them the leave -- you gave the third party -- the
7 receiver the authority to amend.

8 THE COURT: Yes, sir.

9 MR. RAWL: And then it did so. And so by
10 filing the amended complaint --

11 THE COURT: You're saying that I cannot grant
12 their motion to vacate that order?

13 MR. RAWL: I don't believe so, Your Honor.

14 THE COURT: All right. Well --

15 MR. RAWL: The order --

16 THE COURT: -- I understand your argument.
17 You got any authority that you want to cite beyond that
18 proposition?

19 MR. RAWL: Yes, it is -- I believe it's -- I
20 think it's Hawkins v. Pathology Associates, 330
21 South Carolina, 92. That's a court of appeals opinion
22 in 1998 which says, "As soon as the amended complaint
23 is served, the original complaint is no longer in the
24 record. It is superseded and no longer there." So --

25 THE COURT: If that's all you got --

1 MR. RAWL: That is what -- there may be other
2 cases, Your Honor. This is -- my client actually
3 believes this is somewhat procedural gamesmanship to
4 kind of trick the defendants to come to trial, and then
5 withdraw what they claim has to be the operative
6 pleading that they're going to trial on. And instead,
7 ask the Court to change what the operative pleading is
8 to go to trial on -- on that day. I believe that, Your
9 Honor, violates my client's due process rights.

10 THE COURT: I understand the argument.

11 MR. RAWL: So, you know, I mean, you -- one,
12 I mean, there's -- there has been no notice of motion
13 to vacate. I mean, the morning of trial requesting
14 that the operative pleading changed --

15 THE COURT: Your point, anything that
16 requires that -- can you point me to anything that
17 requires that?

18 MR. RAWL: Requires to have -- to give notice
19 to the defendant on what the operative --

20 THE COURT: No, sir.

21 MR. RAWL: -- pleading is they are going to
22 trial on?

23 THE COURT: I'm talking about the motion to
24 vacate. Can you point me to anything that requires
25 that there be some kind notice of any particular period

1 of time for a trial judge to consider a motion made in
2 court about a pleading?

3 MR. RAWL: I think, Your Honor, if this is a
4 motion that my clients did not expect to be made, and I
5 have not had the ability to research it, we were given
6 no notice of the motion, and so --

7 THE COURT: Are you just repeating the
8 argument you just made?

9 MR. RAWL: I would like to have the
10 opportunity to respond to a motion to vacate.

11 THE COURT: Mr. Rawl, everything that you-all
12 have done for several years now with this very case has
13 been programmed to try to delay trial. I'm not going
14 to delay trial. So I get your arguments. You may take
15 your seat.

16 MR. RAWL: The only last point I would say,
17 Your Honor, to the extent there's going to be another
18 operative pleading, I think that my client would still
19 have the right to respond to that pleading. Thank you,
20 Your Honor.

21 THE COURT: All right.

22 MR. CARROLL: Your Honor, just to make my
23 issue preservation point, can I reiterate what Mr. Rawl
24 said? I will be brief. I don't intend to engage in
25 argument.

1 THE COURT: I haven't said anything. Take
2 the podium. Say what you've got to say, but make it
3 brief.

4 MR. CARROLL: Your Honor, the Altrad
5 defendants join with the arguments that Mr. Rawl just
6 made on behalf of his clients, and I would note as well
7 that the putative receiver's pretrial brief that was
8 about 100 pages long that got filed at the end of last
9 week is devoted almost entirely to this claim that they
10 are apparently now withdrawing.

11 THE COURT: No, no, no, no, no. They are
12 not. Let me make it real clear what's happening here,
13 Mr. Carroll. They're not withdrawing their claim of
14 amalgamation or single-business enterprise, not one
15 bit. They are saying that they don't need an amendment
16 to pursue that claim because of the presumptions this
17 Court has imposed some time ago because of your
18 complete failure and your codefendants' complete
19 failure to participate in discovery.

20 As contrasted with, for example, Anglo's
21 approach to this matter, they participated in discovery
22 and made a decision ultimately to settle, which you all
23 actively tried to oppose and get orders in England and
24 oppose order requests in England to give them relief so
25 they could enter into the settlement. You have lost

1 that. And so now you come in here and make the
2 projection of another procedural way you want this
3 trial delayed.

4 I'm not going to do that. The issues here
5 are quite clear. They contended from the very
6 beginning that all these enterprises have operated in
7 amalgamation with each other. Single-business
8 enterprise is simply another way of expressing that
9 theory, and the use of the terms "amalgamated business
10 enterprise" is one familiar in jurisprudence in
11 South Carolina, so they have moved to vacate their
12 complaint as unnecessary. They have not moved to
13 vacate their complaint nor dismiss any claims they have
14 about single-business enterprise, and I have ruled that
15 they don't need to. So ...

16 MR. CARROLL: Your Honor.

17 THE COURT: So your objection is on the
18 record. Thank you, sir.

19 MR. CARROLL: But they argued for months that
20 they had to put in there because it wasn't there.

21 THE COURT: Thank you, Mr. Carroll.

22 MR. CARROLL: To the extent -- so the concept
23 of 15(b) or 15(c), whichever rule it is that says you
24 can conform the pleadings to the evidence at trial,
25 that rule specifically says, "When the trial -- when

1 those issues are tried by consent" -- and I want to
2 make our position --

3 THE COURT: No, sir, that --

4 MR. CARROLL: It says it has to be tried
5 by -- the issue has to be joined by consent of the
6 litigants, and I'm saying that the Adams case from
7 England in 1990 specifically debunks this whole notion
8 of amalgamation or single-business enterprise. So, of
9 course, the Altrad defendants, in addition to all of
10 our jurisdictional objections, don't consent to trial
11 on an issue that's already been resolved.

12 THE COURT: All right.

13 MR. CARROLL: Thank you.

14 MR. RAWL: Your Honor, I just want to join
15 his objections.

16 THE COURT: You know, y'all are tied together
17 forever and ever in this thing. I don't think you need
18 to do that.

19 MR. RAWL: For the record, may I join the
20 objections of Altrad to make sure we don't consent?

21 THE COURT: I note that you-all have been two
22 twins saying the same thing for quite some time.

23 MR. RAWL: Thank you, Your Honor.

24 THE COURT: And I note that, so one embraces
25 what the other says.

1 MR. RAWL: Thank you, Your Honor.

2 THE COURT: Not been any secret throughout
3 these entire proceedings nor the proceedings in England
4 that Altrad, Charter, all of you have operated
5 together, and that is why I'm granting their motion to
6 vacate the amendment of the complaint. You-all have
7 operated as one for a good long time now. And we are
8 going to -- the presumptions are aimed at that, and I'm
9 sure the evidence will also underscore that. There is
10 no need to amend the complaint to pursue that theory;
11 that's been their theory from the very beginning.
12 Thank you, sir.

13 All right. We have now got the complaint. I
14 grant the motion to vacate the motion to amend the
15 complaint. We will proceed on that original complaint.

16 I want to point out that Mr. Rawl's assertion
17 that only things that are tried by an agreement would
18 result in the conforming of the complaint and meet the
19 evidence. That's not so. The rule does not read that
20 way, but we don't have to face that right now. We'll
21 face that at the end of the trial if it becomes an
22 issue.

23 Now we are going to move forward with the
24 trial of this case. And I need some suggestions,
25 Mr. Lay, as to how you want to proceed. We can start

1 this afternoon or we can start tomorrow morning, if
2 that is better for everybody, or I take it that your
3 estimate is that the trial will take two to three days
4 to try.

5 MR. LAY: Yes, ma'am, two to three days. I
6 think we can start this afternoon. We need our IT
7 person to come in here and take about 45 minutes to get
8 set up.

9 THE COURT: Get all the setup and the visuals
10 and that kind of thing? That's fine. All right. It's
11 12:05 right now. This trial will commence at
12 2:00 o'clock.

13 MR. LAY: Thank you, ma'am.

14 THE COURT: Court will be in recess.

15 (Whereupon a lunch recess was taken.)

16 THE MARSHAL: Court will come to order. All
17 rise.

18 THE COURT: All right. Please be seated.
19 All right. Mr. Lay, ready to proceed?

20 MR. LAY: Yes, ma'am. I think we have a
21 couple of things to address. Mr. Robinson is going to
22 address his housekeeping matter.

23 THE COURT: Yep, yep. Mr. Robinson, I saw
24 Mr. Carroll walking over here. He decided not to come.

25 MR. LAY: We have not heard from him and --

1 UNIDENTIFIED SPEAKER: Your Honor, I suspect
2 he's using the facilities and will be here in a couple
3 of minutes.

4 THE COURT: We'll hold off and wait. Well,
5 we can do one thing to kind of take care of Mr. Balber.
6 Let's place upon the record that Anglo-American
7 individually and successor -- and as successor in
8 interest Anglo-American Corporation South Africa LTD
9 and its various allied various entities has entered
10 into a settlement with the receiver. Specifics to be
11 forthcoming in a finalized settlement agreement, but
12 outlines -- complete outlines to be sent to me, and I
13 find it appropriate and proper to go forward and on the
14 basis of which I dismiss Anglo and its allied entities
15 from this matter.

16 They will no longer participate in the trial,
17 and they're dismissed with prejudice. I do that
18 because I trust very much the representations that have
19 been made to me by the parties and the -- again, the
20 Court wishes to thank Mr. Protopapas, Mr. Balber, and
21 all the other attorneys involved in bringing this
22 matter to this point.

23 Mr. Balber, you are a true professional.
24 Thank you so much. Been a pleasure to work with you.

25 MR. BALBER: Thank you, Your Honor. It's

1 been a pleasure for me as well.

2 THE COURT: Yes, sir. All right.

3 This is the bench trial of the matter of Cape
4 PLC individually and its successor in interest and Cape
5 Asbestos Limited by and through its duly appointed
6 receiver, Peter Protopapas, third-party plaintiff,
7 against -- let me read out the remaining defendants.
8 And, Mr. Lay, I'd ask you to help me here.

9 The first group of defendants in the former
10 caption of this case what we have been calling the
11 Anglo De Beers third-party defendants have just been
12 dismissed with prejudice as per what I just put on the
13 record. So is the beginning name of the remaining
14 parties Element Six U.S. Corp.? Keep on going?

15 MS. JOYNER: Yes, ma'am.

16 THE COURT: All right. What is the beginning
17 name of the ones -- or one with whom this thing starts?

18 MS. JOYNER: Your Honor, I am --

19 THE COURT: Charter Consolidated?

20 MS. JOYNER: Yes, ma'am. That is one.

21 That's where we start.

22 THE COURT: I'm just looking at the caption
23 we dealt with so many years now, and what I see in the
24 caption of those that are no longer in the case is
25 Anglo-American, De Beers, De Beers Centenary, De Beers

1 Consolidated, De Beers UK Limited, De Beers Jewelers,
2 De Beers Jewelers U.S., Anglo-American U.S. Holdings,
3 Element Six U.S. Corp, Element Six Technologies U.S.
4 Corp, Element Six Technologies OR Corp, First Mode
5 Holdings, Inc., Platinum Guild International USA
6 Jewelry, Inc., Lightbox Jewelry, Inc., Forevermark US,
7 Inc., Anglo-American Crop Nutrients USA, LLC, and
8 those -- that group third-party defendants is no longer
9 in the case; is that correct?

10 MS. JOYNER: It's mostly correct, Your Honor.
11 I think some of those -- just a couple of those are
12 actually not part of the entities that have been
13 dismissed with prejudice; so I'm happy to give Your
14 Honor the ones that should still be --

15 THE COURT: That's what I was aiming for. I
16 need that before we begin.

17 MS. JOYNER: You want me to give you those?
18 I can read them --

19 THE COURT: Yes.

20 MS. JOYNER: -- to you. So Charter
21 Consolidated Limited --

22 THE COURT: Just a second.

23 MS. JOYNER: Yes, ma'am.

24 THE COURT: Here's what I'm trying to do in
25 an orderly -- I'm trying to look at this caption, as

1 we've been dealing with it for so long, and read out
2 all the parties that have been dismissed. So that
3 would start with Anglo-American, LLC; correct?

4 MS. JOYNER: That is correct.

5 THE COURT: All right. Then De Beers PLC?

6 MS. JOYNER: Yes, ma'am.

7 THE COURT: Then De Beers Centenary?

8 MS. JOYNER: Yes, ma'am.

9 THE COURT: Then De Beers Consolidated Mines
10 LTD?

11 MS. JOYNER: Yes, ma'am.

12 THE COURT: Then De Beers UK Limited?

13 MS. JOYNER: Yes, ma'am.

14 THE COURT: De Beers Jewelers LTD?

15 MS. JOYNER: Yes, ma'am.

16 THE COURT: De Beers Jewelers US, Inc.?

17 MS. JOYNER: Yes, ma'am.

18 THE COURT: Anglo-American US Holdings, Inc.?

19 MS. JOYNER: Yes, ma'am.

20 THE COURT: All right. Element Six US Corp.?

21 MS. JOYNER: Yes, ma'am.

22 THE COURT: Element Six Technologies US
23 Corp.?

24 MS. JOYNER: Yes, ma'am.

25 THE COURT: Element Six Technologies OR

1 Corp.?

2 MS. JOYNER: I don't think that one is a part
3 of this. I think that one is a defaulted party. Oh,
4 it's not?

5 MR. ELLIOTT: No.

6 MS. JOYNER: Well, I don't see OR written
7 here. Oh, it's merged into another entity, so yes.

8 THE COURT: It's out.

9 MS. JOYNER: That is dismissed.

10 THE COURT: Out. So First Mode Holdings,
11 Inc.?

12 MS. JOYNER: First Mode, that one is not.

13 THE COURT: That's still in the case?

14 MR. ELLIOTT: No, no. They're dismissed with
15 prejudice.

16 THE COURT: That's kind of what I thought.

17 MS. JOYNER: That one -- okay.

18 THE COURT: It's out of the case.

19 MS. JOYNER: That's not listed as the --

20 MR. BALBER: That entity is actually in
21 bankruptcy, and I believe has been liquidated, so ...

22 THE COURT: It's no longer, but for my
23 purposes take it out.

24 MS. JOYNER: It's no longer --

25 MR. BALBER: Correct, Your Honor.

1 THE COURT: Just keep with me, Mr. Balber and
2 Mr. Elliott, so I can be sure I'm doing the right
3 thing. Is Platinum Guild USA?

4 MS. JOYNER: Yes, ma'am, that's dismissed.

5 THE COURT: All right. Lightbox Jewelry,
6 Inc.?

7 MS. JOYNER: Yes, ma'am. That's dismissed.

8 THE COURT: Forevermark US, Inc.?

9 MS. JOYNER: Yes, ma'am.

10 THE COURT: Anglo-American Crop Nutrients,
11 LLC.?

12 MS. JOYNER: Yes, ma'am.

13 THE COURT: So the first in the caption as it
14 now appears is Charter Consolidated, LLC -- LTD?

15 MS. JOYNER: Yes, ma'am.

16 THE COURT: I'm going to continue on with
17 this, so check behind me. ESAB Corp.?

18 MS. JOYNER: Yes.

19 THE COURT: Central Mining Investment Corp.?

20 MS. JOYNER: Yes. They're still in, yes.

21 THE COURT: Yeah, all these I'm reading, I
22 want verification they're still in it. Cape Holdco
23 Limited?

24 MS. JOYNER: Cape -- no, Cape Holdco is a
25 defaulted entity.

1 THE COURT: But it's --

2 MS. JOYNER: But they're still in the case.

3 THE COURT: It's still in the case. It
4 defaulted, but still in the case. The Law Debenture
5 Corporation?

6 MS. JOYNER: Same as Cape Holdco.

7 THE COURT: In the case is just defaulted;
8 right?

9 MS. JOYNER: Yes, ma'am.

10 THE COURT: All right. Cape Industrial
11 Services Group LTD?

12 MS. JOYNER: Yes, ma'am.

13 THE COURT: In or defaulted and in?

14 MS. JOYNER: Defaulted and in.

15 THE COURT: All right. Just pay attention
16 now to this, please, ma'am.

17 Mohed Altrad?

18 MS. JOYNER: Yes, ma'am.

19 THE COURT: Altrad UK Limited?

20 MS. JOYNER: Defaulted but in the case.

21 THE COURT: But in the case. Cape UK
22 Holdings Newco Limited?

23 MS. JOYNER: Defaulted, but in the case.

24 THE COURT: All right. Altrad Services LTD,
25 formerly known as Cape Industrial Services Limited?

1 MS. JOYNER: Defaulted, but in the case.

2 THE COURT: All right. Altrad Investment
3 Authority SAS?

4 MS. JOYNER: In the case.

5 THE COURT: Sparrows Offshore Group LTD?

6 MS. JOYNER: Has been dismissed without
7 prejudice.

8 THE COURT: All right. Holdco US, Inc.?

9 MS. JOYNER: Has been dismissed without
10 prejudice.

11 THE COURT: Arranco US, LLC?

12 MS. JOYNER: Dismissed without prejudice.

13 THE COURT: Sparrows Offshore LLC?

14 MS. JOYNER: Sparrows Offshore LLC is
15 defaulted, I believe, but still in the case.

16 THE COURT: But still in the case; right?
17 All right. And Sparrows Group, LLC?

18 MS. JOYNER: Sparrows Group, LLC, is
19 defaulted.

20 THE COURT: Is Sparrows Group, LLC?

21 MS. JOYNER: Yes, ma'am, is defaulted.

22 THE COURT: And in the case?

23 MS. JOYNER: Yes, ma'am.

24 THE COURT: All right. Very good.

25 MR. CARROLL: Your Honor.

1 THE COURT: Just a second.

2 MR. CARROLL: Yes, ma'am.

3 THE COURT: Just a second.

4 All right. That completes the list of
5 entities that are in the case, and a list of entities
6 that are not in the case anymore; correct? And I have
7 identified some of them as the settling entities that
8 were dismissed by this action today and I have
9 identified other ones that are not in it because they
10 were dismissed without prejudice, but I have also
11 identified several defaulted that are still in the
12 case, but are in default; correct?

13 MS. JOYNER: Yes, ma'am.

14 THE COURT: All right. Yes, sir.

15 MR. CARROLL: Your Honor, on behalf of the
16 Altrad defendants, we disagree with the list that was
17 just recited, and I would like to note for the record
18 that the claims against Mohed Altrad, Altrad Investment
19 Authority SAS, Altrad Services Limited, Altrad UK
20 Limited, Cape Holdco Limited, Cape UK Holdings Newco,
21 Sparrows Offshore, LLC, Hawk Bidco US, Inc., and
22 Arranco U.S., all the claims pending in this case has
23 been released by the actual entity and --

24 THE COURT: Yeah, your name will not appear
25 on the settlement documents and the settling parties

1 indicate that you are not a part of the settlement; so
2 I will not be viewing you in that light. The
3 settlement agreement that I am going to be submitting
4 embraces the Anglo and De Beers entities that I just
5 read out. It does not embrace -- from what the parties
6 tell me -- the terminology and agreement is going to
7 say you are referring apparently to this kind of
8 divided argument you make. For some purposes they're
9 all together; and, therefore, dismissing one dismisses
10 all, but for other purposes, they're very independent.
11 You are not responsible for anything Cape did as
12 Altrad.

13 I understand you're making that very
14 inconsistent argument, but it's not going to result in
15 any reflection in the records of anything the Court's
16 taking action on as any dismissal with prejudice or
17 dismissal in any way through settlement. You've got to
18 take that up with other parties than with this Court.

19 MR. CARROLL: Yes, ma'am. I'm not saying
20 anything inconsistent with anything else I have said.
21 I'm reporting the actual entity in England, Cape
22 Intermediate Holdings Limited has released everybody I
23 just listed. So despite --

24 THE COURT: Right. That makes no difference
25 to the settlement that is reached here, because they

1 were released with respect to the Adams case which
2 involved only English defendants. This case and this
3 settlement specifically involves South Carolina
4 plaintiffs and South Carolina claims for mesothelioma
5 damages as a result of activities of all these allied
6 corporations. The ones that will not have to answer
7 about that are Anglo and its related groups.

8 The rest of them are here in this Court and
9 in this case because of activities in this state, not
10 because of the English thing. So this thing -- they
11 are all mutually released each other all has to do with
12 the English settlement which is not a part of anything
13 we are dealing with.

14 MR. CARROLL: Well, I think it is under the
15 Protopapas rule. Under the third circuit, this court
16 has to look to the English Court.

17 THE COURT: Well, I disagree with you, and I
18 do not rule with you on that point.

19 MR. CARROLL: I understand.

20 THE COURT: So proceed.

21 MR. CARROLL: I just need to make sure the --

22 THE COURT: The record reflects your
23 position.

24 MR. CARROLL: Thank you.

25 THE COURT: All right. You may proceed.

1 MR. ROBINSON: Your Honor, John Robinson here
2 on behalf of Mr. Protopapas, the receiver for Cape.
3 Before we took the break, we identified several
4 exhibits, some of which I was going to have a hard copy
5 to give the court reporter.

6 THE COURT: Good.

7 MR. ROBINSON: I have that now. And so, with
8 the Court's permission, I also was informed by one of
9 my co-counsel that the pretrial exhibits have already
10 been marked and there are a number of them. So in our
11 pretrial hearing, before the break, I believe the court
12 reporter here would like for me to submit to our clerk
13 of the court the exhibits that we submitted this
14 morning. And so we are going to, for the purpose of
15 the record, refer these -- refer to these with the
16 Court's permission as pretrial Exhibits 1, 2, 3, 4, and
17 5. And we are using the pretrial exhibit because, as I
18 said, the trial exhibits have already been premarked
19 and there are a number of them, hundreds of them as I
20 understand it.

21 THE COURT: All right. Let me be sure that
22 I've got what they -- what you-all are proposing to
23 give to the clerk of court. I have trial exhibits
24 binders 1 and 2; 1 has Exhibits 1 through 110, and the
25 second one has Exhibits 111 through 189. Is that what

1 you're talking about?

2 MR. ROBINSON: Yes, Your Honor, and you may
3 recall I identified this morning, Receiver's
4 Exhibits 1, 2, 3, 4, and 5. So what I'm asking leave
5 of the court to -- to refer to those as Pretrial
6 Exhibits 1, 2, 3, 4, and 5 so as not to interfere with
7 what has already been premarked if the Court is
8 agreeable to that.

9 THE COURT: Now, let me -- let me be sure I
10 understand. The things I received as receiver for case
11 trial exhibits, Binder 1 and Binder 2.

12 MR. ROBINSON: Yes, Your Honor.

13 THE COURT: Is that something different than
14 what --

15 MR. ROBINSON: This is so we don't have two
16 Exhibit No. 1s. As you recall this morning, I
17 identified Exhibit No. -- we marked as Receiver's --

18 THE COURT: Both these binders are going to
19 be overall labeled as Exhibit 5?

20 MR. ROBINSON: Well, so they're already --

21 THE COURT: Subsets are 1, 2, 3, is that
22 that's what you're --

23 MS. JOYNER: If Your Honor would prefer to do
24 it that way, we are happy do it that way. We were
25 going to move into evidence as Trial Exhibits 1 through

1 212, which we did provide an additional binder this
2 morning. And so then these that John marked earlier,
3 we just wanted to call Pretrial Exhibits 1 through 5.

4 MR. ROBINSON: So we're trying to eliminate
5 duplicate.

6 THE COURT: That's the pretrial -- just refer
7 to them as the pretrial exhibits?

8 MR. ROBINSON: Yes, ma'am.

9 THE COURT: And then the trial exhibits we
10 can -- I don't think we need to do all that five and
11 everything else. The trial exhibits can just be what's
12 in these two binders, and that other binder I got
13 today, which is 1 through 200 -- something --

14 MS. JOYNER: Yes, ma'am.

15 THE COURT: -- those are the trial exhibits.

16 MR. ROBINSON: And I believe the court
17 reporter pointed me, just for the purpose of the clerk
18 of court, also to just verify that Pretrial Exhibit
19 No. 1 is the Judge Marcus Smith September 30th, 2025,
20 order from --

21 THE CLERK: Yes.

22 MR. ROBINSON: Pretrial Exhibit No. 2 is
23 Mr. Carroll's email, which is in a notebook and has
24 attachments. Pretrial Exhibit No. 2.

25 THE COURT: What date is on the Carroll

1 email?

2 MR. ROBINSON: It's -- oh, that's marked as
3 3. Pretrial Exhibit No. 2 for the purpose of what has
4 been marked is actually the --

5 THE COURT: Give me the date on it.

6 MR. ROBINSON: Yes, ma'am. It's actually the
7 Altrad September 30th, 2025, Altrad versus Peter
8 Protopapas.

9 THE COURT: Yes. That's the English ruling
10 with the cautionary note on it?

11 MR. ROBINSON: Yes, Your Honor. But it's
12 marked as No. 2. So what do you have as No. 1?

13 THE COURT: It's the Smith order; is that
14 right? Come on, y'all, speak up.

15 MR. ROBINSON: So, Your Honor, that is not
16 the order that I'm looking at here, so this is why I
17 wanted to get this clear on the record.

18 THE COURT: Well, let me look at what you're
19 looking at.

20 MR. ROBINSON: So what I'm looking at with
21 the clerk of court is a different order than what we
22 introduced them. So I'm happy to --

23 THE COURT: Y'all get this straight right
24 now. Come on, this isn't rocket science.

25 MR. ROBINSON: This is what I'm trying to do.

1 So, Your Honor, Pretrial Exhibit No. 1 is this
 2 9/30/2025 order from Judge Marcus Smith. That is
 3 Exhibit No. 1; that's what we marked. So it says
 4 Plaintiff 2; that's really Pretrial Plaintiff's 1.

5 Exhibit No. 2 is the notebook which includes
 6 the email for Mr. Carroll.

7 THE COURT: This is notebook that is
 8 labeled --

9 MR. ROBINSON: It's October 19th, 2025, email
 10 from Mr. Carroll.

11 THE COURT: October 19th.

12 MR. ROBINSON: Yes, Your Honor. And it's
 13 this black notebook we submitted this morning.

14 THE COURT: Yep.

15 MR. ROBINSON: Okay.

16 THE COURT: Okay.

17 MR. ROBINSON: Exhibit No. 3 is a statement
 18 of cost.

19 THE COURT: That's the cost assessed against
 20 Protopapas?

21 MR. ROBINSON: Yes, Your Honor, and it is --
 22 it was submitted to Judge Justice Smith, and it has
 23 statement of costs for hearing September 23rd, 24th
 24 2025. That's Exhibit No. 3.

25 Exhibit No. 4 is the notice of filing that we

1 incorporated by reference. As I indicated in the
2 pretrial, I have printed just the three-page notice of
3 filing. It had exhibits to it, and I'm going to hand a
4 copy to the Court. This is the notice of filing that
5 we incorporated by reference this morning.

6 THE COURT: Yes, and that is a notice of
7 filing --

8 MR. ROBINSON: October 15th, 2025. And we
9 referred to the exhibits this morning by reference.
10 And I believe --

11 THE COURT: And this is one filed in this
12 action --

13 MR. ROBINSON: Yes, ma'am.

14 THE COURT: -- which, all right, summarizes
15 the --

16 MR. ROBINSON: It discuss the Altrad's
17 involvement in the UK proceedings --

18 THE COURT: Right.

19 MR. ROBINSON: -- and the ex parte -- or the
20 injunction that was referenced. As I believe the Court
21 indicated this morning, rather than refile the entire
22 document with exhibits, we would just simply put this
23 in.

24 THE COURT: That's Exhibit 4?

25 MR. ROBINSON: Exhibit 4, yes, ma'am. All

1 right. And then --

2 THE COURT: Again pretrial.

3 MR. ROBINSON: Yes, ma'am. And then Pretrial
4 Exhibit No. 5 is the Enyo email. And I'll give the
5 Court a copy of that. This -- we've since printed this
6 out. This is the Enyo email to Mr. Protopapas
7 directing his attention to the penal notice that we
8 discussed this morning.

9 THE COURT: Right. All right. Enyo Law.
10 It's authored by Olivia Gare, G-a-r-e, senior
11 associate, dated October the 3rd, 2025. And -- all
12 right. Enyo represented Altrad?

13 MR. ROBINSON: Yes, Your Honor. This was
14 the -- this was what was transmitted to Mr. Protopapas
15 on October 3rd, and it was a hearing transcript
16 approved by Judge -- and the approved judgment of
17 Justice Smith.

18 THE COURT: Right.

19 MR. ROBINSON: That states, "We draw your
20 attention in particular to the penal notice on the
21 order as well as the deadline for the cost
22 submissions."

23 THE COURT: Right, right.

24 MR. ROBINSON: All right. So that represents
25 the five pretrial exhibits that we discussed, Your

1 Honor.

2 THE COURT: Yes, sir.

3 MR. ROBINSON: During the break, I believe
4 everyone in the courtroom also received notice that the
5 court of appeals has dismissed -- granted our motion to
6 dismiss the appeals that were filed this week -- or
7 last week.

8 THE COURT: Oh, wow. This came just now?

9 MR. ROBINSON: Yes, Your Honor. During the
10 break, this was issued by the court of appeals, and I
11 presume Mr. Carroll has a copy of it.

12 MR. CARROLL: If you've got a copy, that
13 would be great.

14 MR. ROBINSON: Okay.

15 THE COURT: And I will, for the record,
16 say -- all right. This is an order of court of appeals
17 dated October the 20th, 2025, today, H. Bruce Williams,
18 chief judge for the Court, and it will be your exhibit.

19 MR. ROBINSON: Well, Your Honor, we can
20 certainly make it an exhibit if you would like.

21 Exhibit 6. So this will be --

22 THE COURT: I will make it easy for you.
23 This is Court's Exhibit -- Court's Exhibit 1.

24 (Whereupon, Court's Exhibit 1 was
25 admitted into evidence.)

1 MR. ROBINSON: All right.

2 THE COURT: This appeal rises out of the
3 circuit court clarifying the order of receiver as
4 directed by the Supreme Court in its June 26th, 2025,
5 order, see Tibbs, et cetera. We decided the motion
6 without waiting for a return pursuant to Rule 263(a),
7 because the order on appeal does not breach the merits
8 of this matter, the appeal is dismissed. And it --
9 there is some discussion, but confirms the court of
10 appeals no longer has any connection with the matters
11 taking place here today.

12 MR. ROBINSON: Yes, Your Honor, and they do
13 cite the remand order and, quote, "appeals will be
14 summarily dismissed or requested relief will be
15 summarily granted that any party continues with this
16 inappropriate behavior. Our intention is to reach and
17 address the merits of issues."

18 And that's citing the Supreme Court remand
19 order -- I'm sorry the Supreme Court order in -- well,
20 that's right -- the remand order, and they also
21 reference the -- some of the language in Welch as well.
22 But they have -- but just came out, as I indicated,
23 this morning. We filed a motion to dismiss when we
24 were walking through the appellate status of things, so
25 we just received that during the break.

1 THE COURT: Okay. But the appellate
2 situation is at an end now.

3 MR. ROBINSON: Yes, Your Honor. As it
4 relates to --

5 THE COURT: I mean, we don't know. I'm not
6 sure I even know the meaning of what's been filed to
7 the South Carolina Supreme Court by way of a writ of
8 prohibition, but since no writ of prohibition has been
9 issued or anything reaching me has been protected, this
10 trial continues.

11 MR. ROBINSON: That's correct, Your Honor.
12 And I was -- since it was brought up earlier, the issue
13 about remittitur, we just rely on our arguments earlier
14 this morning, which I believe the Court intended to
15 proceed with the case law that is cited this morning,
16 indicated that appellate jurisdiction does not transfer
17 on an interlocutory unappealable order, and so the
18 court of appeals has remanded this or has dismissed --

19 THE COURT: Right. They no longer have any
20 connection with this matter.

21 MR. ROBINSON: That's correct. And, in fact,
22 in dismissing it, the case law says they never had
23 jurisdiction over it because it was dismissed. That's
24 all, Your Honor.

25 THE COURT: Thank you, sir.

1 MR. ROBINSON: Be happy to answer any
2 questions.

3 THE COURT: No, I think we got that. I think
4 we got the exhibits, so you may proceed, Mr. Lay.

5 MR. CARROLL: Your Honor, I need to -- no
6 remittitur has been issued.

7 THE COURT: Sir.

8 MR. CARROLL: No remittitur has been issued.

9 THE COURT: Doesn't need to be.

10 MR. CARROLL: We have an opportunity for
11 rehearing.

12 THE COURT: I will do that at my peril is all
13 I can say. The Court has been so specific about the
14 frivolous nature of these things. You can say what you
15 want to say about what you got the right to do. I
16 can't interfere with that, but I can tell you the
17 matter is in my hands very clearly as I always thought
18 it was since my view of it was that the appeal was
19 completely nonmeritorious and the remittitur arguments
20 were completely unavailing.

21 So the matter is concluded as far as I'm
22 concerned. And your positions have been on the record,
23 repeated many, many times throughout the morning of
24 pretrial. I understand what your position is, but we
25 are moving forward with this trial.

1 MR. CARROLL: I understand, Your Honor. I
2 just -- since this is a new document and -- and there
3 was a new argument based on it, I just need to respond
4 for the record that we think the Rule 205 still
5 governs.

6 THE COURT: Right. You disagree completely
7 with what the court of appeals has said. I get that.
8 All right. Proceed, Mr. Lay.

9 MR. RAWL: Your Honor, may I join in
10 Mr. Carroll's --

11 THE COURT: You don't need to do this every
12 time. You guys are joined at the hip.

13 MR. RAWL: I just want to make sure I don't
14 need to repeat all my objections and everything this
15 morning. They're still effective for this afternoon?

16 THE COURT: Yes, sir. All right.

17 MR. RAWL: All right. Thank you.

18 MR. LAY: I'm going to try to make this a
19 relatively brief opening statement. I wanted to give
20 you a roadmap to some of the evidence that's going to
21 be presented in this case.

22 OPENING STATEMENT

23 MR. LAY: So, Your Honor, John T. Lay here
24 representing Peter Protopapas as receiver for Cape PLC,
25 now known at Cape Intermediate Holdings as successor in

1 interest in Cape Industries formerly known as Cape
2 Asbestos Company, and I'm going to call it Cape from
3 here on out. And we are here to do something that
4 we've been waiting to do since June of 2023, and that's
5 show the Court how Altrad Investment Authority SAS and
6 Mr. Altrad and ESAB are responsible for the fraud that
7 Charter, Central Mining, Cape, and NAAC perpetrated on
8 the U.S. market.

9 And let me begin with this. Long before the
10 Parks sued Cape and Cape failed to answer in
11 South Carolina, the evidence will show that Cape was
12 part of a concerted effort to avoid asbestos litigation
13 in the United States, all whilst still pumping harmful
14 asbestos into the market.

15 Their failure to answer and to participate in
16 the litigation here was nothing more than a
17 continuation of the scheme that began in the 1970s,
18 when the asbestos litigation product liability
19 litigation began.

20 Now, prior to attempting to flee the
21 jurisdiction to avoid liability, the evidence will show
22 that Cape was selling directly to the United States,
23 including South Carolina, through a U.S. subsidiary
24 called NAAC, the North American Asbestos Corporation.
25 And it thoroughly and completely dominated NAAC in

1 every way. They fled the jurisdiction and had
2 decided -- and they decided to take U.S. defaults,
3 liquidated the company, NAAC, a U.S. subsidiary, to
4 avoid any judgments.

5 And Cape -- and I want to be really clear
6 here -- and the companies that were controlling Cape.
7 Cape controlled NAAC, Cape was controlled by others
8 upstream, and it did it out of pure greed and thought
9 they cannot really be said to have a moral
10 responsibility to United States asbestos victims. That
11 is straight out of a letter in their own
12 correspondence. "We don't have a moral responsibility.
13 We aren't controlling how our asbestos is being used.
14 That's on somebody else, even though I have all the
15 knowledge about the dangers here."

16 They tried to paint themselves as victims of
17 the U.S. product liability cult. We don't have to
18 guess about that. Again, it's been put in writing. In
19 fact, it's the testimony of Will Ship. Cape mined and
20 distributed the more dangerous forms of asbestos.
21 Specifically, the evidence is going to show Cape was
22 responsible for 95 percent of the worldwide total sales
23 of amosite, and 60 percent of the worldwide sales of
24 crocidolite, which are the most toxic asbestos which
25 cause mesothelioma.

1 Cape supplied raw asbestos fibers to all of
2 the major asbestos companies in the United States from
3 the 1920s to the 1970s, including John Mansfield,
4 Pittsburgh Corning, Fibreboard Company, Ray Asbestos,
5 and more. As a result, Cape was effectively the spigot
6 through which hundreds of thousands of tons of asbestos
7 flowed from its mines down 40 states over 500
8 individual customers, and, again, such as John
9 Mansfield, Pittsburgh Corning, and to over 750
10 manufacturing plants in the United States including
11 South Carolina.

12 It had an effective cartel on the asbestos
13 supply. Like what happened historically with the
14 diamond industry, there is lot that's been written. We
15 are going to have an expert witness that's going to
16 come in here and talk about this. The diamond industry
17 had an effective cartel that controlled the supply and
18 made diamonds scarce when they really weren't. They
19 controlled the supply; they controlled the price.

20 That's precisely what was going on with
21 asbestos. They controlled the market, they controlled
22 the supply, they controlled the price, and it's not
23 surprising since some of the same companies that were
24 involved with the diamond industry are involved with
25 the asbestos industry.

1 What you find from the geologic standpoint is
2 when you find diamonds, you find asbestos. When you
3 find asbestos, you find diamonds. So they ended up
4 coming up together and controlling the markets in both
5 areas.

6 Importantly, Cape and the companies
7 controlling it, again, did this with the knowledge that
8 its asbestos could ultimately expose people in any of
9 the 50 states regardless of where those products were
10 manufactured, and the evidence is going to show that
11 Cape and its controlling companies knew -- and this
12 is -- we are going to have tangible evidence of this,
13 an expert's going to testify about this -- knew very
14 early that even small doses of asbestos could cause
15 meso, and covered up that knowledge for decades. It
16 affirmatively lied about the amosites' propensity to
17 cause mesothelioma. It knew that it did, but said
18 publicly and to its customers that it did not. We are
19 going to be able to tangibly show that.

20 Threatened to economically ruin a South
21 African village doctor, who was caring for mesothelioma
22 patients, who worked at Cape's asbestos mines, if he
23 did not remain quiet about the dangers of asbestos
24 exposure. He was treating a number of patients, and
25 they threatened him with financial ruin by saying they

1 were going to bring other doctors in to drive his
2 patients away.

3 And when faced with liability for flooding
4 the market with its asbestos, Cape, through the
5 companies that controlled it, closed the U.S.
6 subsidiary and absconded back to England and saying,
7 "You can't touch me." And then Cape, and the companies
8 controlling it, hatched a scheme to continue to sell
9 asbestos after they shut down the U.S. subsidiary, to
10 continue to sell asbestos to customers through what has
11 been described -- what has been described as a
12 camouflaged shell entity in Liechtenstein, which was
13 controlled by one of these upstream companies.

14 This was made possible because of something
15 called the "group system." And the group system is
16 something unique to South Africa. You're going to hear
17 the details of this system. Its origins, again, are in
18 South Africa. It came from the unique circumstances
19 that existed in South Carolina [sic]. But politically
20 and economically -- politically, there was disparate
21 rules, disparate government. You had the Boers, you
22 had the British. You had parts of South Africa that
23 were not really governed at all. You had an economic
24 system that was unstable. To fill that void, this
25 group system, this business system in South Carolina

1 came into being.

2 THE COURT: You mean South Africa.

3 MR. LAY: Excuse me, South Africa. Thank
4 you.

5 It came into being. And what this group
6 system did was top-down control. And they, instead of
7 being set up like a normal U.S. based company with
8 divisions, they separated what would be divisions in a
9 U.S. company and made them separate companies, and they
10 did that really for flexibility; they did it for risk
11 allocation; they did it for capital investment to try
12 to draw in capital investment.

13 And what I mean by that is risk allocation.
14 You had an unstable environment. You've got mines that
15 require a lot of capital. They would take all of these
16 companies and spread the risk along all of the
17 companies so one company was not going to just take the
18 hit. It allowed people in Europe, in America to feel
19 better about their investments. We are going to show
20 you that. And you are going to hear that from our
21 expert.

22 They also, because of the different political
23 bodies that were in place, they would have a
24 Boer-facing company that's doing the same thing as a
25 British-based or British-facing company when it was to

1 their political benefit doing the exact same thing, all
2 being run together, all top-down control.

3 This is completely and utterly unique from
4 South Africa, and we are going to show that the way the
5 group system is designed and the hallmarks to the group
6 system, it equals amalgamation. It is the definition
7 of amalgamation. It is something that cannot exist in
8 the U.S. with antitrust, antimonopoly laws. It exists
9 in South Africa because of their unique situation. And
10 it existed for almost 100 years.

11 Now, the group system that's in play here is
12 the Oppenheimer group, and we are going to give you a
13 historical background through expert testimony about
14 who the Oppenheimers were. And the Oppenheimers had a
15 great admiration for the group system, and they came up
16 through the diamond industry and actually grabbed
17 control of the diamond industry in South Africa. It
18 helped them migrate into asbestos, but the
19 Oppenheimers, they had been called the Rockefellers,
20 the JP Morgans, and every other industrial titan all
21 wrapped into one controlling 25 percent of the G&P of
22 South Africa at one point.

23 The Oppenheimer group system began, and I'm
24 going to show you, start getting you oriented to some
25 of these companies and how they fit in. Can you see

1 that?

2 THE COURT: I can.

3 MR. LAY: Okay. So the Anglo piece, these
4 folks are out, the nonparticipating Altrad, its Mohed
5 Altrad, Altrad Investment, and then ESAB Charter. The
6 ESAB Charter was Central Mining and Charter were
7 directly participating. And I want to show you how
8 this played out.

9 So from 1905 to 1957 Central Mining was the
10 parent of Cape and controlled and dominated Cape in
11 every way. We are going to show you evidence of how
12 they're controlling financing. They are putting
13 employees in without asking whether they should put
14 employees in. They are giving them employees and
15 saying, "Run the business."

16 In 1958, the Oppenheimers bought the group
17 system from these folks and Central Mining came under
18 their umbrella. Central Mining then combined with two
19 other companies in 1965 and became Charter. It became
20 Charter and Charter became the direct parent of Cape at
21 that point. So at the very top of the Oppenheimer
22 group system, you have the Anglo-American and De Beers
23 at the top; below them is Charter; below them is Cape;
24 below them is NAAC. Before that, the Central Mining
25 was the parent of Cape. So that's the way they had

1 been set up, and it is top-down control all the way
2 through. That's the hallmark of it.

3 Now, as part of talking with you about the
4 group system, we are going to talk to you about the
5 hallmarks of the group system. There are certain
6 characteristics about the group system that are very
7 important and pervasive when you look at the historical
8 documentation. Things like providing financing across
9 multiple companies, dictating to companies below that
10 what the dividend is going to be, forcing people to
11 accept certain directors on the board of directors,
12 controlling those downstream companies through super
13 directors that are part of the inner circle of the
14 Oppenheimer group.

15 We are going to walk through those, and there
16 are quite a few different hallmarks that can be
17 demonstrated, again, tangibly directly through primary
18 source documents that we have available to us.

19 There were even things like forcing them to
20 pay, forcing Cape to pay a management fee to upstream
21 companies, having directors that are on multiple boards
22 all cross-pollinating each other completely dominating
23 the boards. We are going to show you that, going to
24 show you all of the commonality of the directors that
25 existed during this time period. And likewise, Cape

1 did to NAAC what was being done to it. So Cape is
2 being dominated, and Cape is looking at NAAC and
3 dominating NAAC.

4 It's telling NAAC who your president's going
5 to be. They were making all major decisions about
6 Cape -- excuse me, about NAAC financially. When I mean
7 all, I mean all. What the pricing was, what the
8 supplies were going to be, making all major decisions
9 outside the purview of NAAC. NAAC was effectively a
10 one-man operation with assistants. You had one person
11 that was the salesperson, and then you had four or five
12 assistants that would fill out the orders.

13 When they implemented this scheme to shut
14 down NAAC, we are going to present evidence that shows
15 that they stayed in the same building. They had the
16 same desk. They had the same assistants. They had the
17 same customers. They had the same contracts. They had
18 all the same contacts. They even had the same
19 president. In effect, all of it was the same. We turn
20 a light off, we are NAAC. We turn the light back on
21 we're a new company based out of Liechtenstein with
22 Liechtenstein as an in-between company. All new, all
23 dictated to them; they were told what to do. That's
24 domination and control. We are going to show you that.

25 Now, in this vast coordinated scheme related

1 to multiple entities, you're going to hear a lot of
2 names of individuals, and I just want to orient you to
3 it as much as I can. And we are going to keep
4 repeating it to try to make sure we get it for you
5 because I know this can be complex, but they played a
6 role in this coordinated scheme, whether it's a bad
7 actor or as a victim in the scheme for telling the
8 truth.

9 At the Oppenheimer level you had Ernest
10 Oppenheimer. He was the founder of Anglo-American, and
11 revered the Corner House, which was the original
12 business group that created this concept of the group
13 system. He attracted and was able to attract
14 sufficient capital from U.S. and British investors to
15 acquire De Beers, the diamond company, which was
16 originally affiliated with the Corner House.

17 His son, Harry Oppenheimer, came in and Harry
18 Oppenheimer perfected the group system. They created a
19 group system on steroids once Harry Oppenheimer took
20 over. Again, top-down control. To make sure that they
21 were America facing, they had -- they named the company
22 Anglo-American, and they had a U.S. -- based
23 businessman Charles Engelhard that helped them attract
24 U.S. capital into this business. NP O'Connor was an
25 Anglo-American technical manager who was seconded, and

1 you're going to hear that word a lot, secondment and
2 seconded. And all that is is placing upstream
3 companies, placing their employees with downstream --
4 downstream companies, and they're not asking
5 permission. They're telling them, "The employees are
6 going to be in there, and they are going to be doing
7 whatever job they have been assigned to do."

8 At the Charter level, you're going to hear
9 about Stephen Pollen. And Stephen Pollen we'll say is
10 an Oppenheimer insider sitting on the Charter board, he
11 directs them about who the executive committee is going
12 to be, and who the committee -- who the board of
13 directors are going to be in Charter. Stephen Pollen,
14 we are going to show you direct evidence where he was
15 seen as the voice.

16 THE COURT: Collin?

17 MR. LAY: Pollen, P-o-l-l-e-n.

18 THE COURT: Okay.

19 MR. LAY: Stephen Pollen, the voice of Harry
20 Oppenheimer. When he spoke, everyone was assuming he
21 was speaking with the permission and backing of Harry
22 Oppenheimer. At the Cape level, you have Richard Gaze
23 who was the "chief scientist," quotation marks, at Cape
24 and held senior management roles across Cape Asbestos.
25 And he had very much inside knowledge of about the

1 dangers of asbestos and health to keep it quiet, to
2 bury it.

3 Walter Smither was Cape's marking plant
4 doctor from 1956 to 1984. Again, he's treating tens
5 and tens of meso patients. The Barking plant -- what's
6 interesting about Cape, they're not just mining;
7 they're also creating asbestos product. And the
8 Barking plant was one of those plants that made
9 asbestos products, and they had a virtual epidemic of
10 asbestosis and meso in the Barking plant., and that was
11 going on well before some of the U.S. meso cases were
12 occurring. One of the first companies that had
13 asbestos in it, it was being manufactured -- these
14 products were being manufactured with asbestos
15 everywhere.

16 Anthony Pino (phonetic) was an in-house
17 counsel for Cape who assisted in creating the scheme
18 for Cape to continue selling these South African
19 asbestos fibers with the use of the Liechtenstein
20 pass-through entity. He's the one that came up with
21 the scheme.

22 Anthony Mendelle worked at Cape's Barking
23 plant, and he was a hero of sorts. He was one of the
24 first whistleblowers about what was going on in
25 asbestos.

1 Dr. Mathys Van Rooyen was a local doctor
2 caring for the ten meso patients and was threatened for
3 trying to warn Cape about the dangers of asbestos
4 exposure. Jasper Higham started with Cape in 1965,
5 became a director at Cape, and later became chairman of
6 Cape industry and received payment of his work the
7 entire time he was with Cape from Charter. Charter's
8 control of an employee within Cape who was running
9 Cape.

10 Ronald Dent was the chairman of the board at
11 Cape and agreed to step down when Charter's executive
12 committee decided to put an executive director from
13 Charter in Cape. There wasn't a vote within Cape about
14 who the director was going to be. Charter decided to
15 replace him, and that's what they did.

16 At the NAAC level, you have Richard Cryor who
17 is the first president of NAAC. He was a salesman.
18 Charles Morgan was the second president of NAAC, and we
19 have testimony from him that he gave in the 1980s
20 related to his role in Cape's dominance of NAAC. All
21 major decisions, even though he was the second
22 president of NAAC, were made outside of his purview.

23 Also involved in NAAC and Cape was Max Meyer,
24 a lawyer from Lord Bissel who assisted both Cape and
25 NAAC, and he sat on the board of directors of NAAC and,

1 again, had direct communications with Cape who he also
2 represented, and helped make major decisions for NAAC
3 with Cape and with Charter individuals. We are going
4 to show you that.

5 And then Anthony Saravia was another lawyer
6 at Lord Bissel. We are going to show you a memorandum
7 contained in the file to memorialize the new sales
8 arrangement for the sale of Cape Asbestos from
9 Liechtenstein through this new company CPC. Everything
10 was the same. They tried to create a scenario where
11 this other company in Liechtenstein was an in-between
12 company to hide the fact that sales continued in the
13 United States, and they were trying to hide it so they
14 wouldn't be exposed to product liability litigation in
15 the U.S.

16 To help us tell this story in 2025, we are
17 going to first have Dr. Barry Casteleman who's going to
18 testify. He's an environmental consultant and author
19 of Asbestos: Medical and Legal Aspects. He's
20 testified over 500 times in asbestos and
21 asbestos-related matters around the world. He's going
22 to be testifying about the history and business
23 practices of asbestos-related enterprises in the United
24 States and their effects on individuals in the United
25 States, including South Carolina.

1 He's going to specifically talk about the
2 unique, firsthand information that Cape had, when they
3 had it. They knew before many in the asbestos industry
4 about the harms associated with amosite, crocidolite
5 asbestos. They hid it, they lied about it, they
6 buried, and the people that were dominating them were
7 responsible for it. And if they just raised their hand
8 at the time they knew it, the meso patients that we see
9 now wouldn't be meso patients. It would have been
10 exposed far earlier than it was actually exposed, these
11 dangers because of asbestos.

12 Now, we also have Dr. Stephen Press. He's a
13 tenured associate professor of history at Stanford
14 University. And Dr. Press is uniquely qualified in
15 this case, and we are going to qualify him for a while
16 with you so you understand all of his qualifications
17 here.

18 He is a history professor, schooled in the
19 methodology of analyzing historical records. He has a
20 German background. He can read primary documents in
21 German. He has a German interest in South Africa. He
22 is well-schooled in South African politics and
23 geopolitics of the time. He had written two books
24 related to the diamond industry involving the same
25 companies, the same group system that existed. He

1 was -- the asbestos industry and the group system is
2 simply an extension of all the work that he has done
3 previously.

4 He is the expert on the South African
5 business practices and the group system and the
6 geopolitics of South Africa and how these companies
7 played into those politics and those geopolitics.

8 Finally, we are going to have Mr. Jim Buxton,
9 a South Carolina practicing lawyer in the area of
10 corporate governance, private securities offerings,
11 business transactions, general corporate law, and among
12 other things, he's going to be testifying about how
13 unique, how different the group system is from the way
14 other companies, multinational companies, U.S. -- based
15 companies are run. This is an amalgamated enterprise.
16 He's going to give you the characteristics of what's
17 different about U.S. versus what's going on with this
18 South African business model.

19 The story does not end with this historical
20 information. We are going to show that, you know,
21 Charter dominated through Cape through NAAC, the things
22 that have occurred since then. The evidence is going
23 to show that current successors to Cape are Altrad
24 Investment Authority, SAS, and its 97 percent owner of
25 Mohed Altrad, and they're responsible for the actions

1 and the continued Cape litigation avoidance to this
2 day. They're still doing it, and we've seen it
3 firsthand in this case.

4 Further, although Charter and Central Mining
5 remain corporations today, they became a part of ESAB
6 in 2021, and their annual reports refer to ESAB as
7 their ultimate or immediate parent company and
8 controlling party.

9 Turning to the law in this case, we are going
10 to be seeking four declarations. Charter, Central
11 Mining, and NAAC were part of an amalgamated enterprise
12 to perpetrate fraud on the U.S. market specifically
13 through this liability avoidance scheme.

14 Second, ESAB is a successor in interest to
15 Central Mining and Charter.

16 Third, Altrad Investment Authority is part of
17 an amalgamated scheme with Cape and also successor and
18 alter ego. And Mohed Altrad is the alter ego of Cape.

19 Those are the four primary declarations.
20 There will be subparts to that, but those are the
21 primary declarations that we're going to be seeking.

22 In order to prove amalgamation, we are going
23 to have to show the intertwining of these entities.
24 Check. We are going to have an overwhelming amount of
25 information showing the intertwining of these

1 companies', evidence of bad-faith, abuse, fraud,
2 wrongdoing, or injustice resulting from the blurring of
3 the -- of these entities' legal distinctions. Check.
4 We are going to be able to prove that.

5 Further, the South Carolina Supreme Court has
6 found, when it's true, that courts should be hesitant
7 to evade the corporate form. The corporate structure
8 should not shield fraud, evasion of existing
9 obligations, circumvention of statutes, monopolization,
10 criminal conduct, and the like. Check, check, check,
11 check, check.

12 We are going to have all of that proved up.
13 Therefore, where affiliate entities functioning as a
14 single are enterprise induce fraud, wrongdoing, or
15 injustice, South Carolina law says the enterprise as a
16 whole has to answer to the debts and liabilities of its
17 members. That's what we have got here.

18 Its purpose is essentially the group system
19 again equals amalgamation, single-business enterprise.
20 Maximum control by the parent with minimum investment
21 by the parent. In practice, a group has different
22 entities where a large, U.S. company has divisions. In
23 effect, what happens, Courts have determined that there
24 are, if there are two or more personalities, two or
25 more companies, and we have more than that here, but

1 there's one enterprise, that the enterprise has to
2 respond to the liabilities, all the companies have to
3 respond. All the companies create -- any individual
4 company within that amalgamated business enterprise can
5 create personal jurisdiction.

6 Elements include, again, two or more
7 personalities was for the purpose of committing a fraud
8 against buyers, which was here, was to escape liability
9 when they should have been held accountable to hide the
10 fact that they were dominating NAAC and to hide the
11 fact that they were continuing to pour asbestos in the
12 United States through this Liechtenstein company. All
13 purposefully hidden and designed to get away with
14 making money in the U.S. but not being held accountable
15 for the wrongs.

16 Alter ego will also be proven at trial and
17 the question of whether to pierce the corporate veil
18 via allegation of alter ego. As you know, it sounds
19 inequity. In fact, there's a case authored by you on
20 that. And general equitable principals govern the
21 veil-piercing remedy and applying South Carolina
22 veil-piercing doctrine as all forms of equitable
23 relief, the equities of both sides should be
24 considered, black letter law in South Carolina.

25 The entire point of the alter ego doctrine is

1 that a defunct, dissolved, or undercapitalized entity,
2 and we are going to have that here, is responsible for
3 causing injury, but because the entity is dominated or
4 controlled by others, those others are also liable.
5 Again, check. We are going to show that.

6 The elements of alter ego are total
7 domination, control of one entity by another,
8 inequitable consequences caused thereby. We've got
9 that. This theory does not apply in the absence of
10 fraud or injustice. It's the same sort of concept as
11 amalgamation. And a majority of the jurisdictions have
12 allowed this alter ego concept.

13 Finally, as a reminder to the Court, we went
14 through this this morning, I was going to read these in
15 opening, but I'm going to defer to you, defer to my
16 presentation on the adverse inferences that we read
17 this morning, and we're going to put those adverse
18 inferences in and include several that I did not read,
19 but the main ones are there.

20 Adverse inferences that came about because of
21 the failure -- total, complete failure to participate
22 in discovery by these groups of defendants, and they
23 continue to not participate in except every now and
24 then. We will be able to prove this case without the
25 benefit of the adverse inferences. I think the case --

1 the evidence that we are going to put in is going to
2 complement the adverse inferences, is going to support
3 the adverse inferences, is going to be support for the
4 adverse inferences.

5 Again, four -- four things we are going to be
6 asking you to look at: Charter, Central, Cape, NAAC,
7 bad actors, part of an amalgamated enterprise that
8 perpetrated fraud on the U.S. market as part of the
9 South African Oppenheimer group system. ESAB is a
10 successor in interest to Central Mine and Charter.
11 Altrad Investment Authority is part of an amalgamated
12 scheme with Cape, and alter ego Mohed Altrad is liable
13 for Cape Asbestos' related liabilities as alter ego and
14 amalgamated scheme.

15 So we are going to ask the Court at the end
16 of this case after we put on this evidence, and we're
17 bringing a bunch of evidence to you in these notebooks,
18 and they are -- we've got a chart that shows how these
19 are authenticated, we have -- we have deposition
20 testimony, we have expert testimony, we've got primary
21 source documents, we have an overwhelming amount of
22 information about this group system and the way the
23 domination that occurred in these downstream companies,
24 starting at the top with the Oppenheimer and sons.

25 I'm just going to end with this. You know,

1 there's been a lot of acrimony in this case, and
2 there's been attempt to place the receiver as the bad
3 guy, and they have been called -- they called
4 Mr. Protopapas a lot of names in this case. What
5 you're going to see in this, there's only one group of
6 bad guys in this case, and it's this group of companies
7 under the Oppenheimer system with the Charter, Cape,
8 NAAC, and their successors that continue -- this is
9 companies that hid the fact, they knew it. They knew
10 it firsthand.

11 They hid the fact that asbestos was killing
12 people. They knew it before everyone else. They were
13 one of the first group of companies that knew about the
14 health risk associated with asbestos, and they buried
15 it. They intimidated people. They purposefully said
16 things to customers in advertising that they knew to be
17 false. They hid it. And they continue to sell
18 asbestos into the United States.

19 And when they were about to be held to
20 account, they said, "Oh, heck no. I'm taking my ball
21 and I'm going to try to escape in the UK. I'm going to
22 hide the fact we are still doing business here, and we
23 are going so shut down this U.S. subsidiary, and we are
24 not going to have a presence here. Good luck, U.S. We
25 know we did it to the people of Great Britain and the

1 UK. Good luck U.S. citizens. Tough."

2 That is to the detriment of many, many
3 South Carolinians. Many South Carolinians with meso
4 have touched Cape product. They dominated the market
5 in amosite and crocidolite. It was also damaging to
6 South Carolina companies who had been paying for their
7 share of settlements for the past 50 years. These
8 people have never been held to account for any of that,
9 and we are here just to seek your assistance to hold
10 this group system to account for what they did. They
11 made a lot of money, but it's time they got held to
12 account for what they did. And that's why we are here.
13 Thank you.

14 THE COURT: Thank you, Mr. Lay. You may call
15 your first witness.

16 MR. CARROLL: Your Honor, are you not hearing
17 from me and Mr. Rawl in this?

18 THE COURT: The plaintiff is proceeding
19 with --

20 MR. LAY: I'm trying to understand if they
21 are participating, Your Honor.

22 THE COURT: Y'all have not participated so
23 far. The plaintiff is presenting his case. All right.
24 At the end of the plaintiff's case, I will make some
25 decisions about what your participation will be. But

1 right now, we are in the plaintiff's case.

2 MR. CARROLL: I thought that was an opening
3 statement. I'm sorry. I was just going to note my
4 myriad of objections to all the jurisdictional
5 problems.

6 THE COURT: You put that on the record, the
7 distinction, this morning. I think we understand your
8 position.

9 Mr. Lay, call your first witness.

10 MR. LAY: The first witness, Paul Scrudato is
11 going to be handling the first witness, which is
12 Barry --

13 THE COURT: Say that again.

14 MR. SCRUDATO: It's Paul Scrudato, Your
15 Honor. Here's a card with my name on it. The court
16 reporter already has it.

17 THE COURT: Yes, that would be helpful.
18 Thank you.
19 Thereupon--

20 BARRY CASTELEMAN,
21 was called as a witness, and having been first duly
22 sworn, was examined and testified as follows:

23

24 THE CLERK: Have a seat state your full name
25 for the record.

1 MR. LAY: Your Honor, just for the record,
2 Mr. Scrudato is pro hac vice.

3 THE WITNESS: Good afternoon, Your Honor, my
4 name is Barry Casteleman.

5 THE COURT: Yes, sir. And Mr. Casteleman,
6 Mr. Scrudato is a pro hac vice lawyer who will be
7 examining you.

8 Again, state your full name for the record.

9 THE WITNESS: C-a-s-t-e-l-e-m-a-n.

10 THE COURT: First name Paul?

11 THE WITNESS: Barry, B-a-r-r-y.

12 THE COURT: All right, sir. And,
13 Mr. Casteleman, where are you from?

14 THE WITNESS: I'm from Maryland, Your Honor.

15 THE COURT: All right, sir.

16 You may proceed, Mr. Scrudato.

17 MR. SCRUDATO: Thank you, Your Honor.

18

19 DIRECT EXAMINATION

20 BY MR. SCRUDATO:

21 Q. Dr. Casteleman, how are you?

22 A. I'm fine. Thanks.

23 Q. Have you ever testified in Columbia?

24 A. No, never been to Columbia before.

25 Q. Never visited the town?

1 A. I may have hitchhiked through, but I don't
2 remember if I did.

3 Q. Have you ever testified before Justice Toal?

4 A. No.

5 Q. Can you tell us your profession,
6 Dr. Casteleman?

7 A. I'm a public health worker. My field is
8 toxic substances control.

9 Q. Do you have a focus?

10 A. Main specialization has been on asbestos and
11 some toxic chemicals.

12 Q. I have heard you describe your work as
13 involving public health and the corporate history of
14 asbestos.

15 A. Yes. I have spent a great deal of time
16 investigating the history of the asbestos problem as it
17 relates to public health.

18 Q. Dr. Casteleman, can you tell Justice Toal how
19 your experience and expertise might contribute to the
20 Court's evaluation of the issues in this case?

21 A. I have become very familiar with the historic
22 development of knowledge on the -- in the public domain
23 about asbestos and its dangers. And I have also become
24 quite familiar with the corporate documents through my
25 involvement in litigation, documents unearthed through

1 the process of legal discovery that present a basis of
2 comparison, you might say, in terms of how different
3 corporations have been shown to have dealt with the
4 public health issues raised by being in the asbestos
5 business one way or another.

6 Q. So this includes, Dr. Casteleman, what was
7 known about asbestos disease generally and when it was
8 known?

9 A. Yes.

10 Q. And this includes what specific companies
11 knew about the dangers of asbestos exposure and then
12 when they knew it?

13 A. Yes. And this is based on something like 45
14 years of legal discovery that I have been shown
15 documents from since I started my research in all of
16 this.

17 THE COURT: All right. Dr. Casteleman, let
18 me get some -- if you're going to be offered as an
19 expert, let's get some kind of basic information about
20 your training, education, experience.

21 Will you do that for us to begin with,
22 Mr. Scrudato?

23 MR. SCRUDATO: Your Honor, that's where I'm
24 going. That's this first section of this.

25 /////

1 BY MR. SCRUDATO:

2 Q. Now, you submitted a report in this case, did
3 you, Dr. Casteleman?

4 A. Yes.

5 Q. And here is the cover page dated
6 November 8th, 2024.

7 A. Yes.

8 Q. Your Honor, we have a -- should be a working
9 monitor up there for you for the documents. Is it up?

10 THE COURT: Yes, sir.

11 MR. SCRUDATO: Okay. All right.

12 BY MR. SCRUDATO:

13 Q. I will invite you to this language,
14 Dr. Casteleman, in your report, page 14, towards the
15 end of your report. Can you read this for Justice
16 Toal?

17 A. Highlighted sentence says, "Cape stands out
18 for its ruthlessness and the human toll in maximizing
19 profits from asbestos mining and manufacturing."

20 Q. Is that statement reflectful of your
21 conclusions in this case, Dr. Casteleman --

22 A. Yes.

23 Q. -- after having investigated what Cape knew
24 and when it knew it as compared to other companies who
25 sold asbestos?

1 A. As compared to other asbestos companies, yes.

2 Q. Can you explain what you mean by that
3 sentence in this case?

4 A. Well, the human toll of the use of amosite
5 and crocidolite asbestos in the United States, Cape
6 sold almost all the amosite used in the United States
7 in the 20th century, and most of the crocidolite, and
8 these are wildly regarded as more deadly forms of
9 asbestos by medical writers these days.

10 And the long-standing knowledge that Cape
11 demonstrably had about the lethality of asbestos and
12 the cover up of some of the very important aspects of
13 the dangers associated with the types of asbestos that
14 they were selling complete the picture.

15 Q. Now, Dr. Casteleman, I have heard you use the
16 phrase in published papers about something that you
17 refer to as "toxic corporate crime." What do you mean
18 by that?

19 A. Well, I use the term as a public health
20 worker not as a lawyer, and I refer to -- I mean, there
21 are other forms of corporate crime in my view, price
22 fixing, accounting fraud, tax evasion, hiring
23 paramilitaries to murder labor leaders in Columbia,
24 those are other forms of corporate crime. Toxic
25 corporate crime is the human harm that's more or less

1 deliberately caused by corporate actions and
2 suppression and coverups relating to the manufacture
3 and sale of toxic substances, and it includes such
4 things as the export of hazardous industries to
5 developing countries.

6 Q. Now, let's talk about your testimonial
7 experience briefly, Dr. Casteleman. When was the first
8 time you gave a deposition trial in an asbestos case?

9 A. 1979.

10 Q. And since that time, how many depositions
11 have you given in asbestos cases?

12 A. Over 1,000.

13 Q. And since that time, how many testifying --
14 how many times have you testified in court?

15 A. Over 500 trials.

16 Q. And were those engagements at the request of
17 plaintiffs?

18 A. All but one, yes.

19 Q. All but one. Can you tell us about the one
20 that wasn't on behalf of a plaintiff?

21 A. In that case, the United States government
22 was the defendant. The case was brought by
23 Johns-Manville Corporation a few years after JM went
24 into bankruptcy proceedings, and issued before the U.S.
25 Court of Claims was whether Johns-Manville or the

1 government knew more about the hazards of asbestos
 2 during World War -- during the period of the early
 3 1940s, World War II, relating to the sale of products,
 4 asbestos products to the government during the war,
 5 products which had no warning labels on them.

6 And so the Justice Department asked me to
 7 testify in the case about the history of knowledge both
 8 with respect to what the government knew and what
 9 Johns-Manville knew.

10 Q. Similarly to what you're being asked to
 11 testify today?

12 A. Yes.

13 Q. Only in this case, it's Cape and not
 14 Johns-Manville; correct?

15 A. Yes.

16 Q. Do you know, if you know, Dr. Casteleman, why
 17 did the --

18 THE COURT: All right. Mr. Scrudato, before
 19 you get into what his opinions are, put his training,
 20 education, and experience on the record.

21 MR. SCRUDATO: Okay. I will move through
 22 this. Got it, Your Honor.

23 BY MR. SCRUDATO:

24 Q. Let's talk about your educational background,
 25 Dr. Casteleman.

1 A. My --

2 Q. Walk us through that after high school.

3 A. My bachelor's degree is in chemical
4 engineering, Johns Hopkins University 1968. I went
5 back to school a few years later, in training for air
6 pollution control. And at that point, I learned
7 about -- started reading about the health effects of
8 air pollution and was quite stunned by what I found
9 about asbestos and wrote my master's thesis about the
10 health effects of asbestos. And that was completed in
11 1971.

12 Then I went back to school about ten years
13 later at the Johns Hopkins School of Hygiene and Public
14 Health, and in 1985 I was granted a doctorate of
15 science degree from the school of public health, and my
16 doctoral thesis was called "Asbestos: A Historical
17 Case Study of Corporate Response to an Industrial
18 Health Hazard."

19 Q. Can you tell us, Dr. Casteleman, about the
20 time frame in which you got your master's in the
21 context of public health in the United States?

22 A. Yes. It was -- it was 1970 and 1971 when I
23 was reading about the dangers of asbestos and quite
24 amazed by how dangerous this stuff was. There was no
25 regulation at that time. The Environmental Protection

1 Agency was created by President Nixon in December of
2 1970, and the Occupational Safety and Health
3 Administration was created by an act of Congress in the
4 last week of 1970, so these were not functioning
5 government regulatory agencies until well into the next
6 year, and only then were they beginning to start to
7 change the way business was conducted in the United
8 States with regard to the use of toxic substances in
9 particular asbestos.

10 Q. What was the title of your doctoral thesis?

11 A. It was called "Asbestos: A Historical Case
12 Study of Corporate Response to an Industrial Health
13 Hazard."

14 Q. Can you tell us what that was about?

15 A. Well, it was basically about looking very
16 closely at the history of what was publicly available
17 about the dangers of asbestos over time, and what
18 corporations who were in the asbestos business knew and
19 did about asbestos, both in the period before 1970 when
20 most workers in the public didn't have any idea that
21 asbestos was dangerous, and then in -- starting in the
22 1970s, where there started to be more media coverage,
23 and regulation bodies, new governmental agencies
24 raising public awareness about the fact that they're
25 working with asbestos and had some dangers.

1 Q. So the subject area of your doctoral thesis
2 was different from your master's thesis; correct?

3 A. Yes. The doctoral thesis attempted to seek
4 how come we have this pandemic of asbestos disease?
5 Was it a failure to know that asbestos was dangerous,
6 or was it something more nefarious having to do more
7 with covering up the dangers and deceiving people about
8 the dangers of asbestos by people in the industry who
9 were making money out of it.

10 Q. Just focusing again on your doctoral thesis,
11 Dr. Casteleman, can you tell us about the scope of the
12 research you did, what you looked at, what sources you
13 looked at where and how? Just explain the process that
14 you went through in preparing your doctoral thesis.

15 A. I attempted to find everything I could that
16 was published about the dangers of asbestos in every
17 type of publication. So I found that primary material
18 was in medical papers; medical textbooks would be a few
19 years behind and picking up. And so I read medical
20 textbooks as well on pathology, internal medicine,
21 chest disease, cancer, every type of subset of medical
22 textbook that might cover it.

23 There were abstracting publications that were
24 just devoted to publishing summaries about articles
25 that had newly appeared in the literature with names

1 like the Bulletin of Hygiene, the Industrial Hygiene
2 Digest, and I went through all of these publications.
3 Of course, this was in mostly medical libraries that I
4 found these things. I wanted to know -- a lot of
5 problems were medical, but the solutions were
6 engineering in terms of industrial ventilation system
7 design, and so I read engineering journals to try and
8 find out what they had to say about these things.

9 There was safety publications as well from
10 the National Safety Council and journal names like
11 Safety Engineering that also carried articles that
12 talked about the dangers of the dusts, the use of
13 respirators to protect workers from different
14 concentrations and dangers and sizes of airborne dusts.
15 Workers' compensation laws that were changing to impose
16 additional bottom line considerations to companies
17 using dangerous materials like asbestos and lead, and
18 so I looked in popular magazines to the extent I could
19 find them.

20 There were -- there were listings that were
21 journals that were devoted to listing things that what
22 were appearing in trade magazines by subject, and so I
23 would look up dust and then I would look up whatever
24 trade magazine articles that were referenced under
25 that. So I just tried to find everything I could.

1 And, of course, in the medical journal articles, there
2 was usually references given, and I would go through
3 the list of references. And if there was something
4 there I hadn't seen, I would go look it up.

5 And -- and this included foreign references
6 as well as references published in the United States,
7 of course. So this is the way I tried to find
8 everything I could that was published and available.
9 There were other things that were publicly available,
10 but you had to go to some effort to find them.

11 Those were things like workers' compensation
12 claims. So in some cases, through the asbestos
13 litigation, companies would disclose lists of claims
14 that had been made against them by people claiming they
15 had asbestosis, and so I would go and try to find the
16 claim files at the government offices where those
17 claims had been processed, and in some cases we found
18 quite remarkable material.

19 In California, in particular, on these kind
20 of claims going way, way back, back to 1940 with people
21 using asbestos insulation material, for example. And
22 so that's the published and publicly-available
23 literature.

24 And at the same time I was digging through
25 all of that, I was hired to do this research, this

1 historical research in connection with product
2 liability cases, and it just started out as a research
3 job in 1976, but the lawyers were showing me some of
4 the corporate documents even then that they were
5 extracting through the process of legal discovery.

6 And so my doctoral thesis really attempted to
7 put together the whole picture of the
8 publicly-available information and the corporate
9 response to the effect to the extent that corporate
10 response was reflected in these internal corporate
11 documents coming up in discovery which were not written
12 with any expectation they'd ever be read by anybody
13 outside the corporation.

14 Q. So this work on your doctoral thesis in 1985
15 and before that, Dr. Casteleman, that involved going to
16 libraries and actually turning page after page; it
17 wasn't done on online or on a computer?

18 A. Of course, right.

19 Q. Can you tell us briefly about the
20 peer-reviewed process to get your doctorate at Johns
21 Hopkins?

22 A. Well, the doctoral thesis, I wrote a 43-page
23 outline of what I wanted to do to write the thesis and
24 had a thesis committee that had to approve of that,
25 including a historian for the Johns Hopkins medical

1 institutions, and then they -- I came back three years
2 later with the thesis, and had another ritual called
3 the defense of the thesis with the thesis committee
4 asking me any questions they chose to, and then
5 deciding whether to accept the thesis as submitted or
6 reject it or to request some changes and they accepted
7 it as submitted.

8 Q. All right. Just can you give us some idea of
9 where Johns Hopkins ranks in sort of the educational
10 world of public health, Dr. Casteleman?

11 A. I think Johns Hopkins Medical Institution, as
12 the hospital, and the Johns Hopkins School of Public
13 Health are very highly regarded in the fields.

14 Q. Now, what relationship had your doctoral
15 thesis played to your first book on asbestos?

16 A. It was largely identical. I had some things
17 that were in the book that didn't get into the thesis.
18 And then there were also some things in the thesis that
19 didn't make it into the first edition of the book that
20 came out just a little bit before I got awarded the
21 doctoral degree, so then it was the second edition of
22 the book two years later, 1986, and now it's in the
23 fifth edition.

24 Q. We are going to get to the book momentarily.
25 Let's just stick with your qualifications,

1 Dr. Casteleman. Have you been asked to do consulting
2 work for any private or public organizations in the
3 area of public health?

4 A. Yes. I became an independent consultant in
5 1975. I haven't had a boss or been one since then and
6 I have worked for numerous federal government agencies
7 in the field of toxic substances, mostly asbestos.
8 They include the Occupational Safety and Health
9 Administration, the Environmental Protection Agency,
10 the Federal Trade Commission, the Consumer Product
11 Safety Commission, Congress' Office of Technology
12 Assessment, and others.

13 They've also included international
14 organizations, the International Labor Organizations,
15 the World Health Organization, the World Bank. These
16 are some of the organizations and lots of environmental
17 groups and public health groups, labor unions, most of
18 which didn't pay me anything, but which my boss worked
19 a lot.

20 Q. Have you been invited to testify or offer
21 written submissions to any U.S. Senate or house of
22 representatives' committees?

23 A. Yes. The first time I testified before a
24 Senate committee was in 1973. I was a local public
25 health official and the committee was holding hearings

1 about community exposure to asbestos, and I told them
2 about my efforts to send out warnings to mechanics not
3 to use compressed air hoses to blowout brake assemblies
4 in 1972 before any warning labels had appeared on brake
5 pads yet from the manufacturers. I warned about -- I
6 was concerned about asbestos cement pipes used for
7 water supply and the erosion of asbestos that occurred
8 from that.

9 And I brought about a 5-pound bag of asbestos
10 and put it in front of me while I testified. I had
11 bought that at a hardware store just the week before.
12 It was a paper bag. The only mark on the bag was 89
13 cents, the price, and it was inside a clear plastic bag
14 when I brought into the Senate hearing.

15 Q. Now, your CV, Dr. Casteleman, identifies over
16 100 articles you have authored; correct?

17 A. Yes.

18 MR. SCRUDATO: Your Honor, may I approach?

19 THE COURT: You may.

20 MR. SCRUDATO: This is a copy of the CV, Your
21 Honor, with a list publications attached.

22 THE COURT: Thank you.

23 BY MR. SCRUDATO:

24 Q. Now, just looking over the articles that you
25 are the original author of attached your CV, do those

1 mostly involve asbestos, Dr. Casteleman?

2 A. They do mostly about asbestos. Some are
3 about chemicals, some are about asbestos and chemicals.

4 Q. Now, the first edition of your book, which
5 was published in 1984; correct?

6 A. Yes.

7 Q. So that was a few months before you got your
8 actual doctorate; correct?

9 A. Yes.

10 Q. Was the subject matter and scope of the book
11 unique or distinguished in any way?

12 A. Well, it was -- yes. I would say it was
13 unique in the extent of the coverage of what was
14 publicly available about the dangers of asbestos, and
15 also unique in terms of its inclusion of corporate
16 documents and what they showed about the response of
17 many companies and industry in general.

18 Q. Now, you have -- you have just published --
19 you recently published a fifth edition, correct,
20 Dr. Casteleman? I think it was in 2005?

21 A. Well, it was 20 years ago, yes, yes.

22 Q. Is this it?

23 A. Yes. So that was 21 years after the first
24 edition came out.

25 MR. SCRUDATO: Your Honor, may I approach?

1 THE COURT: You may.

2 MR. SCRUDATO: This is the fifth edition,
3 Your Honor.

4 THE COURT: All right. I have received a
5 copy of "Asbestos: Medical and Legal Aspects," Fifth
6 Edition, Barry I. Casteleman, published in 2005.

7 BY MR. SCRUDATO:

8 Q. Now, Dr. Casteleman why a fifth edition after
9 the four previous ones?

10 A. Well, as time went on, I got involved in more
11 cases and had access to incredible documents. The
12 involvement with the Justice Department in the case
13 against Johns-Manville -- Justice Department did an
14 amazing job of discovery of Johns-Manville documents,
15 so I expanded the book largely based on the stuff that
16 came out of the Johns-Manville documents.

17 And then I got involved with Chase Manhattan
18 bank and their world headquarters was full of asbestos.
19 They got it from the Johns-Manville of England, a
20 company called Turner & Newall, and Turner & Newall
21 documents showed what that company had done in the
22 United States and India and Africa and Australia and
23 all over the world, so I expanded the book again.

24 And then another eight years went by, and a
25 lot of documents had come out about the turbine

1 companies, the General Electric and Westinghouse and
2 what Bigelow companies knew about the hazards of
3 asbestos and some of the automobile companies. And so
4 I expanded the book one more time in the fifth edition
5 in 2005.

6 Q. So the fifth edition has about 900 pages and
7 11 chapters, right, Dr. Casteleman?

8 A. Yes.

9 Q. Can you highlight a few of the chapters for
10 Justice Toal that are particularly relevant to this
11 case and your qualification here?

12 A. Well, the corporate documents appear
13 throughout the book in terms of the chapters, but, you
14 know, I start with talking about asbestosis, the first
15 disease recognized as caused by asbestos. And then
16 Chapter 2 is about cancer. Chapter 3 is about efforts
17 to set up some compensation or whatever happened in the
18 realm of compensation for asbestos-related disease.
19 And then Chapter 4 is about efforts to protect people
20 with standards and regulations. Chapter 5 is about
21 asbestos product use, 'cause there was big distinction
22 made in the asbestos litigation between asbestos
23 product use and mining and milling asbestos and so on.

24 The corporate knowledge chapters, Chapter 9.
25 So I summarize what different companies knew usually in

1 the space of two or three pages each. And then,
2 Chapter 10 is the methods chapter where I talk about
3 all the means that I did -- all the areas that I did
4 research in in order to put -- put the book together.
5 And the last chapter is about the legacy. Where do we
6 go from here? What are we left with from what has
7 happened?

8 Q. Dr. Casteleman, I'd like to talk to you about
9 the acknowledgments page in sort of the context of your
10 testimony today, your qualifications today.

11 MR. SCRUDATO: Your Honor, it is highlighted
12 on the screen.

13 BY MR. SCRUDATO:

14 Q. Could you walk us through, first of all, what
15 the acknowledgments page was and then address the folks
16 that you worked with -- cooperated with you, gave you
17 information, or you talked to in terms of reviewing
18 sections of the book that are highlighted here?

19 A. Well, I was just trying to say thanks to
20 people who contributed to the book on the
21 acknowledgments page. On the first, people named are
22 the old timers that I consulted in the field who had
23 published about the dangers of asbestos and could maybe
24 help me have a better understanding about the history
25 of the public health history of asbestos and who these

1 people -- Dr. Vilhelm Hooper (phonetic) was the leading
2 expert in the world on occupational environmental
3 cancer publishing more than anyone else in the 1940s
4 and '50s and '60s. He also worked at the National
5 Cancer Institute from 1948 to 1964.

6 Thomas Mancuso was an epidemiologist who
7 published about chromates in 19- -- the late 1940s, and
8 asbestos in the early 1960s. Dr. Mancuso wrote a
9 preface to my book.

10 Gerrit Schepers was an expert on asbestos
11 from South Africa. Here I am shown meeting with
12 Dr. Schepers towards the end of his life. He lived to
13 be about 96. We'll talk more about him later in terms
14 of some of the experiences that he had in visiting the
15 asbestos mines.

16 Dr. Irving Selikoff was the leading medical
17 expert on asbestos in the United States, legendary
18 figure who founded journals and was also extraordinary
19 in dealing with the media because he knew that people
20 needed to learn about the dangers of asbestos, that the
21 people didn't know the stuff was dangerous, and so he
22 was doing what he could to raise public awareness.

23 THE COURT: I'm very familiar with
24 Dr. Selikoff and Mount Sinai and that whole group of
25 doctors and other investigators.

1 THE WITNESS: Yes. And Harriet Harding was a
2 leading expert on verilium who also wrote about
3 asbestos her professional career started in the
4 mid-1940s. She was an understudy of Alice Hamilton who
5 was a legendary figure in the field of occupational
6 medicine in the United States and wrote reports for the
7 government of Illinois, but led to the enactment of the
8 first workers' compensation laws and the workers'
9 compensation laws passed throughout the United States
10 in the second decade of the last century. Dr. Hardy
11 reviewed some of the chapters of my book before the
12 first edition was published.

13 Dr. Alfred Angars (phonetic) published about
14 the asbestosis and lung cancer in patients he had seen
15 publishing articles in 1942 and 1951.

16 William Smith, who was run out of New York
17 University in the 1950s because he was too interested
18 in asbestos, a leading expert. Also Dr. Morris
19 Greenberg was with the factory inspector in Britain,
20 and published a great deal about the lethality of
21 asbestos. Dr. Greenberg, just died -- just a few years
22 ago died.

23 Richard Doll was an epidemiologist, very well
24 known, who published studies about smoking and lung
25 cancer in the beginning of the 1950s about asbestos and

1 lung cancer in 1955.

2 Herbert Abrams, one of the first doctors in
3 the United States to work with trade unions, going back
4 to the early 1950s.

5 Harold Stewart, who published about
6 asbestosis in 1931, and was head of a committee. He
7 was with the National Cancer Institute by the 1950s,
8 and led an international committee that concluded that
9 asbestos causes lung cancer in a publication in 1952.

10 So these are some of the people I was able to
11 contact and talk to and meet with over the years in
12 putting together this history.

13 Q. Thank you, Dr. Casteleman. Now, you also
14 thank in the acknowledgments a number of lawyers;
15 correct?

16 A. Yes.

17 Q. Both defense and plaintiffs' lawyers;
18 correct?

19 A. That's right. The defense lawyers were also
20 helpful in their way. They had numerous occasions to
21 question me and show me documents to cast their clients
22 in a good light, and so if there were any internal
23 corporate documents that would reflect well on the
24 companies, that they had every opportunity to show me
25 those documents in depositions and in trials, and so

1 they would also sometimes point things out in my book.
2 The book had extraordinarily thorough peer review in
3 the sense that every line of that book was read
4 carefully for ambiguities and errors, and these things
5 were brought to my attention over the years in
6 depositions and in trial.

7 In some cases, I made improvements in the
8 book based on these things, and I would put the names
9 of some of these defense lawyers in the acknowledgments
10 page, which some of them said they appreciated.

11 Q. Let's turn to the Company Knowledge section,
12 Dr. Casteleman. Can you walk Justice Toal through what
13 this section is in the book.

14 MR. SCRUDATO: Your Honor, I think it's two
15 pages.

16 THE WITNESS: Yes. This is -- you can see
17 carrying over from the bottom of the one page and the
18 top of the next. These are examples of corporate
19 documents that came out, you can see just a few pages a
20 piece, about these individual companies, and the
21 documentation that emerged related to what they
22 actually knew and did relating to the hazards of
23 asbestos, and they are illustrative. They don't
24 include Cape partly because there was no legal
25 discovery done on Cape because Cape ran away before the

1 litigation really got going, although some of the
2 documents from UNARCO and Pittsburgh Corning do relate
3 to knowledge of Cape which was selling them the amosite
4 asbestos that they were using to make, you know,
5 asbestos insulation.

6 Q. As you look at this list, Dr. Casteleman, do
7 you see many customers of Cape for either amosite or
8 crocidolite?

9 A. Yes.

10 Q. We'll come back to that later,
11 Dr. Casteleman. Have you ever testified against Cape
12 in any case?

13 A. No.

14 Q. And are you still testifying for plaintiffs
15 in asbestos lawsuits?

16 A. Yes.

17 Q. At the request of plaintiffs?

18 A. Yes.

19 Q. Have you ever testified -- I know I asked you
20 earlier about testifying before Justice Toal or here in
21 Columbia, but have you ever testified in an asbestos
22 case in South Carolina?

23 A. Yes. There was one case in Greensboro, I
24 think, in 2001.

25 Q. Do you remember who the defendant was or

1 anything about the case?

2 A. No, I don't remember who the defendant was.
3 I think the case was -- Henderson was the name of the
4 plaintiff.

5 Q. That's correct. Henderson.

6 MR. SCRUDATO: Your Honor, with your
7 permission --

8 THE COURT: Is it Henderson v. Lohrman?

9 MR. SCRUDATO: Pardon.

10 THE COURT: There is a very well-known
11 asbestos case in South Carolina called Henderson v.
12 Lohrman. Is that -- is that the case?

13 MR. SCRUDATO: You know, from your CV, or
14 your attachment with all of your trials suggest it's
15 Henderson. We should find out the answer to that
16 question. Henderson v. --

17 THE COURT: L-o-h-r-m-a-n.

18 BY MR. SCRUDATO:

19 Q. Can you find out the answer to that?

20 A. I can't, but you can probably. Nexus, Lexus,
21 whatever it's called.

22 THE COURT: It's not important. The
23 Henderson case is often cited to the South Carolina
24 Supreme Court case. It talks about the basic
25 requirements for liability in the asbestos cases.

1 MR. SCRUDATO: This case was -- his testimony
2 was in 2001. Was that Henderson case an early case
3 around there?

4 THE COURT: I think so.

5 MR. SCRUDATO: Oh, maybe it's the same case.
6 We'll try to find out. Your Honor, with your
7 permission, I would tender Dr. Barry Casteleman as an
8 expert in the field of public health as it relates to
9 asbestos and the corporate use of asbestos.

10 MR. CARROLL: Your Honor, the Altrad
11 defendants' only objection is to the absence of
12 jurisdiction, and the fact that these claims have all
13 been released, and I don't want to have to do this all
14 day. The objection is that we have already filed with
15 the Court. If it suits, Your Honor, if we can treat
16 those as continuing, then I won't have to be objecting
17 much over here.

18 THE COURT: Yes, yours is a general objection
19 to this trial as a whole rather than a specific
20 objection to this particular witness's qualifications
21 as I understand it.

22 MR. CARROLL: Well, we did have a sentence
23 about -- about the experts in our filing that we
24 essentially made.

25 THE COURT: These were kind of general

1 discussion that didn't talk about individual witnesses
2 as I recall it.

3 MR. CARROLL: We didn't talk about
4 Dr. Casteleman's specific credentials.

5 THE COURT: I understand.

6 MR. CARROLL: Again, Your Honor, if I can --
7 if I can rely on my filing, so I don't bug you.

8 THE COURT: Absolutely, Mr. Carroll.

9 MR. CARROLL: I figure you'd appreciate that.

10 MR. RAWL: And the Charter defendants also
11 rely on their filed objections.

12 THE COURT: Yes, sir.

13 MR. RAWL: Thank you so much.

14 THE COURT: Yes, sir. All right. You may
15 proceed.

16 MR. SCRUDATO: Thank you, Your Honor.

17 THE COURT: All right. I find that by reason
18 of his training, education, and experience,
19 Dr. Casteleman is qualified as an expert in the matters
20 of public health as it relates to asbestos.

21 BY MR. SCRUDATO:

22 Q. Dr. Casteleman, let's shift gears now, if we
23 could, away from your background and training and talk
24 about Cape Asbestos Company. Can you give Justice Toal
25 a quick overall summary of the company and what it did?

1 A. Well, it was a multinational corporation or
2 collection of companies that were in the business of
3 mining asbestos in South Africa and manufacturing
4 asbestos products in Great Britain, Italy, and other
5 countries and selling the asbestos. They mined all
6 over the world, including a great deal of it sold to
7 the United States.

8 Q. Did Cape issue any, for lack of a better
9 description, brochures about their business?

10 A. Sure. They published occasional brochures, I
11 suppose, for investors and people like that to see what
12 a nice company they were to invest in.

13 Q. Dr. Casteleman --

14 MR. SCRUDATO: Actually, Your Honor, may I
15 approach?

16 THE COURT: Yes, of course.

17 MR. SCRUDATO: These are the exhibits that
18 will be referred to during Dr. Casteleman's testimony.
19 They're all going to be on the screen.

20 THE COURT: All right. All right. I'm
21 receiving a document Dr. Barry Casteleman direct
22 examination exhibits binder, and it lists the various
23 documents he is going to be referring to by exhibit
24 number, and then by order of presentation. All right.
25 You may proceed.

1 MR. SCRUDATO: Thank you, Your Honor.

2 BY MR. SCRUDATO:

3 Q. Dr. Casteleman, would you turn to Exhibit 3,
4 please.

5 A. Yes.

6 Q. And what is that?

7 A. It says Cape Asbestos 1893 to 1953.

8 Q. And what basically is that document?

9 A. It's a document describing the company
10 starting with a history of the company and then
11 describing the business of the company.

12 MR. SCRUDATO: Can you print out the chart,
13 Michael?

14 THE COURT: This is a document published by
15 the Cape Asbestos Company, Limited, Park Street,
16 London; correct?

17 MR. SCRUDATO: Correct.

18 THE WITNESS: Yes.

19 MR. SCRUDATO: Should be one with the yellow
20 lines on it. Okay.

21 BY MR. SCRUDATO:

22 Q. Dr. Casteleman, this is in the 1953 Cape
23 brochure; correct?

24 A. Yes.

25 Q. Can you -- can you use this to explain to

1 Justice Toal the various areas of Cape's business as it
2 relates to this case in particular?

3 A. Sure. I guess we'll go from left to right.
4 They talk about the factories that they have, and
5 Barking Acre Mill and elsewhere in Great Britain. On
6 the other side, they have the South African subsidiary
7 companies that run the mines, and these companies,
8 namely Egnep, which is Penge spelled backward,
9 P-e-n-g-e, is the place where they had the big amosite
10 asbestos mine.

11 And so they have the asbestos mines here as
12 well as the -- and the Cape Blue asbestos mines as
13 well. So this is both the amosite mines and the
14 crocidolite mines that are shown in this lower right
15 corner of this diagram.

16 Q. And how about off to the left where it says
17 "branch offices"?

18 A. Yes, branch office, including one in the
19 United States, in New York, in 1953, this would soon be
20 changed to the North American Asbestos Corporation,
21 NAAC, within a year's time of the publication of this
22 brochure.

23 Q. So this was before or right before NAAC was
24 opened; correct?

25 A. Yes.

1 Q. Okay. And how about Barking? Can you tell
2 Justice Toal what Barking is?

3 A. Barking was one of their big plants. It
4 manufactured various asbestos products. Apparently was
5 a fairly big asbestos factory that opened in 1913, and
6 by the early 1930s, they had a large number of cases of
7 asbestosis which would -- which we'll get into soon, I
8 think.

9 Q. So you pointed me yesterday, Dr. Casteleman,
10 to some language in the 1961 brochure, which I believe
11 is Exhibit 61, where Cape describes its asbestos
12 business.

13 A. Yes. They --

14 Q. Oh, here it is, Dr. Casteleman. It's up on
15 the screen.

16 A. Oh, okay. Well, they talk about them being a
17 bunch of associated companies manufacturing asbestos
18 products.

19 Q. So they describe themselves as group of
20 associated companies in the business of asbestos;
21 correct?

22 A. Right. With products including insulation or
23 brake lines. They also made asbestos boards.

24 Q. So how does Cape's business, Dr. Casteleman,
25 compare in terms of scale and nature to the business of

1 other companies sort of that you described in your book
2 or similarly situated companies? How does it compare?

3 A. They were one of the biggest in the world,
4 one of the biggest asbestos companies. The others of
5 comparable size are Johns-Manville and Turner & Newall.
6 Johns-Manville here in the United States. Big in the
7 sense that they were very integrated companies that
8 owned asbestos mines as well as asbestos product
9 manufacturing plants.

10 Q. Okay. So some companies, for example, like
11 Owens Corning, just made a product that contained
12 asbestos; correct?

13 A. That's right. Like General Motors making
14 brake linings. They weren't married to the asbestos
15 business. If they found they could make brake linings
16 out of something else that would be more profitable to
17 them, they were more willing to go into making with the
18 alternative material than the company that also had
19 asbestos mines.

20 Q. So how was Cape different than that example,
21 the General Motors example?

22 A. Well, because they owned asbestos mines and
23 they were -- they would therefore be opposed to
24 regulations that would limit the sale of asbestos in
25 favor of safer materials.

1 Q. Because they were selling the asbestos fiber
2 to begin with?

3 A. They had that financial interest, yes.

4 Q. Okay. Did this difference give Cape a
5 different knowledge base from which to see any of the
6 harmful effects of exposure to asbestos?

7 A. Sure. That meant that not only in their
8 manufacturing plants, but in their mines, they also had
9 the opportunity to see the harmful effects of asbestos
10 on the people that they employed.

11 Q. Now, going back to the 1953 brochure.

12 MR. SCRUDATO: Michael, would you pull up
13 those few pages.

14 BY MR. SCRUDATO:

15 Q. Explain to Justice Toal what -- what we are
16 all looking at here, Dr. Casteleman.

17 MR. SCRUDATO: Pull back to the whole thing
18 first, Michael, if you would. Thanks.

19 BY MR. SCRUDATO:

20 Q. And then we'll go through them. Go ahead,
21 Dr. Casteleman?

22 A. All right. So they are just sort of showing
23 the fact that asbestos was a material widely used in
24 industry. And they're picturing a few of the workers
25 in the mine on the upper left.

1 MR. SCRUDATO: Can you zero in on the
2 workers, please?

3 BY MR. SCRUDATO:

4 Q. Is there anything noteworthy about these
5 pictures in Cape's 1953 sales brochure?

6 A. Well, the man with the -- with the power
7 drill on top doesn't appear to have been provided with
8 any kind of respiratory protection, and I think when he
9 turns on that drill, they wouldn't get as good a
10 picture because it wouldn't be so clear.

11 Q. We are going to have more on this shortly,
12 Dr. Casteleman, but at the time period that this
13 brochure was distributed in 1953, did Cape know
14 anything about the deadly effects of asbestos exposure?

15 A. Yes.

16 Q. What were the typical type of asbestos fibers
17 that were sold in the United States?

18 A. Chrysotile or white asbestos; amosite,
19 so-called brown asbestos; crocidolite, so-called blue
20 asbestos. The amosite, crocidolite -- amosite almost
21 all came from -- or probably all came from Cape and
22 most of the crocidolite in the United States. That was
23 what was used in cement asbestos pipes and certain
24 types of gasket that were more chemically resistant,
25 that was also largely Cape.

1 Q. What was Cape's share of the worldwide total
2 sales of amosite and crocidolite?

3 A. Amosite I think it was on the order of
4 95 percent and crocidolite 60 percent.

5 Q. So 95 percent of all the amosite being
6 shipped in the United States was coming from Cape?

7 A. Yes, probably.

8 Q. Did Cape sell chrysotile?

9 A. I don't think so.

10 Q. Why was that?

11 A. They didn't own any chrysotile mines.

12 Q. Where did chrysotile come from?

13 A. Mostly Canada. There was also some from
14 Russia and it was scattered around. Other countries
15 also had small chrysotile mines.

16 Q. How does asbestos amosite, chrysotile, and
17 crocidolite compare in terms of potency in causing
18 mesothelioma?

19 A. Well, it's widely regarded -- not
20 universally, but widely regarded that the amphibole
21 varieties, amosite and crocidolite are more capable of
22 causing Mesothelioma in particular than chrysotile
23 asbestos.

24 Q. All right. Dr. Casteleman, let's -- let's
25 shift gears again and -- and move over to what we

1 discussed a few minutes ago, which was Cape's early
2 knowledge of how asbestos affects human beings. Okay?

3 A. Sure.

4 Q. Okay. What are the two principal sources of
5 knowledge that would be relevant to what Cape knew and
6 when it knew it?

7 A. Well, there's the published literature,
8 publicly-available knowledge, and there's the knowledge
9 that they gained through their own experience in their
10 own factories and mines.

11 Q. So public information and private
12 information?

13 A. Yes.

14 Q. Let me ask this question, Dr. Casteleman.
15 Did Cape have knowledge about the harmful effects of
16 asbestos exposure that it kept to itself?

17 A. Yes.

18 Q. All right. Let's -- let's -- let's first
19 address what was known in the published scientific
20 literature, the first category you mentioned. When did
21 Cape first become aware of the health effects of
22 exposure to asbestos?

23 A. I don't know when they first did, but there
24 certainly were publications in the form of newspaper
25 articles that appeared in the late 1920s describing

1 workers who had died of asbestosis and who were
2 certified as having died from asbestosis at postmortem
3 coroner examinations which were part of the public
4 health system in Great Britain.

5 Q. Were these reports from the Barking plant,
6 the one that was on the chart that we were just looking
7 at?

8 A. Yes, they were.

9 MR. SCRUDATO: Do we have an image of that,
10 Michael? All right.

11 THE WITNESS: That's the plant?

12 BY MR. SCRUDATO:

13 Q. Okay. That's in Essex, England?

14 A. Yes, that's a huge factory. Yes.

15 Q. What do they produce there?

16 A. They made brake linings, they made
17 insulation, they made asbestos-containing boards.
18 Probably other things.

19 Q. Okay. Now, the incident you were just
20 talking about at that case at Barking that was public
21 in the local newspaper, what are those called?

22 A. Coroner inquests.

23 Q. Yeah.

24 MR. SCRUDATO: Can you load those?

25 /////

1 BY MR. SCRUDATO:

2 Q. So tell Justice Toal what this is,
3 Dr. Casteleman.

4 A. This is one of these newspaper reports about
5 one of these people that had been certified as having
6 died from working at Cape Asbestos in Barking.

7 MR. SCRUDATO: Can you scroll to the top,
8 please, Michael? Yeah.

9 BY MR. SCRUDATO:

10 Q. "Protests at an inquest. Relative spurns
11 firm's sensitivity. Family stricken by asbestosis."
12 Did I read that correctly?

13 A. Yes. And the company's expression of
14 sympathy without giving any money was the subject of
15 the newspaper's story. That family was pretty upset,
16 but the company had nothing more to offer them than a
17 sorry about that.

18 Q. So this woman, it looks like, was 45 when she
19 died or 46, if I'm reading that correctly; correct?

20 A. Yes.

21 Q. Now, were there other newspaper reports of
22 similar coroner inquests about this time?

23 A. Yes.

24 Q. Do you have them there?

25 A. I think I do in this volume. Oh, this looks

1 like a stack of them. So I have here quite a few of
2 these newspaper stories and just ...

3 MR. SCRUDATO: That is Exhibit 4, Your Honor,
4 in the binder, the stack of requests.

5 THE WITNESS: These are from 1929, 1930,
6 1932, '33.

7 BY MR. SCRUDATO:

8 Q. Okay. Moving on, Dr. Casteleman, you talked
9 about the coroner inquest from the Barking plants in
10 the early 1930s. Are you aware of published scientific
11 articles about these -- about early asbestos disease at
12 Barking, in other words published articles, scientific
13 articles, not stuff published in the newspaper?

14 A. Yes, I am.

15 Q. Can you talk about that for us?

16 A. There was a radiologist named Wood, and a
17 pathologist named Gloyne who knew a whole lot about
18 asbestos disease, much of which I think they learned
19 from workers at the Barking. Wood reported in the
20 British Journal of Radiology in 1934 that he'd seen 80
21 cases of asbestosis at the plant in Barking where
22 people who worked at that plant -- he didn't name the
23 company -- he said the plant was in Barking. And Wood
24 and Gloyne published 100 cases of asbestosis in 1934 in
25 The Lancet.

1 And here again, the Barking plant played a
2 dominant role. All 67 of the women in the report were
3 from the same plant, had worked at the Barking plant.
4 Shortest exposure was only six months' duration. And
5 of the 33 men, most of them had worked at the same
6 plant, and so all told, more than 85 of the 100 workers
7 in there reported that worked at the Barking plant.

8 And just by way of comparison, the British
9 factory inspector had published a report in 1930 based
10 on an attempt to do some survey of the asbestos
11 industry with multiple factories included, probably not
12 including Cape, and they found of 360 people, they
13 found less than 100 cases 96 or 95, I think it was,
14 cases of asbestosis in their survey of the 360 workers
15 they did medical examinations on.

16 So this was a very large number of cases, 100
17 cases reported in 1934. And as I said, all but about a
18 dozen of them were people who worked at the Barking
19 plant for Cape Asbestos.

20 Q. So what did Cape specifically know early on,
21 Dr. Casteleman, about the dangers of working with
22 amosite?

23 A. Well, they had amosite mines and the
24 conditions at the mines were utterly lacking in any
25 kind of safety protection. They were visited by

1 Dr. Gerrit Schepers in 1949 who was associated with the
2 government in South Africa, and he describes hearing a
3 noise inside of a shipping bag and discovered it was a
4 child enclosed in the shipping bag with the asbestos
5 coming down over his head, and the child was kept
6 stepping lively by a supervisor with a whip to pack
7 down the asbestos in the sacks -- in the jute bags for
8 shipment because it was cheaper than having a
9 mechanical contraption to pack the bags. And
10 Dr. Schepers reported seeing children with advanced
11 asbestosis who were 12 years old.

12 Q. And where did he report that?

13 A. He published that in a big conference in
14 New York in 1964. The conference proceedings were
15 published at the end of 1965, and there was -- in
16 edition to the papers that were presented, there were
17 also discussion periods after the presentation of the
18 articles and the discussions were transcribed in the
19 conference proceedings as well, and so this is really
20 among the most -- is the most horrifying thing I have
21 read in the medical literature on asbestos and disease,
22 Schepers description of children in the shipping bag.

23 Q. Was that a Cape mine?

24 A. Yes.

25 Q. How about the -- are you familiar with the

1 Wyers' paper, Dr. Casteleman, from 1946?

2 A. Yeah. Well, there was a Wyer's doctoral
3 thesis, and that was 1946. And then there was a paper
4 he published in a journal called Postgraduate Medicine
5 in 1949 both about the same population. Schepers was
6 the company doctor with Cape, and reported in the
7 published article about 115 deaths or cases of
8 asbestosis and --

9 Q. Is this the paper? Is this the paper?

10 A. This is the doctoral thesis. So let's take
11 that. And one of the things he notes in the doctoral
12 thesis is about amosite, and he says, "The dirty wire,
13 or brownish yellow amosite is friable, dusty, difficult
14 to work, so hard that steel parts which normally last
15 weeks or months are worn away in two or three days and
16 its reputation as regards to health utterly
17 pernicious."

18 The other big asbestos company, Turner &
19 Newall, also had a --

20 Q. Yeah, I was going to ask you about that.

21 A. Had a concern about amosite. One of the
22 internal corporate documents reported that Sir Samuel
23 Turner had ordered that internal -- in-factory use of
24 amosite not be used because it was so dusty.

25 Q. Well, they had a policy about a certain type

1 of processing; correct?

2 A. Right.

3 Q. And what -- what did they forbid?

4 A. The processing of amosite in the factory.

5 Q. In a dry form?

6 A. In a dry form; right.

7 Q. Did Cape ever adopt that policy?

8 A. No.

9 Q. You mentioned earlier where Cape mined the
10 amosite in South Africa. Penge was it?

11 A. Yes. The northeast end of Transvaal, which
12 is sort of the eastern -- North Eastern corner of South
13 Africa.

14 Q. What was the scale of the Penge mine?

15 A. They employed, I think, 5,000 workers.

16 According to one of the publications in the '40s, they
17 employed a large number of people, and a lot of people,
18 which they may or may not have counted in the 5,000,
19 were women and children. The men would work
20 underground with the drilling and blasting, but the
21 host rock, called banded iron stone, was extremely
22 hard, and the usual milling of asbestos that separates
23 the asbestos fibers from the host rock was difficult to
24 do with both amosite and crocidolite, which had the
25 same host rock, this banded iron stone, because it was

1 so hard it would tear up the mill. The machinery would
2 be damaged because the host rock was so hard that
3 separating it from the asbestos was very damaging to
4 the machinery.

5 So they had these women with 4-pound hammers
6 hammering the asbestos fiber loose and putting it in
7 bags and separating it from the rock so they wouldn't
8 have to process the rock in the mill. It was a cheaper
9 way of doing this separation.

10 Q. Dr. Casteleman, you referenced the Doll
11 article from 1955 in your expert report.

12 A. Yes.

13 Q. Can you tell us about that one and why it's
14 significant?

15 A. Well, Doll found that there was ten times the
16 rate of lung cancer in people who worked at an asbestos
17 factory as in the general population. It's one of the
18 early epidemiology studies. He was a pioneer in
19 designing these studies. He had done studies on
20 cigarette smoking five years before.

21 Q. So let's -- let's pivot slightly,
22 Dr. Casteleman. Were there any developments in the
23 late 1950s in South Africa about asbestos as a cause of
24 mesothelioma in humans?

25 A. Yes. Up until then, there had been

1 previously published cases of mesothelioma in people
2 with asbestosis, most of them, but they were scattered
3 and only one or two cases in most of these reports.

4 But then --

5 MR. SCRUDATO: From Dr. Casteleman's book.

6 BY MR. SCRUDATO:

7 Q. Hold on, Dr. Casteleman.

8 MR. SCRUDATO: It was page 105 or 106, in
9 that area. Nope, after that. Nope. Crocidolite.

10 THE WITNESS: The table he's referring to is
11 on page 105 of my book, Your Honor. So it's three
12 pages starting on 105.

13 MR. SCRUDATO: Here we go, Your Honor. We
14 have it up on the screen now.

15 THE COURT: I can see it better in the book.

16 MR. SCRUDATO: Okay. We can make it bigger
17 on the screen. How is that?

18 THE COURT: Yep.

19 BY MR. SCRUDATO:

20 Q. Okay. Can you explain to Justice Toal what
21 this chart is now where -- where -- where it appears
22 and what it is?

23 A. As I say, this is a chapter on -- a cancer
24 chapter of my book, and in three pages it lists
25 publications in -- medical publications that relate to

1 mesothelioma among people exposed to asbestos, most of
2 whom were people who were identified as people with
3 asbestosis. And so Vagler (phonetic), the third -- the
4 third publication listed in 1943, actually two
5 publications, but he talked about the same two cases in
6 both of them, in other words, they were separate German
7 medical publications, talked about the fact that the
8 Germans had by that time autopsied 29 cases of
9 asbestosis, and they found that four of them had cancer
10 of the lung, two of them had primary cancers of the
11 pleura and Vagler said both the lung cancers and the
12 pleural cancers are occupation cancers.

13 So Vagler was the first to say that
14 mesothelioma of the pleura was an asbestos disease in
15 occupational cancer. And although this was published
16 in 1943 in the Journal of the American Medical
17 Association equivalent in Germany, the German Medical
18 Weekly, this was the subject of abstracts starting with
19 one published in the United Kingdom written Gloyne,
20 G-l-o-y-n-e, the following year.

21 So even in the middle of World War II the
22 British were publishing abstracts of German articles
23 talking about mesothelioma and asbestosis, remarkable
24 as that is, and the abstract published in the Book of
25 Hygiene in Britain was then republished in the United

1 States, and that's what these references -- reference
2 numbers relate to is the publication of the abstracts
3 of the German article.

4 MR. SCRUDATO: Michael, could you move so we
5 can see the page that is on the far right, the last
6 page?

7 BY MR. SCRUDATO:

8 Q. Okay. Now, the article you referred to in
9 the first question I asked you about developments in
10 South Africa, you referred to the Wagner paper;
11 correct?

12 A. Yeah. You pronounced his named Wagner, but
13 that's right.

14 Q. So as I understand your testimony, prior to
15 when the Wagner paper came out, there was a number of
16 reports in various journals connecting asbestos to
17 mesothelioma; correct?

18 A. Yes. And you can see, but if you look at the
19 number of cases, the second column, there are mostly
20 one or two cases in these reports. As you get to the
21 later ones, there are maybe a few more. But still, not
22 until you get to the Wagner's paper do you have a large
23 number of 33 cases of pleural mesothelioma, 32 of which
24 Wagner confirmed had exposure to asbestos.

25 Q. What impact did the Wagner paper have in the

1 scientific community, Dr. Casteleman?

2 A. It led -- it's one of the most widely cited
3 papers in the medical literature on asbestos and
4 disease, and within two years, more cases -- 15 more
5 cases of mesothelioma were reported from the shipyards
6 in Belfast and Northern Ireland. Now, the doctor who
7 had published in 1958 about a smaller number of cases,
8 figured out why these people had mesothelioma. He
9 hadn't known in 1958, but by 1962 he did.

10 And so -- and then the big conference in
11 New York in 1964 pretty well finished as far as medical
12 scientific recognition of mesothelioma as an asbestos
13 disease, but I think a lot happened between 1960 and
14 1964.

15 THE COURT: 1964 was the Mount Sinai
16 conference, wasn't it?

17 THE WITNESS: Yes, Your Honor.

18 BY MR. SCRUDATO:

19 Q. So Wagner now has this information. What did
20 he -- what did he do with it?

21 A. Well, Wagner published what he knew, and he
22 also was still in South Africa in 1960 trying to work
23 with a group called Pneumoconiosis Research Unit to
24 look further into this problem in the area -- in the
25 areas where crocidolite asbestos was mined in the

1 northern western cape province and amosite asbestos in
2 the Transvaal were mined. And it was -- it was
3 organized that there'd be surveys conducted, medical
4 surveys.

5 And the surveys were in fact conducted
6 between 1960 and 1961, and by 1962, they were starting
7 to write up some of their findings -- well, 1961 and
8 1962 they were being written up, but they were never
9 made public for another 20 years until a journalist was
10 able to track down the report of the research which had
11 been not only suppressed but opposite claims had been
12 made publicly about the lethality of amosite and
13 crocidolite asbestos by people representing Cape, which
14 I think we'll get to.

15 Q. We are going to come to that in some detail,
16 Dr. Casteleman. Correct. You mentioned something
17 called the Pneumoconiosis Research Unit?

18 A. Yes.

19 Q. Can we abbreviate that as PRU as we go?

20 A. Yeah, fine.

21 Q. Did Dr. Wagner, after he discovered the
22 mesotheliomas in South Africa, make a trip to England
23 to meet with any of the asbestos-producing companies?

24 A. In the early years of his research, even
25 before he published anything about it, in 1958, he went

1 to Britain, and he talked about -- about this with
2 executives of Cape and Turner & Newall.

3 Q. Was he seeking funding?

4 A. Pardon?

5 Q. Was he seeking funding? Research --

6 A. Yes, yes. He thought this kind of research
7 you people ought to be interested in.

8 Q. And so --

9 A. So he talked to executives, and they were --

10 Q. What was their first reaction?

11 A. Well, they told him they didn't know anything
12 about that, and they told him that he probably ought to
13 look into something else.

14 Q. This was the folks from Cape and Turner &
15 Newall?

16 A. Yes.

17 Q. Did they ultimately change their mind about
18 funding research in South Africa?

19 A. I can't recall them ever funding research.

20 Q. Did Cape ever change its mind about funding
21 research in South Africa through the PRU?

22 A. Well, they stopped after the -- after that
23 first work had been done in 1960 and 1961. I don't
24 recall them doing anything subsequent to that in terms
25 of research.

1 Q. Okay. Did Dr. Wagner publicize -- publish
2 his findings of the 32 mesotheliomas in South Africa?

3 A. Yes, we talked about that paper. That was so
4 prominently cited and led to recognition of
5 mesothelioma as an asbestos disease on a much more
6 widespread level.

7 Q. Did he report anything about the nature or
8 type of the exposures, the extent of the exposures that
9 had caused the 32 mesotheliomas?

10 A. Sure. And he describes them also in a table
11 at the end of the -- of the article, but it's evident
12 that about half of these people had only environmental
13 exposure. These were not people who were
14 occupationally exposed to the -- and it was mostly the
15 blue asbestos mines, the crocidolite mines. But here
16 you see his descriptions in the middle about the
17 expected -- exposure, and it's mostly, you know, lived
18 a whole life in the location near an asbestos mill.
19 Lived her life in the vicinity of the mines.

20 So lots of these cases were nonoccupational
21 exposure, people with only environmental exposure who
22 were -- who were developing this deadly cancer.

23 Q. Do we know what company was doing the mining
24 where these 32 cases were found?

25 A. Cape. There were other companies that were

1 doing some mining in the -- in the region in the
2 northwestern Trans of Cape province, but Cape was the
3 dominant company in the area in terms of volume of
4 asbestos they mined.

5 Q. So can you put -- put this study in context
6 in terms of its importance in the development of
7 knowledge about asbestos disease?

8 A. Well, it showed that at least -- at least
9 with the blue asbestos, it didn't seem to take very
10 much exposure to cause mesothelioma. These were not
11 people who were working underground and drilling the
12 walls of mines and getting their asbestos exposure.

13 Q. Okay. Let's -- let's sum up where we are
14 here, Dr. Casteleman. We've been talking about
15 published scientific articles, about the dangers of
16 asbestos exposure up until 1960 when Wagner publishes
17 his study; correct?

18 A. Mostly, yes.

19 Q. And we've also talked about asbestos hazards
20 that Cape learned on its own from its workers at the
21 Barking plant; correct?

22 A. Yes.

23 Q. Okay. And at this point in time, up to 1960,
24 was Cape selling asbestos fiber worldwide for
25 incorporation into asbestos products like pipe

1 covering, for example?

2 A. Yes.

3 Q. Including in the United States; correct?

4 A. Yes. The amosite asbestos was very widely
5 used in pipe covering in the United States.

6 Q. Including selling fiber into South Carolina;
7 correct?

8 A. Yes.

9 Q. Now, your book identifies numerous
10 publicly-available reports of mesothelioma in
11 association with asbestos exposure going back to 1943;
12 correct? The Vagler (phonetic) report?

13 A. Yeah, the mesothelioma cases.

14 Q. Capped off with Wagner's publication of 32
15 mesos at the Cape Asbestos mine published in 1960;
16 correct?

17 A. Well, they weren't ever single one, but most
18 of them were from the blue mine, yes.

19 Q. As of 1960, Dr. Casteleman, are you aware of
20 any warnings or instructions to workers anywhere in the
21 United States, including South Carolina, regarding the
22 harmful effects of asbestos exposure?

23 A. No.

24 Q. Any warnings from Cape regarding -- to
25 workers involving the harmful effects of asbestos

1 exposure?

2 A. No.

3 Q. And in 1961 when Cape published its 30-page
4 asbestos, the raw material brochure, Cape included
5 information on how to order its asbestos fibers;
6 correct?

7 A. Sure.

8 Q. And included information about how to pay for
9 its asbestos; right?

10 A. Correct.

11 Q. Does the 1961 publication say anything at all
12 about mesothelioma as a risk factor in asbestos
13 exposure?

14 A. It says nothing about the dangers of
15 asbestos.

16 Q. So it says nothing about any adverse health
17 effects; right?

18 A. Correct.

19 Q. Does it say anything about worker protection
20 when working with asbestos supplied by Cape?

21 A. No.

22 MR. SCRUDATO: Your Honor, I'm going to do
23 another detour if we keep going.

24 THE COURT: Yes, sir. All right.

25 MR. SCRUDATO: All right. Your Honor, let's

1 shift now --

2 THE COURT: Just a second.

3 You good? All right.

4 BY MR. SCRUDATO:

5 Q. Dr. Casteleman, you good to proceed? Okay.

6 All right. Let's shift gears, Dr. Casteleman, and now
7 talk about Cape's sales operation in the United States.
8 Okay?

9 A. (Witness nods head.)

10 Q. All right. When did Cape start selling
11 asbestos fiber in the United States from the beginning?

12 A. Oh, probably around 1920 they were
13 advertising in Asbestos Magazine every month almost.

14 Q. Tell Justice Toal what Asbestos Magazine it
15 was?

16 A. It was a trade magazine that was published in
17 Philadelphia starting in 1919 and published until 1983.
18 I was one of its subscribers in the last years, and it
19 talked about the global asbestos industry, what was
20 going on, who was opening new mines, factories, that
21 sort of thing.

22 Q. Do you know when Cape -- when Cape stopped
23 advertising in Asbestos Magazine?

24 A. I think it was in -- sometime in the 1970s.
25 I don't know when.

1 Q. Okay. And over that time period, from 1920
2 to the late 1970s, approximately how many ads did Cape
3 place for its asbestos in Asbestos Magazine?

4 A. I think there were hundreds of them.

5 Q. Did Cape have a sales arm in the United
6 States?

7 A. Yes. It was called the North America --

8 Q. Hold on a second, Doctor.

9 MR. SCRUDATO: Is this an advertisement?

10 UNIDENTIFIED SPEAKER: Yes.

11 MR. SCRUDATO: Here we go, Your Honor. Your
12 Honor, this is one of the advertisements. It looks
13 like this was from 1966 for crocidolite from Cape
14 Asbestos Fibers Limited.

15 THE WITNESS: Yes.

16 BY MR. SCRUDATO:

17 Q. All right. Now, North American Asbestos, as
18 you mentioned earlier, was Cape's sales arm in the
19 United States; correct?

20 A. Yes.

21 Q. And when was it formed?

22 A. 1953.

23 Q. Okay. And before it was formed, it was the
24 New York sales agency?

25 A. Right. They had a New York sales office that

1 did their sales.

2 Q. Okay. Where was NAAC? Where was it located?

3 A. In Chicago.

4 Q. Can you describe it? How many employees, you
5 know?

6 A. It was basically a one-man show. They had
7 some secretarial assistants that helped to manage the
8 orders and process the ...

9 Q. So he basically coordinated deliveries?

10 A. Yes.

11 Q. Was it the only one person there who
12 functioned in that role?

13 A. Well, it was like one, more or less,
14 executive-type of person, and the rest were
15 secretarial-type assistants.

16 Q. Okay.

17 A. Clerical assistants.

18 Q. Okay. Who was the first director or salesman
19 at Cape?

20 A. Richard Cryor was the first head of NAAC, if
21 that's what you're getting at.

22 Q. Yes, I am. Tell us about Mr. Cryor. Where
23 did he work before NAAC?

24 A. Mr. Cryor worked for UNARCO, which was an
25 asbestos insulation manufacturing company in northern

1 New Jersey and then he went to work for Cape in 1953.

2 Q. Did -- and so Mr. Cryor had an understanding?

3 A. He had certainly experience with, you know,
4 manufacturing asbestos products.

5 Q. Were there workers' compensation claims
6 relating to asbestos disease filed by Union Asbestos,
7 Mr. Cryor's former employer?

8 A. Yes. At the UNARCO or Union Asbestos &
9 Rubber Company. It varied. At different times it was
10 called one or the other. Yes, they had workers'
11 compensation claims in the 1940s, several of which I
12 describe in my book.

13 Q. Can you pull up the -- can you describe this
14 for Justice Toal?

15 A. So this is a document from one of the
16 compensation claim files that has come to light in the
17 course of the asbestos litigation, and Cryor handwrote
18 this note in 1944.

19 Q. What does the note say?

20 A. "The attached correspondence relates to E.
21 Ross case, and I don't think it should appear in his
22 personnel file, probably better kept with your file on
23 the case."

24 Q. And what was the attached correspondence?

25 A. It was the workers' compensation claim record

1 of Mr. Ross.

2 Q. Did you see any records indicating why
3 Mr. Cryor didn't want this to appear in his personnel
4 file?

5 A. It appears to me that the personnel file
6 might have been more available to more people to see,
7 and he wanted it to be a limited access matter that
8 people were getting asbestosis working at that factory.
9 Wasn't apparently something they were anxious to tell
10 the workers about.

11 Q. Now, Mr. Cryor left his job at NAAC in what
12 year, Dr. Casteleman?

13 A. 1969. I think he died in 1970.

14 Q. What did he die of?

15 A. Mesothelioma.

16 Q. So when did the business of NAAC end, North
17 American Asbestos?

18 A. Oh, 1977, something like that. '77, '78, I
19 think.

20 Q. Okay. Let's -- let's talk about the Cape
21 customer base in the United States.

22 MR. SCRUDATO: Could you pull up those
23 customer lists, please?

24 BY MR. SCRUDATO:

25 Q. So could you walk Justice Toal through these

1 Cape documents, Dr. Casteleman? Let's go to the --

2 MR. SCRUDATO: Just the ship to, Michael, and
3 not the foreign states.

4 THE WITNESS: So they list, it looks like,
5 about 40 states in the United States that they shipped
6 asbestos to.

7 BY MR. SCRUDATO:

8 Q. And is South Carolina on the list?

9 A. Yes.

10 MR. SCRUDATO: Can we go to the next page,
11 Michael?

12 BY MR. SCRUDATO:

13 Q. And what is this?

14 A. This states where suits had been filed
15 against them.

16 Q. And one of those states is South Carolina;
17 correct?

18 A. Yes.

19 Q. Let's go to the next document. Next, let's
20 go to the actual sales list. Okay. Explain to Justice
21 Toal what we are looking at here, Dr. Casteleman.

22 A. It's a list for different periods of time of
23 customers for the Cape Asbestos Fiber. You can see
24 lots of big companies in the United States, asbestos
25 companies and companies that are so well-known as

1 asbestos companies. I guess they may have been selling
2 insulation to companies like General Electric.

3 MR. SCRUDATO: Michael, you have one of these
4 highlighted. Can you pull that one up, please. Okay.

5 Justice Toal, this one is highlighted.

6 BY MR. SCRUDATO:

7 Q. Can you explain to Justice Toal what this one
8 is, Dr. Casteleman?

9 A. You can -- you can see, again, lots of
10 companies that used a lot of asbestos and asbestos
11 products.

12 Q. And what -- who are the highlighted
13 companies?

14 A. Like Pittsburgh Corning, Great Asbestos
15 Manhattan, companies that were making asbestos
16 products. Union Asbestos was another. Southern
17 Asbestos made textiles --

18 Q. All right. So sort of --

19 A. -- (inaudible) Insulation made insulation.
20 Garlock made gaskets. Keaseby & Mattison made asbestos
21 cement pipe. Mudent Cork made insulation.
22 Johns-Manville made just about everything out of
23 asbestos.

24 Q. So it's basically a who's who of asbestos
25 manufacturer -- product manufacturers in the United

1 States?

2 A. Yes.

3 Q. All right.

4 A. I mean, the insulation wasn't just -- the
5 amosite asbestos wasn't just used in the companies that
6 made Union Asbestos using only amosite. There were
7 widely used insulation products made by Johns-Manville.
8 Owens Illinois and Owens Corning also used amosite
9 asbestos as well as crocidolite and its combinations in
10 the making of their pipe covering.

11 Q. All right. Dr. Casteleman, explain to
12 Justice Toal how Cape Asbestos Fibers' fiber would have
13 found its way into South Carolina.

14 A. Well, either by being shipped directly as raw
15 fiber or being -- more likely, more commonly in
16 products that were shipped into the state that were
17 made from Cape Asbestos Fiber, products like thermal
18 insulation that were manufactured someplace else and
19 shipped into South Carolina.

20 Q. So the first one would be direct shipments to
21 customers in South Carolina; correct?

22 A. Customers of the asbestos fiber itself, yes.
23 Pure fiber.

24 Q. And can you explain in a little bit more
25 detail, perhaps use Pittsburgh Corning as an example,

1 how Cape Asbestos fiber shipped to a Pittsburgh Corning
2 manufacturing facility could find its way into
3 South Carolina.

4 A. Well, the plant, Pittsburgh Corning plant was
5 in Tyler, Texas, and so they had -- you know, they
6 shipped asbestos insulation, you know, asbestos
7 so-called insulation all over -- all over the country,
8 and certainly including South Carolina.

9 Q. So if UniVest pipe covering was used in
10 South Carolina by an insulator, would that insulator
11 have been exposed to Cape Asbestos?

12 A. Yes.

13 Q. Well, how could -- how could one determine
14 where Cape Asbestos fibers were used in South Carolina?

15 A. Well, I guess it's, you know, in the purchase
16 and shipping documents that the companies retain about
17 the records of what they bought and where they got it
18 from, and what the workers themselves actually remember
19 working with as testified in -- in numerous -- numerous
20 cases in which workers brought claims.

21 Q. So if a worker testified, I used Pittsburgh
22 Corning, you know, UniVest at a plant in
23 South Carolina?

24 A. Sure, sure.

25 Q. How about the bankruptcy trust records?

1 A. Yes. Those too have lists of sites that are
2 recognized as sites where the company's products were
3 used. Approved sites I think they are sometimes
4 referred to in some of these reports.

5 Q. Meaning, for example, Pittsburgh Corning has
6 a list of approved sites in South Carolina, such that
7 it's presumed that, you know, UniVest was at that site;
8 correct?

9 A. That's right. And that means that people can
10 apply to the bankruptcy trust of the company and get
11 some compensation as a consequence of that.

12 Q. Okay. All right. Same for Johns-Manville?

13 A. Right.

14 Q. It was a major -- major purchaser of Cape
15 Asbestos?

16 A. Yeah. All these bankruptcy trusts have
17 similar setups with recognizing sites where it's been
18 established that the company's products, asbestos
19 products were used.

20 Q. Okay. Got it.

21 MR. SCRUDATO: Your Honor, this -- I don't
22 know what your schedule -- how your schedule is,
23 this -- we are going into a different area now. It
24 might be --

25 THE COURT: How long do you think his

1 testimony is going to last?

2 MR. SCRUDATO: Well, we are getting to the --
3 some of the key documents about Cape's knowledge.

4 THE COURT: Right.

5 MR. SCRUDATO: I would say another two hours.
6 Hour and a half, two hours.

7 THE COURT: Well --

8 MR. SCRUDATO: I don't think we can finish it
9 today.

10 THE COURT: All right. All right. Well,
11 let's take it -- if you move into a different area, do
12 you think this is a convenient time to stop?

13 MR. SCRUDATO: I do, yes.

14 THE COURT: All right.

15 MR. SCRUDATO: Yes, I do.

16 THE COURT: All right. Dr. Casteleman, thank
17 you very much for today's testimony. You will be here
18 tonight, you can be pleasant with people, but don't
19 talk about your testimony. You are under oath
20 testifying in this case; so you don't talk about your
21 testimony.

22 THE WITNESS: I understand, Your Honor.

23 THE COURT: Yes, sir, you're an experienced
24 person at litigation.

25 THE WITNESS: Every state has got its own

1 rules.

2 THE COURT: I am sure you understand the
3 rules. So with that, Court will be adjourned today.
4 We will resume at 9:30 sharp.

5 MR. SCRUDATO: Thank you, Your Honor.

6 THE COURT: All right. Court will be in
7 recess.

8 (Whereupon the proceedings were
9 adjourned at 4:27 p.m.)

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CERTIFICATE OF REPORTER

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



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