STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	
COUNTY OF RICHLAND)	**FOR THE FIFTH JUDICIAL CIRCUIT**
JERRY P. ROSS and **PAULETTE W. ROSS,**	**C/A NO. 2024-CP-40-03710**
Plaintiffs,	
v.	*In Re:* Asbestos Personal Injury Litigation Coordinated Docket
ASCEND PERFORMANCE MATERIALS OPERATIONS LLC, et al.,	
Defendants.	

PLAINTIFFS' MOTION FOR DAMAGES AGAINST CAPE INTERMEDIATE HOLDINGS LIMITED

COMES NOW, Plaintiffs Jerry and Paulette Ross, by and through counsel, and hereby file this Motion for Damages Against Cape Intermediate Holdings Limited ("Cape"). In support of their Motion, Plaintiffs would respectfully show as follows:

I. INTRODUCTION

Cape failed to answer this matter and was placed into default. Because this is a personal injury case and the damages are not, largely, liquidated, this Court ordered a damages hearing to go forward on April 20, 2026. Plaintiffs submit this brief in advance to detail the evidence expected to be presented to this Court.

Jerrry Ross suffers from malignant mesothelioma, an invariably fatal disease resulting from exposure to asbestos. He and his wife, Paulette filed this matter seeking damages, economic, non-economic and punitive, to compensate them and further sought punitive damages to deter similar conduct by defendants.

II. LEGAL CLAIMS FOR WHICH CAPE HAS ADMITTED AND BEEN DETERMINED TO BE LIABLE

"It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability."[1] As such, by suffering default, Cape has admitted all of the facts as pled in Plaintiffs' Second Amended Complaint and conceded liability under each of the following causes of action:[2]

A. Product Liability: Negligence[3]

B. Product Liability: Strict Liability[4]

C. Vicarious Liability Based on Respondeat Superior[5]

D. Negligence *Per Se*[6]

E. Product Liability: Beach of Implied Warranties[7]

F. Fraudulent Misrepresentation[8]

G. Loss of Consortium[9]

III. CATEGORIES OF DAMAGES TO BE AWARDED

A. Medical Bills

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[1] *Roche v. Young Bros., of Florence*, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998) (*citing Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 246 S.E.2d 880 (1978); *Schenk v. National Health Care, Inc.*, 322 S.C. 316, 471 S.E.2d 736 (Ct.App.1996); *State ex rel. Medlock v. Love Shop, Ltd.*, 286 S.C. 486, 334 S.E.2d 528 (Ct.App.1985).

[2] *See* **Exhibit 1**, Second Amended Complaint. For efficiency, Plaintiffs are not reciting the individual elements of each cause of action in this Motion. However, Plaintiffs incorporate all allegations set forth in Plaintiffs' Second Amended Complaint as if set forth fully herein.

[3] *See id*. at §§38-53.

[4] *See id*. at §§54-70.

[5] *See id*. at §§71-87.

[6] *See id*. at §§103-106

[7] *See id*. at §§107-110.

[8] *See id*. at §§111-114.

[9] *See id*. at §§115-118.

Prior to his diagnosis in April of 2024, Mr. Ross was in "very good health."[10] Following his diagnosis, Mr. Ross' doctors determined immunotherapy treatments were his best option.[11] Mr. Ross received six immunotherapy treatments over an 18-week period.[12] As of October of 2025, Mr. Ross had accrued $565,397.36 in medical bills associated with his mesothelioma and treatment.[13] Dr. Frank opined that "[g]iven the expense of immunotherapy drugs, [Mr. Ross' medical bills are] quite consisted with appropriate treatment for his condition."[14]

B. Pain and Suffering and Loss of Consortium

Mr. Ross has - and continues to - experience pain, suffering, nervous and emotional distress, mental anguish, and suffers from changes to his general health, strength and vitality. As one example, prior to his diagnosis Mr. Ross did not require any supplemental oxygen.[15] He now requires oxygen "all the time, 24/7."[16] Mr. Ross explained that his diagnosis was "a rude awakening," and he simply is not able to do the basic everyday things he used to.[17] Both Mr. Ross and his wife, Paulette, are worried about his future but have resolved to "just take it a day at a time."[18]

C. Punitive Damages

Cape is liable to Plaintiffs for its willful, wanton, or reckless misconduct in knowingly and intentionally concealing and misrepresenting the dangerous characteristics of their asbestos products, as well as concealing the detrimental aspects of asbestos to Jerry Ross's health and physical condition. Cape's actions were willful, wanton, or reckless in its total disregard of the

[10] **Exhibit 2**, Deposition Transcript of Jerry Ross, dated Aug. 14, 2024 ("Ross Dep.") at 57:19-22.
[11] *Id*. at 62:6-18.
[12] *See id*.
[13] *See* **Exhibit 3**, Medical Billing Records.
[14] **Exhibit 4**, Expert Report of Dr. Arthur Frank, at 2.
[15] *See* Ex. 2, Ross Dep. at 62:25-63:9.
[16] *Id*.
[17] *Id*. at 63:16-64:2.
[18] *Id*. at 63:10-64:4.

health and safety of the users and consumers of their products.[19] This Court has the authority to award punitive damages in a default matter. In *Solley v. Navy Federal Credit Union, Inc.* 397 S.C. 192 (S.C. App. 2012), the South Carolina Court of Appeals found that, in a default case, "[t]he trial judge has considerable discretion regarding the amount of damages, both actual or punitive." Solley v. Navy Fed. Credit Union, Inc., 397 S.C. 192, 203, 723 S.E.2d 597, 602 (Ct. App. 2012). Indeed,

> [i]n a default case, the plaintiff must prove by competent evidence the amount of his damages, and such proof must be by a preponderance of the evidence. Although the defendant is in default as to liability, the award of damages must be in keeping not only with the allegations of the complaint and the prayer for relief, but also with the proof that has been submitted.

Id. at 603.

IV. RELEVANT FACTUAL AND PROCEDURAL HISTORY

A. Jerry Ross Developed Mesothelioma as a Result of Exposure to Asbestos.

1. Mr. Ross was exposed to asbestos while working at Monsanto in Greenwood Mills, SC.

Mr. Ross graduated from Greenwood Mills High School in Greenwood, South Carolina in 1962.[20] After graduating from high school Mr. Ross served in the U.S. Airforce from 1962 to 1966.[21] In 1966, he began working at Chemstrand ("Monsanto") in Greenwood, South Carolina.[22] Mr. Ross worked at Monsanto for over three decades, from 1966 until 1998.[23]

[19] *See infra* Section IV.B-C.
[20] *See* Ex. 2, Ross Dep. at 19:12-20:1.
[21] *Id*. at 20:21-21:2.
[22] *Id*. at 22:21-24:19. The Chemstrand plant was later purchased by Monsanto, but plant operations continued without change.
[23] *Id*.

The Monsanto plant produced nylon and was comprised of two large buildings, the North plant and the South plant.[24] Mr. Ross also referred to the two plants as the "textile side" and the "carpet side."[25] The plant buildings were open with some areas divided off.[26] The equipment at the plant was heated by steam that came from boilers in a boiler room separate from the main building.[27] Insulated pipes ran from the boiler room to the main building to connect to the various equipment.[28]

a. Work in the Pack Room (1966-1968)

Mr. Ross worked in the Pack Room in the South plant from approximately 1966 until 1968.[29] The Pack Room was a separate room on the Second Floor of the South plant that was partitioned off from the main area.[30] Mr. Ross' main job duty was to go to the "spinning area" and get used packs, bring them back to the pack room, and put them in the furnace to "burn them off."[31] Mr. Ross had to walk through the plant to get to the spinning room.[32] There was maintenance and repair work going on in the other areas of the plant while he walked through it.[33]

b. Work in the Pre-Bulk Area (1968-1970)

Around 1968 Mr. Ross moved to the "pre-bulk" area in the South plant, where he worked for approximately two years.[34] Pre-bulk is where bulk is added to yard to make it fluffy for carpet.[35] The pre-bulk area was open to other areas of the plant and had pre-bulk machines, rewinders, and

[24] *See id*. at 24:17-25:5.
[25] *Id*. at 67:14-68:15.
[26] *See id*. at 25:20-24.
[27] *See* Ex. 2, Ross Dep. at 25:25-26:25.
[28] *See id*.
[29] *See id*. at 27:30-10.
[30] *See id*. at 28:6-17, 72:20-23.
[31] *Id*. at 27:11-16.
[32] *See id*. at 28:24-29:12.
[33] *See id*. at 29:14-21.
[34] Ex. 2, Ross Dep. at 29:22-30:20.
[35] *See id*.

pumps.[36] There were steam pipes running through the area connected to the pre-bulk machines.[37] Mr. Ross operated the pre-bulk machine.[38] He removed bobbins of yarn when they got full and put a new one on to make another bobbin.[39]

Once or twice a year maintenance was performed on the pre-bulk machine to "recondition" it.[40] The pre-bulk machine would be shut down and a crew would clean it and start it up again.[41] From pre-bulk, Mr. Ross could see maintenance being performed on equipment in other areas of the plant.[42]

c. Work in the Spinning Area (1970-1990)

Around 1970, Mr. Ross moved to the "spinning area." He worked as a spinning machine operator for around 20 years, first in the South plant, then later in the North plant.[43] The spinning machines were 3-stories tall and made bobbins of yarn.[44] Nylon flakes were fed into the top. On the second floor it came out as thread, and then on the first floor rollers and wheels made it into a bobbin of yarn.[45] The spinning area in the South plant was about the size of a football field and had eight spinning machines.[46] The spinning area in the North plant was about half the length of a football field and had four spinning machines.[47]

[36] *See id*. at 30:25-31:25.
[37] *See id*.
[38] *See id*. at 74:19-75:1.
[39] *See id*. at 75:3-10.
[40] Ex. 2, Ross Dep. at 31:25-32:17.
[41] *See id*.
[42] *See id*. at 31:4-11.
[43] *Id*. at 32:18-23; 33:17-19; 77:2-8.
[44] *See id*. at 33:1-13.
[45] *See id*.
[46] *See* Ex. 2, Ross Dep. at 33:23-24; 37:16-18.
[47] *See id*. at 34:18-21; 37:19-21.

There were steam pipes running throughout the spinning departments to all the equipment, including pumps connected to the spinning machines.[48] The pipes and the equipment were insulated because it was a hot process that started with nylon flake that had to be melted.[49]

Maintenance was done on the spinning machines on a scheduled basis but also occurred because of power failures.[50] Monsanto had its own maintenance crew that handled the day-to-day maintenance.[51] Planned shutdowns occurred around twice a year and lasted a week.[52] Monsanto brought in outside contractors to work the shutdowns.[53] The outside contractors removed piping and equipment and then reinstalled it.[54] The pipes had to be removed and taken apart and would then be taken to the furnace to burn off the polymer stuck inside before reinstalling the pipes.[55] Mr. Ross was present during shutdown maintenance because he was operating another of the spinning machines.[56]

Insulation had to be taken off the pipes before they were removed.[57] Insulation was attached to the pipe with metal bands; the metal bands were cut off and then the insulation removed and the pipes were unbolted.[58] Removing insulation was dusty and Mr. Ross breathed the dust.[59] The pipes were put back and reinsulated after repairs were completed.[60] Most of the time the same insulation

[48] *See id*. at 36:4-37:8.
[49] *See id*. at 37:3-15.
[50] *See id*. at 37:22-38:20.
[51] *See id*.
[52] *See* Ex. 2, Ross Dep. at 38:22-39:19.
[53] *See id*. at 39:20-40:8.
[54] *See id*. at 40:5-13.
[55] *See id*. at 41:17-25; 42:5-8.
[56] *See id*. at 42:9-13.
[57] *See id*. at 42:14-17.
[58] *See* Ex. 2, Ross Dep. at 42:14-22.
[59] *See id*. at 42:23-43:2.
[60] *See id*. at 43:12-25.

was placed back on the pipes.[61] Mr. Ross was also present when mud or cement was also mixed and applied to the pipes.[62] Mixing the mud/cement was dusty and Mr. Ross breathed the dust.[63]

During shutdowns the pumps and valves were disconnected.[64] The pumps and valve were also insulated and in order to remove the pumps and valves the insulation was removed.[65] When insulation was removed from the pumps and valves the air was dusty and Mr. Ross breathed the dust.[66] After the pumps and valves were repaired, the same insulation would be put back on.[67]

After insulation removal and replacement whoever wasn't working a machine was responsible for sweeping up the area. *Id*. at 52:2-53:3. Sometimes Mr. Ross was the person in charge of sweeping. *Id*. When the dust was swept up the air was very dusty, and Mr. Ross breathed the dust. *Id*.

2. Mr. Ross developed mesothelioma as a result of his asbestos exposure.

Mr. Ross was diagnosed with mesothelioma in April of 2024.[68] Plaintiffs' expert, Dr. Arthur Frank, reviewed Mr. Ross' medical records and work history and concluded that "it is my opinion, held with a reasonable degree of medical certainty, that Mr. Ross developed a malignant pleural biphasic mesothelioma as a result of his exposure to asbestos."[69] Dr. Frank further opined that "[w]hile any one of the products containing asbestos to which he would have been exposed, containing any and all fiber types, in any and all settings, would have been sufficient, in and of themselves, to produce his mesothelioma, it is well documented that as the amount of exposure to

[61] *See id*. at 44:7-10.
[62] *See id*.
[63] *See id*. at 44:11-15.
[64] *See* Ex. 2, Ross Dep. at 44:16-45:6; 47:5-22.
[65] *See id*. at 45:13-16; 47:5-22.
[66] *See id*. at 45:21-25; 47:23-25.
[67] *See id*. at 46:10-19; 48:17-49:1.
[68] *See id*. at 18:25-19:6.
[69] *See* Ex. 4, Frank Report

asbestos increases, the likelihood of developing an asbestos-related disease also increases."[70] Finally, Dr. Frank opined that "[a]ll of his exposures as noted above would have been contributory. All of his exposures would have been at levels above background, would have been medically significant, and therefore medically causative of his mesothelioma."[71]

B. Cape Mined and Sold Asbestos Despite Early Knowledge of the Hazards of Asbestos

1. Cape had a near monopoly on the global sale of amosite and crocidolite asbestos.

There are three primary types of commercial asbestos: chrysotile, amosite, and crocidolite. Cape operated asbestos mines in South Africa and mined amosite and crocidolite, which are the most harmful to humans.[72] There were fewer than five principal mining companies world-wide, and at its peak Cape produced approximately 90% of the world's supply of amosite asbestos, including asbestos imported and used in South Carolina.[73] Thus, by Cape's own admission, 9 out of 10 fibers of amosite contained in the insulation Mr. Ross was exposed to contained asbestos mined, sold and imported by Cape. Cape supplied hundreds of thousands of tons of asbestos to over 500 individual customers, such as Carey, Fibreboard, GAF (f/k/a Ruberoid), Owens Corning, Johns-Manville and Pittsburgh Corning, over 750 manufacturing plants, and also sold directly to customers in South Carolina.[74]

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[70] *Id*.
[71] *Id*.
[72] **Exhibit 5**, Jock McCulloch, *Surviving Blue Asbestos: Mining and Occupational Disease in South Africa* 115 (2002).
[73] *Hammond v. North American Asbestos Corp*., 454 N.E. 2d 210, (Ill. 1983)(confirming that Cape Asbestos supplies 90% of the world's supply of amosite asbestos and virtually the sole supplier of longer fiber grades); **Exhibit 6**, Jock McCulloch, *Asbestos Blues: Labour, Capital, Physicians & the State in South Africa* 27 (James Currey 2002), at 30.
[74] **Exhibit 7**, CAPE000994–95; **Exhibit 8,** J.S. Harington & N.D. McGlashan, *South African Asbestos: Production, Exports, and Destinations*, 1959–1993, 33 AM. J. INDUS. MED. 321, 323 (1998) (reporting that in the early-1960s North America was a major recipient of South-African amosite and crocidolite exports); Karen Selby, *Mesothlioma in South Africa*, Asbestos.com (Apr. 17, 2025), https://www.asbestos.com/mesothelioma/south-africa/ (noting South Africa supplied appx. 97% of the world's crocidolite and "practically all" amosite and that the mines were owned by companies including Cape Asbestos); *see also, e.g.*, North American Asbestos Corporation, "States Where Suits Have Been Filed and States We Shipped Asbestos To," at Cape_Receiver_00138819-21; North Am. Asbestos Corp., Customer List (Plaintiff's Ex. WEY 5050, Cape_Receiver_00138265-282) (Oct. 6, 1976)

In 1920, Cape began advertising its asbestos for sale in the United States. From 1920-1978, Cape advertised in almost every issue of *Asbestos Magazine*, a monthly trade journal published in Philadelphia, Pennsylvania and circulated nationally.

On October 14, 1953, Cape Asbestos Company Ltd. (a U.K. entity) established the North American Asbestos Corporation ("NAAC"), a direct subsidiary that was part of the Company's "mining division" and domiciled in Illinois for the "purpose of expediting and facilitating the movement" of asbestos from South African mines.[75] NAAC had both marketing and distribution roles: (i) serving as Cape's sales agency in the United States, with sole authority to offer Cape products and responsibility for transmitting information about customer needs to Cape mines, and (ii) ensuring proper distribution of asbestos products and that shipments from Africa made it "all the way through to the customer's plant," including to plants in South Carolina or through South Carolina ports.[76] NAAC "effect[ively] . . . put the Mines at every U.S. port"[77] and by 1970 was the "largest U.S. importer of Amphibole Fibers," which were "re-distributed from . . . warehouse locations in East Coast, Gulf Coast and West Coast Ports."[78]

2. Cape had early knowledge asbestos was hazardous and hid the information from customers and the public.

Cape knew about the health hazards of asbestos even before it started selling asbestos in the United States. Cape's Barking Plant in London manufactured "Caposite," a pre-formed pipe

[75] *See* **Exhibit 9**, CAPE000110–12 (1982 court filing describing NAAC's history); **Exhibit 10**, CAPE000177 (identifying NAAC as the sole U.S.-based entity of the Cape mining division); **Exhibit 11**, CAPE000869 (1973 letter describing NAAC as "a division of Cape Asbestos Co. Ltd., with corporate offices in London").
[76] *See* **Exhibit 12,** CAPE000263–66 (describing intended business of NAAC); **Exhibit 13**, CAPE000333 (1975 Cape Asbestos cover letter of NAAC director resignations); **Exhibit 14**, CAPE000729 (appointment announcement describing NAAC as "specialize[d] in marketing and distribution of Blue and Amosite asbestos in the United States, Canada, Mexico and the Caribbean"); **Exhibit 15**, CAPE000988–89 (1969 NAAC memorandum describing customer services).
[77] Ex. 5, CAPE000988–89.
[78] **Exhibit 16**, CAPE000878–79.

and block insulation made with 100% amosite asbestos.[79] In the early 1900s, workers at the Barking Plant began developing asbestosis, a noncancerous but often fatal lung condition.[80]

In 1954, Dr. Chris Wagner was appointed as a research fellow to the Pneumoconiosis Research Unit ("PRU") in Johannesburg. Dr. Wagner began studying mesothelioma and took an interest in the Cape asbestos mines in South Africa. In 1959, Dr. Wagner reported a series of 33 mesothelioma cases in South African mine workers and in people living near the mines.[81]

Dr. Wagner's research triggered the PRU to investigate mesothelioma at the South African asbestos mines.[82] On April 30, 1962, the PRU memorialized its findings in a preliminary report, reporting mesothelioma numbers that startled researchers:

> [a]n alarmingly high number of cases with mesothelioma of the pleura has been discovered in people who live or have lived in the North Western Cape and that there is evidence to suggest that this condition is associated with an exposure to asbestos dust inhalation which again need not be industrial.[83]

The investigators were aware of 90 cases of mesothelioma, but theorized more cases existed that the study id not identify due to methodology.[84]

In response to the PRU's report, Cape sent Walter Smither to South Africa to investigate and issue a report. Dr Smither was previously the Barking Plant doctor starting in 1956. One of Dr. Smither's primary recommendations to Cape in 1962 was to withdraw any support for surveys intended to discovery asbestos disease, including any support for the PRU, and begin "vigorously attacking" the conclusions of the PRU research:

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[79] **Exhibit 17**, *Cape asbestos, the story of the Cape Asbestos Company Limited, 1893-1953* ("Cape Story") at 62; **Exhibit 18**, Deposition of Anthony Mendelle at 3, *Smith v. Pittsburgh Corning Corp.*, Nos. GD81-20383 & GD81-20381 (Pa. Ct. Com. Pl. Allegheny Cnty. Nov. 13, 1984), at 37.

[80] Ex. 17, Cape Story, at 50; **Exhibit 19**, Cape Inquests (1929-1938) (summaries of coroner inquests reveling early recognition of asbestos-related worker deaths at Cape's U.K. facilities).

[81] **Exhibit 20**, Wagner, J.C., Sleggs, C.A., and Marchand, P, *Diffuse Pleural Mesothelioma and Asbestos Exposure in the North West Cape Province*, Br. J. Ind. Med. 17:260-65 (1960).

[82] **Exhibit 21**, Memo from Gear re: Proposed Study of Mesothelioma in South Africa (Nov. 29, 1960).

[83] **Exhibit 22**, PRU Preliminary Report (April 30, 1962).

[84] *Id.*

> [m]y recommendation would be that the company should not support any future wide ranging survey of the industry with a view to discovering either asbestosis or mesothelioma. **The reason for this is that the company is well aware of the problem and has some idea of its extent**.[85]

During his investigations, Dr. Smither also identified 10 additional cases of mesothelioma being cared for by a local doctor, Dr. Matthys Van Rooyen.[86] Dr. Smither recommended the mesothelioma patients be removed to Johannesburg, not to help the patients but because it would allow Cape to hide the victims and the source of their disease.[87] There is no information that Cape ever notified its customers or anyone else of either the PRU Preliminary Report of Dr. Smither's Report.

Anthony Mendelle was Production Manager then Plant Manager at the Barking Plant from 1956-1968.[88] In 1984 Mr. Mendelle testified that while he was manager, the Barking Plant had a "running total" of about 60 asbestosis cases a year and that workers were also contracting mesothelioma.[89] Mr. Mendelle recalled discussions with other senior management within Cape regarding mesothelioma and the fact that low exposures to asbestos could cause mesothelioma.[90] Notably, Mr. Mendelle testified that "we knew there was an association" between amosite and mesothelioma well before a seminal article on asbestos disease was published by Dr. Muriel Newhouse in 1965.[91] Dr. Newhouse had spent time at the Barking Plant and much of the data for her 1965 article came from her time investigating asbestos-related disease at the Barking Plant.[92]

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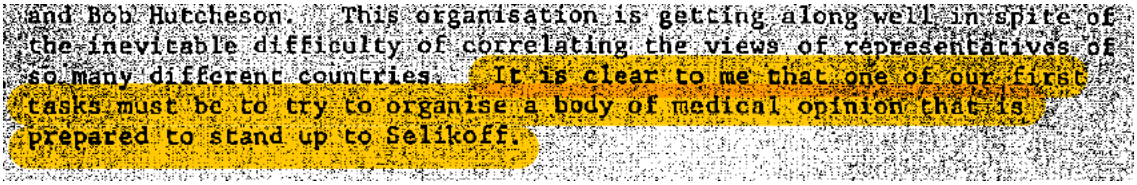
[85] **Exhibit 23**, Smither, *Visit to South Africa*, dated Aug. 1962 ("Smither Report"), at 34-35.
[86] *Id*. at 11-12 (emphasis added).
[87] *Id*. at 13 ("the advantage from the standpoint of the company is that these cases will be treated as a group, will be removed fromt eh area of the conflict, if one may call it that, and will be taken some hundreds of miles away.").
[88] Ex. 18 at 3.
[89] *Id*. at 11.
[90] *Id*. at 11-12, 69.
[91] *Id*. at 56-57.
[92] *Id*. at 58.

Despite having direct knowledge of the association between amosite asbestos and mesothelioma, Cape repeatedly told his customers the opposite. Richard Gaze worked at the Barking Plant from 1943-1963. He later became "Chief Scientist" at Cape and held senior management roles across the entire Cape asbestos operation.[93] A 1966 letter from Dr. Gaze told Cape's customers that "it is a fact that not one authenticated case of mesothelioma has been associated with amosite anywhere in the world."[94] This letter was passed on to the President of one of Cape's major amosite customers in the United States, Robert Buckley of Pittsburgh Corning Corporation. One week later, Mr. Buckley responded to Dr. Gaze, stating "from your letter, I am assured that no customer's worker need to be concerned about mesothelioma."[95]

Cape's Sales Director, issued similar false statements to managers and sales personnel. After acknowledging that products made with amosite "are now our principal asbestos products," he told anyone "faced with questions on the possible dangers of to health involved in the use of asbestos based materials" that "not one case of mesothelioma has been associated with amosite asbestos.[96]

Within the United States, Cape took a more aggressive approach through NAAC. Documents establish that, despite knowledge to the contrary, Cape actively tried to influence public opinions about the safety of asbestos, including but not limited to rebutting the emerging medical and scientific literature regarding the hazards of asbestos:


and Bob Hutcheson. This organisation is getting along well in spite of the inevitable difficulty of correlating the views of representatives of so many different countries. It is clear to me that one of our first tasks must be to try to organise a body of medical opinion that is prepared to stand up to Selikoff.

[93] Ex. 18, at 6-7.
[94] **Exhibit 24**, Letter from Gaze to Cryor, dated March 22, 1966 (emphasis in original).
[95] **Exhibit 25.** Letter from Buckley to Gaze, dated March 30, 1966.
[96] **Exhibit 26**, Letter from Galloway, dated Aug 19, 1966.

C. Cape Refuses to Participate in Litigation.[97]

Cape's continued refusal to participate in litigation is the result of decades of unprecedented moral fraud. Cape's moral fraud is the result of a company policy wherein Cape deemed it has no "moral responsibility" to United States citizens or its judicial system.[98]

After the onset of asbestos-related product liability litigation in the 1970s, Cape became concerned with its own liability.[99] Cape settled an early Texas asbestos products liability case in 1977, but then refused to participate in cases filed by U.S. plaintiffs. Rather, Cape chose took default judgments based on its bet that U.K. courts were unlikely to enforce an American default judgment. Soon after Cape removed itself from U.S. litigation; it ordered the dissolution of NAAC, removing it from litigation as well. Since that time, Cape has refused to appear or answer any summons in U.S. litigation, including the present action.

At the same time Cape decided it would not participate in U.S. litigation, Cape also devised a scheme which allowed it to continue selling asbestos in the United States. Cape dissolved NCAA and re-branded the operation as an independent entity under the name Continental Products Company ("CPC"). The change from NAAC to CPC was merely "a difference in form" that provided Cape "an organization which could liase with the customers."[100] Cape calso ontinued

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[97] The Court is well versed in Cape's continued efforts to avoid liability in litigation by refusing to participate. Cape's actions have resulted in a receivership being appointed over Cape. Cape's refusal to participate in litigation has been briefed extensively in Plaintiff's Motion to Appoint Receiver in *Park v. Armstrong, et al.*, C/A No. 2021-CP-40-02727, In the 5th Circuit, Richland County, South Carolina, and the Notice of and Motion to Confirm Appointment of Receiver in *Tibbs v. 3M Company, et al.*, C/A No. 2023-CP-40-01759, In the 5th Circuit, Richland County, South Carolina. For the sake of brevity, Plaintiffs are not recounting the entire history of Cape's efforts to avoid liability but incorporate both motions as if set forth fully herein.

[98] **Exhibit 27**, Telex from A. Penna to S. Milwild, dated July 4, 1977.

[99] *See, e.g.*, **Exhibit 28**, CAPE000351–56 (1975 lawyer letter referring to "attempt to limit NAAC's and Cape's exposure to future United States litigation").

[100] **Exhibit 29**, Testimony of A. Penne, dated Mar. 14, 1988, at Cape_Receiver_00132247 ("It was a difference in form; and, as I have said, the Morgan company, new company, CPC, did carry on very much the same role that NAAC had carried on in trading terms."); *id*. at Cape_Receiver_00132236 ("Our mining companies wished to continue selling asbestos in the United States, yes … There needed to be an organization that could liase with customers."); *Id*. at Cape_Receiver_00132247 ("Certainly, Howard Tanner, the Sales Director of the South African mining companies

selling asbestos to the same list of customers within the United States through Associated Mineral Corporation ("AMC"), a Lichtenstein pass-through entity.[101] The express "purpose of this corporate arrangement [was] to eliminate or reduce as much as possible the exposure in the United States of [South African mining companies] to lawsuits brought against it under theories of strict liability concerning products liability on the sale of asbestos in the United States."[102]

V. CAPE'S NET WORTH

At this time, Plaintiffs have been unable to determine Cape's net worth, insurance coverage, and other financial information relevant to punitive damages which should be assessed against Cape. As this Court is aware, Cape's net worth and assets are currently the subject of ongoing litigation between Cape and its Court-appointed receiver, Peter D. Protopapas. As a result of Cape's refusal to comply with orders or participate in litigation in any way, Plaintiffs respectfully request this Court take judicial notice of Cape's refusal to participate in litigation and presume that Cape's net worth is in excess of $1 billion to determine punitive damages.

VI. CONCLUSION

For the forgoing reasons, Plaintiffs respectfully submit that this Court has sufficient evidence to calculate and award compensatory and punitive damages. Plaintiffs have, and will, at the hearing of this matter, establish substantial economic damages and Cape conduct has been demonstrated to be of exactly the kind that warrants punitive damages. For these and the reasons

was extremely keen to ensure that sales to America, that is there could be some continuation of sales to American customers.")

[101] *See e.g.*, **Exhibit 30**, CAPE000386; *see also* **Exhibit 31**, CAPE000531 (announcement of Continental Products Corporation as "Agent to handle the North American requirements for Amosite and Crocidolite asbestos fibre").

[102] **Exhibit 32**, CAPE000377–79.

and based on the evidence to be adduced at the damages hearing on this matter, Plaintiffs request that this Court award compensatory and punitive damages as it determines is appropriate.

Respectfully submitted,

/s/ David C. Humen

David C. Humen (SC Bar No. 104536)
Charles W. Branham, III (SC Bar No. 106178)
DEAN OMAR BRANHAM & SHIRLEY, LLP
302 N. Market Street, Suite 302
Dallas, TX 75202
T: 214-722-5990
F: 214-722-5991
dhumen@dobslegal.com
tbranham@dobslegal.com
Other email: spepin@dobslegal.com

and

Theile B. McVey (SC Bar No. 16682)
KASSEL MCVEY ATTORNEYS AT LAW
1330 Laurel Street
Post Office Box 1476
Columbia, South Carolina 29202-1476
T: 803-256-4242
F: 803-256-1952
tmcvey@kassellaw.com
Other email: emoultrie@kassellaw.com
ATTORNEYS FOR PLAINTIFF

April 2, 2026
Dallas, Texas.

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	
COUNTY OF RICHLAND)	**FOR THE FIFTH JUDICIAL CIRCUIT**
JERRY P. ROSS and **PAULETTE W. ROSS,**	**C/A NO. 2024-CP-40-03710**
Plaintiffs,	
v.	*In Re:* Asbestos Personal Injury Litigation Coordinated Docket
CAPE INTERMEDIATE HOLDINGS LIMITED, et al.,	
Defendants.	

ORDER GRANTING DEFAULT JUDGMENT AGAINST CAPE INTERMEDIATE HOLDINGS LIMITED

Before this Court is Plaintiffs' Motion for Damages by reason of Cape's failure to respond to the Plaintiffs' Second Amended Complaint. Based on the evidence placed into evidence by the Plaintiffs during the damages hearing held on April 20, 2026, this Court GRANTS the motion as outlined below against Cape Intermediate Holdings Limited ("Cape").

BACKGROUND

By way of background, Plaintiffs filed a Second Amended Complaint naming Cape as a defendant on October 29, 2025. Cape was served at their UK address on November 3, 2025, via DHL. Cape failed to answer this matter. Plaintiffs filed a motion for default. An Order of Default was filed on December 10, 2025. On March 6, 2026, Plaintiffs requested a damages hearing. On March 17, 2026, this Court issued a Notice of Damages Hearing to begin on April 20, 2026. On March 23, 2026, Plaintiffs served Cape with the Order placing Cape into default, the Order setting the damages hearing for April 20 and the Notices of Depositions of Jerry and Paulette Ross to take

place on April 14, 2026. Those documents were served via DHL[1] as well as via the claims email address for Cape at elclaimsaltraduk@altrad.com.

Because this is a personal injury case and the damages are not, largely, liquidated, this Court ordered a damages hearing to go forward on April 20, 2026. Plaintiffs submitted a brief on their motion for damages, submitted thirty-nine exhibits and appeared via deposition. Counsel for Plaintiffs, Theile McVey appeared at the damages hearing. Cape did not answer the complaint, did not appear at Plaintiffs' damages depositions, and did not appear at the damages hearing.

I. LEGAL CLAIMS FOR WHICH CAPE HAS ADMITTED AND BEEN DETERMINED TO BE LIABLE

"It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability."[2] As such, by suffering default, Cape has admitted all of the facts as pled in Plaintiffs' Second Amended Complaint and conceded liability under each of the following causes of action:[3]

A. Product Liability: Negligence

B. Product Liability: Strict Liability

C. Vicarious Liability Based on Respondeat Superior

D. Negligence *Per Se*

E. Product Liability: Breach of Implied Warranties

F. Fraudulent Misrepresentation

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[1] **Exhibit 38**, Notice of Damages Hearing, sent to ESAB.
[2] *Roche v. Young Bros., of Florence*, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998) (*citing Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 246 S.E.2d 880 (1978); *Schenk v. National Health Care, Inc.*, 322 S.C. 316, 471 S.E.2d 736 (Ct.App.1996); *State ex rel. Medlock v. Love Shop, Ltd.*, 286 S.C. 486, 334 S.E.2d 528 (Ct.App.1985).
[3] *See* **Exhibit 1**, Second Amended Complaint.

II. CATEGORIES OF DAMAGES TO BE AWARDED

A. Medical Bills

Following his diagnosis, Mr. Ross' doctors determined immunotherapy treatments were his best option. Mr. Ross received eight immunotherapy treatments over many months. As of October of 2025, Mr. Ross had accrued $565,397.36 in medical bills caused by his mesothelioma and its treatment.[4] Dr. Frank opined that "[g]iven the expense of immunotherapy drugs, [Mr. Ross' medical bills are] quite consistent with appropriate treatment for his condition.[5]" This Court awards $565,397.36 in past medical expenses to Mr. Ross.

B. Mr. Ross' Past and Future Pain and Suffering

A. Jerry Ross Developed Mesothelioma as a Result of Exposure to Asbestos.

1. Mr. Ross was exposed to asbestos while working at Monsanto in Greenwood Mills, SC.

Mr. Ross graduated from Greenwood Mills High School in Greenwood, South Carolina in 1962. After graduating from high school Mr. Ross served in the U.S. Air Force from 1962 to 1966. In 1966, he began working at Chemstrand ("Monsanto") in Greenwood, South Carolina. Mr. Ross worked at Monsanto for over three decades, from 1966 until 1998. Mr. Ross testified to his exposures as a result of the asbestos insulated pipes[6].

Mr. Ross testified in a second damages deposition about his past and future pain and suffering and other damages[7]. Mr. Ross testified that he was terrified when he received his mesothelioma diagnosis. He was given only one year to live. Mr. Ross was worried about his

[4] *See* **Exhibit 3**, Medical Billing Records.
[5] *See* **Exhibit 4**, Expert Report of Dr. Arthur Frank
[6] *See* **Exhibit 2**, Deposition Transcript of Jerry Ross, dated August 3, 2024
[7] *See* **Exhibit 35**, Deposition of Jerry Ross, dated April 14, 2026

wife Paulette, whom he married twenty-one years ago. Mr. Ross's first wife died from pancreatic cancer. He spent many years alone until he met and married Paulette.

The only treatment available to Mr. Ross was immunotherapy. He underwent seven immunotherapy treatments scheduled three weeks apart. Following the seventh immunotherapy treatment, he developed severe pancreatitis. The pancreatitis caused extreme pain. He was forced to stop his immunotherapy and had to undergo an eight-week course of steroid treatment. While he was undergoing treatment for the pancreatitis, he worried that the mesothelioma was spreading.

When Mr. Ross completed the treatment for pancreatitis, he went back to immunotherapy. Unfortunately, after his eighth round of immunotherapy, he again developed pancreatitis. He once again experienced extreme pain and was forced to stop his immunotherapy. This time his doctors told him that he would never again be able to do the therapy to treat his mesothelioma. The pancreatitis was too dangerous. As a result of these treatments, Mr. Ross lost thirty pounds.

Mr. Ross has pain and continues to experience pain, suffering, nervousness, emotional distress, mental anguish, loss of enjoyment of life and has experienced changes to his general health, strength and vitality. As one example, prior to his diagnosis Mr. Ross did not require any supplemental oxygen. During treatment, he required oxygen "all the time, 24/7." He could not leave the house for more than an hour and a half because he would run out of oxygen in his portable tank. At home, he had a long oxygen cord that he could move from room to room with and stay on oxygen. However, that oxygen required power. When Hurricane Helene hit, the Rosses lost power, as did their children. As a result, they had to stay at a shelter for three days so that Mr. Ross could be connected to power.

Mr. Ross continues to have imaging scans every three months. These scans bring extreme anxiety knowing that they could show the cancer has spread. It also means they live their lives in

three-month increments. Given his condition, Mr. Ross' retirement travel plans were no longer possible. Mr. Ross knows his cancer will most likely spread and prove to be fatal. He knows that means his wife will be left alone. It is undisputed that mesothelioma is a "starving disease." That means that as the cancer grows it will impact nerves and cause extreme pain. He will require twenty-four-hour a day care. He will need supplemental oxygen and pain management. Ultimately, the mesothelioma will restrict his lung's ability to ventilate and he will die "starved" for oxygen. His death will be painful, debilitating, and frightening. This Court awards $20,000,000 to Mr. Ross for his past and future non-economic loss.

C. Mrs. Ross' Loss of Consortium

Paulette Ross has her own substantial loss of consortium claim.[8] Mrs. Ross testified that she lost her first husband at thirty-four when her youngest daughter was only three months old. She did not date again until she met Jerry Ross. She testified that she fell for Jerry because he was always such a gentleman. Since the day they met, Paulette has never opened a car door nor any door for that matter. Jerry is always there to do it for her. She testified that he loves her two daughters as his own. And Paulette loves his son as her own. They blended their families together over the last twenty-one years. They had dreams in retirement of travel with each other and their families.

Paulette testified they are unable to travel with doctors' appointments scheduled so frequently or scans every three months. Paulette has not missed a single doctor's appointment with Jerry. She too has anxiety about what the three-month scans will show. She too is terrified the cancer will come back and take her husband. Paulette testified every morning she worries he will not wake up. Every time his pulse ox is low or Jerry coughs, she worries the cancer is back.

[8] See **Exhibit 36**, Deposition of Paulette Ross taken on April 14, 2026.

The Plaintiffs have proven a substantial loss of consortium claim. This Court awards $5,000,000 to Mrs. Ross.

C. Punitive Damages

a. Cape Mined and Sold Asbestos Despite Early Knowledge of the Hazards of Asbestos

Cape had a near monopoly on the global sale of amosite and crocidolite asbestos. There are three primary types of commercial asbestos: chrysotile, amosite, and crocidolite. Cape operated asbestos mines in South Africa and mined amosite and crocidolite, which are the most harmful to humans.[9] There were fewer than five principal asbestos mining companies world-wide. At its peak, Cape produced approximately 90% of the world's supply of amosite asbestos, including asbestos imported and used in South Carolina.[10] Thus, by Cape's own admission, nine out of ten fibers of amosite contained in the insulation Mr. Ross was exposed to contained asbestos mined, sold and imported by Cape. Cape supplied hundreds of thousands of tons of asbestos to over 500 individual customers, such as Carey, Fibreboard, GAF (f/k/a Ruberoid), Owens Corning, Johns-Manville and Pittsburgh Corning, over 750 manufacturing plants, and also sold directly to customers in South Carolina.[11]

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[9] **Exhibit 5**, Jock McCulloch, *Surviving Blue Asbestos: Mining and Occupational Disease in South Africa* 115 (2002).
[10] *Hammond v. North American Asbestos Corp*., 454 N.E. 2d 210, (Ill. 1983)(confirming that Cape Asbestos supplies 90% of the world's supply of amosite asbestos and virtually the sole supplier of longer fiber grades); **Exhibit 6**, Jock McCulloch, *Asbestos Blues: Labour, Capital, Physicians & the State in South Africa* 27 (James Currey 2002), at 30.
[11] **Exhibit 7**, CAPE000994–95; **Exhibit 8,** J.S. Harington & N.D. McGlashan, *South African Asbestos: Production, Exports, and Destinations*, 1959–1993, 33 AM. J. INDUS. MED. 321, 323 (1998) (reporting that in the early-1960s North America was a major recipient of South-African amosite and crocidolite exports); Karen Selby, *Mesothelioma in South Africa*, Asbestos.com (Apr. 17, 2025), https://www.asbestos.com/mesothelioma/south-africa/ (noting South Africa supplied appx. 97% of the world's crocidolite and "practically all" amosite and that the mines were owned by companies including Cape Asbestos); *see also, e.g.*, North American Asbestos Corporation, "States Where Suits Have Been Filed and States We Shipped Asbestos To," at Cape_Receiver_00138819-21; North Am. Asbestos Corp., Customer List (Plaintiff's Ex. WEY 5050, Cape_Receiver_00138265-282) (Oct. 6, 1976)

In 1920, Cape began advertising its asbestos for sale in the United States. From 1920-1978, Cape advertised in almost every issue of *Asbestos Magazine*, a monthly trade journal published in Philadelphia, Pennsylvania and circulated nationally.

On October 14, 1953, Cape Asbestos Company Ltd. (a U.K. entity) established the North American Asbestos Corporation ("NAAC"), a direct subsidiary that was part of the Company's "mining division" and domiciled in Illinois for the "purpose of expediting and facilitating the movement" of asbestos from South African mines.[12] NAAC had both marketing and distribution roles: (i) serving as Cape's sales agency in the United States, with sole authority to offer Cape products, responsibility for transmitting information about customer needs to Cape mines, (ii) ensuring proper distribution of asbestos products and that shipments from Africa made it "all the way through to the customer's plant," including to plants in South Carolina or through South Carolina ports.[13] NAAC "effect[ively] . . . put the Mines at every U.S. port"[14] and by 1970 was the "largest U.S. importer of Amphibole Fibers," which were "re-distributed from . . . warehouse locations in East Coast, Gulf Coast and West Coast Ports."[15]

1. Cape had early knowledge asbestos was hazardous yet hid the information from customers and the public.

Cape knew about the health hazards of asbestos even before it started selling asbestos in the United States. Cape's Barking Plant in London manufactured "Caposite," a pre-formed pipe

[12] *See* **Exhibit 9**, CAPE000110–12 (1982 court filing describing NAAC's history); **Exhibit 10**, CAPE000177 (identifying NAAC as the sole U.S.-based entity of the Cape mining division); **Exhibit 11**, CAPE000869 (1973 letter describing NAAC as "a division of Cape Asbestos Co. Ltd., with corporate offices in London").
[13] *See* **Exhibit 12,** CAPE000263–66 (describing intended business of NAAC); **Exhibit 13**, CAPE000333 (1975 Cape Asbestos cover letter of NAAC director resignations); **Exhibit 14**, CAPE000729 (appointment announcement describing NAAC as "specialize[d] in marketing and distribution of Blue and Amosite asbestos in the United States, Canada, Mexico and the Caribbean"); **Exhibit 15**, CAPE000988–89 (1969 NAAC memorandum describing customer services).
[14] Ex. 5, CAPE000988–89.
[15] **Exhibit 16**, CAPE000878–79.

and block insulation made with 100% amosite asbestos.[16] In the early 1900s, workers at the Barking Plant began developing asbestosis, a noncancerous but often fatal lung condition.[17]

In 1954, Dr. Chris Wagner was appointed as a research fellow to the Pneumoconiosis Research Unit ("PRU") in Johannesburg. Dr. Wagner began studying mesothelioma and took an interest in the Cape asbestos mines in South Africa. In 1959, Dr. Wagner reported a series of thirty-three mesothelioma cases in South African mine workers and in people living near the mines.[18]

Dr. Wagner's research triggered the PRU to investigate mesothelioma at the South African asbestos mines.[19] On April 30, 1962, the PRU memorialized its findings in a preliminary report, reporting mesothelioma numbers that startled researchers:

> [a]n alarmingly high number of cases with mesothelioma of the pleura has been discovered in people who live or have lived in the North Western Cape and that there is evidence to suggest that this condition is associated with an exposure to asbestos dust inhalation which again need not be industrial.[20]

The investigators were aware of ninety cases of mesothelioma, but theorized more cases existed that the study not identify due to methodology.[21]

In response to the PRU's report, Cape sent Walter Smither to South Africa to investigate and issue a report. Dr Smither was previously the Barking Plant doctor starting in 1956. One of Dr. Smither's primary recommendations to Cape in 1962 was to withdraw any support for surveys intended

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[16] **Exhibit 17**, *Cape asbestos, the story of the Cape Asbestos Company Limited, 1893-1953* ("Cape Story") at 62; **Exhibit 18**, Deposition of Anthony Mendelle at 3, *Smith v. Pittsburgh Corning Corp.*, Nos. GD81-20383 & GD81-20381 (Pa. Ct. Com. Pl. Allegheny Cnty. Nov. 13, 1984), at 37.

[17] Ex. 17, Cape Story, at 50; **Exhibit 19**, Cape Inquests (1929-1938) (summaries of coroner inquests reveling early recognition of asbestos-related worker deaths at Cape's U.K. facilities).

[18] **Exhibit 20**, Wagner, J.C., Sleggs, C.A., and Marchand, P, *Diffuse Pleural Mesothelioma and Asbestos Exposure in the North West Cape Province*, Br. J. Ind. Med. 17:260-65 (1960).

[19] **Exhibit 21**, Memo from Gear re: Proposed Study of Mesothelioma in South Africa (Nov. 29, 1960).

[20] **Exhibit 22**, PRU Preliminary Report (April 30, 1962).

[21] *Id*.

to discovery asbestos disease, including any support for the PRU. He advocated "vigorously attacking" the conclusions of the PRU research:

> [m]y recommendation would be that the company should not support any future wide ranging survey of the industry with a view to discovering either asbestosis or mesothelioma. **The reason for this is that the company is well aware of the problem and has some idea of its extent**.[22]

During his investigations, Dr. Smither also identified ten additional cases of mesothelioma being cared for by a local doctor, Dr. Matthys Van Rooyen.[23] Dr. Smither recommended the mesothelioma patients be removed to Johannesburg, not to help the patients but because it would allow Cape to hide the victims and the source of their disease.[24] There is no information Cape ever notified its customers or anyone else of either the PRU Preliminary Report of Dr. Smither's Report.

Anthony Mendelle was Production Manager then Plant Manager at the Barking Plant from 1956-1968.[25] In 1984 Mr. Mendelle testified that while he was manager, the Barking Plant had a "running total" of about sixty asbestosis cases a year and that workers were also contracting mesothelioma.[26] Mr. Mendelle recalled discussions with other senior management within Cape regarding mesothelioma and the fact that low exposures to asbestos could cause mesothelioma.[27] Notably, Mr. Mendelle testified that "we knew there was an association" between amosite and mesothelioma well before a seminal article on asbestos disease was published by Dr. Muriel Newhouse in 1965.[28] Dr. Newhouse spent time at the Barking Plant gathering much of the data for her 1965 article came from her time investigating asbestos-related disease at the Barking

[22] **Exhibit 23**, Smither, *Visit to South Africa*, dated Aug. 1962 ("Smither Report"), at 34-35.
[23] *Id*. at 11-12 (emphasis added).
[24] *Id*. at 13 ("the advantage from the standpoint of the company is that these cases will be treated as a group, will be removed from the area of the conflict, if one may call it that, and will be taken some hundreds of miles away.").
[25] Ex. 18 at 3.
[26] *Id*. at 11.
[27] *Id*. at 11-12, 69.
[28] *Id*. at 56-57.

Plant.[29] The harm and death its asbestos caused to workers and even those that lived near Cape's mines was known to Cape well before Mr. Ross was ever exposed to Cape asbestos.

Despite having direct knowledge of the association between amosite asbestos and mesothelioma, Cape repeatedly told its customers the opposite. Richard Gaze worked at the Barking Plant from 1943-1963. He later became "Chief Scientist" at Cape and held senior management roles across the entire Cape asbestos operation.[30] A 1966 letter from Dr. Gaze told Cape's customers that "it is a fact that not one authenticated case of mesothelioma has been associated with amosite anywhere in the world."[31] This letter was passed on to the President of one of Cape's major amosite customers in the United States, Robert Buckley of Pittsburgh Corning Corporation. One week later, Mr. Buckley responded to Dr. Gaze, stating "from your letter, I am assured that no customer's worker need to be concerned about mesothelioma."[32]

Cape's Sales Director, issued similar false statements to managers and sales personnel. After acknowledging that products made with amosite "are now our principal asbestos products," he told anyone "faced with questions on the possible dangers to health involved in the use of asbestos based materials" that "not one case of mesothelioma has been associated with amosite asbestos.[33] 1966 was the year that Mr. Ross began working at Monsanto and was first exposed to Cape asbestos. Despite Cape's decades of knowledge, Cape affirmatively continued to hide the dangers of its products. Moreover, Cape chose to issue false statements about its product's safety.

Within the United States, Cape took a more aggressive approach through NAAC. Documents establish that, despite knowledge to the contrary, Cape actively tried to influence

[29] *Id*. at 58.
[30] Ex. 18, at 6-7.
[31] **Exhibit 24**, Letter from Gaze to Cryor, dated March 22, 1966 (emphasis in original).
[32] **Exhibit 25.** Letter from Buckley to Gaze, dated March 30, 1966.
[33] **Exhibit 26**, Letter from Galloway, dated Aug 19, 1966.

public opinions about the safety of asbestos, including but not limited to rebutting the emerging medical and scientific literature regarding the hazards of asbestos, including attempting to organize a body of medical opinion to rebut Dr. Selikoff's findings about the dangers of asbestos.

B. Cape Refuses to Participate in Litigation.

Cape's continued refusal to participate in litigation is the result of decades of unprecedented moral fraud. Cape's moral fraud is the result of a company policy wherein Cape deemed it has no "moral responsibility" to United States citizens or its judicial system.[34]

After the onset of asbestos-related product liability litigation in the 1970s, Cape became concerned with its own liability.[35] Cape settled an early Texas asbestos products liability case in 1977, but then refused to participate in cases filed by U.S. plaintiffs. Rather, Cape chose to take default judgments based on its bet that U.K. courts were unlikely to enforce an American default judgment. Soon after Cape removed itself from U.S. litigation. It ordered the dissolution of NAAC, removing it from litigation as well. Since that time, Cape has refused to appear or answer any summons in U.S. litigation, including the present action.

At the same time Cape decided it would not participate in U.S. litigation, Cape also devised a scheme which allowed it to continue selling asbestos in the United States. Cape dissolved NAAC and re-branded the operation as an independent entity under the name Continental Products Company ("CPC"). The change from NAAC to CPC was merely "a difference in form" that provided Cape "an organization which could liaise with the customers."[36] Cape also continued

[34] **Exhibit 27**, Telex from A. Penna to S. Milwild, dated July 4, 1977.

[35] *See, e.g.*, **Exhibit 28**, CAPE000351–56 (1975 lawyer letter referring to "attempt to limit NAAC's and Cape's exposure to future United States litigation").

[36] **Exhibit 29**, Testimony of A. Penne, dated Mar. 14, 1988, at Cape_Receiver_00132247 ("It was a difference in form; and, as I have said, the Morgan company, new company, CPC, did carry on very much the same role that NAAC

selling asbestos to the same list of customers within the United States through Associated Mineral Corporation ("AMC"), a Lichtenstein pass-through entity.[37] The express "purpose of this corporate arrangement [was] to eliminate or reduce as much as possible the exposure in the United States of [South African mining companies] to lawsuits brought against it under theories of strict liability concerning products liability on the sale of asbestos in the United States."[38]

Cape is liable to Plaintiffs for its willful, wanton, and reckless conduct in knowingly and intentionally concealing and misrepresenting the dangerous characteristics of their asbestos products, as well as concealing the detrimental aspects of asbestos to Jerry Ross's health and physical condition. Cape's actions were willful, wanton, and reckless in its total disregard of the health and safety of the users and consumers of their products.[39] This Court has the authority to award punitive damages in a default matter. In *Solley v. Navy Federal Credit Union, Inc.* 397 S.C. 192 (S.C. App. 2012), the South Carolina Court of Appeals found in a default case, "[t]he trial judge has considerable discretion regarding the amount of damages, both actual or punitive." In *Howard v. Holliday Ins. Inc.*, 271 S.C. 238, 246 S.E.2d 880 (1978), the South Carolina Supreme Court found:

> [i]n a default case, the plaintiff must prove by competent evidence the amount of his damages, and such proof must be by a preponderance of the evidence. Although the defendant is in default as to liability, the award of damages must be in keeping not only with the allegations of the complaint and the prayer for relief, but also with the proof that has been submitted.

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had carried on in trading terms."); *Id*. at Cape_Receiver_00132236 ("Our mining companies wished to continue selling asbestos in the United States, yes … There needed to be an organization that could liase with customers."); *Id*. at Cape_Receiver_00132247 ("Certainly, Howard Tanner, the Sales Director of the South African mining companies was extremely keen to ensure that sales to America, that is there could be some continuation of sales to American customers.")

[37] *See e.g.*, **Exhibit 30**, CAPE000386; *see also* **Exhibit 31**, CAPE000531 (announcement of Continental Products Corporation as "Agent to handle the North American requirements for Amosite and Crocidolite asbestos fibre").

[38] **Exhibit 32**, CAPE000377–79.

[39] *See infra* Section IV.B-C.

In *Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 203, 723 S.E.2d 597, 602 (Ct. App. 2012) the Court of Appeals stated:

> " [a] defendant in default admits liability but not the damages as set forth in the prayer for relief. The amount of damages in a default action must be proved by a preponderance of the evidence." See *Jackson v. Midlands Human Res. Ctr.*, 296 S.C. 526, 529, 374 S.E.2d 505, 507 (Ct.App.1998) ("A judgment for money damages must be warranted by the proof of the party in whose favor it is rendered.") citing *Renney v. Dobbs House, Inc.*, 275 S.C. 562, 566, 274 S.E.2d 290, 292 (1981), *Id. at* 603.

This Court finds that an award of $20,000,000 in punitive damages is appropriate based on the evidence presented. However, this Court's analysis must not end there. As outlined in *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 686 S.E.2d 176 (2009), this Court addresses the following factors:

1. Reprehensibility

"Reprehensibility is 'perhaps the most important indicium of the reasonableness of a punitive award.'" *BMW of North America v. Gore*, 517 U.S. 559, 565 (1996). In considering reprehensibility, Court should consider the following factors:

(1) The harm caused was physical as opposed to economic;

(2) The tortious conduct evinced an indifference to or a reckless disregard for the health and safety of others

(3) The target of the conduct had financial vulnerability

(4) The conduct involved repeated actions or was an isolated incident

(5) The harm was the result of intentional malice, trickery or deceit, rather than mere accident.

This Court finds ample support in this record to establish that Cape's conduct was reprehensible. First, Mr. Ross' harm was physical rather than economic. Cape's conduct caused

Mr. Ross to develop a universally fatal cancer, mesothelioma. Second, Cape's conduct clearly evinced an indifference or reckless disregard for the health and safety of others. Cape knew, long before Mr. Ross was ever exposed to its' asbestos, that exposure to asbestos caused mesothelioma. It then sought to hide that information from the public, its workers and its customers. Third, Mr. Ross was financially vulnerable in that he did not have access to the same research information about the dangers of asbestos. He was forced to rely on companies like Cape for information. Fourth, as outlined above, Cape's conduct involved decades of repeated acts of deliberate indifference. Cape's conduct including shutting down research about the dangers of its asbestos, moving asbestos victims away from the mines, representing to the public and to its customers that there had been not one mesothelioma case linked to amosite asbestos. Finally, the evidence demonstrates that Mr. Ross' mesothelioma was the result of intentional malice, trickery and deceit. Based on these findings, this Court concludes that Cape's conduct was highly reprehensible and that the imposition of punitive damages is appropriate.

2. Ratio

Due Process requires consideration of the ratio between the compensatory award, which represents the plaintiff's actual or potential harm and the punitive award. *Mitchell*. 385 S.C. at 588, 686 S.E.2d at 185. However, a single-digit ratio is generally thought to comport with due process. *Id*. The South Carolina Supreme Court has upheld verdicts with a 6.82 to 1 ratio, 3.75 to 1 ratio, 2.54 to 1 ratio, 9.996 to 1 ratio and a 28 to 1 ratio. *Id.* at 593, (collecting cases). In *Mitchell*, the Court remitted a punitive damages award from $15 million to $10 million so that it would be a 9.2 to 1 ratio. *Id*. at 594.

Here there is a 1 to 1 ratio of compensatory (excluding Paulette Ross' loss of consortium award) to punitive damages. This Court awarded $20,565,397.36 in compensatory damages and

$20,000,000 in punitive damages. This ratio clearly comports the rulings of the South Carolina Supreme Court as they impact Cape's due process.

3. Comparable Civil Penalties

This Court's punitive damages award is consistent with such awards in other cases. A court may properly consider the similarity between the punitive damages awarded by the jury in the case under review as compared to punitive damages awards in other cases. *Mitchell*, 385 S.C. at 588, 686 S.E.2d at 186. Relevant points of comparison are "the type of harm suffered by the plaintiff or plaintiffs; the reprehensibility of the defendant's conduct; the ratio of actual or potential harm to the punitive damages award; the size of the award; and any other factors the court may deem relevant." *Id*. at 588-89.

First, this Court understands that there are no verdicts against Cape because it has shunned the US legal system for decades. However, in the 1970s *Adams* case, a United States District Court Judge in Texas issued a default judgment against Cape for $15,654,000. In the *Plant* case, tried before this Court in 2023, the jury awarded $20 million in noneconomic damages to Sarah Plant, $3.5 million in future medical expenses to Sarah Plant, and $5 million to her husband in a verdict against defendant Whitaker, Clark & Daniel. In the *Perry* case, tried before this Court in 2024, the jury awarded $19,237,500 in noneconomic damages to Michael Perry, $3,800,000 in past and future economic loss damages to Michael Perry, and $9,618,750 to his husband in a verdict against Johnson & Johnson.

This Court's punitive damages award in this matter is proper and does not violate any constitutional bounds.

III. CONCLUSION

Plaintiffs informed this Court they have received prior settlements with defendants totaling $7,365,000. Cape is entitled to a set off for the prior settlements. As stated previously, this Court awards $565,397.36 in past medical bills to Jerry Ross, $20 million in past and future non-economic loss to Jerry Ross, $5 million in loss of consortium damages to Paulette Ross and $20 million in punitive damages against Cape Intermediate Holdings Ltd. After set off, a judgment shall be entered against CIHL for $38,200,397.36

IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]

Richland Common Pleas

Case Caption: Jerry P Ross , plaintiff, et al vs Ascend Performance Materials Operations Llc , defendant, et al

Case Number: 2024CP4003710

Type: Order/Judgment by Default and Form 4

So Ordered

Jean H. Toal

No. 25-213

In the Supreme Court of the United States

ATLAS TURNER, INC.,

Petitioner,

v.

DONNA B. WELCH, individually and as Personal Representative of the Estate of Melvin G. Welch, and PETER D. PROTOPAPAS, in his capacity as Receiver for Atlas Turner, Inc.,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of South Carolina

BRIEF FOR THE RECEIVER IN OPPOSITION

JON ROBINSON
SHANON PEAKE
SMITH ROBINSON
3200 Devine Street
Columbia, S.C. 29205
803-254-5445

BRYAN KILLIAN
Counsel of Record
JAMES NELSON
MORGAN, LEWIS
& BOCKIUS LLP
1111 Pennsylvania Ave. NW
Washington, D.C. 20004
202-373-6191
bryan.killian@morganlewis.com

QUESTIONS PRESENTED

After Atlas Turner was held in contempt for disobeying orders and contumaciously refusing to participate in discovery, a South Carolina court appointed a prejudgment Receiver to investigate whether Atlas Turner has insurance that could cover its liability for injuries its products allegedly caused in South Carolina. The court empowered the Receiver, if he finds insurance assets, to preserve and collect them, such as by seeking coverage from the insurer.

1. Under 28 U.S.C. § 1257(a), does this Court lack jurisdiction to review the state court's interlocutory order affirming appointment of a prejudgment receiver to investigate the existence of Atlas Turner's insurance assets?

2. Was the South Carolina Supreme Court correct to hold that, if Atlas Turner is subject to personal jurisdiction in South Carolina on products-liability claims, state courts can issue equitable decrees concerning Atlas Turner's intangible rights for insurance coverage for the harms Atlas Turner's products cause in South Carolina?

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INTRODUCTION

Atlas Turner, Inc., is a Canadian company that sold asbestos insulation into South Carolina. With other defendants, it was sued in South Carolina in an asbestos-injury case. Atlas Turner contumaciously refused to respond to discovery requests, leading the trial court to strike its answer. With Atlas Turner in default, the court appointed a Receiver to investigate its insurance assets and, if he finds any, to collect them. He has not collected anything to date.

On interlocutory review, the South Carolina Supreme Court affirmed the Receiver's appointment. Assuming Atlas Turner is subject to personal jurisdiction in South Carolina—an issue not yet appealed—the Supreme Court rejected Atlas Turner's argument that the trial court lacked authority under South Carolina law to appoint the Receiver.

This Court should deny review. The decision below is interlocutory, and further proceedings certainly could make resolving the question presented unnecessary. Atlas Turner's objection, based on the Fourteenth Amendment's Due Process Clause, was neither raised nor addressed below. And Atlas Turner's question presented depends on false and unsupported assumptions, including that its intangible insurance assets are located outside South Carolina and that the South Carolina court is exercising in rem jurisdiction over them.

Not that Atlas Turner identifies an issue worthy of further review. Atlas Turner and its amici incorrectly assert that the state court is unconstitutionally exercising in rem jurisdiction over out-of-state assets. They ignore that Atlas Turner's insurance assets, if

they exist, would be intangible assets, and this Court has long held that "[j]urisdiction over an intangible can indeed *only* arise" in personam. *Estin* v. *Estin*, 334 U.S. 541, 548 (1948). They also assume that Due Process requirements are different for in rem and in personam actions, ignoring this Court's holding that "the requirements of the Fourteenth Amendment to the Federal Constitution do not depend upon a classification for which the standards are so elusive and confused generally and *** primarily for state courts to define." *Mullane* v. *Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 312 (1950).

There is no constitutional problem with appointing a receiver to determine whether a defendant, over whom the court has personal jurisdiction, has insurance coverage responsive to the plaintiff's claim and then to collect from any such insurers. Indeed, the only receivership case Atlas Turner cites as part of its contrived lower-court "split" held as much; Atlas Turner's supposedly contrary cases do not involve receivers at all, and do not conflict with the South Carolina Supreme Court's (or this Court's) explanation of the consequences of in personam jurisdiction. Atlas Turner's confusion provides no basis for further review.

JURISDICTION

Atlas Turner seeks review of an interlocutory order of the Supreme Court of South Carolina, affirming the trial court's interlocutory order appointing a prejudgment receiver. The Court lacks jurisdiction under 28 U.S.C. § 1257(a) because the state court's order is not final. See p. 8–11, *infra*.

STATEMENT OF THE CASE

1. Atlas Turner is a Canadian company. For years, it peddled toxic asbestos insulation throughout the United States and reaped substantial profits. Among its former customers and current victims are South Carolinians. See Pet. App. 3a, 19a.

Like a tortoise hides in its shell, so Atlas Turner withdrew from the United States into Canada after the dangers and costs of its asbestos distribution became clear. Now, when Atlas Turner is sued in a U.S. court on asbestos-related tort claims, it insists that it never has had any contact with the forum state. Atlas Turner invariably moves to dismiss on personal-jurisdiction grounds, and if that motion is denied, Atlas Turner selectively participates in the litigation, to the point of contemptuously disobeying direct court orders. See Pet. App. 19a.

Atlas Turner followed that playbook in this case brought by Donna Welch against dozens of defendants. Mrs. Welch alleges that her deceased husband was exposed to Atlas Turner's asbestos in South Carolina in the 1960s. True to form, Atlas Turner moved to dismiss on personal-jurisdiction grounds. Through a lawyer's affidavit, Atlas Turner asserted that it never maintained offices in South Carolina, owned property in South Carolina, or registered to do business in South Carolina. See Pet. App. 8a.[1] The trial court orally denied the motion. *See* S.C. Court of Appeals Record on Appeal ("ROA") at 517–520.

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[1] Atlas Turner insists that it "has never done business in the State" (Pet. 5), but that conclusion does *not* necessarily follow from the untested assertions in the affidavit.

Atlas Turner answered, and discovery began. Yet, true to form, Atlas Turner refused to participate. Variously claiming that no facts exist and that Canadian law blocks its participation in discovery, Atlas Turner unequivocally told the trial court it could not and would not "ever" produce a witness to answer Mrs. Welch's questions. See Pet. App. 4a.

Atlas Turner now tries to soften its defiance by telling this Court that it "complied with discovery requests *to the extent it could*." Pet. 5 (emphasis added). The South Carolina Supreme Court rightly rejected that *ipse dixit* and held that Atlas Turner could have complied *fully*. See Pet. App. 6a–13a. Atlas Turner's general assertion that no facts exist obviously contradicts the lawyer's affidavit Atlas Turner submitted: "it is curious how he gained access to these facts if, as Atlas Turner contends, the historical facts of their corporate conduct are unknown to anyone." Pet. App. 8a.

No court needs to tolerate such blatant disrespect. The trial court held Atlas Turner in contempt and struck Atlas Turner's answer—a fitting sanction, seeing as how Atlas Turner's behavior was akin to that of a defendant who hadn't ever appeared. See Pet. App. 5a.

2. Still, there was the matter of the discovery Atlas Turner had ignored. To get answers, the trial court appointed a Receiver, Peter D. Protopapas, "to investigate the existence of all insurance or indemnifications coverages or claims relating thereto which are potentially available to Atlas." Pet. App. 37a. That meant insurance policies "intended to protect the lives, interests and property within South Carolina." Pet. App. 34a. If the Receiver discovers any, he is to

"administer" them, including by seeking coverage and indemnification from the insurers. Pet. App. 36a.

The court overruled Atlas Turner's objection to the court's authority to appoint a Receiver. Pursuant to S.C. Code Ann. § 15-65-10(5), which preserves South Carolina's historic equity practices concerning receivers, the court can appoint a prejudgment receiver when a defendant endeavors to defraud, hinder, and delay creditors. See Pet. App. 32a. As such, the court rejected Atlas Turner's argument that, pursuant to a different statutory provision, S.C. Code Ann. § 15-65-10(4), the court could appoint a receiver only over Atlas Turner's "property within this State." Pet. App. 33a (quoting the statute). Still, the court noted that, for purposes of South Carolina's receivership statute, Atlas Turner's insurance rights *are* property within South Carolina insofar as they cover liabilities in South Carolina. See Pet. App. 34a.

3. Atlas Turner filed an interlocutory appeal of the discovery sanction and appointment order. The appeal was transferred to the South Carolina Supreme Court.

First, the Court affirmed the sanction in full. See Pet. App. 5a–13a. Atlas Turner's "grotesque distortion of elementary discovery principles" deserved the "harsh medicine" of striking its answer. Pet. App. 12a.

Next, the Court recapped the parties' arguments on personal jurisdiction. See Pet. App. 14a–15a. The Court did so only to demonstrate Mrs. Welch's prima facie case. For, "Atlas Turner has not appealed the trial court's ruling denying its motion to dismiss for lack of personal jurisdiction. *** [W]e will not address

the issue now, and nothing in this opinion may be construed as affecting the merits of any later appeal of the personal jurisdiction issue." Pet. App. 15a–16a.

Finally, the Court turned to the appointment order, which it affirmed in part and reversed in part. See Pet. App 16a–28a. Because the trial court appointed the Receiver pursuant to S.C. Code Ann. § 15-65-10(5), the Supreme Court reviewed South Carolina's historic practice and confirmed the traditional power of equity courts to appoint a Receiver before judgment when the defendant is "fraudulently concealing or disposing of assets that may be responsive to a later judgment." Pet. App. 17a. Here, "Atlas Turner's strident and outspoken refusal to comply with the trial court's orders convinces us it will continue to act in bad faith as the case against it progresses." Pet. App. 19a. "Atlas Turner's contemptuous disregard of the court's discovery orders and other conduct demonstrates it is seeking to evade its responsibilities as a civil litigant." Pet. App. 20a.

The Court rejected Atlas Turner's contention that the trial court "had no jurisdiction to appoint a Receiver because it neither owns nor possesses any property within the borders of South Carolina." Pet. App. 21a. A fatal flaw in that contention is its circularity. Because Atlas Turner never adduced evidence of where its insurance assets are, "other than its general claim that all property it owns rests outside the borders of this state," the Receiver's first job is to investigate Atlas Turner's insurance assets. *Ibid.*

The Supreme Court went further and rejected Atlas Turner's suggestion that a court with personal ju-

risdiction over a defendant lacks power to issue equitable orders concerning the defendant's out-of-state property. Surveying law older than the United States, as well as this Court's pre-*Erie* equity jurisprudence, the Court affirmed the power of a South Carolina equity court to enjoin "a party over whom it has personal jurisdiction to convey and produce its property and assets, regardless of where they may be located." Pet. App. 22a–23a. Like the equitable remedy of injunction, the equitable remedy of receivership is not territorially circumscribed—as long as the court has personal jurisdiction over the defendant. See Pet. App. 23a–24a (collecting authorities, including one where a New York receiver retrieved a racehorse in California).

The Supreme Court reversed in part insofar as it narrowed the scope of the Receiver's authority, thereby ensuring that it does not extend beyond Atlas Turner's insurance assets. "[T]he trial court properly gave the Receiver power to pursue claims in South Carolina's jurisdiction to bring Insurance Assets to bear in covering Mr. Welch's injuries. However, we hold that power does not properly extend to reach every claim relating to Atlas Turner's assets and business activities. *** [E]quity only allows insurance policies that have the potential to cover Mr. Welch's injuries to be included ***." Pet. App. 27a.

4. Since the Receiver's appointment in June 2023, he has diligently investigated Atlas Turner's insurance coverage. He has not found responsive insurance policies with available funds, and he has not asserted control over any insurance assets. The Receiver's investigatory efforts are explained in two status reports.

In a June 2024 status report, the Receiver explained that he found information that Atlas Turner had claimed did not exist. He discovered interrogatory answers Atlas Turner supplied in the late 1970s, in which it listed insurance providers. Working from that list, the Receiver learned that coverage from three of the four is exhausted—meaning, they have no further obligation to Atlas Turner. As to the fourth, the Receiver's investigation was incomplete as of June 2024. See Receiver's Status Report at 1–6, *Welch* v. *3M Co.*, No. 2022-CP40-03834 (S.C.C.P. Jun. 25, 2024).

In a July 2025 status report, the Receiver concluded that Atlas Turner's remaining insurers had long ago bought out their policies—meaning, they had paid Atlas Turner to terminate their coverage obligations. The Receiver has been unable to track down the proceeds of those buyout transactions. See Receiver's Report on Current Receiverships on S.C. Asbestos Docket at 42, *Tibbs* v. *3M Co.*, No. 2023-CP-40-01759 (S.C.C.P. July 11, 2025).

At present, with his work nearing completion, the Receiver anticipates the receivership will be dissolved in the near future.

REASONS FOR DENYING THE PETITION

I. The Petition is riddled with oversights, misstatements, and other vehicle problems.

A. The Court lacks jurisdiction.

Since the First Judiciary Act, 1 Stat. 85, § 25, Congress has restricted this Court's jurisdiction over state courts to reviewing only "final judgments and decrees." 28 U.S.C. § 1257(a). "Final" means final. A

state court judgment is not reviewable unless it is "an effective determination of the litigation and not of merely interlocutory or intermediate steps therein." *Market St. R.R.* v. *R.R. Comm'n*, 324 U.S. 548, 551 (1948).

In no sense is the South Carolina Supreme Court's order affirming appointment of the Receiver a final judgment. (Atlas Turner does not independently challenge the court's order affirming the discovery sanction.) The court resolved an *interlocutory* appeal of an order appointing a *prejudgment* receiver to locate insurance assets of one defendant. The order is nonfinal, as are all state-court orders concerning preliminary equitable relief. See, *e.g.*, *Gibbons* v. *Ogden*, 19 U.S. 448, 449 (1821) (order denying a motion to dissolve a preliminary injunction); *Georgia Ry. & Power Co.* v. *Town of Decatur*, 262 U.S. 432, 436–437 (1923) (order affirming a temporary injunction); see also *Montgomery Bldg. & Constr. Trades Council* v. *Ledbetter Erection Co.*, 344 U.S. 178, 180 (1952) (holding that the statute conferring jurisdiction over state courts incorporates the "classical" distinction between preliminary and permanent equitable relief).

Atlas Turner does not seriously dispute the jurisdictional defect. Instead, without elaboration, Atlas Turner asserts that the appointment order is practically final because the question presented, "finally decided by the highest court in the State, will survive and require decision regardless of the outcome of future state-court proceedings." Pet. 1 (quoting *Cox Broadcasting Corp.* v. *Cohn*, 420 U.S. 469, 477 (1975)). There are two fatal problems with that assertion.

First, the federal question the Petition poses was *neither* pressed *nor* finally decided below. *See* pp. 11–14, *infra*. Second, future state-court proceedings could obviate the question in two ways.

- The South Carolina Supreme Court held that a state court can appoint a prejudgment Receiver to investigate and potentially collect insurance assets of a defendant "over whom it has personal jurisdiction." Pet. App. 22a. As the court noted, Atlas Turner's appeal did not raise its personal-jurisdiction defense, so the court did not decide whether the trial court has personal jurisdiction over Atlas Turner. See Pet. App. 14a–16a. In ordinary cases, individual Justices have concurred in denying certiorari when an *unrelated* and unresolved personal-jurisdiction defense, if ultimately successful, would moot a federal question. See *Doe* v. *Facebook, Inc.*, 142 S. Ct. 1087, 1088–1089 (2022) (Thomas, J., concurring in denial of certiorari). Here, Atlas Turner's Petition is *inextricably intertwined* with its unresolved personal-jurisdiction defense, for Atlas Turner's question presented presumes the lower courts have "specific personal jurisdiction" over the company. Pet. *i*. Since Atlas Turner expressly reserved its right to appeal personal jurisdiction later on, see Final Reply Br. of Appellant at 5, *Welch* v. *Atlas Turner, Inc.*, No. 2023-001096 (S.C. Jan. 16, 2024), its assertion to this Court that its question presented "will survive *** regardless of the outcome of future proceedings" is obviously false.

- The Receiver's first job is to investigate insurance assets that might cover Mrs. Welch's claims. Unless he finds something, Atlas Turner's worries about "in rem jurisdiction over [its] out-of-territory property" (Pet. *i*) and "jurisdictional conflicts" (Pet. 10) are speculative. And the Court should take those worries with a grain of salt. Until now, Atlas Turner has adamantly claimed that "corporate records" concerning its insurance do not "even exist." Pet. App. 12a. Although the Receiver has disproven Atlas Turner's misrepresentations about its records, he has not discovered responsive insurance assets, so he has not recovered any property. Owing to the realistic possibility that the Receiver will find no insurance assets and the receivership will end in the near future, Atlas Turner cannot seriously maintain that its question presented "will survive *** regardless of the outcome of future proceedings."

B. Atlas Turner's question presented is not preserved.

Atlas Turner frames its Petition upon the Fourteenth Amendment's Due Process Clause. See Pet. *i*, 1. Yet Atlas Turner never mentioned that below. Its appellate briefs neither cite the Fourteenth Amendment nor refer to "due process," let alone any limits they impose upon state-court jurisdiction. The only Constitutional provision Atlas Turner expressly (and cursorily) mentioned was the Commerce Clause. See Initial Br. of Appellant at 11–12, *Welch* v. *Atlas Turner, Inc.*, No. 2023-001096 (S.C. Oct. 6, 2023); see also *id.* at 8 (asserting that "the concept of interstate

and intrastate commerce [is] reserved to the federal government, not the states").

Atlas Turner contends that it preserved its due-process argument when it argued that the trial court "had no jurisdiction" because Atlas Turner (supposedly) "neither owns nor possesses any property" in state. Pet. 7. Not so. That jurisdictional objection was based on state law—not due process. See Initial Br. of Appellant at 6.

- Atlas Turner first argued that the court lacked jurisdiction because of a state-law presumption against interpreting South Carolina statutes to apply extraterritorially. See *ibid.*
- Atlas Turner next argued that the court lacked jurisdiction because "our receivership statute," S.C. Code Ann. § 15-65-10, requires in-state property. Initial Br. of Appellant at 7.

The South Carolina Supreme Court's rejection of Atlas Turner's jurisdictional objection (Pet. App. 21a–22a) thus resolved a question of state law—not due process.

Atlas Turner did not tacitly rely upon due-process cases, either. The primary federal opinion Atlas Turner relied upon below, *Booth* v. *Clark*, 58 U.S. 322 (1854), is not a due-process case. See Initial Br. of Appellant at 6, 9 (quoting *Booth*); see also Pet. 19–23 (quoting *Booth* repeatedly). The date on *Booth* should be a dead giveaway that it doesn't relate to the Fourteenth Amendment's Due Process Clause. Booth was a post-judgment receiver appointed by a New York court, who purported to litigate the judgment debtor's federal cause of action in D.C. federal court. This

Court affirmed the dismissal of Booth's action, finding nothing in New York state law "empowering a receiver to sue in his own name officially in another jurisdiction for the property or *choses in action* of a judgment debtor." *Booth*, 58 U.S. at 332. The Court's observation that Booth "has no extra territorial power of official action" was tethered, not to due process, but to the Court's review of the receivership "statute of New York" and "the rules and practice of chancery as they may be"—the two state-law grounds Booth claimed authorized him to litigate in D.C. *Id.* at 338.[2]

"*Booth* v. *Clark* rests upon practical considerations," not the U.S. Constitution. *McCandless* v. *Furlaud*, 293 U.S. 67, 75 (1934). And like many old equitable doctrines, *Booth*'s practical considerations are not frozen in amber. *Booth* itself recognized that European courts were then allowing suits like Booth's insofar as they were allowing suits by the assignees of judgment debtors. See *Booth*, 58 U.S. at 335–336. But in 1854, that principle had "not yet reached our courts." *Id.* at 337. By 1934, however, it had taken hold here, and this Court then recognized that a "foreign receiver may sue in the federal court for another state." *McCandless*, 293 U.S. at 76; see also Pet. App.

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[2] Atlas Turner does not rely on *Booth* for its actual holding; the Receiver has not instituted *any* litigation on Atlas Turner's claims against its insurers, let alone litigation outside South Carolina. If the Receiver identifies Insurance Assets and sues an insurer in South Carolina court on Atlas Turner's cause of action to recover insurance proceeds, he would not be, in *Booth*'s formulation, exercising "extra territorial power of official action." *Booth*, 58 U.S. at 338. And if the Receiver sues in a foreign court, his ability to do so "is controlled by the law of the foreign state, the full faith and credit clause, and comity." Pet. App. 21a.

21a (finding that "[t]his aspect of *Booth* has been supplanted by various federal statutes and rules"). By 1938, *Booth*'s vitality was diminished: after *Erie Railroad Co.* v. *Tomkins*, 304 U.S. 64 (1938) and *Ruhlin* v. *N.Y. Life Ins. Co.*, 304 U.S. 202 (1938), this Court ceased to be the final expositor of common-law and chancery rules. States are free to follow this Court's Nineteenth Century opinions on those rules—or not. Accordingly, Atlas Turner's reliance on *Booth* raised, at most, a state-law question beyond this Court's jurisdiction.

C. Atlas Turner's question presented rests on false and assumed premises.

As Atlas Turner frames this case, nailing down the situs of its property is essential. The stated premise of Atlas Turner's question presented, repeated throughout the Petition, is that the property the Receiver is investigating is "out-of-territory" or "out-of-state." Pet. *i*, 1, 2, 3, 11, 20, 21, 22, 24–25. Yet, Atlas Turner completely fails to substantiate that premise. Indeed, Atlas Turner ignores that the appointment order concerns a particular type of property: the Receiver is charged with investigating Atlas Turner's "Insurance Assets," defined as insurance policies, insurance proceeds, and claims for insurance coverage "that have the potential to cover Mr. Welch's injuries." Pet. App. 27a. Atlas Turner also completely ignores that its Insurance Assets all are *intangible* assets. See *Curry* v. *McCanless*, 307 U.S. 357, 366 (1939). It follows that Atlas Turner's Insurance Assets—if they exist, see p. 8, *supra*—are not necessarily out-of-state property.

Unlike tangible property, "intangible property has no actual situs." *Rush* v. *Savchuk*, 444 U.S. 320, 330 (1980). The situs of an intangible is an imputed "legal fiction," *id.* at 328, determined under substantive state law, see *id.* at 328 n.12; see also *Karaha Bodas Co.* v. *Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 313 F.3d 70, 83 (CA2 2002); *Peterson* v. *Islamic Republic of Iran*, 627 F.3d 1117, 1131 (CA9 2010) ("To determine the location of an intangible right to payment, we must look to California state law.") (citing *GP Credit Co., LLC* v. *Orlando Residence, Ltd.*, 349 F.3d 976, 979–981 (CA7 2003) and *Levin* v. *Tiber Holding Corp.*, 277 F.3d 243, 249 (CA2 2002)).

Atlas Turner never outright says where it thinks its Insurance Assets are situated, but seemingly assumes they are in Canada because Atlas Turner is Canadian. That assumption is dubious; in *Hanson* v. *Denckla*, 357 U.S. 235 (1958), the Court observed that intangible assets are *not* necessarily within the state of their owner's domicile, see *id.* 249 & n.19. Yet even if Atlas Turner's Insurance Assets were, in some sense, within Canada, that would not preclude South Carolina from treating them as within South Carolina and subject to its laws. For, the Fourteenth Amendment does not require a single, "exclusive situs" for intangibles. *State Tax Comm'n of Utah* v. *Aldrich*, 316 U.S. 174, 179 (1942); *cf. Texas* v. *New Jersey*, 379 U.S. 674, 683 (1965) (holding that, for escheatment, the situs of intangibles "is not controlled by *** constitutional provisions"). An intangible can be present in multiple States. See *Hanson*, 357 U.S. at 247 ("In considering restrictions on the power to tax, this

Court has concluded that '[j]urisdiction' over intangible property is not limited to a single State."); see also *Tabacalera Severiano Jorge, S.A.* v. *Standard Cigar Co.*, 392 F.2d 706, 714–715 (CA5 1968) ("The situs of intangible property is about as intangible a concept as is known to the law. The situs may be in one place for ad valorem tax purposes; it may be in another place for venue purposes, *i.e.*, garnishment; it may be in more than one place for tax purposes in certain circumstances; it may be in still a different place when the need for establishing its true situs is to determine whether an overriding national concern, like the application of the Act of State Doctrine is involved.") (citations omitted).

Atlas Turner cursorily asserts that neither state court "purported to find that Atlas Turner's contractual insurance rights are located in South Carolina." Pet. 20. On the contrary, in rejecting Atlas Turner's argument that the Receiver could not be appointed under the South Carolina statute requiring "property within this state," S.C. Code Ann. § 15-65-10(4), the trial court concluded that Atlas Turner's intangible Insurance Assets *are* inside South Carolina for receivership purposes because they insure property, lives, or interests in South Carolina. See Pet. App. 33a–35a. The South Carolina Supreme Court did not disturb that conclusion.

Atlas Turner's assumption that its intangible Insurance Assets are necessarily and inherently "out-of-state" property contradicts the South Carolina court on a question of state law. Because there is no consti-

tutional basis for this Court to revisit that determination (and Atlas Turner hasn't asked), the Court should deny the Petition.

II. The decision below is correct and implicates no constitutional concerns, let alone Atlas Turner's imaginary circuit split.

A. The South Carolina Supreme Court's decision is correct and consistent with this Court's due-process precedents.

Vehicle problems aside, the South Carolina Supreme Court's ruling presents no due-process concerns. That court held, after Atlas Turner contumaciously refused to respond to discovery requests, that it was appropriate (1) to strike Atlas Turner's answer, placing it in default, and (2) to appoint a Receiver to investigate the Insurance Assets Atlas Turner was hiding and, if he finds any, to collect them. Both rulings are consistent with decisions of this Court and lower courts, and neither ruling crosses a due-process line.

First, it is equitable and appropriate to appoint a receiver to investigate facts that a defendant refuses to produce in discovery. See *Aviation Supply Corp.* v. *R.S.B.I. Aerospace, Inc.*, 999 F.2d 314, 317 (CA8 1993) ("Faced with this pattern of willful nondisclosure and false disclosure, followed by transfer to avoid a tenacious judgment creditor, the district court was well within its discretion in turning to a drastic remedy such as a receiver."). Atlas Turner doesn't cite, and the Receiver hasn't found, appellate authority holding that the Due Process Clause either forbids or regulates appointment of a receiver for that purpose.

Next, many decisions confirm that equity courts with personal jurisdiction over a party can issue equitable decrees concerning the party and its property without regard to state boundaries. See Pet. App. 22a. Since *Massie* v. *Watts*, 10 U.S. 148, 158–163 (1810), *Muller* v. *Dows*, 94 U.S. 444, 448–450 (1876), and *Booth*, 58 U.S. at 332, which Atlas Turner acknowledges (Pet. 22–23), that principle has not weakened. See *Phelps* v. *McDonald*, 99 U.S. 298, 308 (1878); *Cole* v. *Cunningham*, 133 U.S. 107, 116–117 (1890); *Steele* v. *Bulova Watch Co.*, 344 U.S. 280, 289 (1952); *United States* v. *First Nat'l City Bank*, 379 U.S. 378, 384 (1965); *United Int'l Holdings, Inc.* v. *Wharf (Holdings) Ltd.*, 210 F.3d 1207, 1236 (CA10 2000), *aff'd* 532 U.S. 588 (2001); *Koehler* v. *Bank of Bermuda Ltd.*, 12 N.Y.3d 533, 541 (2009). Quite simply, "there is no doubt that if the court has personal jurisdiction over the parties, it has the power to order each of them to act in any fashion or in any place." Wright & Miller, 11A *Federal Practice & Procedure* § 2945 (3d ed. 1999).

B. Atlas Turner's objections stem from a fundamental misunderstanding of this Court's precedents.

Atlas Turner concedes the foregoing and contends that the Fourteenth Amendment's Due Process Clause limits the *types* of equitable decrees a court can issue to a person over whom it has personal jurisdiction. In Atlas Turner's view, while a court can order a party to answer interrogatories or bring property in-state, the court cannot appoint a receiver to get answers or property when the party has flagrantly diso-

beyed the court's orders. Atlas Turner, in short, contends that the Constitution forbids state courts from exercising what it calls "direct control" (Pet. 2, 9, 19, 20, 22, 23) over property of recalcitrant litigants.

Atlas Turner's argument is flatly contrary to this Court's precedents. With no hint of a constitutional concern, the Court in *Ager* v. *Murray*, 105 U.S. 126 (1881), affirmed that a court with personal jurisdiction over a patentee could appoint someone to "execute an assignment [of the patent] if the patentee should not himself execute one as directed by the decree." *Id.* at 132. Such power was "clearly within the chancery powers of the court," *ibid.*, because "it is within the general jurisdiction of a court of chancery to assist a judgment creditor to reach and apply to the payment of his debt *any property* of the judgment debtor, which by reason of its nature only *** cannot be taken on execution at law." *Id.* at 129 (emphasis added).[3]

Atlas Turner claims its argument follows from "fundamental principles of in rem jurisdiction" (Pet. 16), which Atlas Turner distinguishes from in personam jurisdiction (Pet. 17–20) before concluding that the lower court "conflated" the two (Pet. 20–25). But

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[3] See also 3 Pomeroy, *A Treatise on Equity Jurisdiction* §§ 1335–1336, pp. 363–365 (1887) (receivers can be appointed to carry equitable decrees "into effect"); *id.* § 135 p. 118 (because "statutes *** have virtually abolished the ancient doctrine that the decrees in equity can only act upon the person of a party," equitable decrees can function like in rem decrees issued by courts of law); Clark, *Specific Performance in Connection with Receiverships*, 33 Harv. L. Rev. 64, 65 (1919) ("Today receivers are frequently appointed to accomplish what the defendant is ordered to do but refuses.").

it is Atlas Turner, not the lower court, who is confused. An equity court's appointment of a receiver does not change the nature of the court's jurisdiction, and the requirements of due process do not depend on either label.

1. At common law, "in personam" and "in rem" marked endpoints along a spectrum of adjudicatory authority. Each had a distinct origin and conclusion. In personam jurisdiction began with authority over a person and ended with a judgment of personal liability; in rem jurisdiction began with authority over property and ended with a broad judgment "affect[ing] the interests of all persons in designated property." *Hanson*, 357 U.S. at 246 n.12; see *Shaffer* v. *Heitner*, 433 U.S. 186, 199 (1977). Not all adjudications fit neatly into those boxes. See *Hanson*, 357 U.S. at 246 ("[T]he in rem and in personam classifications do not exhaust all the situations that give rise to jurisdiction"). Quasi in rem jurisdiction, for example, was a label applied to adjudications with features of both, such as adjudications beginning with authority over property and ending with a narrow judgment "affect[ing] the interests of particular persons in designated property." *Id.* at 246 n.12.

Heedless of the nuances, Atlas Turner assumes the order appointing the Receiver was necessarily "an exercise of in rem jurisdiction" because it concerns Atlas Turner's property. Pet. 21. That assumption lacks merit. Atlas Turner concedes that Mrs. Welch's case is in personam; it began with authority over Atlas Turner and will end, if she prevails, with a judgment of personal liability. See Pet. 5. Appointing a pre-judgment Receiver to investigate Atlas Turner's Insurance

Assets and collect any did not transform this into an in rem case.

When intangible property is the object of a court order, moreover, jurisdiction is necessarily in personam, not in rem. "Jurisdiction over an intangible can indeed *only arise* from control or power over the *persons* whose relationships are the source of the rights and obligations." *Estin*, 334 U.S. at 548 (emphases added). "[C]ontrol over parties whose judicially coerced action can make effective rights created by the chose in action enables the court with such control to dispose of the rights of the parties to the intangible. *** [P]ower exists through the state's jurisdiction of the parties whose dealings have created the chose in action ***." *Standard Oil Co.* v. *New Jersey ex rel. Parsons*, 341 U.S. 428, 429–430 (1951).

Nor is Atlas Turner correct that receiverships are necessarily in rem. Historically, receivership is an equitable remedy. See Wright & Miller, 12 Fed. Prac. & Proc. Civ. § 2985 (3d ed. 1999). Yet historically, chancery courts lacked in rem jurisdiction. "Generally, if not universally, equity jurisdiction is exercised *in personam*, and not *in rem*, and depends upon the control of the court over the parties, by reason of their presence or residence, and not upon the place where the land lies in regard to which relief is sought." *Hart* v. *Sansom*, 110 U.S. 151, 154 (1884); see *Durand & Co.* v. *Howard & Co.*, 216 F. 585, 591 (CA2 1914) ("Now it is perfectly evident that the mere appointment of a chancery receiver does not affect title, and it is equally evident that acceptance of a lease by a receiver acting under the authority of a court in accepting it does not and cannot invest the receiver with title. Equity acts

only in personam."). Lacking in rem jurisdiction, chancery courts used in personam decrees, like injunctions or receiverships, to effect control over property. See *Pennington* v. *Fourth Nat'l Bank of Cincinnati*, 243 U.S. 269, 272 & n.2 (1917). Accordingly, though some receiverships (such as those akin to present-day bankruptcies) resemble in rem proceedings, it is not true that appointing a receiver is necessarily an exercise of in rem jurisdiction. To this day, courts recognize that appointing a receiver does *not* render an in personam case in rem. See *Brill & Harrington Invs.* v. *Vernon Sav. & Loan Ass'n*, 787 F. Supp. 250, 252 (D.D.C. 1992); *State ex rel. Petro* v. *Gold*, 850 N.E.2d 1218, 1232 (Ohio Ct. App. 2006).

Atlas Turner lacks support for its view that in personam jurisdiction morphs into in rem jurisdiction upon appointment of a receiver. Atlas Turner claims it is "well established that 'the appointment of a receiver is in the nature of a proceeding in rem.'" Pet. 21 (quoting 12 Wright & Miller § 2985). That quote doesn't mean what Atlas Turner thinks it means: "in rem" and "in the nature of a proceeding in rem" aren't synonyms; the latter label, like "quasi in rem," describes actions that don't cleanly fit within the rigid contours of an in rem action. See *Mullane,* 339 U.S. at 312. Depending on the circumstances, receiverships can be in personam or quasi in rem. See *Am. Freedom Train Found.* v. *Spurney*, 747 F.2d 1069, 1073 (CA1 1984) (explaining "jurisdiction in an in personam receivership action"); *Sparrow* v. *Nerzig*, 89 S.E.2d 718, 720 (S.C. 1955) ("actions quasi in rem, such as those involving receivership"); see also *S.E.C.* v. *Ross*, 504 F.3d 1130, 1151 n.17 (CA9 2007) ("in the context

of receivership actions, *** the line between in personam and in rem jurisdiction is vanishingly thin"). The law is more nuanced than Atlas Turner acknowledges.

2. Atlas Turner is wrong that due-process requirements depend on classifying a case or remedy as in personam or in rem. See Pet. 16–25. This Court rejected that argument 75 years ago:

> Distinctions between actions in rem and those in personam are ancient and originally expressed in procedural terms what seems really to have been a distinction in the substantive law of property under a system quite unlike our own. The legal recognition and rise in economic importance of incorporeal or intangible forms of property have upset the ancient simplicity of property law and the clarity of its distinctions, while new forms of proceedings have confused the old procedural classification. ***
>
> [T]he requirements of the Fourteenth Amendment to the Federal Constitution do not depend upon a classification for which the standards are so elusive and confused generally and which, being primarily for state courts to define, may and do vary from state to state.

Mullane, 339 U.S. at 312. Due process does not depend on "ancient," "elusive," and "confused" distinctions between in personam and in rem jurisdiction—those are matters "for state courts to define." *Ibid.*

Mullane's sea-change, severing due process from the type of adjudicatory authority, was slow. In *Mul-*

lane, the Court applied it to the due-process requirement of notice. See *id.* at 314. In *Shaffer*, the Court applied it to jurisdiction, holding that "all assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny." *Shaffer*, 433 U.S. at 212.[4]

Atlas Turner's Petition reads as if neither *Mullane* nor *Shaffer* exists.

- With nary a citation of *Mullane*, Atlas Turner essentially asks the Court to reject *Mullane*'s reasoning when Atlas Turner asks the Court to "clarify that in rem and in personam jurisdiction remain distinct sources of judicial power with distinct requirements." Pet. 23.
- Though Atlas Turner cites *Shaffer*, it focuses on the first half of the opinion, where the Court recited dated practices from the *Pennoyer* era. See Pet. 3, 17, 19. Atlas Turner then feigns uncertainty over whether *Shaffer*'s holding—applying *International Shoe* to "all assertions of state-court jurisdiction"—applies to in rem cases because, supposedly, the "Court has never had occasion to explain how that standard applies to in rem jurisdiction." Pet 24. Atlas Turner can't be serious. *Shaffer*'s question presented was "whether the standard of fairness and substantial justice set forth in *International Shoe* should be held to govern actions in rem as well as in personam." *Shaffer*, 433 U.S. at

[4] Subsequent decisions clarify that *Shaffer*'s holding applies to out-of-state defendants who aren't tagged in the forum state (*Burnham* v. *Superior Court*, 495 U.S. 604 (1990)) and who haven't consented to jurisdiction (*Mallory* v. *Norfolk Southern Railway Co.*, 600 U.S. 122 (2023)).

> 206. After its historical review, the Court laid out the "case for applying to jurisdiction in rem the same test of 'fair play and substantial justice' as governs assertions of jurisdiction in personam." *Shaffer*, 433 U.S. at 207. "In rem jurisdiction" is shorthand for jurisdiction over the interests of persons in property. See *ibid.* So, "in order to justify an exercise of jurisdiction in rem, the basis for jurisdiction must be sufficient to justify exercising 'jurisdiction over the interests of persons in a thing.'" *Ibid.* The Court even demonstrated how to apply the minimum-contacts standard to in rem cases—how to look through the situs of property to ascertain the owner's personal contacts with the forum state. See *id.* at 207–209.

Accordingly, whether the controversy here is that which exists between Mrs. Welch and Atlas Turner generally or focuses instead on their competing interests in Atlas Turner's Insurance Assets specifically, the requirements of the Fourteenth Amendment's Due Process Clause are the same. South Carolina courts may proceed so long as Atlas Turner has established minimum contacts with South Carolina to satisfy traditional notions of fair play and substantial justice. The state courts have not finally resolved that question. See p. 10, *supra*. When they do, Atlas Turner's commercial activities directed toward South Carolina, plus its (possible) acquisition of insurance to cover bodily injuries its activities caused in South Carolina, will be relevant contacts bearing upon the fairness of the court's appointment of a Receiver.

3. The preceding discussion reveals why two decisions of this Court that Atlas Turner cites—*Fall* v. *Eastin* and *Rush* v. *Savchuk*—don't advance its cause.

Atlas Turner rests its direct-control-versus-indirect-control dichotomy on a Frankenstein's monster quotation that stitches together snippets from different pages of *Fall* v. *Eastin*, 215 U.S. 1 (1909). See Pet. 19. In so doing, Atlas Turner masks what *Fall* was really about; it had nothing to do with due process. In a divorce proceeding, a Washington court ordered the husband to convey to the wife his interest in Nebraska land, which was accomplished when a court-appointed commissioner executed a deed to that effect. See *Fall*, 215 U.S. at 1–5. The husband, "then, to defeat the decree, and in fraud of her rights, conveyed the land to" his sister, Eastin. *Id.* at 14. The wife sued Eastin to quiet title in Nebraska, *id.* at 2, and this Court affirmed that the Full Faith and Credit Clause did not oblige Nebraska courts to revoke Eastin's deed. See *id.* at 4. For full-faith-and-credit purposes, States may prescribe how real property within their territories can be conveyed and therefore may refuse to recognize out-of-state decrees purporting to convey local real estate. See *id.* at 11.

Atlas Turner's effort to twist *Fall*'s holding into an applicable due-process limitation fails for multiple reasons. First, this case concerns intangible property, and *Fall* recognized a "firmly established" Full Faith and Credit exception only for real property. *Fall*, 215 U.S. at 11; see *Williams* v. *North Carolina*, 317 U.S. 287, 294 n.5 (1942) (describing *Fall* as "refus[ing] to require courts of one state to allow acts or

judgments of another to control the disposition or devolution of realty in the former" and as "rest[ing] on the doctrine that the state where the land is located is 'sole mistress' of its rules of real property"). Second, *Fall*'s recognition of a Full Faith and Credit exception for in-state courts bespeaks no corresponding Due Process limitation on out-of-state courts. The Court was fixed on what in-state courts *may* do with certain real-estate decrees, not on whether out-of-state courts *can* issue such decrees. The Court observed that "embarrassment[s]" occasioned by the Full Faith and Credit exception for real-estate decrees have "been obviated by legislation in many states." *Fall*, 215 U.S. at 11. Such legislation would be ineffective, however, if the Due Process Clause flatly forbade out-of-state courts from issuing real-estate decrees in the first place. Accord *Durfee* v. *Duke*, 375 U.S. 106, 115 & n.14 (1963) (holding that the principle affirmed in *Fall* does not void the out-of-state court's judgment concerning title to real property, such that the matter "can be retried in another State in litigation between the same parties").

Neither is *Rush* v. *Savchuk* like this case. See Pet. 24. In *Rush*, despite *Shaffer*'s hot-off-the-presses holding, the Minnesota Supreme Court allowed a plaintiff to use a quasi-in-rem proxy to litigate a tort claim against an out-of-state tortfeasor who lacked contacts with Minnesota. The focal point of *Rush* was the tortfeasor's insurer, who did business in Minnesota and who, by virtue of an insurance policy, owed coverage (a debt) to the tortfeasor. Building off *Kulko* v. *Superior Court*, 436 U.S. 84 (1978) and anticipating *Walden* v. *Fiore*, 571 U.S. 277 (2014), *Rush* held that the insurer's "adventitious" presence in Minnesota,

though it brought the insurer's intangible debt to the tortfeasor into Minnesota as well, was not evidence of the tortfeasor's own contacts with Minnesota and therefore could not sustain exercising personal jurisdiction over the tortfeasor. See *Rush*, 444 U.S. at 329–330; see *id.* at 331 (refusing to attribute the insurer's Minnesota contacts to the tortfeasor).

This case is not the "inverse" of *Rush*, Pet. 24, as would be the case if South Carolina courts held that Atlas Turner's contacts with South Carolina sustain personal jurisdiction over Atlas Turner's insurers. The insurers' amenability to suit in South Carolina will be considered if and when the Receiver finds any insurance coverage. At that point, if Atlas Turner and the insurer are both subject to personal jurisdiction in South Carolina, any constitutional concern will evaporate, for "where the debtor [*i.e.*, an insurer] and creditor [*i.e.*, Atlas Turner] are within the jurisdiction of a court, that court has constitutional power to deal with the debt." *Standard Oil*, 341 U.S. at 439.

C. There is no split regarding a receiver's power to investigate and collect a defendant's intangible assets or out-of-state assets.

Properly viewed, the situation here has engendered no division among lower courts. Atlas Turner manufactures a split, citing Arizona, Montana, and Washington cases that did not involve receivers, let alone receivers and intangible property. See Pet. 11–13. The only receivership case Atlas Turner cites (Pet. 14), *Citronelle-Mobile Gathering, Inc.* v. *Watkins*, 934 F.2d 1180 (CA11 1991), agrees with the

South Carolina Supreme Court that a court with personal jurisdiction over a defendant can appoint a receiver to investigate and collect the defendant's property, wherever it may be. See *id.* at 1187–1188. The Eleventh Circuit, in turn, relied on decisions from the First, Second, and Ninth Circuits holding that personal jurisdiction sustains appointing a receiver over a defendant's intangible and/or extraterritorial property. See *United States* v. *Ross*, 302 F.2d 831, 833–834 (CA2 1962) (having "personal jurisdiction over Ross *** gave the court power to order Ross to transfer [foreign] property," including corporate stock, to a receiver); *United States* v. *Arizona Fuels Corp.*, 739 F.2d 455, 460–461 (CA9 1984) (personal jurisdiction over party was sufficient to uphold receiver's authority over party's property in different state); *ibid.* (explaining there is "no purpose" served by requiring additional steps to acquire "intangible" property rather than "land or tangible personal property"); cf. *Am. Freedom Train Found.* v. *Spurney*, 747 F.2d 1069, 1073–1074 (CA1 1984) (A court may exercise "its in personam equitable jurisdiction in ancillary actions brought by the receiver. If there is in personam jurisdiction, it need not be shown that the court has jurisdiction over property ***.").

Nor is there even tension between the Arizona, Montana, and Washington cases and the South Carolina Supreme Court's decision here. Two of those cases, *Gammon* v. *Gammon*, 684 P.2d 1081 (Mont. 1984), and *In re Marriage of Kowalewski*, 182 P.3d 959 (Wash. 2008), dealt with real property and the Full Faith and Credit exception for decrees transferring title to real property located out-of-state. See p. 26, *su-*

pra. Neither decision discusses due process or embraces Atlas Turner's view of the Fourteenth Amendment. On the contrary, the Montana Supreme court *rejected* an argument, analogous to Atlas Turner's, that an Oregon divorce decree was "entirely void and unenforceable" because it purported to transfer title to land in Montana. *Gammon*, 684 P.2d at 1085–1086. So too, the Washington Supreme Court holds that a state court, though it cannot transfer *title* to out-of-state real property, can adjudicate *rights to* and *interests in* out-of-state real property. *Kowalewski*, 182 P.3d at 962–963.

The third state-court case, *State* v. *Western Union Financial Services, Inc.*, 208 P.3d 218 (Ariz. 2009), is also inapposite. That case addressed the "narrow" question whether an Arizona court, having personal jurisdiction over the custodian of a wire transfer (Western Union), could seize that intangible asset without having personal jurisdiction "over any owner or interest holder of any seized transfer." *Id.* at 220. Accordingly, the court viewed the question as a question of in rem jurisdiction over intangible property. *Ibid.* As in *Shaffer* and *Rush*, Western Union's presence in Arizona was insufficient to justify jurisdiction. See *id.* at 224–226. Furthermore, after concluding that this Court has not "mandated" state courts to accept the "fiction" that a debt travels with the debtor, the court held that, as a matter of state law, Arizona courts could exercise jurisdiction over the wire transfers only if "either the sender or the recipient of the wire transfer is domiciled in Arizona." *Id.* at 225. Neither was. See *id.* at 226.

That situation is nothing like this one. Here, the trial court found personal jurisdiction over the owner of intangible assets (Atlas Turner) and held that, as a matter of state law, Atlas Turner's Insurance Assets are in South Carolina. While *Western Union* didn't involve a receiver, the Arizona Supreme Court's affirmation that the State could investigate the wire transfers, see *id.* at 220 n.3, parallels the South Carolina courts' decision to appoint the Receiver to investigate Atlas Turner's Insurance Assets.

The absence of a relevant conflict confirms the Court should deny the Petition.

D. Different receiverships are irrelevant.

Several amici echo Atlas Turner's false assertion that the state court here is unconstitutionally exercising in rem jurisdiction over out-of-state assets. Like Atlas Turner, amici ignore that insurance assets are intangible, and "[j]urisdiction over an intangible can indeed *only arise*" in personam. *Estin*, 334 U.S. at 548 (emphasis added). They contend that jurisdiction over property is wholly separate and distinct from jurisdiction over persons, ignoring that "in order to justify an exercise of jurisdiction in rem, the basis for jurisdiction must be sufficient to justify exercising 'jurisdiction over the interests of persons in a thing.'" *Shaffer*, 433 U.S. at 207; *Mullane*, 339 U.S. at 312 ("[T]he requirements of the Fourteenth Amendment to the Federal Constitution do not depend upon a classification for which the standards are so elusive and confused generally and *** primarily for state courts to define.").

Attempting to overcome the serious vehicle problems with this case and lack of support for their legal

arguments, Atlas Turner and its amici point to other South Carolina receivers appointed in other cases, to argue that South Carolina receiverships have caused international strife. Those other cases, which amici exaggerate and mischaracterize, provide no reason for this Court to grant certiorari *in this case*.

For example, National Union complains about a wholly unrelated receivership over Payne & Keller, a formerly defunct Texas company. National Union pretends that the South Carolina Receivership Order in that case caused "interstate conflict[]," but it identifies no conflict at all. Amicus Br. of Nat'l Union at 10. Rather, National Union deceptively omits that, after a South Carolina trial court held Payne & Keller was fraudulently dissolved under Texas law, a Texas trial court domesticated that decision, and the Texas Secretary of State independently decided to revoke Payne & Keller's dissolution. See C.A. Original Clerk's Record (C.R.) 5, *Nat'l Union Fire Ins. Co. of Pittsburgh, PA* v. *Payne & Keller Co.*, No. 14-23-0899-CV (Dec. 11, 2023) (discussed in Appellee's Br. at 11, *Nat'l Union*, *supra* (No. 14-23-0899-CV), 2024 WL 2115176). The Texas Secretary of State also expressly stated that Texas had no interest in the outcome of the case—hardly strife at all. See C.A. Supplemental Clerk's Record (Supp. C.R.) 13, *Nat'l Union*, *supra* (Feb. 13, 2024) (discussed in Appellee's Br. at 11, *Nat'l Union*, *supra*, 2024 WL 2115176). Not only does National Union concede two states may exercise personal jurisdiction over the same defendant at once, Amicus Br. of Nat'l Union at 12, but it also fails to identify any action by a South Carolina court purporting to form, dissolve, or revive a foreign corporation—what it says cannot happen. *Id.* at 13.

National Union (and other amici) also mention the receivership over Whittaker, Clark & Daniels, but once again ignore the facts of that case. There, the Third Circuit held that the South Carolina court's receivership order, "on its face," did not purport to give the receiver authority to decide whether the company could file for bankruptcy protection. *In re Whittaker Clark & Daniels Inc.*, 152 F.4th 432, 445 (CA3 2025). So, a state's "exclusive authority to govern the internal affairs of its corporations," Amicus Br. of Nat'l Union at 14, was not usurped in that case (or any other). Atlas Turner contends that appointing a receiver to investigate a company's insurance assets somehow undermines its internal affairs, Pet. 26, but that is not so. Atlas Turner concedes that the South Carolina Supreme Court did not allow the Receiver any "powers to control Atlas Turner's corporate affairs," Pet. 8 n.2, so the "internal affairs doctrine," which "recognizes that only one State should have the authority to regulate a corporation's internal affairs—matters peculiar to the relationships among or between the corporation and its current officers, directors, and shareholders"—is plainly not at issue here. *Edgar* v. *MITE Corp.*, 457 U.S. 624, 645 (1982); see also Amicus Br. of Am. Tort Reform Assoc. at 7 (conceding the South Carolina Supreme Court did not permit such intrusion but speculating that lower courts may not follow the Supreme Court's correct statement of the law).

Atlas Turner and amici complain about two other receiverships that are not at issue in this appeal—involving Canadian company Asbestos Corporation Limited (ACL) and English company Cape Intermediate Holdings Limited (Cape).

As they note, ACL has filed for bankruptcy in Canada. Since that voluntary bankruptcy petition, neither the South Carolina Courts nor the receiver for ACL have taken any action—"extraterritorial" or otherwise—regarding ACL's assets. And before the bankruptcy, ACL's receiver simply investigated the existence of ACL's insurance assets, taking no control over any. See Response to Motion for Ex Parte Relief and Provisional Relief, *In re Asbestos Corp. Ltd.*, No. 25-10934-mg, ECF 23, at 30–34 (Bankr. S.D.N.Y. May 14, 2025). That an asbestos company went bankrupt from its tort liabilities is hardly surprising and, again, has nothing to do with this case.

And the Cape receivership is nothing like this case, since it does not involve insurance assets; it involves direct, corporate veil-piercing liability for flooding South Carolina with asbestos for decades and then fraudulently winding up an American subsidiary in a blatant attempt to avoid liability. Atlas Turner observes that Cape sought and obtained an injunction from a U.K. court against the South Carolina receiver, which purports to enjoin him from taking court-ordered actions "*even in South Carolina*." Pet. 28–29. Atlas Turner shockingly pretends that a U.K. court is well within its rights to control South Carolina court officers acting in South Carolina, chiding the South Carolina Supreme Court for "intensif[ying] the international clash" by simply noting that it is "shocking and indefensible" for a U.K. court to purport to intervene in ongoing South Carolina court proceedings. *Id.* at 29–30.

Atlas Turner has it backwards. American courts need not halt ongoing proceedings merely because a

foreign court purports to enjoin them. In any event, those proceedings are continuing in the South Carolina Courts—one of three groups of defendants settled with the Cape receiver, and the trial as to the others was recently stayed pending an expedited appeal in the South Carolina Supreme Court. *See* Order, *Tibbs* v. *3M Co.*, No. 2025-002120, and *Cape plc* v. *Anglo American plc*, No. 2025-002121 (S.C. Nov. 20, 2025).

CONCLUSION

The Court should deny the Petition.

Respectfully submitted,

BRYAN KILLIAN
Counsel of Record
JAMES NELSON
MORGAN, LEWIS
& BOCKIUS LLP
1111 Pennsylvania Ave. NW
Washington, D.C. 20004
202-373-6191
bryan.killian@morganlewis.com

JON ROBINSON
SHANON PEAKE
SMITH ROBINSON
3200 Devine Street
Columbia, S.C. 29205

DECEMBER 2025