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

ROGER D. STIWINTER, and **PHYLLIS G. STIWINTER**,	)	**C/A NO. #2025-CP-40-08457**
Plaintiff,	)	In Re: Asbestos Personal Injury Litigation Coordinated Docket
v.	)	
3M COMPANY, *et al.*,	)	
Defendants.	)	

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SC Court of Appeals

ORDER DENYING ESAB CORPORATION'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

INTRODUCTION

This Court, having considered ESAB Corporation's ("ESAB" or "Defendant") Motion to Dismiss for lack of personal jurisdiction pursuant to Rules 12(b)(1) and 12(b)(6), the record, the submissions, and applicable law, concludes that ESAB Corporation is properly before this Court as an alleged party to an ongoing scheme to avoid liability for its conduct and the conduct of other entities with which it acted together in the decision to sell thousands of tons of raw asbestos fibers into the U.S. market, and then abandon its liability to U.S. plaintiffs, including Plaintiffs herein. For the same reasons this Court denied ESAB's Motion to Dismiss on the same grounds in *Tibbs v. 3M et al.,* C/A No. 2023-CP-40-01759, this Court again denies ESAB's motion.

BACKGROUND

In precisely the same context applicable here, the South Carolina Supreme Court concluded:

> [W]e have reviewed the trial court's order denying the Appellants' [M]otion to [D]ismiss for lack of personal jurisdiction and the Confirmation Order, and there is ample prima facie evidence of personal jurisdiction over each of the Appellants and Cape.

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Tibbs v. 3M Company, et al., 2025-002104 (May 27, 2026). The order referenced by the South Carolina Supreme Court confirmed that "jurisdiction over ESAB is . . . proper under both the alter ego and single business enterprise theories." Order, *Tibbs v. 3M et al.,* C/A No. 2023-CP-40-01759 dated December 6, 2023. In addition to the evidence set forth in the active pleadings, Plaintiffs briefing included additional evidence demonstrating that ESAB is subject to personal jurisdiction in South Carolina.

Three days after filing its Amended Motion to Dismiss asserting, among other things, ESAB was founded in 2021, does not do business in South Carolina, and has no employees, ESAB issued a press release stating:

> Founded in 1904, ESAB Corporation (NYSE: ESAB) is a focused premier industrial compounder… ESAB Corporation is based in North Bethesda, Maryland and employs more than 9,000 associates and serves customers in approximately 150 countries.

(June 2, 2026, Press Release). ESAB's designated witness on personal jurisdiction, Rita Herring, testified on March 18, 2026, that ESAB was registered to do business in South Carolina. Ms. Herring further testified that ESAB "is not transacting any business in South Carolina."

On May 20, 2026, ESAB filed an "Application for Surrender of Authority to Do Business in the State of South Carolina," signed by ESAB Corporation's General Counsel, stating the corporation is no longer doing business in South Carolina. (emphasis added). ESAB's 10-K reported that ESAB Corporation, founded in 1904, had net sales of $1.130 billion in the Americas for the year ended December 31, 2025, and its "sales channels include both independent distributors and direct salespeople."

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Plaintiff's suit seeks, in part, to hold ESAB and its predecessors and successors in interest responsible for Cape Intermediate Holdings Limited's (successor to Cape PLC, successor to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)) liability arising from Cape's sale of massive amounts of asbestos in the United States, including in South Carolina. ESAB challenges this Court's ability to exercise jurisdiction over it in a manner that would leverage Cape's litigation-avoidance scheme; however, this Court is empowered to exercise jurisdiction over ESAB.

First, the exercise of personal jurisdiction over ESAB is appropriate at this preliminary stage because Plaintiffs' complaint, coupled with submitted evidence, makes a prima facie showing that ESAB is part of a single business enterprise/business amalgamation with Cape, consistent with South Carolina jurisprudence recognizing intertwined operations and evidence of bad faith, abuse, fraud, wrongdoing, or injustice. *See Walbeck v. I'On Co.*, 439 S.C. 568, 889 S.E.2d 537 (2023). Second, the exercise of specific jurisdiction is proper based on known and intended contacts with South Carolina—through Cape and NAAC—stemming from the movement of asbestos from South African mines to the United States, including South Carolina, while concealing known dangers. Third, jurisdiction is further supported by ESAB's participation in an amalgamated commodity mining enterprise that distributed massive amounts of asbestos into the United States and South Carolina, hid known health risks, and avoided responsibility when liability materialized.

THE HISTORY OF CAPE AND ESAB

I. ESAB is the parent company of, and an amalgamated scheme with, two companies involved historically in South African mining, Central Mining and Charter.

The record before this Court demonstrates that ESAB, founded in 1904, has had a corporate relationship to Cape and to entities that operated and ultimately chose to evade jurisdiction in U.S. courts since at least 1994, and ESAB has engaged in activities to guard against liability for historical bad acts of these subsidiaries.

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Specifically, ESAB is responsible for and amalgamated with The Central Mining & Investment Corporation Limited ("Central Mining"), Charter Consolidated Limited ("Charter"), and Cape, which were historically part of the Oppenheimer Group System in South Africa. Judicial and historical materials describe the Oppenheimer Group System's integrated control over affiliated companies. *Consolidated Gold Fields, PLC v. Anglo American Corp. of South Africa, Ltd.,* 698 F. Supp. 487 (S.D.N.Y. 1988). Within this system, Charter and Central Mining were financing and management entities with direct management responsibilities for Cape, which sold 95 percent of the amosite asbestos into the United States from the 1950s until 1978.

(a) Historical Cape activities

Cape mined hundreds of thousands of tons of raw asbestos in Apartheid-era South Africa and sold asbestos fiber to scores of U.S. manufacturers, including in South Carolina. Third-Party Compl. ¶ 40. In 1953, Cape established NAAC as a wholly controlled instrumentality to expedite and facilitate the movement of asbestos from South African mines into the United States, including South Carolina, and the following two decades were Cape's most bountiful years. Third-Party Compl. ¶¶ 70, 72.

Cape effectively controlled 90% of the global supply of amosite asbestos and dominated distribution of other asbestos types, and, under direction of an amalgamated network, implemented a conscious national distribution pattern, with NAAC selling massive amounts of asbestos used or distributed in South Carolina; NAAC's records show Cape sold asbestos to companies in South Carolina. Third-Party Compl. ¶¶ 69, 73-75.

By 1970, NAAC was the largest U.S. importer of Amphibole Fibers. NAAC's operations and decision-making were wholly dominated by Cape and its owners, including Charter, with borrowing restricted by Cape and dividends forced to Cape. Third-Party Compl. ¶¶ 72-73, 75, 77-79. Cape directed NAAC to procure wholly inadequate insurance coverage for massive future

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products liability exposure and suppressed information about known risks, using misinformation to influence public opinion. Third-Party Compl. ¶¶ 80-88.

In response to rising asbestos suits in the early 1970s, Cape and affiliates implemented a litigation-avoidance scheme. Cape did this by feigning reduced oversight of NAAC, disclaiming moral responsibility, declining to reserve funds in the U.S., and refusing to accept process or appear in U.S. proceedings. Third-Party Compl. ¶¶ 89-102. On January 31, 1978, Cape liquidated NAAC, siphoning remaining U.S. assets to Cape Industries Overseas Ltd., wholly owned by Cape Industries Ltd., to reduce assets available to creditors. This followed a well worn Oppenheimer strategy of draining domestic profits and liquidating U.S. presence when liability was imminent. Third-Party Compl. ¶ 97. Nevertheless, despite NAAC's dissolution, Cape contemplated ways to continue asbestos flows to U.S. customers and to take profits out of the U.S., forming Continental Products Corporation through NAAC's final president to act as a commission agent. Third-Party Compl. ¶¶ 94-96, 99, 101.

Cape has refused to address its massive unpaid responsibilities for death and illness caused by its asbestos products in South Carolina and elsewhere in the United States. Third-Party Compl. ¶ 114.

(b) The amalgamated enterprise of Charter, Central Mining, and Cape perpetrated a fraud on the U.S. market

Cape and the Oppenheimer Group knew more about asbestos health hazards than virtually anyone in the 1950s and 1960s and Cape used such knowledge in its business decisions. When faced with U.S. asbestos liabilities, Cape and its amalgamated entities closed NAAC to give the impression that it was exiting the U.S. market. But Cape continued selling South African asbestos via a Liechtenstein pass-through to the same customers, rebranding operations as Continental Products Company ("CPC"), which, according to Cape was nothing more than "a difference in

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form" of NAAC. CPC operated in the same building as NAAC, with NAAC files and employees moving to CPC, CPC taking over the pension plan, and staff occupying the same desks, illustrating continuity of operations despite formal changes.

(c) ESAB takes control of Charter and Central Mining

Beginning in 1994, Charter and ESAB became intertwined, first with ESAB as a subsidiary of Charter, and ultimately with ESAB as Charter's parent, through a series of transactions: a 1993 Scheme of Arrangement; 1994 acquisition of ESAB AB; 2008 formation of Charter International Limited via scheme; 2011 acquisition by Colfax UK Holdings Ltd., a wholly-owned subsidiary of Colfax Corporation; 2021 formation of ESAB Corporation; and 2022 spin-off of ESAB Corporation as parent of Colfax UK and indirect parent of PubCo Charter. As part of the 2022 Separation Agreement between Colfax and ESAB, ESAB agreed that the ESAB Group would own all ESAB Assets and be liable for all ESAB Liabilities, defined broadly to include liabilities relating to ESAB Assets and those expressly assumed or arising under the agreement and ancillary agreements. Post-separation, several Charter subsidiaries, including Central Mining, reported ESAB Corporation as their ultimate parent and controlling party, with ESAB providing letters of support to meet all liabilities through stated going-concern periods; several Charter entities reported no operational revenue or employees.

(d) ESAB's Continued Attempts to Avoid Responsibility

In June 2025, during pending declaratory judgment proceedings in *Tibbs*, Central Mining passed a special resolution reducing its share premium account from GBP 76,239,337 to zero, accompanied by a Solvency Statement. ESAB's CFO signed this resolution as director of Charter, and ESAB's corporate representative confirmed review of documents before signature. Charter's Annual Report for year ended December 31, 2024 reflects ESAB's control, reciting ESAB Corporation as ultimate parent and a letter of support to meet all liabilities through December 31,

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2026, consistent with going concern assessment. Both Charter and Central Mining identify ESAB as their controlling party in UK public filings. ESAB promotes a corporate history dating to 1904 in public materials and SEC filings, including its 10-K for year ended December 31, 2025 and press releases. ESAB's corporate representative acknowledged these statements and investor access to full filings.

II. ESAB's Contacts with South Carolina

In addition to its contacts with South Carolina through its amalgamated enterprise, ESAB itself has substantial contacts with South Carolina:

(a) ESAB registered to do business in South Carolina

ESAB Corporation was registered to do business in South Carolina from 2021 until May 20, 2026, when it withdrew its registration seven days before the *Tibbs* opinion issued.

(b) ESAB Facilities in South Carolina

ESAB built and operated a $3,500,000 training center in Florence, South Carolina, and subsequently opened a 260,000 square foot facility in Union, South Carolina, reportedly employing more than 100 South Carolinians.

(c) ESAB mandates suits against it be brought in Florence, South Carolina

ESAB's Terms and Conditions of Sales located on its website provide that South Carolina law governs all its transactions and require that buyers submit to the exclusive jurisdiction of state and/or federal courts located in Florence, South Carolina for lawsuits arising under or in connection with the offer, with specified waivers and UCC references.

LEGAL STANDARD

At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by a prima facie showing of jurisdiction either in the complaint or in affidavits, with factual disputes resolved in favor of the non-moving party. *See Brown v. Inv. Mgmt. & Res., Inc.,* 323 S.C. 395, 475

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S.E.2d 754 (1996); *Cockrell v. Hillerich & Bradsby Co.,* 363 S.C. 485, 611 S.E.2d 505 (2005); *HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 699 S.E.2d 699 (Ct. App. 2010). South Carolina's long-arm statute is coextensive with due process, collapsing the analysis into whether the defendant has minimum contacts with the forum such that suit does not offend traditional notions of fair play and substantial justice. *See S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 423 S.E.2d 128 (1992); *Int'l Shoe Co. v. Washington,* 326 U.S. 310 (1945). General jurisdiction requires affiliations so continuous and systematic as to render the corporation essentially at home; specific jurisdiction focuses on contacts giving rise to the suit and constitutional reasonableness. *See Daimler AG v. Bauman,* 571 U.S. 117 (2014); *Helicopteros Nacionales de Colombia, S.A. v. Hall,* 466 U.S. 408 (1984); *Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs., Inc.,* 334 F.3d 390 (4th Cir. 2003). On Rule 12(b)(6), the pleading standard is liberal, well-pled facts are presumed true, and dismissal is improper if any theory could entitle relief. *See Overcash v. S.C. Elec. & Gas Co.,* 364 S.C. 569, 614 S.E.2d 619 (2005); *HHHunt Corp.*, 699 S.E.2d at 704; *Brown v. Leverette*, 291 S.C. 364, 353 S.E.2d 697 (1987); *FOC Lawshe Ltd. P'ship v. Int'l Paper Co.*, 352 S.C. 408, 574 S.E.2d 228 (Ct. App. 2002); *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987).

ARGUMENT

I. The Exercise of Business Amalgamation/Single Business Enterprise Jurisdiction Over ESAB is Proper

South Carolina recognizes the single business enterprise theory. Specifically, where multiple corporations unify operations and resources to achieve a common business purpose and adherence to separateness would defeat justice, courts regard them as a single enterprise-in-fact, upon a showing of bad faith, abuse, fraud, wrongdoing, or injustice, a finding of a single business theory or amalgamation is proper. *See Pertuis v. Front Roe Rests., Inc.*, 423 S.C. 640, 817 S.E.2d 273 (2018); *Walbeck v. I'On Co., LLC*, 439 S.C. 568, 889 S.E.2d 537 (2023). The pleadings and

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evidentiary submissions here allege intertwined operations among ESAB, Charter, Central Mining, and Cape, coordinated to exploit the U.S. asbestos market (including South Carolina), hide or misstate known health risks, strategically underinsure, drain domestic profits offshore, and create a byzantine web to appear separate while avoiding liability—satisfying the Pertuis/Walbeck standards for amalgamation at the prima facie stage. Courts may apply veil-piercing theories to obtain personal jurisdiction, including among sister entities. *See Duong v. N.A. Transp. Servs. LLC,* 2019 WL 13109647 (D.S.C. Sept. 25, 2019). Given the allegations and evidence submitted to this Court, treating ESAB and Cape as separate would defeat justice, and this Court concludes Plaintiffs have made a prima facie showing of personal jurisdiction under South Carolina's single business enterprise theory.

II. The Exercise of Personal Jurisdiction Over ESAB is Proper

Cape acted as agent for ESAB and affiliated entities within an amalgamated mining enterprise moving asbestos from South African mines to the United States (including South Carolina), concealing known dangers, accelerating offshore flows of proceeds, minimizing capital for compensation, and refusing U.S. process or appearances. This combination of occurrences satisfies South Carolina's long-arm statute, including actions through agents. S.C. Code §§ 36-2-803(4), (8). Under the specific jurisdiction test, ESAB purposefully availed itself through its agent. Plaintiffs' claims arise out of those activities; and exercising jurisdiction comports with fair play and substantial justice, given the forum's interests and Plaintiffs' interest in effective relief. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985); *Helicopteros*, 466 U.S. 408; *Christian Sci. Bd. of Dirs. v. Nolan*, 259 F.3d 209 (4th Cir. 2001). This Court further notes that specific jurisdiction over Cape exists based on its extensive U.S. contacts and conduct directed at South Carolina, as detailed in the Third-Party Complaint and incorporated factual materials, and that veil-

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piercing standards for jurisdiction are more lenient than for liability, warranting jurisdiction and discovery.

III. ESAB's Litany of Other Arguments Likewise Lack Merit

A. The South Carolina "Door Closing Statute" does not bar the Plaintiffs' Claims.

S.C. Code § 15-5-150 addresses capacity, not subject matter jurisdiction, and authorizes foreign residents to proceed against foreign corporations where the cause arose or the subject is situated in South Carolina; given Cape's importation and sale of amosite into South Carolina and Plaintiffs' exposures, suit is proper, and because ESAB is responsible for Cape's actions, dismissal is unwarranted. *See Farmer v. Monsanto Corp.,* 353 S.C. 553, 579 S.E.2d 325 (2003).

B. There is no basis for a stay

The decision to stay lies within this Court's discretion. This Court has already decided the personal jurisdiction question as to ESAB in *Tibbs*, and the Supreme Court of South Carolina has affirmed this Court. The remittitur in *Tibbs* has now been sent down by the Supreme Court to this Court. In light of this action, no stay is warranted. Thus, ESAB's stay request is denied.

C. Plaintiffs' Complaint provides fair notice of the claims.

ESAB argues insufficiency but did not move under Rule 12(e); the pleadings provide fair notice under Rule 8 and South Carolina's liberal standards and are not so vague as to preclude a responsive pleading. *See Watts v. Metro Sec. Agency*, 346 S.C. 235, 550 S.E.2d 869 (Ct. App. 2001); *Carolina First Corp. v. Whittle*, 343 S.C. 176, 539 S.E.2d 402 (Ct. App. 2000).

D. Indispensable Parties

Cape is already named and was served in at least the Stiwinter matter on January 5, 2026. Its nonappearance does not render it indispensable where complete relief is available against ESAB under veil-piercing/amalgamation theories. Veil piercing is a means of imposing liability, not a standalone cause of action and equity does not require futile acts. A Rule 19 joinder is unnecessary

where, as here, complete relief can be accorded without additional parties. *See Drury Dev. Corp. v. Found. Ins. Co*., 380 S.C. 97, 668 S.E.2d 798 (2008); *Pertuis*, 423 S.C. 640.

CONCLUSION

For the foregoing reasons, and based on the record and applicable law, IT IS ORDERED that ESAB Corporation's Motion to Dismiss for lack of personal jurisdiction is DENIED. This Court's ruling is consistent with its prior denial of ESAB's similar motion in *Tibbs v. 3M et al.,* C/A No. 2023-CP-40-01759, and with the South Carolina Supreme Court's recognition of ample prima facie evidence of personal jurisdiction in a nearly identical matter.

IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]

[Signature appears on the following page.]

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Richland Common Pleas

Case Caption:	Roger D Stiwinter , plaintiff, et al vs 3M Company , defendant, et al
Case Number:	2025CP4008457
Type:	Order/Other

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