# APPENDIX

## TABLE OF APPENDICES

**Page**

## APPENDIX A

**THE STATE OF SOUTH CAROLINA**
**In The Supreme Court**

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

v.

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

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

And Cape plc, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas, Respondent,

v.

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

Of Which Charter Consolidated, Ltd.; ESAB Corporation; Central Mining & Investment Corporation, Ltd.; Mohed Altrad; and Altrad Investment Authority S.A.S., are the Appellants.

Appellate Case No. 2025-002104

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Appeal From Richland County
Jean Hoefer Toal, Acting Circuit Judge

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Opinion No. 28337
Heard February 25, 2026 – Filed May 27, 2026

**AFFIRMED AS MODIFIED IN PART AND REVERSED IN PART**

A. Victor Rawl, Jr. and William James Blount, of Gordon & Rees LLP, of Charleston, for Appellants Charter Consolidated, Ltd., ESAB Corporation, and Central Mining & Investment Corporation, Ltd.

Kevin A. Hall and Matthew Todd Carroll, of Womble Bond Dickinson (US) LLP, of Columbia; and Mary Elizabeth O'Neill, of Womble Bond Dickinson (US) LLP, of Charlotte, North Carolina; all for Appellants Altrad Investment Authority S.A.S. and Mohed Altrad.

Gray Thomas Culbreath and John Thomas Lay, Jr., of Gallivan, White & Boyd, PA, of Columbia; Lindsay Anne Joyner and Eleanor Lasseigne Jones, of Gallivan, White & Boyd, PA, of Charleston; Jonathan M. Robinson and Shanon N. Peake, of Smith Robinson Holler DuBose Morgan, LLC, of Columbia; George Murrell Smith, Jr., of Smith Robinson Holler DuBose Morgan, LLC, of Sumter; Troy S. Brown, of Philadelphia, Pennsylvania; Lauren McCulloch Semlinger, of Houston, Texas; and Paul A. Scrudato, of New York, New York; all for Respondent Cape, PLC.

Theile Branham McVey, John D. Kassel, and Jamie Rae Rutkoski, of Kassel McVey, of Columbia; Charles William Branham, III and David Christopher Humen, of Dean Omar Branham

Shirley, LLP, of Dallas, Texas; all for Respondents Margaret B. Tibbs and John A. Tibbs.

James Ledlie of Motley Rice, LLC, of Mount Pleasant, as Amicus Curiae for Motley Rice, LLC. Kush A. Shukla of Meirowitz & Wasserberg, LLP, of Columbia, as Amicus Curiae for Meirowitz & Wasserberg, LLP. Joshua Drew Cagle of Maune, Raichle, Hartley, French & Mudd, LLC, of Mount Pleasant, as Amicus Curiae for Maune, Raichle, Hartley, French & Mudd, LLC. Kenneth J. Wilson of Roger, Patrick, Westbrook & Brickman, LLC, as Amicus of Curiae for Rogers, Patrick, Westbrook & Brickman, LLC. Thomas A. Limehouse, Jr. of Limehouse LLC, as Amici Curiae for Santa Fe Braun, Inc.; Rentavla, LLC; ITT, LLC; Goulds Pumps, LLC; Dovers, LLC and Velvet V. Corporation. William Camden Lewis of Richardson Thomas, LLC, of Columbia; Terry E. Richardson, Jr. of Richardson Thomas, LLC, of Barnwell; Robert W. Cowan of Bailey Cowan Heckaman, PLLC, of Houston Texas, all as Amicus Curiae for Asbestos Victims. Jenna Brooke Kiziah McGee of Parker Poe Adams & Bernstein, LLP, of Charleston, as Amicus Curiae for New-Indy Containerboard, LLC. Wesley Brian Sawyer of Murphy & Grantland, PA, of Columbia, as Amicus Curiae for National Union Fire Insurance Co. of Pittsburgh, PA. Beattie B. Ashmore of Beattie B. Ashmore, PA, of Greenville, as Amicus Curiae.

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**JUSTICE HILL:** This is an appeal from an order in an asbestos case confirming the appointment of a receiver over Cape Intermediate Holdings Limited (CIHL), an English company. We refer to the order as the Confirmation Order. The case was brought by

John A. Tibbs and his wife, who sued numerous defendants alleging they had caused Mr. Tibbs' lung cancer. The Tibbs' complaint named Cape plc as one of the defendants.

It is helpful to begin by straightening out the confusion about which "Cape" entity is the real party in interest in this litigation. Both Cape plc and CIHL are descendants of Cape Asbestos Company, LTD, which was incorporated in England in 1893. Space and time do not allow us to recount the vertigo-inducing chronology of changes to the name and corporate form Cape Asbestos Company, LTD has undergone since its 1893 birth. What matters is that everyone agrees the correct entity is CIHL, and the Confirmation Order reflects this change.

There have been pleadings and orders in this case and another asbestos case known as *Park* (which we will soon discuss) that name Cape plc as the defendant. It appears this Cape plc was a successor in interest to Cape Asbestos Company, LTD, and predecessor in interest to CIHL, facts these papers spell out. This Cape plc was an English company, and the name of the Cape group from 1989 to 2011. Appellants argue that the Cape plc that is named in these cases is not the English company known as Cape plc, but the entity named Cape plc that was incorporated in the Bailiwick of Jersey in 2011 (Cape Jersey) and is a current parent company of CIHL. They make this argument–which was accepted by an English court decision we will later discuss–in part to claim that Cape Jersey cannot be responsible for any conduct any Cape company took before 2011. For our purposes, we agree with the trial court that CIHL is the correct defendant. Any reference to "Cape" in this opinion refers to CIHL and its predecessors and affiliates, not Cape Jersey.

The trial court had earlier appointed a receiver for Cape plc in *Park v. Armstrong International, Inc.*, Case No. 2021-CP-40-02727, another asbestos case where it had not answered or appeared. Keith Park, who had been the personal representative for his mother Isabella Park's estate, moved for the Receiver to be appointed. Due to confusion or miscommunication, and unbeknownst to Keith's trial counsel and the trial court, the Park estate had been closed, and Keith's appointment as personal representative had been terminated before he filed the motion. The trial court granted Keith's motion in 2023. It appears trial counsel did not learn of the estate closure until 2025, at which time the estate was reopened and Keith was reappointed as personal representative.

The *Park* Appointment Order directed the Receiver to, among other things, "administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape whatever they may be." Although the order emphasized the Receiver was to collect and administer "any insurance assets of Cape," the third paragraph of the order gave the Receiver sweeping powers over Cape's property.

Relying on the *Park* Appointment Order, the Receiver accepted service of the Tibbs' complaint on behalf of Cape plc. The Receiver answered the complaint and brought a third-party complaint against several parties, including (1) Altrad Investment Authority SAS and Mohed Altrad (collectively, the Altrad appellants), and (2) Charter

Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. (collectively, the Charter appellants), who are the Appellants now before us. The Receiver's third-party complaint alleges causes of action for unjust enrichment, constructive trust, alter-ego/amalgamation, and accounting.

Appellants answered the third-party complaint and also moved to dismiss it, contending the trial court lacked personal jurisdiction over Cape and them. They also moved to dissolve the receivership over Cape. After the trial court denied both motions, Appellants appealed and filed two petitions for writ of certiorari. The appeals were dismissed as interlocutory. In the meantime, we decided *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 916 S.E.2d 320 (2025), *cert. denied sub nom. Atlas Turner, Inc. v. Welch*, No. 25-213, 2026 WL 79875 (U.S.S.C. Jan. 12, 2026), which set forth guidelines for appointing a receiver before judgment and clarified the scope of the receiver's authority in that case. In the wake of *Welch*, we granted Appellants' two pending certiorari petitions and remanded to the trial court with instructions directing the trial court to confirm the Receiver's appointment and scope of authority complied with *Welch*. We further directed the trial court to ensure "the receiver has been authorized to conduct its work by an order filed in the specific case as to which the work is to take place. The receiver is not to be authorized to conduct work as to a case in which no receiver appointment order has been filed." The order also warned the parties against filing future improper petitions or interlocutory appeals (Appellants have filed over a dozen related to this case) or engaging in other inappropriate behavior, and it held several motions for sanctions in abeyance.

Once *Tibbs* was remanded, Appellants renewed their attacks on the *Park* Appointment Order. For his part, the Receiver sought an order confirming that his appointment in *Park* satisfied *Welch* and our remand instructions.

On October 13, 2025, the trial court issued the Confirmation Order. Besides clarifying that CIHL was the correct defendant, the Confirmation Order ruled that a pre-judgment receiver was warranted for CIHL because it had engaged in moral fraud and was in danger of insolvency. The Confirmation Order also scaled back the scope of the Receiver's authority.

This appeal followed. Appellants challenge the Confirmation Order on numerous fronts. They claim the Confirmation Order is void because it is merely a continuation of the *Park* Appointment Order and not a receivership order entered "in the specific case" as our June 26 remand order required. Appellants further contend the Confirmation Order is illegitimate because it relied on the *Park* Appointment Order, which they claim was void or invalid for various reasons that we will soon examine. Appellants also maintain the Confirmation Order runs afoul of *Welch*, and that no personal jurisdiction exists over either CIHL or the Appellants.

We now address these arguments, mindful our standard of review requires us to uphold the Confirmation Order unless the trial court exceeded its wide discretion in imposing it. *See Midlands Util., Inc. v. S.C. Dep't of Health & Env't Control*, 301 S.C. 224, 228, 391 S.E.2d 535, 538 (1989) (providing "the appointment of a receiver is within the discretion of the circuit judge").

I.

A. Whether the Confirmation Order was a Receivership Order Filed in this "Specific Case"

The trial court believed it was complying with the remand order by filing the *Park* Appointment Order and the Confirmation Order in the *Tibbs* action. We understand the trial court's reasoning and agree the filing met the spirit of our instructions. We also acknowledge that where a general receiver has been appointed, it is not always practical or efficient to require a new receivership appointment process in every case in which the receiver may need to act. *See Adler v. Seamen*, 266 F. 828, 838–39 (8th Cir. 1920); *see also* Rule 66, SCRCP. In such instances, the traditional practice has been for the receiver to return to the appointing court and seek an expansion of his authority allowing him to act in the new matter. *See Equity Trust Co. Custodian ex rel. Eisenmenger IRA v. Cole*, 766 N.W.2d 334, 341–42 (Minn. Ct. App. 2009); 1 Ralph Ewing Clark, *Clark on Receivers* § 108 (3d ed. 1959); 75 C.J.S. Receivers § 63 (March 2026 Update). But in this case, the Receiver (who is a pre-judgment, rather than general, receiver) did not seek such permission, and the trial court did not require it.

In future cases, a pre-judgment receiver should not be authorized to take control of a company's assets or otherwise act in lawsuits outside the case in which he is appointed. Of course, if a receiver is appointed after judgment, the trial court has much more latitude in permitting the receiver to operate in other matters or lawsuits and in expanding the receiver's authority.

B. The *Park* Appointment Order

As mentioned, much of Appellants' attack on the Confirmation Order focuses on their belief that the

2023 *Park* Appointment Order for Cape plc is void or invalid. Cape plc has not challenged the *Park* Appointment Order or made any objection or appearance in that lawsuit.

In normal circumstances, Appellants would not have standing to challenge Keith's capacity to file the motion for a receivership because they are not parties in *Park*. In general, a receivership order is not subject to collateral attack by a third party unless the order is void. *See Green v. Bookhart*, 19 S.C. 466, 470–71 (1883) ("A third person, when sued, cannot object to the regularity of the receiver's appointment when the judgment debtor has waived the objection . . . " (cleaned up)). However, "[i]f the court is without jurisdiction to appoint a receiver the order is void and may be attacked or disregarded whenever it comes collaterally in question." *Porter v. Brown*, 149 S.C. 151, 162 n.1, 146 S.E. 810, 814 n.1 (1929) (quoting 34 Cyc. p. 168) (J. Cothran, concurring in result); *see also Grant v. A.B. Leach & Co.*, 280 U.S. 351, 359 (1930) (holding validity of receivership appointment "could not have been questioned by a collateral attack in another court"); *Hudson v. All Star Mills, Inc.*, 315 S.E.2d 514, 516–17 (N.C. Ct. App. 1984); Clark, *supra*, at § 109; 16 Fletcher Cyc. Corp. § 7764 (2025).

Here, Appellants are parties in *Tibbs*. Because the *Park* Appointment Order and the Confirmation Order have been filed in *Tibbs*, Appellants may challenge the receivership directly. We emphasize, however, that an order appointing a receiver may not be challenged in a collateral case unless it is shown the appointment order is void.

We remind that an order is only void if it is issued from a court that lacked personal jurisdiction or subject matter jurisdiction. *Thomas & Howard Co. v.*

*T.W. Graham & Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995) ("Irregularities which do not involve jurisdiction do not render a judgment void."). Appellants make numerous claims that the Confirmation Order is void. There is no question the trial court had subject matter jurisdiction over the wrongful death action and the receivership motion, and the trial court's rulings that it had personal jurisdiction over Cape in *Park* are not before us. Despite the fact that the issue of personal jurisdiction is interlocutory, we have reviewed the trial court's order denying the Appellants' motion to dismiss 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. This is despite the fact that Cape has not appeared at all in this case and the Appellants have refused to engage in even jurisdictional discovery. The trial court still has to review the issue on the merits, and the parties, including Appellants, may present additional evidence as to this issue at trial. We therefore cannot accept Appellants' arguments that the Confirmation Order is void.

i. Keith's Authority as Personal Representative

We reject Appellants' suggestion that the *Park* Appointment Order is invalid because Ms. Park's estate was closed when the order was entered. Appellants insist the reopening of the estate and Keith's reappointment as personal representative cannot relate back to or otherwise revive the original receiver appointment order. Yet that is precisely what section 62-3-701 of the South Carolina Code (2022) allows.

Appellants point us to a New York case that concluded South Carolina law did not allow relation back of actions taken before an estate is reopened for subsequent administration. *See Bargil Assoc., LLC v. Crites*, 135 A.D.3d 676, 677–78 (N.Y. App. Div. 2016). The sparse *Bargil* decision overlooked key provisions of our Probate Code. Although it cited to section 62-3-608 of the South Carolina Code (2022), which states the termination of the appointment of a personal representative "ends the right and power pertaining to the office," the section goes on to provide an exception that allows the terminated personal representative to "at any time prior to distribution or until restrained or enjoined by court order . . . perform acts necessary to protect the estate[.]" *Id.* And where, as here, a successor personal representative is appointed pursuant to section 62-3-613 of the South Carolina Code (2022), he has "the same power and duty as the original personal representative to complete the administration and distribution of the estate[.]" S.C. Code Ann. § 62-3-716 (2022). And once a personal representative or successor personal representative is appointed, his powers "relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter." § 62-3-701.

This statutory scheme confirms that Keith's reappointment related back in time and gave him the power and authority to seek appointment of the Receiver in *Park* on behalf of his mother's estate. The *Bargil* decision misunderstood this process, and it relied on two cases that pre-dated our adoption of the Probate Code. These cases had held that a person whose appointment as an administrator of an estate had been terminated had no authority or capacity to bring a wrongful death action on behalf of the estate, and any subsequent appointment could not relate back to the initial filing. *See Cockcroft v. Airco Alloys, Inc.*, 276 S.C. 184, 277 S.E.2d 587 (1981); *Glenn v. E.I. DuPont De Nemours & Co.*, 254 S.C. 128, 174 S.E.2d 155 (1970). Appellants proclaim these cases still control.

But we repudiated *Cockcroft* and *Glenn* in *Thomas v. Grayson*, 318 S.C. 82, 456 S.E.2d 377 (1995). There, Ms. Thomas, a foreign personal representative, brought a wrongful death action in South Carolina. The defendants contended Ms. Thomas lacked the capacity to sue because she had not filed the necessary papers in the South Carolina probate court to authenticate her appointment. By the time she later filed the papers, the statute of limitations on the wrongful death suit had run, and the defendants moved to dismiss on that basis. Answering a certified question from the federal district court, we held that under Rules 15(c) and 17(a) of the South Carolina Rules of Civil Procedure, the amendment of the complaint that reflected the authentication related back to the filing of the original complaint, which was within the statute of limitations. We noted that the rationale of *Cockroft* and *Glenn* "was based on the idea that a change in [the] plaintiff's capacity to sue was tantamount to bringing a new cause of action." *Thomas*, 318 S.C. at 89, 456 S.E.2d at 380. We explained this rationale no longer exists given the pleading rules set forth in Rules 15(c) and 17(a), which now permit amendments to pleadings to relate back, so that legitimate claims are not tossed out on "a technicality in the pleading." *Id*. at 89, 456 S.E.2d at 380–81. Because this holding was dispositive, we did not address the district court's question of whether § 62-3-701 also allows relation back. We now hold it does.

Appellants claim that § 62-3-701 only applies to actions taken by someone on behalf of an estate before it is opened, not to actions taken after an estate has been closed. Appellants' interpretation draws no support from the words of the statute, nor from the well of common sense. It would be senseless to say that someone's beneficial actions taken on behalf of an estate after the decedent's death but before the estate is first opened could be ratified by the later appointment of a personal representative, but the same actions taken by someone on behalf of a closed estate that is later reopened cannot be so rescued. In either event, the law provides a mechanism for protection of estate property when an estate has not yet been opened or has been closed.

Still, Appellants harken to *McCullar v. Estate of Campbell*, 381 S.C. 205, 672 S.E.2d 784 (2009), where we held a claim brought against an estate that has been closed is a nullity. But *McCullar* is off point. It did not address the effect of reopening an estate or involve the relation back mechanisms of Rules 15 and 17, SCRCP, and § 62-3-701.

ii. <u>CIHL is the Correct Defendant</u>

Appellants next argue the appointment order is invalid because it appointed a receiver for Cape plc, when the true entity at issue is CIHL. As we stated at the outset, the Confirmation Order corrected this matter and ruled the proper party is CIHL. It is settled law that even a judgment is not void because it misnames or fails to name the real party in interest if no one has been misled or prejudiced. *See Griffin v. Capital Cash*, 310 S.C. 288, 292, 423 S.E.2d 143, 146

(Ct. App. 1992). It must be remembered that receivership is an equitable remedy. Equity frowns upon forfeiture. So do our rules of civil procedure: Rule 17(a) of the South Carolina Rules of Civil Procedure prohibits dismissal of an action simply because the real party in interest was, through honest mistake or difficulty in ascertaining identity, not named. *See Fisher on behalf of estate of Shaw-Baker v. Huckabee*, 422 S.C. 234, 239, 811 S.E.2d 739, 741 (2018).

Appellants further contend CIHL was not a named defendant in either *Park* or *Tibbs*, that the court had no personal jurisdiction over Cape, and that Cape has never been served. The trial court has already ruled that service of the first amended complaint was proper on CIHL and Cape plc in *Park* and personal jurisdiction existed. The relevant part of the first amended complaint named "Cape Intermediate Holdings Limited f/k/a Cape Intermediate Holdings plc, individually and as successor-in-interest to Cape Asbestos Company" and "Cape plc, individually and as successor-in-interest to Cape Asbestos Company" as defendants. Appellants' appeal of those rulings have been deemed interlocutory, and we will not review the rulings here today. Appellants' view that the second amended complaint (whose allegations against Cape and CIHL were identical to the first amended complaint) is the "operative" pleading against CIHL and Cape is mistaken. And we have just held that the trial court has cured any misnomer that has occurred. The music has stopped on Appellants' name games.

## II.

### A. Challenges to the Confirmation Order

Having concluded the initial *Park* Appointment Order was valid, we now take up the array of substantive challenges Appellants have lodged against the Confirmation Order. The first batch of these challenges relate to Appellants' belief that the Receiver's claims are barred by *Adams v. Cape Industries plc* (1990) 1 Ch 433 (CA), and a 2024 decision by a trial judge from the High Court of Justice for England and Wales (EWHC) that reaffirmed *Adams*, *CIHL v. Protopapas* [2024] EWHC 2999.

#### i. The Effect of *Adams* and the EWHC's Ruling

Once the Receiver began to investigate whether Cape had any insurance coverage or other assets responsive to the damages sought against it, CIHL and Cape Jersey asked the EWHC to enjoin the Receiver from acting on their behalf. They contended that the order appointing the Receiver is of no effect in the United Kingdom because there was no personal jurisdiction over them. They pointed to the 1990 English decision in *Adams v. Cape*, which, as a matter of private international law, refused to recognize and enforce a default judgement Mr. Adams and others had obtained against Cape in a Texas federal court. The *Adams* court concluded Cape did not have enough presence in the United States to justify the federal court's exercise of jurisdiction over it, at least for purposes of enforcing the foreign default judgment in England. The *Adams* court ruled that Cape's Illinois subsidiary's distribution of Cape's asbestos throughout the United States could not be attributed to Cape as a matter of English law.

The EWHC saw no daylight between the Texas default order at issue in *Adams* and the order appointing the Receiver for Cape. In its view, the United Kingdom court did not have to recognize or enforce an in personam judgment against Cape because *Adams* had declared for all time that, according to principles of private international law, Cape was not present in the United States. Interestingly, although the Receiver had not appeared and was a United States citizen, the EWHC summarily found it had personal jurisdiction over the Receiver, though this finding was unaccompanied by any facts, logic, or law.

The EWHC granted the injunction, and its order purports to bar the Receiver from acting on behalf of Cape anywhere in the world. Although the EWHC acknowledged the Receiver had been appointed by and is an officer of a South Carolina court, it refused to craft a "carve-out" to its injunction order to allow the Receiver to continue to act in South Carolina. After extensive discussion, the EWHC concluded comity did not block it from enjoining the Receiver, the arm of a state court of the United States, for "[u]nder English law the receiver should not be in a position to conduct proceedings." The EWHC took pains to disclose it intended "no disrespect" by this ruling, and it did not "sit as some sort of appellate court" from a South Carolina trial court, though it appreciated its ruling "brings about a clash between two court systems."

The EWHC did what it believed English law required it to do. We do not quite follow how a receiver–an officer of the court of a sovereign nation–

can be subject to fines, costs, or imprisonment for carrying out the duties that court has authorized him to undertake, and for which the law may offer him immunity and other protection, but that is a matter, perhaps, for another day. As noted, the EWHC is a trial court, and appeals from it go first to the Court of Appeals and then to the Supreme Court of the United Kingdom. We are confident the EWHC would be amazed at how Appellants have interpreted its ruling and *Adams*. According to Appellants, those decisions mean that an American court applying American law is barred from finding that it has personal jurisdiction over Cape. One of the Appellants made this breathtaking statement in its reply brief: "[T]he *Adams* courts declined to recognize the Texas judgment for a reason that United States courts themselves would require: the absence of personal jurisdiction over Cape." Of course, the Texas federal court implicitly found it had personal jurisdiction over Cape. The EWHC was careful to note that *Adams* had stated that in deciding whether a foreign court has jurisdiction over a party sufficient to warrant enforcement of the foreign judgment in England, English courts "will apply not the law of the foreign court itself but our own rules of private international law." The EWHC, further quoting *Adams*, observed that English principles of private international law "will by no means necessarily coincide with the rules applied by the foreign court itself in governing its own jurisdiction . . . our courts are generally not concerned with these rules."

Appellants maintain no South Carolina or other court can go behind *Adams* and attribute the activities of the subsidiary to Cape or its successors or affiliates, including Appellants. Appellants go so far as to argue that *Adams* resolved for all time that Cape has never been "present" in the United States for the purpose of personal jurisdiction. We cannot imagine a more misguided view of comity than what Appellants are proposing: that the issue of when the court of one sovereign nation may exert personal jurisdiction over a party should be decided by the laws of another.

Although the EWHC declined to grant comity to the South Carolina receivership order, we suspect it would be horrified to learn that the Appellants here are asking us to declare that its ruling displaced the well-developed South Carolina and federal common, statutory, and constitutional law governing personal jurisdiction in South Carolina courts. That was never the EWHC's stated intention, and no fair reading of its ruling could lead to such an incredible conclusion. We therefore decline Appellants' request, and by doing so, to paraphrase Benjamin Franklin, save the EWHC from such mortification. 3 John Adams, *Diary and Autobiography of John Adams* 422 (Butterfield, et. al. eds., 1961).

We brush aside as unworthy of comment Appellants' fanciful argument that our Reception Statute, section 14-1-50 of the South Carolina Code (1976), requires us to apply *Adams* and the EWHC's rulings as if they were the binding law of this State.

ii. Estoppel and Res Judicata

We now turn to Appellants' various estoppel and res judicata arguments. All of these arguments are of a common thread: that the Receiver should be barred from taking any position inconsistent with the *Adams* decision, including its finding that under English law Cape's American subsidiary was not its alter-ego and the subsidiary's contacts could not be attributed to Cape for purposes of determining personal jurisdiction. The EWHC scoffed at CIHL's attempt to use this same theory to apply estoppel against the Receiver. (Coincidentally, as far as we can tell, this is the only portion of the EWHC's ruling that Appellants do not believe binds us.) Like the EWHC, but for different reasons, we reject Appellants' various estoppel and res judicata arguments.

Appellants' estoppel and res judicata arguments overlook the real import of *Adams* and distort the doctrines. Res judicata, or claim preclusion, bars a later suit by the same party when there has been a previous adjudication by a court of the same subject matter at issue in the later suit. *Hughes on behalf of Est. of Hughes v. Bank of Am. Nat'l Ass'n*, 442 S.C. 113, 130–31, 898 S.E.2d 102, 111 (2024). Res judicata does not apply because the subject matter of the *Adams* and EWHC decisions was enforcement of a foreign judgment under principles of English law. The same goes for Appellants' collateral estoppel (also known as issue preclusion) arguments. Collateral estoppel "bars the relitigation of only the particular issues that were actually litigated and decided in the prior suit." *Catawba Indian Nation v. State*, 407 S.C. 526, 537, 756 S.E.2d 900, 906 (2014). All *Adams* decided was that a Texas federal court judgment was not enforceable against Cape in the United Kingdom. The conclusions of *Adams* may be preclusive in later United Kingdom litigation, but they pack no punch under the state or federal law of a court in this country. In essence, Appellants ask us to treat the judgment of a Texas federal court that applied United States law as having been overruled by a later decision of a United Kingdom court applying English law. Whether a South Carolina court can enforce personal jurisdiction over a party is a matter determined solely by South Carolina and federal law, not the law of a foreign country.

Appellants also urge that *Adams* bars the Receiver's third-party claims here because it held that Cape's American subsidiary was not its "alter-ego" and could not be otherwise used to pierce Cape's corporate shield. Once again, Appellants' aim is off. As far as we know, no court has considered the merits of the claims the Receiver makes in his third-party complaint. These claims allege that Appellants and other third-party defendants–not Cape's long gone American subsidiary that was the sole focus of *Adams*–are alter egos of Cape. Whether they are may be a matter to be decided under South Carolina law, or the laws of England, France, or another jurisdiction. *See Pertuis v. Front Roe Restaurants, Inc.*, 423 S.C. 640, 650, 817 S.E.2d 273, 278 (2018).

Although Appellants claim the Receiver is bound by the positions Cape took in *Adams* and has since taken, when it comes to a Receiver, estoppel does not always work in the way Appellants imagine. Although a Receiver "stands in the shoes" of the party, he is not always bound by the party's previous actions. This is true when it is alleged the party's previous transfers or activities were fraudulent. Clark, *supra*, at § 802. One need not have a wide imagination to understand why. *See Scholes v. Lehmann*, 56 F.3d 750, 754–55 (7th Cir. 1995) (explaining why a receiver for a corporation is not always subject to equitable defenses that would otherwise apply against the corporation).

III.

A. <u>The Proper Scope of the Pre-Judgment Receivership over Cape</u>

Appellants maintain South Carolina law only allows a receivership over a foreign corporation if there is specific, identified property of the corporation within this state. According to Appellants, this is made plain by section 15-65-10 of the South Carolina Code (2005), which provides in part:

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

Pushing this point further, Appellants declare that, outside of its in-state tangible property, "a foreign corporation can never be in receivership" under South Carolina law. Appellants list no authority for this sweeping statement because there is none. And a quick glance at § 15-65-10 proves that foreign corporations are not exempt from the reach of the receivership statute.

The Confirmation Order relied on sections (4) and (5) to justify the receivership appointment. We conclude the trial court's ruling that Cape was in danger of insolvency lacks adequate evidentiary support, so we reverse that part of the Confirmation

Order that relied on section (4) to justify appointment of the Receiver.

We hold the trial court was well within its discretion in ruling that section (5) authorized the appointment of a pre-judgment receiver over Cape. “Our law allows appointment of a Receiver in several circumstances, including ‘[i]n such other cases as are provided by law or may be in accordance with the existing practice, except as otherwise provided in this Code.’” *Welch*, 445 S.C. at 659, 916 S.E.2d at 330 (quoting § 15-65-10(5)). This language was modeled on the 1848 New York Civil Code. “At common law, an equity court had the inherent power to appoint a Receiver before judgment.” *Id*. “A Receiver may only be appointed before judgment in the rarest of cases, when ‘there is the strongest reason to believe that the plaintiff is entitled to the relief demanded in his complaint, and there is danger that the property will be materially injured before the case can be determined.’” *Id*. (quoting *Richland Cnty. v. S.C. Dep’t of Revenue*, 422 S.C. 292, 313, 811 S.E.2d 758, 769 (2018)). “This extreme power may only be used in extreme cases, such as where a defendant’s conduct demonstrates it is fraudulently concealing or disposing of assets that may be responsive to a later judgment.” *Id*. The extreme power of imposing a receivership before judgment can be used where the defendant engages in what our decisions have coined, a bit oxymoronically, “moral fraud,” defined as “a conscious intent to *defeat, delay, or hinder* his creditors in the collection of their debts.” *Virginia-Carolina Chem. Co. v. Hunter*, 84 S.C. 214, 200–21, 66 S.E. 177, 179 (1909) (emphasis added). This phrase–”to defeat, delay, or hinder”–echoes the ancient words of the Statute of Elizabeth, which prohibits fraudulent transfers. S.C. Code Ann. § 27-23-10 (2007).

The trial court had the discretion to appoint a receiver pursuant to § 15-65-10(5) because Cape has engaged in decades of moral fraud in asbestos litigation, including in this case. As in *Welch*, Cape's conduct in this case "demonstrates it is seeking to evade its responsibilities as a civil litigant" by refusing to participate at all in *Park* and this case, or any other United States asbestos cases. *Welch*, 445 S.C. at 331, 916 S.E.2d at 661. The record shows Cape has resolved as a matter of corporate policy to not engage in United States asbestos litigation because it could not "foresee any court . . . enforcing a judgment which would have enormous financial . . . repercussions, *when we really cannot be said to have a moral responsibility and are simply victims of the US product liability cult*." (emphasis added). Appellants contend Cape's corporate machinations are legitimate tactics under English corporate law and have been blessed by English courts. But what may be legitimate corporate structuring in a company's home country may still be deemed illegitimate by the liability laws of a foreign country where that company has caused harm.

Cape's intent to defeat and hinder the *Tibbs* and *Park* plaintiffs has gone well beyond the legitimate efforts of a party defending itself by the rights granted by civil procedure. Two episodes bear this out. The first occurred when the Receiver subpoenaed Lloyds of London to determine if it had issued any relevant insurance policies to CIHL. Learning of the Receiver's contact, Ran Oren, the sole director of CIHL, wrote Lloyds on Appellant Altrad's letterhead and instructed Lloyds not to obey the subpoena based on the EWHC's injunction against the Receiver. Mr. Oren may have felt he needed to protect CIHL's interests by alerting Lloyds of the injunction, but we think it unlikely he would have written the letter in the way he did if no insurance existed. A bit dog barks.

The second episode involved a mutual release CIHL, the Altrad Appellants, and some of the other third-party defendants in *Tibbs* entered into after the Receiver had been appointed. In the release, the parties each gave up any claim they may have against the other related to this case or any other asbestos case in the United States. The release was a brazen attempt to "defeat, delay, or hinder" the Tibbs and other alleged asbestos victims in this country. *Virginia-Carolina Chem. Co.*, 84 S.C. at 200–21, 66 S.E. at 179.

Both episodes were an unlawful interference with property under the control of the court and the Receiver. *See Ex Parte Tyler*, 149 U.S. 164, 181 (1893) ("No rule is better settled than that, when a court has appointed a receiver, his possession is the possession of the court, for the benefit of the parties to the suit and all concerned, and cannot be disturbed without the leave of the court, and that if any person, without leave, intentionally interferes with such possession, he necessarily commits a contempt of court, and is liable to punishment therefor."); Clark, *supra*, at § 253 (explaining that appointment of a receiver "prevents the defendant from dealing with the chose in action to the prejudice of the receiver, and of the res in control and possession of the court"); 75 C.J.S. Receivers § 95 (March 2026 Update).

We agree, however, with Appellants that Cape's long corporate history of selling asbestos in the United States knowing the danger it posed is not the type of moral fraud relevant to establishing a receivership, as it is not evidence of actions by Cape to "defeat, delay, or hinder" the Tibbs or others from pursuing their claims. *Virginia-Carolina Chem. Co.*, 84 S.C. at 200–21, 66 S.E. at 179.

B. Modification of the Confirmation Order

The Confirmation Order amended the scope of the Receivership Order, deleting the paragraph that gave the Receiver such sweeping powers over Cape's business. However, it left intact the broad authority granted to the Receiver to "administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape, and take any and all steps necessary to protect the interests of Cape whatever they may be." March 16, 2023 *Park* Appointment Order at 1.

A pre-judgement receiver differs from a post-judgment receiver in many ways. While the order appointing a general receiver after judgment may authorize the receiver to act on a corporation's behalf in other matters and lawsuits in which he has not been appointed, a pre-judgment receiver is limited to conducting activities in and connected directly to the pending lawsuit. While we affirm the appointment of the pre-judgment receiver for Cape under the circumstances here, we modify the Confirmation Order and hold the pre-judgment receiver may only operate to collect insurance assets and pursue such legal and equitable claims the corporation may have that can result in the receipt of assets responsive to the Tibbs' pending claims.

Allowing the pre-judgment receiver to operate in this limited scope does not impair Cape's right as a foreign corporation to conduct its internal affairs free from interference by a foreign court. The internal affairs of Cape–its relations between its officers, directors, shareholders, and agents–are not affected by the Confirmation Order as we have modified it. *See Pertuis*, 423 S.C. at 649–50, 817 S.E.2d at 278 (defining internal affairs).

We have held that an action to pierce the corporate veil or determine if a single business enterprise/amalgamation exists does not implicate the internal affairs doctrine. See *id.* at 650, 817 S.E.2d at 278 (the "threshold amalgamation issue is not as much a question of the inner-workings of foreign corporations as it is an assessment of whether these entities actually operate as a single business enterprise, and thus should be treated as a single entity"). Other jurisdictions agree. *See*, *e.g.*, *Kaiser-Francis Oil Co. v. Deutsche Oel & Gas, S.A.*, 566 P.3d 252, 264–66 (Alaska 2025) (citing *Pertuis* and collecting cases). We leave it to the trial court to consider *Pertuis* and determine whether the receiver's third-party claims should be controlled by South Carolina law or the law of the jurisdiction of Cape's incorporation or some other jurisdiction.

Appellants insist that litigation decisions, such as whether and how to sue, defend a lawsuit, or accept service are solely for Cape's board of directors and cannot be lawfully made by a receiver. If Appellants were right, then a receiver–even one appointed after judgment–could never act in the lawsuit in which he has been appointed. And if litigation decisions are exclusively for Cape's board, one wonders how Appellants can make them on Cape's behalf. Appellants' argument highlights that Cape is the architect of its own predicament. It has never appeared to defend its interests, and to argue that the very conduct that made a receivership necessary now somehow requires its reversal proves only that irony lives. Although in future cases a pre-judgment receiver should not be authorized to accept service in other lawsuits, Cape has had ample opportunity to appear in this case. Its pursuit of the injunction order in England and entering into the release demonstrates it is acutely aware of and has actual notice of the claims against it. In fact, the release Cape signed recited that CIHL and Cape plc were "separately named defendants" in the *Park* action and that Cape plc has also been sued in the *Tibbs* case. We note too that the very authority that Appellants claim states the rule that a corporation's litigation decisions are solely for the corporation's board carries a qualification Appellants ignore: that the rule only applies when the board is disinterested and not burdened by a conflict of interest. *See Star v. TI Oldfield Dev., LLC*, 962 F.3d 117, 130–33 (4th Cir. 2020). And *Star* did not involve a corporation in receivership.

Clinging to their claim that a South Carolina court has no authority to appoint a receiver over an out-of-state corporation, Appellants ask us to follow *In Re Whittaker, Clark & Daniels, Inc.,* 2026 WL 1131929 (3d Cir. Apr. 26, 2026), which considered whether a South Carolina post-judgment receiver for a New Jersey corporation could prevent the corporation from filing bankruptcy. The Third Circuit held the receiver could not prevent the filing because he had not sought to enforce the receivership order in New Jersey or petitioned to be appointed an ancillary receiver in that state. Because he did not do so, the corporation's board retained the sole power to file bankruptcy. However, the Third Circuit acknowledged "New Jersey law permits its courts to recognize foreign receivership orders and appoint an ancillary receiver to aid in the execution of foreign judgments, including by enjoining the corporation and its board from taking specific actions and exercising specific powers."

The Third Circuit also emphasized the receivership order did not by its terms give the receiver control over the corporation's internal affairs. Although that resolved the issue, the Third Circuit went on to observe that the full faith and credit clause may not require a state to recognize and enforce another state court judgment purporting to exercise authority over the internal affairs of a foreign corporation.

*Whittaker* therefore dealt with a much narrower and far different question than the ones before us involving CIHL. Nothing in *Whitaker's* holding or its dicta touches the question of whether South Carolina law allows a South Carolina court to appoint a pre-judgment receiver over a foreign corporation for the purpose of pursuing potential insurance assets and certain claims. As we have held, these pursuits do not tread on the corporation's internal affairs.

C. <u>Bond</u>

Appellants insist that both the *Park* Appointment Order and the Confirmation Order must be reversed because they failed to set a bond as required by section 15-65-60 of the South Carolina Code (2005). We disagree.

First, Appellants have no standing to enforce the bond provision because they do not possess or have the right to possess the property covered by the Confirmation Order as we have modified it, i.e. Cape's insurance assets and third-party claims. *See Ex parte Rowley*, 200 S.C. 174, 186, 20 S.E.2d 383, 384, 387 (1942) (holding one not in possession of subject property in receivership may not challenge lack of bond). Unless, of course, Appellants are admitting they and Cape are in fact alter-egos or a single business enterprise.

Second, the lack of a bond does not render a receivership order void. As we earlier noted, a void order is one made by a court without jurisdiction. Our earlier cases had a broader view of what makes a receivership order void. *See Truesdell v. Johnson*, 144 S.C. 188, 204, 142 S.E. 343, 348 (1928) (providing the failure to have a clause in the appointment order fixing the value of the property "is mandatory, and without such clause the order is void"). The trial court's failure to set a bond in a receivership case does not affect the court's subject matter jurisdiction over the issues in the case or its personal jurisdiction over the parties. *Thomas & Howard Co.*, 318 S.C. at 291, 457 S.E.2d at 343 ("Generally, a judgment is void only if a court acts without jurisdiction. Irregularities which do not involve jurisdiction do not render a judgment void." (internal citations omitted)). The failure to set a bond does not render an order void. Rather it may–though not always as we discuss below–render an order invalid or, put another way, voidable. *See Innovative Waste Mgmt. Inc. v. Crest Energy Partners GP, LLC*, 423 S.C. 611, 614, 815 S.E.2d 780, 781 (Ct. App. 2018) ("A voidable judgment is nothing more than one made in error by a court with jurisdiction . . . ."). Accordingly, we clarify *Truesdell* and hold that a receivership order that fails to set a bond is not void.

It is true § 15-65-60 states that a bond must be set. When receiverships began, they were designed to protect property such as rents, crops, livestock, or other personal property from being dissipated to the disadvantage of the owner's looming creditors. These items were tangible, had intrinsic market value, and were often portable. A bond is designed to cover the owner's loss if it turns out the receivership wrongfully deprived the owner of the use (and sometimes the literal fruits) of his property. This dynamic is not in play here. Here, the Receiver is authorized to seek and collect only two things: insurance assets and whatever he may collect by his third-party actions. The insurance assets are worthless to anyone but Cape and any potential judgment creditor. The value of the third-party claims need not be bonded, for if the Receiver obtains judgment based on them, it will benefit Cape. We therefore hold there is no rational need for a bond under the circumstances here. "The reason for a rule must control the application of the rule." *S.C. Ins. Co. v. James C. Greene & Co.*, 290 S.C. 171, 188, 348 S.E.2d 617, 626 (Ct. App. 1986).

D. Release

As we have held, the nature and timing of the release is evidence of moral fraud justifying the appointment of a pre-judgment receiver. We do not, however, otherwise rule on the effect or validity of the release. A release is an affirmative defense that must be pled. Rule 8, SCRCP. The trial court must rule on the merits of this defense, and nothing in our decision here today may be construed as affecting the merits.

IV.

A. The Trial Court's May 23, 2024 Sanctions Order in *Tibbs*

We address one final item Appellants raise on appeal, even though it does not relate directly to the Receivership appointment. Appellants believe they have spotted yet another void order by the trial court or, in their words, a "jural nullity": the trial court's May 23, 2024 order that granted the Receiver's motion for sanctions and imposed adverse inferences against Appellants. Appellants claim this order is void because the trial court had no jurisdiction over the case because Appellants' appeals of several earlier orders were still pending.

It appears Appellants had three appeals pending when the May 23, 2024 order was entered: two from the December 6, 2023 order denying Appellants' motions to dismiss for lack of personal jurisdiction and to dissolve the receivership, and one from the March 12, 2024 order granting plaintiff's motions to compel discovery. As Appellants well know, Rule 205, SCACR, by its terms permits a trial court to "proceed[] with matters not affected by the appeal." Appellants' pending appeals from the order denying the motion to dismiss and the motion to dissolve the receivership did not affect the matters inherent in the motion for sanctions. Consequently, the trial court retained the jurisdiction to rule upon it. *See Cousar v. New London Eng'g Co.*, 306 S.C. 37, 40, 410 S.E.2d 243, 245 (1991) (providing "[i]n cases on appeal, the South Carolina Rules of Court provide for the trial court to retain jurisdiction over matters not affected by the appeal," and thus, the trial court's "retention of jurisdiction over discovery in this case was not an abuse of discretion" where the appellants had appealed the denial of their motion to amend their pleadings).

Appellants' pending appeal from the March 12, 2024 order granting the motion to compel discovery did, however, deal with the same issue that the May 23, 2024 order addressed: discovery. Yet, because Appellants' appeal from the March 12, 2024 order was dismissed as interlocutory, the appeal did not divest the trial court of jurisdiction to enter the May 23, 2024 order. *See, e.g.*, *United States v. Green*, 882 F.2d 999, 1001 (5th Cir. 1989) ("Notice of appeal from a non-appealable order, however, does not render void for lack of jurisdiction acts of the trial court taken in the interval between filing of the notice and dismissal of the appeal."); *Euziere v. United States*, 266 F.2d 88, 91 (10th Cir. 1959) (providing "all of the cases hold[ing] that an appeal divests the trial court of jurisdiction over the case . . . presuppose[] that there is a valid appeal from an appealable order," but an attempt to appeal from an order found unappealable by the appellate court "remains just that, an attempt. It is a nullity and does not invest the appellate court with jurisdiction, and consequently does not divest the trial court of its jurisdiction"), *cert. granted, judgment vacated on other grounds*, 364 U.S. 282 (1960)); *Hodgson v. Mahoney*, 460 F.2d 326, 328 (1st Cir. 1972) ("While filing a notice of appeal generally deprives the district court of jurisdiction, where the notice is manifestly deficient, e.g. by reason of reference to a nonappealable order, the district court may disregard it and proceed with the case. Otherwise, a litigant could temporarily deprive a court of jurisdiction at any and every critical juncture." (internal citations omitted)).

B. Appellants' Supplemental Citations

Finally, we are disturbed by the Appellants' misuse of Rule 208(b)(7), SCACR, which allows a party to provide the Court with "supplemental citations." Since oral argument, Appellants have filed three Notices of Supplemental Authority. All are packed with argument, even though the rule flatly states the notice is only allowed to refer to the matter "to which the citations pertain" and "shall, *without* *argument*, state the reason for the supplemental citations." Rule 208(b)(7), SCACR (emphasis added). Though the notices include some proper supplemental citations, they teem with improper argument (repeating points Appellants have made many times before) and offer irrelevant updates about proceedings pending in other trial courts. After Tibbs' counsel pointed out that argument was not permitted under the Rule, Appellants responded with even more argument. And all of this occurred after our June 26, 2025 order warning that future frivolous filings and inappropriate behavior would have serious consequences. Appellants' misuse of the Rule will be considered at a later date alongside the pending motions for sanctions.

V.

Conclusion

We conclude the Confirmation order is not void, and we affirm it as we have modified it today. We reverse the portion of the Order that questioned CIHL's solvency.

**AFFIRMED AS MODIFIED IN PART AND REVERSED IN PART.**

**KITTREDGE, C.J., FEW, JAMES, JJ., and Acting Justice Courtney Clyburn Pope, concur.**

## APPENDIX B

### The Supreme Court of South Carolina

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

v.

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

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

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

v.

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

Of Which Charter Consolidated, Ltd.; ESAB Corporation; Central Mining & Investment Corporation, Ltd.; Mohed Altrad; and Altrad Investment Authority S.A.S., are the Appellants.

Appellate Case No. 2025-002104

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied, and the matter is remanded to the circuit court. However, notwithstanding the issuance of the remittitur, this Court retains jurisdiction over the pending motions for sanctions that have been filed with this Court and any other sanctions issues related to this appeal.

/s/ John W. Kittredge C.J.

/s/ George C. James, Jr. J.

/s/ D. Garrison Hill J.

/s/ Courtney Clyburn Pope A.J.

Columbia, South Carolina
August 4, 2026

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The Honorable Jean Hoefer Toal

## APPENDIX C

**The Supreme Court of South Carolina**

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

v.

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

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

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

v.

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

Of Which Charter Consolidated, Ltd.; ESAB Corporation; Central Mining & Investment Corporation, Ltd.; Mohed Altrad; and Altrad Investment Authority S.A.S., are the Appellants.

Appellate Case No. 2025-002104

## ORDER DENYING APPELLANTS' MOTION TO STAY OR RECALL THE REMITTITUR

Appellants' motion to stay or recall the remittitur is denied. We are troubled by Appellants' motion, and we will explain why we are concerned. But first, we want to make clear what this case—and related cases—are about. These asbestos-related claims seek damages arising from workers suffering from mesothelioma as a result of working decades ago in a South Carolina facility or plant containing asbestos materials. The worker or the worker's estate attempts to identify those responsible for the manufacture and placement of the asbestos materials in the specific South Carolina facility or plant. Given the latent nature of the carcinogen, the manifestation of the disease and resulting injuries are often delayed many years. The claims present a host of factual and legal challenges, including the proximate cause element of linking the exposure to asbestos years ago to the manifestation of the disease. It is an unchallenged principle of law that an injured party may seek to recover damages in tort from the party responsible for causing the injury. With that brief description of the typical asbestos-related claim, we now turn to the regrettable saga of this case, which has been mired in obfuscation and delay tactics.

For over 130 years, it has been settled law—law that Appellants fail to cite or mention—that the remittitur may only be recalled upon a very strong showing that the remittitur was sent down through some mistake or inadvertence by the appellate court. *State v. Keels,* 39 S.C. 553, 17 S.E. 802, 802-03 (1893); *see also State v. Barnes,* 413 S.C. 1, 4, 774 S.E.2d 454, 456 (2015).

Because Appellants cannot meet this legal standard governing remittitur recall, they have ignored it outright. Still, they proclaim that [a]ll of the requirements for a stay or recall are met here." Either Appellants do not grasp the elementary procedural effect of our issuance of the remittitur, or this is yet another of their seemingly endless attempts at delay.

Once this Court issues the remittitur to the trial court, we no longer have jurisdiction. *Pringle v. Sizer,* 3 S.C. 335, 337 (1872) ("Strictly speaking, after a cause has been once remitted, this Court loses all jurisdiction over it . . . ."). That includes jurisdiction to grant a motion to stay. Our reservation of any sanctions issues does not change this status.

This Court respects Appellants' right to seek United States Supreme Court certiorari review. We will not sit idly by, however, and allow Appellants to manipulate court rules and governing laws and recharacterize our decisions in a brazen attempt to manufacture a split of decisional authority or some far-fetched international crisis. We therefore take this opportunity to note several things about Appellants' motion and their troubling previous conduct in this case.

We can start with Appellants' revisionist history of the Third Circuit decision in *In re Whittaker, Clark & Daniels, Inc.,* 176 F.4th 241 (3d Cir. 2026). We have already had to address Appellants' attempted distortion of *Whittaker. Tibbs v. 3M Co.,* Op. No. 28337 (S.C. Sup. Ct. filed May 27, 2026) (Howard Adv. Sh. No. 20 at 19, 3738). By any rational and objective reading, the *Whittaker* decision rests largely on the undisputed fact that the South Carolina Receiver appointed in that case over a New Jersey corporation had failed to seek an ancillary appointment by a New

Jersey court. *Whittaker,* 176 F.4th at 257. Therefore, the Third Circuit, in a thoughtful opinion by Judge Ambro, reached the unremarkable conclusion that the South Carolina Receivership Order could not prevent the corporation from filing bankruptcy because an out-of-state receiver that had not been appointed as an ancillary receiver by the state court of the corporation's domicile could not control the internal affairs of a foreign corporation. *Id.* No one would quarrel with this general principle (although a related general principle recognizes that a receivership order can authorize a receiver to control the decision to file bankruptcy on behalf of a domestic corporation. McNeill & Ehrmann, *What* Whittaker Clark & Daniels *Says About Receivership Proceedings and Authority to File,* 45 Am. Bankr. Inst. J. 20, 20 (2026) ("A receivership order can divest corporate management of its authority to file for bankruptcy in two primary ways: explicitly or implicitly.")).

Appellants, however, proceed to misrepresent this principle and stretch it beyond recognition. In Appellants' view, the Third Circuit held in *Whittaker* that the Constitution forbids state or federal court receivers from making or interfering with any litigation decisions of a foreign corporation, even if an ancillary appointment order has been obtained in the corporation's "home" state. Appellants may believe this argument, but no one else would.

Lost amidst Appellants' arguments is the immutable fact that this Court has narrowed the scope of the Receivership. The initial grant of authority to the Receiver in other asbestos litigation was challenged as overly broad, and we agreed. *Welch v. Advance Auto Parts, Inc.,* 445 S.C. 640, 666-67, 916 S.E.2d 320, 334-35 (2025). When that same challenge was made in this case, we adhered to our precedent limiting the scope of the Receivership. We limited the scope of the Receivership to cover just two matters: the pursuit of any insurance coverage and the pursuit of alter ego/amalgamation and other equitable claims that may benefit the corporation. Specifically:

> [W]e modif[ied] the Confirmation Order and h[e]ld the pre-judgment receiver may only operate to collect insurance assets and pursue such legal and equitable claims the corporation may have that can result in the receipt of assets responsive to the Tibbs' pending claims.
>
> Allowing the pre judgment receiver to operate in this limited scope does not impair Cape's right as a foreign corporation to conduct its internal affairs free from interference by a foreign court. The internal affairs of Cape—its relations between its officers, directors, shareholders, and agents—are not affected by the Confirmation Order as we have modified it. *See Pertuis [v. Front Roe Rests., Inc.],* 423 S.C. [640,] 649-50, 817 S.E.2d [273,] 278 [(2018)] (defining internal affairs).
>
> We have held that an action to pierce the corporate veil or determine if a single business enterprise/amalgamation exists does not implicate the internal affairs doctrine. *See id.* at 650,817 S.E.2d at 278 (the "threshold amalgamation issue is not as much a question of the inner-workings of foreign corporations as it is an assessment of whether these entities actually operate as a single business enterprise, and thus should be treated as a single entity"). Other jurisdictions agree. *See, e.g., Kaiser-Francis Oil Co. v. Deutsche Oel &*

> *Gas, S.A.,* 566 P.3d 252,264-66 (Alaska 2025) (citing *Pertuis* and collecting cases). We leave it to the trial court to consider *Pertuis* and determine whether the receiver's third-party claims should be controlled by South Carolina law or the law of the jurisdiction of Cape's incorporation or some other jurisdiction.

*Tibbs,* Op. No. 28337, at 36-37. Notwithstanding our clear limitation on the Receiver's authority, Appellants persist in advancing the patently false narrative that this Court has sanctioned a rogue Receivership with unlimited authority.

The "internal affairs" doctrine is a choice of law principle. Our decision does not address much less conflict with the Third Circuit's ruling that a corporation's decision to file bankruptcy involves the internal affairs doctrine. We acknowledged in *Tibbs* the general principle that certain corporate litigation decisions belong exclusively to the corporation's board, subject to certain exceptions, such as when the board is operating under a conflict of interest. *Whittaker* acknowledged another implicit exception: a state court receiver may divest a domestic corporation of its management authority and even dissolve the corporation. *Whittaker,* 176 F.4th at 256 ("Thus, on our reading, New Jersey law permits its courts to recognize foreign receivership orders and appoint an ancillary receiver to aid in the execution of foreign judgments, including by enjoining the corporation and its board from taking specific actions and exercising specific powers.").

It appears Appellants are relying on *Whittaker* to claim the receivership order here violates the Dormant Commerce Clause and Due Process. Even if these arguments were preserved, we do not understand how the Dormant Commerce Clause applies to a state court order regarding a company incorporated and existing under the laws of another country. As to Appellants' Due Process arguments, we are puzzled how they can press them at this late stage and on behalf of a third party.

We note further that Appellants' argument that the receivership order violates what they contend is the federal government's exclusive jurisdiction over foreign relations has never been presented to us before and cannot be raised now. Nevertheless, we take a moment to recognize how surreal Appellants' position is. Appellants maintain that only the federal government can conduct foreign affairs and regulate foreign commerce. Therefore, no state court has jurisdiction to affect the internal affairs of a corporation located outside the United States. Likewise, according to Appellants' logic, the decisions of the English courts regarding the scope of a corporation's liability, the legal effect of corporate transactions, and a corporation's presence for jurisdictional purposes are final and must be followed by all courts of this country. The United States Supreme Court has made clear that corporations organized under the law of another country cannot always use the internal affairs doctrine as a shield:

> As a general matter, the law of the state of incorporation normally determines issues relating to the *internal* affairs of a corporation. . . . Different conflicts principles apply, however, where the rights of third parties *external* to the corporation are at issue. . . . To give conclusive effect to the law of the chartering state in determining whether the separate juridical status of its

> instrumentality should be respected would permit the state to violate with impunity the rights of third parties under international law while effectively insulating itself from liability in foreign courts. We decline to permit such a result.

*First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba,* 462 U.S. 611, 621-22 (1983) (footnotes omitted); *see also VantagePoint Venture Partners 1996 v. Examen, Inc.,* 871 A.2d 1108, 1113 n. 14 (Del. 2005) ("The internal affairs doctrine does not apply where the rights of third parties external to the corporation are at issue, *e.g.,* contracts and torts."); 19 C.J.S. *Corporations §* 965 (2026).

It should be remembered that Appellants make these unmoored arguments not for themselves, but for Cape Intermediate Holdings Limited (CIHL)—an active English corporation that has never bothered to appear in our courts and whose tactics to avoid legal accountability have risen to the level of moral fraud. It should be remembered that these Appellants—who claim they have no legally relevant relationship with CIHL or any Cape entity—have refused to participate in even the most rudimentary jurisdictional discovery to explore their insistence that they have no minimum contacts with South Carolina. It should be remembered that despite maintaining that the South Carolina trial court has no personal jurisdiction over them, these Appellants routinely file objections and motions to dismiss and appear at hearings to make extended arguments against the court's rulings. It should be remembered that these Appellants have collectively filed over a dozen appeals from rulings of the trial court, at least seven of which we have dismissed as interlocutory and not immediately appealable. (There are eight more appeals the Court of Appeals has dismissed as interlocutory). Among the rulings Appellants have prematurely appealed include a scheduling order and an order regarding the pre-marking of trial exhibits, rulings that lawyers of even the briefest experience would know are not immediately appealable.

Appellants do not stop with misrepresenting and misapplying our decision and the decision of the Third Circuit. They make the stunning claim that they have been victims of an "illegitimate proceeding" that has caused them constitutional injury and irreparable harm just like that in *Axon Enterprise, Inc. v. FTC,* 598 U.S. 175, 182 (2023). *Axon* involved claims that certain federal agency enforcement action proceedings violated the constitutional separation of powers doctrine. *Id.* at 180. The Court held only that the federal district court had jurisdiction to hear these claims. *Id.* In deciding that Congress did not intend for the agencies' statutory review scheme to oust federal district courts of jurisdiction to hear the claimant's constitutional claims, the Court reasoned that the separation of powers argument could not be meaningfully reviewed by the agency even though the claimant could seek review of the agency ruling in the federal court of appeals. *Id.* at 190-92. The Court explained this was because the claimants were alleging a core constitutional injury—being subjected to "an illegitimate proceeding" conducted by "an illegitimate decisionmaker." *Id.* at 191.

There is no separation of powers claim here, nor any notion that South Carolina courts are "illegitimate." Yet, that does not keep Appellants from ginning up another reckless distortion of a court decision. Time and time again, Appellants have wasted the scarce judicial resources of this Court, the Court of Appeals, and the trial court.

/s/ John W. Kittredge C.J.

/s/ George C. James, Jr. J.

/s/ D. Garrison Hill J.

/s/ Courtney Clyburn Pope A.J.

Columbia, South Carolina
August 25, 2026

cc:
Matthew Todd Carroll
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Mary Elizabeth O'Neill
A. Victor Rawl, Jr.
William James Blount
Jonathan M. Robinson
Shanon N. Peake
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Terry E. Richardson, Jr.
Robert W. Cowan, Esq
The Honorable Jean Hoefer Toal
The Honorable Jeanette W. McBride

## APPENDIX D

### The Supreme Court of South Carolina

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

v.

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

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

and

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

v.

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

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

Appellate Case Nos:
2024-001423, 2024-001499, 2024-000916, 2024-002114,
2024-002116, 2024-002117, 2025-000052

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ORDER

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We have before us seven petitions for writs of certiorari filed in this Court under Rule 242 of the South Carolina Appellate Court Rules. Each petition was filed by some combination of Petitioners Mohed Altrad, Altrad Investment Authority SAS, Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd., and each arises from an order of the court of appeals dismissing an appeal on the ground the order appealed from was not immediately appealable. Each appeal and now each petition challenges some aspect of the circuit court's order appointing Peter D. Protopapas as Receiver for Defendant Cape PLC. We deny the petitions in cases 2024-000916, 2024-002114, 2024-002116, 2024002117, and 2025-000052. In cases 2024-001423 and 2024-001499, we convert the petitions to common law writs of certiorari, and grant them pursuant to article V, section 5 of the South Carolina Constitution and section 14-3-310 of the South Carolina Code (2017). We dispense with any briefing and remand the cases to the circuit court for all purposes, specifically including:

(A) On May 21, this Court filed its opinion in *Welch v. Atlas Turner, Inc,* Op. No. 28284 (S.C. Sup. Ct. filed May 21, 2025) (Howard Adv. Sh. No. 19 at 12). In that opinion, we analyzed the circuit court's jurisdiction to appoint a receiver, discussed the factual basis on which such an order must be based, and set forth limitations on the receiver's scope of authority. We also made it clear that appointing a receiver before judgment is permissible only in the "rarest" and "most extraordinary" cases. We now direct the circuit court to:

1) Ensure the receiver has been authorized to conduct its work by an order filed in the specific case as to which the work is to take place. The receiver is not to be authorized to conduct work as to a case in which no receiver appointment order has been filed.
2) Ensure that such an order is based on findings of fact sufficient under *Welch* to justify the order, and that the receiver's scope of authority is limited as set forth in *Welch*.
3) To the extent the circuit court intends to authorize the work of a receiver based on facts not found sufficient in *Welch,* or to authorize a scope of work not approved in *Welch,* the circuit court should make specific findings of fact and conclusions of law the circuit court finds justify its action.

(B) It has come to our attention there may be motions filed in this case and other asbestos cases that have not been ruled on by the circuit court. Specifically, we understand there is a pending motion to dissolve the receivership filed September 15, 2023, and a pending motion to reconsider a "clarifying" order filed November 15, 2024, both in *Park v. Armstrong International, Inc, et al.,* 2021-CP-40-2727. To the extent that is true, we direct the circuit court to either rule on all pending motions or set forth an explanation of the reasons the court determines it should not rule at this time.

(C) We ask that the circuit court provide this Court with a report on its progress on matters (A) and (B), including the current status of *Park* and all asbestos cases in which a receiver has been appointed, every 30 days until further order of this Court.

We address one final matter. Over the last few years, the court of appeals and this Court have received dozens of interlocutory appeals in asbestos cases such as this one. In the vast majority of those cases, the court of appeals dismissed the appeal because the order was not an immediately appealable order, and we denied certiorari because we agreed the dismissal was proper. In fact, many of the appeals from those orders have bordered on frivolous. We will rule at a later time on any currently pending motion for sanctions, and any further frivolous appeals in these cases from interlocutory orders that are not immediately appealable will result in sanctions. In addition, the parties' filings at the court of appeals and this Court have been unnecessarily antagonistic, predominated by what one litigant in these petitions characterized as "sniping" at each other on matters that have nothing to do with the merits of the appeal. No party gains an advantage in the exercise of this inappropriate behavior. This Court and the court of appeals will not tolerate it any further. Appeals will be summarily dismissed, or requested relief will be summarily granted, if any party continues with this inappropriate behavior. Our intention is to reach and address the merits of issues properly before us without the distraction of unnecessary sniping by the lawyers, and if the lawyers persist in this sniping, appropriate sanctions will be imposed.

/*s*/John Kittredge C.J.

/*s*/John Cameron Few J.

/*s*/George James Jr. J.

/*s*/D. Garrison Hill J.

Verdin, J., not participating.

Columbia, South Carolina
June 26, 2025

cc: Matthew Todd Carroll
Kevin A. Hall
Mary Elizabeth O'Neill
Shanon N. Peake
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John Thomas Lay, Jr.
Gray Thomas Culbreath
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Laura Watkins Jordan
Eleanor Lasseigne Jones
Jonathan M. Robinson
Brian Montgomery Barnwell
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Peter Demos Protopapas
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John S. Nichols
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Benjamin Palmer Carlton

Carmen Vaughn Ganjehsani
Ashwin Ray Sanzgiri
John Kenneth Chandler
The Honorable Jeanette W. McBride

## APPENDIX E

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

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<tr>
<td>JOHN A. TIBBS and MARGARET B. TIBBS,<br><br>Plaintiffs,<br><br>v.<br><br>3M COMPANY et al.,<br><br>Defendants.<br><br>CAPE PLC, individually and as successor in interest to CAPE ASBESTOS COMPANY LIMITED, by and through its duly appointed Receiver Peter D. Protopapas,<br><br>Third-Party Plaintiff,<br><br>v.<br><br>ANGLO AMERICAN PLC, individually and as successor in interest to ANGLO AMERICAN CORPORATION OF SOUTH AFRICA LTD., et al.,<br><br>Third-Party Defendants.</td>
<td>C/A No. 2023-CP-40-01759<br><br>In Re: Asbestos Personal Injury Litigation Coordinated Docket<br><br>ORDER ON ALTRAD DEFENDANTS’ NOTICE OF RECENT SUPREME COURT AUTHORITY VOIDING THIRD PARTY LITIGATION, RENEWED MOTION TO DISMISS AND MOTION TO STRIKE ALL FILINGS AND ORDERS IN THE THIRD-</td>
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| | **PARTY CASE AND THE RECEIVER'S AND TIBBS PLAINTIFFS' MOTIONS TO CONFIRM THE APPOINTMENT OF THE RECEIVER** |

This matter came before the Court on (i) Altrad Defendants' Notice of Recent Supreme Court Authority Voiding Third Party Litigation, Renewed Motion to Dismiss and Motion to Strike All Filings and Orders in the Third-Party Case and (ii) the Receiver for Cape and the Tibbs Plaintiffs' Motion to Confirm the Appointment of the Receiver.[1] Having considered the Motions, related memoranda, including all opposition and reply briefing, and all supporting materials submitted to the Court, in addition to extensive argument on August 12, 2025, the Court rules as follows.

## PROCEDURAL BACKGROUND

### 1. Procedural Background of *Park*

#### *a. Park Plaintiffs filed an amended complaint naming Cape*

On June 4, 2021, Isabella Park filed a lawsuit asserting personal injury claims arising from asbestos exposure against (among others) Cape PLC,

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[1] Anglo American plc's Motion and associated filings are not being ruled on in this Order because Anglo American plc has settled their case with the Receiver.

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

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

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

On December 23, 2021, Keith Park, again appearing individually and as personal representative of Ms. Park's estate, filed his second amended complaint. *See* Second Amended Compl.

*Park v. Armstrong Int'l, Inc., et al.*, No. 2021-CP-4002727 (Dec. 23, 2021). The second amended complaint again named "Cape Intermediate Holdings Limited f/k/a Cape Intermediate Holdings plc, individually and as successor-in-interest to Cape Asbestos Company" and "Cape plc, individually and as successor-in-interest to Cape Asbestos Company" as defendants. *Id.* The second amended complaint added allegations and defendants unrelated to Cape.

### *b. Park Plaintiffs properly served Cape*

In December 2021, the Park Plaintiffs served Cape Intermediate Holdings Ltd. and Cape plc with the First Amended Complaint through an English process server.[2] Neither Cape entity responded to the complaint. At the time that Cape was served with the complaint, Keith Park remained the personal representative of the Park Estate.

Third-Party Defendants to the *Tibbs* action notified this Court that on August 26, 2022, the Spartanburg Probate Court entered an order closing the Park Estate. It appears from the record that counsel for the Park Plaintiffs only became aware of this closure when the Third-Party Defendants in *Tibbs* raised the matter in filings in this Court. Once counsel were made aware that the estate had been

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

closed, they took immediate steps to have Mr. Park reopen the Park Estate. At the time of this Court's August 12, 2025 hearing, the Park Estate had been reopened.

### *c. Park Plaintiffs moved to appoint a Receiver over Cape*

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

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

#### *d. This Court appointed Peter D. Protopapas as Receiver over Cape*

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

### 2. Procedural Background of *Tibbs*

#### *a. Tibbs Plaintiff sued Cape*

On April 5, 2023, John A. Tibbs and Margaret B. Tibbs (the "Tibbs Plaintiffs") filed a lawsuit asserting personal injury claims arising from asbestos exposure against (among others) "Cape PLC, individually and as successor in interest to Cape Industries Ltd. f/k/a Cape Asbestos Company Ltd. and its subsidiaries and global affiliates." *See* Compl., *Tibbs v. 3M Company, et al.*, No. 2023-CP-4001759 (April 5, 2023), at 1, 7. Mr. Tibbs sought relief after being diagnosed with lung cancer. *Id.* at 1. Plaintiffs alleged that Mr. Tibbs "was exposed to asbestos during the course of his career at various job sites, primarily located in South Carolina and North Carolina. He was also exposed to asbestos fibers carried home on the clothing and person of his father while he also worked as a superintendent of maintenance at various jobsites while Plaintiff John A. Tibbs lived in the family home." *Id.* at 15. Plaintiffs sued Cape as a "Product Defendant," alleging that "[a]t all times material hereto, CAPE PLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos/and or asbestos-containing products, materials, or equipment, including but not limited to, raw asbestos fibers present at numerous jobsites in South Carolina and North Carolina." *Id.* at 23.

On May 3, 2023, the Tibbs Plaintiffs filed an amended complaint against (among others) "Cape PLC, individually and as successor in interest to Cape Industries Ltd. f/k/a Cape Asbestos Company Ltd. and its subsidiaries and global affiliates." *See* First Amended Compl., *Tibbs v. 3M Company, et al.*, No. 2023-CP-4001759 (May 3, 2023), at 2, 8. Plaintiffs' claims against Cape remained the same. *See id.* at 17, 28.

***b. Tibbs Plaintiffs served Cape's Receiver, and the Receiver filed a general denial on behalf of Cape.***

The Tibbs Plaintiffs served Cape's Receiver with the Complaint and the Amended Complaint. On June

29, 2023, the Receiver answered the Amended Complaint with a General Denial. *See Tibbs v. 3M Company, et al.*, No. 2023-CP-4001759 (June 29, 2023).

### *c. Receiver filed Third-Party Action against Anglo American, De Beers, Charter, and Altrad*

Following his appointment in *Park* and his receipt of service of the Complaint and Amended Complaint in *Tibbs*, on June 30, 2023, the Receiver filed a third-party action against, among others, ESAB Corporation, Altrad Investment Authority SAS, and Mohed Altrad. *See* Third-Party Compl., *Tibbs v. 3M Company, et al.*, No. 2023-CP-4001759 (June 30, 2023). The Receiver's third-party declaratory judgment action seeks declarations as to the nature of the relationships among Charter, Central Mining, and Cape; the status of the named Third-Party Defendants as successors to Cape and/or Charter, and Central Mining; and that the Third-Party Defendants were unjustly enriched by their participation in Cape's scheme.

The Third-Party Defendants filed motions to dismiss and dissolve the Cape receivership after receipt of the Third-Party Complaint. This Court held a hearing on the Third-Party Defendants' motions on October 25, 2023. On December 6, 2023, this Court, having considered those arguments, denied the motions in a written order. *See* Order Denying Certain Third Party Defendants' Motions to Dissolve Receivership, *Tibbs v. 3M Company, et al.*, No. 2023-CP-4001759 (Dec. 6, 2023).

On May 21, 2025, the South Carolina Supreme Court entered an order in a separate receivership over the insurance assets of another entity, Atlas Turner. *See Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 916 S.E.2d 320 (2025). In *Welch*, the Court upheld this Court's appointment of a receiver over the insurance assets of Atlas Turner under S.C. Code § 15-65-10(5), but it narrowed one definition in the order to conform with the insurance-only receivership that this Court had instituted.

## ORDERS

### 1. Validity and effect of reopening Park Estate

Third-Party Defendants complain to this Court that because the Park Estate probate order lapsed on August 26, 2022, nothing done in the *Park* case during that period, including the motion to appoint a receiver, had any effect. In support of that theory, counsel cite this court to *Glenn v. E.I. DuPont de Nemours & Co.*, 254 S.C. 128, 134, 174 S.E. 155, 158 (1970) as well as *McCullar v. The Estate of Dr. William Cox Campbel*, 381 S.C. 205, 672 S.E.2d 784 (2018). Those cases addressed whether a wrongful death lawsuit could move forward when a personal representative of an estate had not been appointed. That is not the case here.

Here, Isabella Park brought suit against Cape. Following her death, Keith Park was properly appointed and filed two amended complaints, each time naming Cape. Mr. Park filed these complaints while the Park Estate was open. While it is true that the Park Estate lapsed, this Court finds that the Park Estate was validly reopened on July 30, 2025. Pursuant to South Carolina Code § 62-3-701, the authority of the Personal Representative relates "back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter."

A personal representative, pursuant to the Code, "may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative." *Id.* The reporter's comment to S.C. Code § 62-3-701 observes that "the authority of the personal representative relates back to death and stems from his appointment," and that "[t]he personal representative may ratify acts done by others prior to appointment."

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

**2. Validity of the appointment of the Receiver for Cape and its authority to bring the third-party action in *Tibbs***

***a. Validity of the Park Estate***

Third-Party Defendants in *Tibbs*, Altrad Investment Authority S.A.S. ("Altrad") and ESAB Corporation ("ESAB") (together, "Third-Party Defendants") argue in their Motions to Dismiss the Third-Party Complaint and Dissolve the Cape Receivership and in their Oppositions to the Receiver's Motion to Confirm Appointment of Receiver in *Tibbs* that the Receiver's Third-Party Complaint must be dismissed because the lapse of the authority of the Park Estate personal representative makes the Receiver's appointment a nullity.

For the reasons set forth above, pursuant to South Carolina Code § 62-3-701, the authority of the Park

Estate Personal Representative relates "back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter." As a result, this Court finds that the Park Estate Personal Representative relates back to the time that this Court appointed the Cape Receiver on March 17, 2023; therefore, Mr. Protopapas had the authority to bring the Third-Party Complaint in *Tibbs* on June 30, 2023.

#### *b. Analysis of alleged moral fraud on behalf of Cape*

Third-Party Defendants in *Tibbs* argue that the Cape Receivership should be dissolved, or that the Motion to Confirm the Appointment of the Receiver should be denied, because the Court did not find that Cape engaged in moral fraud sufficient to appoint a Receiver under S.C. Code § 15-65-10(5). Likewise, the South Carolina Supreme Court Order in *Tibbs v. 3M Company*, Appellate Case Nos. 2024-001423, 2024-001499, 2024-000916, 2024-002114, 2024-002116, 2024-002117, and 2025-000052 remanded the cases to this Court and directed the Court to ensure that the Cape Receivership Order "is based on findings of fact sufficient under *Welch* to justify the order." Slip Op. at 4 (June 26, 2025).

This Court has evaluated the alleged moral fraud of Cape based on information received from two sources: (1) Plaintiff's original Motion to Appoint the Receiver over Cape, filed on March 6, 2023 in *Park*, and (2) the Receiver's Report, filed on July 11, 2025 in

*Tibbs*.[3] This Court finds the following facts, as presented by Plaintiffs and the Receiver, respectively, constitute moral fraud sufficient to appoint a Receiver under S.C. Code § 15-65-10(5):

*1. Moral fraud facts as presented in Plaintiff's March 6, 2023 motion*

a. Cape establishes American presence and operations through NAAC

At its peak, from mines in Apartheid-era South Africa, Cape produced approximately 90%[4] of the world's supply of amosite asbestos, including asbestos imported and used in South Carolina.

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

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

[4] *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).

in Illinois.[5] NAAC had both marketing and distribution roles: (i) serving as Cape's sales agency in the United States, with sole authority to offer Cape products and responsibility for transmitting information about customer needs to Cape mines, and (ii) ensuring proper distribution of asbestos products and that shipments from Africa made it "all the way through to the customer's plant," including, on information and belief, to plants in South Carolina or through South Carolina ports.[6] NAAC "effect[ively]

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

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

. . . put the Mines at every U.S. port"[7] and by 1970 was the "largest U.S. importer of Amphibole Fibres," which were "re-distributed from . . . warehouse locations in East Coast, Gulf Coast and West Coast Ports."[8]

Over its history, NAAC was "essentially a one-man operation" consisting of one salesman supported by four office clerical personnel (overseen by a board of directors made up of largely of Company lawyers or other Cape executives, until all Cape officials resigned in 1975 as a "sensible precaution" in light of U.S. litigation).[9] In coordination with the global Cape network, however, NAAC sold asbestos to Cape's numerous American-based clients, including, but not limited to, the U.S. Government, Keene Corporation (f/k/a Baldwin-Ehret-Hill), Carey, Fibreboard, GAF (f/k/a Ruberoid), Owens Corning, Johns-Manville and Pittsburgh Corning.[10] These companies were giants among asbestos product manufacturers, and on

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[7] NAAC Internal Memorandum dated Oct. 27, 1969, CAPE000988–89

[8] Cape Newsletter, No. 5, No. 12, Dec. 1970, CAPE000878–79 at 1.

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

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

information and belief, their products were used extensively in South Carolina. In addition, NAAC tried to influence public and corporate opinion about the safety of asbestos, including, but not limited to, rebutting emerging medical critiques of its safety.[11] Cape Asbestos, moreover, dominated NAAC's decision-making, with NAAC, for example, unable to "borrow one dollar without [Cape Asbestos's] approval" and routinely forced to withdraw cash from the United States to pay dividends to Cape Asbestos (minimizing the assets on NAAC's balance sheet).[12]

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

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

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

After the onset of asbestos-related product liability litigation in the 1970s, Cape became especially concerned with its own liability.[13] Thus, Cape Asbestos went through tortured machinations to make it appear it was reducing oversight over NAAC, but in reality, NAAC continued to operate as a mere division or instrumentality under Cape's domination and control.[14]

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"commission agents," which "implies an independent, lack of responsibility, and an emphasis on local self-interest").

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

[14] *See* Letter from C. Morgan of NAAC to S.M. Dougherty, of Cape's South African Mining subsidiary, Cape Asbestos South Africa (Pty.) Ltd., Feb. 2, 1978, CAPE000123 (NAAC discouraging Cape visits to the U.S. in 1978 or else negate "maneuvers" related to "continued problems with product liability litigation"); Letter from R. Gaze, Cape Chief Scientist, to C. Morgan, NAAC President, July 4, 1975, CAPE000152 (suggesting to "disassociate the Parent Company as fully as possible from the operating companies," and noting, "It would I think be as well for this letter not to appear on the office file and so I am sending it to your home"); Letter from R. Gaze, Cape Chief Scientist, to C. Morgan, NAAC President, June 20, 1975, CAPE000154 (raising whether to "do something to change the identity of NAAC in order to avoid exposing the company

In addition, Cape began to engage in a campaign of litigation avoidance by refusing to accept process or appear in any proceedings in the United States, including failing to respond to the Second Amended Summons in this action, as properly served pursuant to Article 10 of the Hague Convention on March 8, 2022.[15] According to Cape executives, this strategy was warranted because they "really cannot be said to have a moral responsibility [to respond to the suits]

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unnecessarily," while doing "everything possible to maintain a successful selling operation in the United States," and therefore requesting that Morgan reduce physical inventory at the NAAC warehouse, again sent to Morgan's home address); Letter from M. Meyer, Cape's U.S. Lawyer, to R. Dent of Cape, May 6, 1974, CAPE000166–67 (suggesting that "no one from Cape be an officer of NAAC since we want it to be as independent as possible **in order to avoid any contention that it is the alter ego of Cape** and that Cape is doing business in the United States" (emphasis added); Letter from Cape Group General Counsel A.J. Penna to Max Meyer of Lord Bissell, July 15, 1975, CAPE000333 (stating "that it would be a sensible precaution against Cape's involvement in any future proceedings for [Cape personnel] to resign from the N.A.A.C. Board," and enclosing resignation letters).

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

and are simply victims of [a] US product liability cult."[16]

Ultimately, to avoid paying damages to workers whom were made sick or died as the result of using its asbestos, Cape resolved to liquidate NAAC, effective January 31, 1978.[17] Existing debts of NAAC were paid, with remaining assets transferred upstream to NAAC's direct parent company at the time, Cape Industries Overseas Ltd. (a U.K. entity wholly owned by Cape Industries Ltd.).[18] NAAC's liquidation was central to Cape's litigation-avoidance strategy, based on legal advice that no British or South African court would enforce a judgment against a Cape entity if it never appeared again in the United States.[19]

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

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

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

[19] *See, e.g.*, Letter from S. Milwid of Lord Bissell to A.J. Penna, Cape General Counsel, Dec. 23, 1975, CAPE000141–43 (advising Cape on default-judgment risk); Telex from S. Milwid of Lord Bissell to A.J. Penna, Cape General Counsel, May 24, 1978,

Yet, Cape continued to contemplate schemes to facilitate the sale of asbestos to U.S. customers while minimizing its product-liability risk.[20] For example, Continental Products Corporation (using the same physical address as NAAC in Chicago, Illinois) was formed to "act as a commission agent for the future sales of asbestos from South Africa" in the United States, with South African mines selling to a new Lichtenstein subsidiary called Associated Mines Company, which in turn sold asbestos to the United States under its own invoices.[21] The express "purpose

CAPE000566 (agreeing that it would be in the "best interests of Cape companies other than NAAC" to make "no response" to litigation); Confidential and Work Product Memorandum from S. Milwid of Lord Bissell to E. Burkholder of Lord Bissell regarding Deposition of Geoffrey A. Higham (Cape executive), Nov. 28, 1984, CAPE000617–19 (summarizing 1984 deposition testimony regarding litigation strategy, and concluding, "[o]n the whole, from my review of this Abstract, it does not appear that Walker, in the 89 pages of the deposition, uncovered very much, particularly pertaining to the decision for the dissolution of NAAC").

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

[21] Lord Bissell Memorandum dated April 7, 1978, CAPE000386 (also noting "Gerry Morgan [former NAAC President, now CPC President] was in Mexico City in January of this year and is supposed to have explained the new corporate arrangement to the Eureka group of companies' officers"); *see also* Announcement of Continental Products Corporation, CAPE000531 (introducing Continental Products Corporation as "Agent to handle the North American requirements for Amosite and Crocidolite asbestos fibre," and noting "our location will be the same as the former North American Asbestos Corporation,"

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."[22]

### 2. *Moral fraud facts as presented in the Receiver's report*

On July 11, 2025, the Receiver submitted a report to this Court in *Tibbs* detailing the results of research performed into the moral fraud of Cape. *See Tibbs v. 3M Company, et al.*, No. 2023-CP-4001759 (July 11, 2025). The Receiver's detailed presentation covered much of the same ground as was presented in the Park Plaintiffs' Appointment Motion, supplemented with information the Receiver uncovered through his detailed investigation into Cape and its affiliates in carrying out his charge to marshal the assets of Cape. Because of the significant overlap between the Receiver's report and the Park Plaintiffs' factual recitation, the Court recounts the facts the Receiver presented in its July 11 Report related only to four categories: (1) Cape's concealment its early knowledge of asbestos health hazards from U.S. customers, (2) Cape's suppression of a 1962 report of the South African Pneumoconiosis Research Unit ("PRU"), (3) Cape's creation of a fake Lichtenstein company to continue its sales of asbestos to the U.S. market

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and that "[a]lthough operating as a new organization, bot Joan Holtze and myself will endeavor to maintain the same service to our many customers and friends as offered at North American Asbestos Corporation.").

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

following the closure of NAAC, and (4) information related to Cape's modern moral fraud.

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

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

In 1953, immediately before Cape opened its NAAC sales operation in Chicago,[23] Cape published an 85-page brochure describing the company's origin, organization and operations.[24] Cape diagrammed its operations in the brochure.[25] Cape had four principal groups under its head London office: branch selling offices (NAAC joined this branch when Cape formed it later the same year), UK product manufacturing

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

[24] *Cape asbestos, the story of the Cape Asbestos Company Limited, 1893-1953*.

[25] *Id.* at 50.

factories, miscellaneous "English subsidiary companies," and overseas subsidiary companies.[26] Every one of these operations involved the exploitation of asbestos as a commercial raw material, from mining, to processing into finished products, to the sale of the fiber overseas.[27] The "overseas" companies, according to the diagram, were the asbestos mining operations in South Africa.[28] Cape noted that it would dispatch executives from London to "control [ ] the whole of Cape's operations in that country," meaning, South Africa.[29]

Cape Asbestos Company began advertising its asbestos for sale in the United States in 1920. It advertised mainly in *Asbestos Magazine*, which was a monthly trade journal published in Philadelphia, Pennsylvania, and circulated nationally from 1919 to 1983. Cape advertised in virtually every issue until 1978—almost 600 issues. At the same time Cape began selling asbestos to U.S. customers, it developed first-hand knowledge about the dangers of asbestos exposure. In the early 1900s, workers at its Barking Plant in London began developing asbestosis, a noncancerous but often fatal lung condition.[30]

Among other products, Barking manufactured a pre-formed pipe and block insulation named

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[26] *See id.*

[27] *See generally id.*

[28] *See generally id.*

[29] *Id.* at 56.

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

"Caposite".[31] Anthony Mendelle (who was deposed in 1984) was the Plant Manager at Barking from 1960 to 1968, following his work as the Production Manager at the same plant from 1956 to 1960.[32] Mendelle saw first-hand the effects of asbestos exposure on plant workers—the plant had a "running total" of about 60 asbestosis cases a year, and more ominously, workers were also contracting mesothelioma, an incurable cancer of the lining of the lung that is usually fatal within a year of diagnosis.[33] Mendelle was instrumental in the closure of the Barking Plant because of the number of workers dying from exposures at the Plant.[34] Mendelle testified that Caposite was a "major department" at Barking.[35] Caposite was made with 100% amosite asbestos.[36] Other operations used the two other types of asbestos, crocidolite and chrysotile.[37]

It is here that two principal antagonists enter the Cape story—Richard Gaze and Walter Smithers. Smithers was the Barking Plant doctor starting in 1956 and was still working for Cape as of 1984, when

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[31] *Cape Asbestos, the story of the Cape Asbestos Company Limited*, 1893-1953, at 62.

[32] 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).

[33] *Id.* at 11.

[34] *Id.* at 48-49.

[35] *Id.* at 40.

[36] *Id.* at 37.

[37] *Id.* at 41-42.

Mendelle was deposed.[38] Richard Gaze worked at Barking from 1943 to 1963.[39] After 1963, Gaze rose to become the "Chief Scientist" at Cape and held senior management roles across the entire Cape asbestos operation for many years.[40] These included membership on the Board of Directors of numerous Cape asbestos subsidiaries.[41] The minutes of a "special meeting of the board of directors of the North American Asbestos Corporation" held on April 7, 1970, note that "[t]he chairman reported that Dr. Richard Gaze of Cape Asbestos, Ltd will have direct responsibility on behalf of the parent company for the operations of North American Asbestos Corporation."[42]

Mendelle testified that Cape knew about asbestos and mesothelioma at Barking—because workers were dying of both asbestos-related diseases in the 1950s.[43] Mendelle, Gaze and Smithers discussed mesothelioma and asbestosis at Barking, and that low exposures could cause mesothelioma.[44] Mendelle testified that

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[38] *Id.* at 5.

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

[40] *Id.* at 6.

[41] *Id.*

[42] NAAC Special Meeting Minutes (April 7, 1970).

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

[44] *Id.* at 11-12, 69.

"we knew there was an association" between amosite and mesothelioma well before a seminal article on asbestos disease was published in 1965 by Dr. Muriel Newhouse.[45] Newhouse spent time at Barking, and much of her data for the article came from her time investigating disease at the plant.[46] Mendelle said that he and Newhouse had numerous conversations about amosite as a cause of mesothelioma at Barking.[47] Mendelle was asked if workers in the Caposite operation—which used only amosite, as noted above—had developed mesothelioma, and he said "yes, many."[48] Mendelle acknowledged that all three types of asbestos were used at Barking, and that the workers may have worked in departments other than the main Caposite operation.[49]

Despite this knowledge, Dr. Gaze repeatedly told Cape's customers that "it is a fact that <u>not one</u> authenticated case of mesothelioma has been associated with amosite anywhere in the world."[50] 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—and in his reply to Dr. Gaze, Mr. Buckley wrote: ". . . from your letter, I am assured that no customer's worker need be concerned about

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

[46] Mendelle Deposition, *supra*, at 58.

[47] *Id.* at 56-57.

[48] *Id.* at 66.

[49] *Id.* at 68.

[50] Letter from Gaze to Cryor (March 22, 1966) (emphasis in original).

mesothelioma."[51] In a memorandum to over twenty managers and sales personnel at Cape along with Dr. Gaze, the Cape Sales Director gave advice to the addressees of the memorandum "who are faced with questions on the possible dangers of to health involved in the use of asbestos based materials."[52] The Sales Director repeated exactly what Dr. Gaze wrote to Mr. Buckley at Pittsburgh Corning, noting first that Cape's Caposite line of products made solely with amosite "are now our principal asbestos products," the Sales Director then stated that "not one case of mesothelioma [has been] associated with amosite asbestos."[53] Dr. Gaze later died from mesothelioma.

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

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

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[51] Letter from Buckley to Gaze (March 30, 1966).

[52] Letter from Galloway (Aug 19, 1966).

[53] *Id.*

visiting the Cape asbestos mines in South Africa, and then meeting with management officials at Cape and another asbestos mining company (Turner and Newell) in London where he was "assured . . . that I was following a line of research which seemed to them to be of little value, and that I would be advised to follow other lines of investigation."[54]

Dr. Wagner reported a series of 33 mesothelioma cases in South African mine workers, and in people living near the mines, at the 1959 Pneumoconiosis Conference in Johannesburg. The formal scientific paper was published in 1960.[55] Wagner's investigation triggered the PRU to investigate mesothelioma at the South African asbestos mines.[56] Cape and other mining companies partially financed the study, which meant the mining companies were copied on all reports and had input on designing study parameters.[57]

The investigators saw troubling indications of disease soon after the study began.[58] An October 6, 1961 memorandum of the PRU noted that it discussed early results with the "asbestos industry"—Cape, and others—and that the results showed that the incidence of asbestosis amongst miners and the

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[54] Letter from Christopher Wagner to Cape (November 30, 1994).

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

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

[57] *Id.*

[58] Letter from Naude to Diederichs (Oct. 6, 1961).

ordinary population was "alarmingly high," and further that the incidence of mesothelioma, "although perhaps not large in terms of actual numbers—is very high from an epidemiological point of view."[59] On April 30, 1962, the PRU memorialized its findings, recording mesothelioma numbers that startled researchers: "[a]n alarmingly high number of cases with mesothelioma of the pleura has been discovered in people who live or have lived in the North Western Cape and that there is evidence to suggest that this condition is associated with an exposure to asbestos dust inhalation which again need not be industrial."[60] In other words, mesothelioma occurred not only in miners, but also in the general population that lived near the asbestos mines.[61] The investigators revealed that they were aware of 90 cases of mesothelioma, but they theorized that more cases existed that the study failed to capture due to its methodology.[62]

The preliminary results were equally alarming to Cape. Soon after Cape saw the October 1961 PRU results, it dispatched Dr. Smither to South Africa for an "investigation" even before the more detailed April 1962 report was circulated. The Receiver has located the 48-page report that Dr. Smither prepared for the company on his return from South Africa.[63] The report opens:

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[59] *Id*.

[60] PRU Preliminary Report (April 30, 1962).

[61] *Id.*

[62] *Id.*

[63] Smither, *Visit to South Africa* (August 1962).

> [a]s a result of a decision taken at a meeting between Dr. R Gaze, Dr. J McKeurtan and myself at Park Street, London, on 31st October 1961, I was sent by the company to South Africa. My terms of reference were to study all aspects of mesothelioma and asbestosis reported in South Africa on medical matters, and generally to learn as much as possible about conditions in the industry in that country.[64]

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

> [m]y recommendation would be that the company should not support any future wide ranging survey of the industry with a view to discovering either asbestosis or mesothelioma. The reason for this is that the company is well aware of the problem and has some idea of its extent.[65]

At that point, Cape's support for the PRU ended.[66] Smither aligned with Dr. McKeurtan—the top executive over Cape's mining subsidiaries in South Africa—who was "vigorously attacking" the conclusions of the PRU researchers.[67]

Another document the Receiver discovered shows the scope of Cape's assault on the PRU study. In a

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[64] *Id.* at 2.

[65] *Id.* at 34.

[66] *See, e.g.*, *id*

[67] *Id.* at 35.

letter from L.G Walters, the Director of the PRU, to M. F. Baxter at the South Africa Council for Scientific and Industrial Research, Walters addresses a memorandum of the "asbestos producers committee."[68] Cape was a member of that committee.[69] Walters quotes from the "committee memorandum" in which it critiques the PRU investigation: "The whole survey appears to have been undertaken with the underlying object of implicating crocidolite asbestos as being directly responsible for the comparatively rare tumor known as mesothelioma of the pleura."[70]

Walters noted that Smither identified 10 additional cases of mesothelioma during his visit to the Cape Prieska mine during his visit.[71] Smither's 48-page report notes that a local doctor named "Van Rooyen" was caring for "10 cases among colored people of what he now calls the 'Prieska picture.'"[72] Smither advocated for removing the patients to Johannesburg for "investigation."[73] Dr. Smither's recommendation was not medical or altruistic. He wrote in his Report that:

> the advantage from the standpoint of the company is that these cases will be treated as a group, will be removed from the area of the

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[68] Letter from Walters to Baxter (July 19, 1962).

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

[70] *Id.* at 2.

[71] *Id.*

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

[73] *Id.*

> conflict, if one may call it that, and will be taken some hundreds of miles away.[74]

Smither went on to note that this move would bring "less attention from the politicians."[75] Dr. Smither was covering up the health hazards of Cape's asbestos by hiding Cape's victims.

Dr. Matthys van Rooyen—the local Prieska doctor caring for 10 mesothelioma patients—was deposed in 1996.[76] He testified that Cape periodically dispatched "executives" and doctors (presumably, Smither) from London to visit asbestos mines in South Africa.[77] Dr. Van Rooyen testified that he tried to warn Cape about the dangers of asbestos exposure, but met a chilly response: "I experienced opposition[ ] . . . whenever we talked about asbestos as a danger, people saw us as dangers . . . we had a lot of opposition from these people. But very definitely, from the chief executives of Cape Blue Mines."[78]

Dr. Van Rooyen's interest in mesothelioma began in 1957 then he wrote an article discussing two mesothelioma cases for the *South African Medical Journal*, explicitly attributing them to Prieska's blue-asbestos dust.[79] He then screened the community—miners and civilians alike—by taking thousands of

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[74] *Id.* at 13.

[75] *Id.*

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

[77] *Id.* at 135.

[78] *Id.* at 116.

[79] *Id.* at 24.

chest X-rays and even persuaded the Pneumoconiosis Bureau to dispatch a mobile radiography unit to Cape's Prieska mine.[80] Determined to force action, he armed South African parliamentary member A.H. Stander with data and a speech describing Cape's mill as "spraying asbestos fiber" over the town, thus placing the issue before Parliament.[81] These uncompromising interventions—and the frank discussions he had with Cape managers—made him a "pest," as Dr. Van Rooyen described the situation, in Cape's eyes.[82]

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

> Q: Was there any discussion about other doctors coming to Prieska?
>
> A: That was one of the threats used very regularly. Now, why do I call it a threat? If you live in an area where you have a population of 16,000, there are two doctors there. They are still fit, and they can work hard. They do work. And if you take away a quarter or more of their practice by introducing a doctor or more in that area, you can definitely break them. And that is -- so that threat was used to me, personally, on

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[80] *Id.* at 38, 63.

[81] *Id.* at 11-12, 30.

[82] *Id.* at 40, 57.

more than one occasion. I don't accept it nicely, and I still don't.

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

A: Yes. . . . I remember distinctly that this was treated in a very superficial way. And the chap . . . he said that with our directors in London earning a million a year, do you think they would listen to you?[83]

The final PRU report was published 1964 but it was not circulated outside of the PRU and the mining companies.[84] For reasons unknown, but perhaps to protect powerful industrial mining and economic interests in South Africa, the final report also said little about mesothelioma. Whatever the reason for this extremely limited circulation, Cape had copies of the final report and the preliminary reports, but never mentioned them publicly, and certainly never breathed a word of it to its U.S. customers. In fact, Cape disseminated exactly the opposite story. While it is true that the PRU was aware of what the mesothelioma survey revealed, and did not publicize the results, the PRU also was not in the business of selling raw asbestos for profit around the world. Cape certainly was. The PRU report was not discovered for 20 years until an enterprising journalist researching

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[83] *Id.* at 41.

[84] Letter from Walters to Baxter (July 19, 1962).

the Cape story for a documentary located it in an archive in South Africa.

Dr. Smither returned from South Africa on June 30, 1962.[85] Less than two weeks later, on July 12, 1962, Drs. Smither and Gaze attended a meeting in London of the Asbestosis Research Council (ARC).[86] The ARC was an industry group founded by Cape and another mining and asbestos products company, Turner & Newell.[87] The ARC sponsored research into asbestos disease and had a hand in shaping final reports given its funding of the studies.[88] Scientists and physicians from Queen's College in Cambridge, Reading University, and Cambridge University, and some industry representatives attended the July 12 meeting.[89] The Receiver located the 6-page detailed memorandum reporting the detailed minutes of the meeting.[90] As this group met to discuss asbestos disease, Dr. Smither and Dr. Gaze remained silent and reported nothing about the PRU study, nor even that Dr. Smither just returned from a three-week trip to South Africa to investigate mesothelioma in the mines.[91]

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[85] Smither, *Visit to South Africa* (August 1962) at 42.

[86] ARC-19th meeting (July 12, 1962).

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

[88] *Id.* at 723-29.

[89] ARC-19th Meeting (July 12, 1962).

[90] *Id.*

[91] *See generally id.*

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

As the Park Plaintiffs presented in their Appointment Motion, when Cape closed NAAC, it did *not* stop selling asbestos in the United States. The Receiver presented additional facts in its Report detailing the scheme to conceal its identity to U.S. litigants and continued selling the same South African asbestos fibers with the use of a Lichtenstein pass-through entity, Associated Minerals Corporation ("AMC"), to the same list of customers in the U.S. market. Anthony Penna, in-house counsel for Cape, referred to this scheme, which also included re-branding the entire NAAC operation as an independent entity under a new name, Continental Products Company ("CPC"), as only "a difference in form."[92]

Cape disguised this scheme even from NAAC's then-president, Charles Morgan, when Penna asked Morgan to consider opening CPC. While Cape averred that Morgan was well aware of the connection to

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

Cape,[93] in reality, the true scheme was on a need-to-know basis, and Morgan did not need to know anything. He was simply Cape's U.S. puppet. Morgan testified that Penna "said he was the attorney representing Associated Minerals Corporation."[94] Morgan testified that he did not know that Penna was contacting him on behalf of Cape.[95] He did not know who owned AMC, and no one had suggested to him that there was a relationship between Cape and it.[96]

Once Morgan agreed to establish CPC, Cape's lawyers at the Lord Bissell firm in Chicago drew up the incorporation documents.[97] Rather than

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

[94] Deposition of C. Morgan, Feb. 20, 1981, at Cape_Receiver_00096003.

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

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

[97] *Id.* Cape_Receiver_000 95988 ("Q. Who drew the Articles of Incorporation? A. Mr. Max Meyer. At least I asked him to do this work for me. Who actually did the work I couldn't say.").

establishing a direct connection between the newly formed CPC and a Cape-named company, Penna spearheaded the creation of a Liechtenstein company, AMC, a seemingly unrelated entity, which was in truth an Oppenheimer subsidiary. As Penna described, "everyone was concerned whether they were mining companies or Cape Industries or any company that was a party to these sales should not by its actions put either the mining companies or Cape at risk."[98] "The Lichtenstein company was a separately constituted company but it certainly had no direct employees of its own. . . . It was primarily an invoicing company."[99] Cape's involvement was pervasive. Confronted with evidence, Penna was forced to admit, "Yes, it seems to be contemplated that Cape Asbestos Fibres would subscribe the initial capital."[100]

Even before NAAC closed, Morgan reached out to customers to let them know of the formation of CPC, thereby ensuring a seamless sales transition between the companies.[101] To ensure the success of the new

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[98] Cape_Receiver_00132246.

[99] *Id.* at Cape_Receiver_00132239-40.

[100] *Id.*

[101] Deposition of C. Morgan, Feb. 20, 1981, at Cape_Receiver_00096022. ("I advised them that North American Asbestos was being liquidated, it was no longer to be in the position to supply them with fiber, I had made a connection where I thought I could supply them with fiber, I would like their consideration very much."); Ex. 81, Deposition of C. Morgan, Feb. 20, 1981, at Cape_Receiver_00096003, Cape_Receiver_00096063-4 ("Q. When Tony Penna contacted you on behalf of the Lichtenstein corporation you knew, did you not, in fact he was actually contacting you on behalf of Cape Asbestos? A. No, Sir, I did not know that."); *id.* at

venture, Morgan testified that CPC received a $12,000 check "[c]are from North American Asbestos" to start the company.[102]

CPC's offices were in the same building as NAAC had previously had its offices: "North American Asbestos was on the 29th floor and Continental Products Corporation took a lease on the 12th floor."[103] All of the NAAC filing cabinets that had been on the 29th floor were moved to the 12th floor, and all of the NAAC employees—Joan Holtze, Jean Canzoneri, and Sue Purrington—moved with Morgan to CPC.[104] CPC also took over the NAAC employees' pension plan.[105] Joan Holtze testified that she sat at the same physical desk at CPC as she had when she worked for NAAC.[106] In this way, Cape hoped to escape liability, but continued selling asbestos fibers to virtually the same contact list using a shell game and companies in Liechtenstein and South Africa to conceal any connection between it and the United States.

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

[102] *Id.* at Cape_Receiver_000 96000.

[103] *Id.* at Cape_Receiver_00095991.

[104] *Id.* at Cape_Receiver_00095992-3.

[105] *Id.* at Cape_Receiver_00096066.

[106] Deposition of J. Holtze, Apr. 12, 1979, at Cape_Receiver_00097838-9.

A.R. Sarabia wrote a memorandum contained in the Lord Bissell client file to memorialize the new sales arrangements for the sale of Cape asbestos to the United States from Lichtenstein through CPC.[107] On June 26, 1978, Meyer wrote Penna advising that the Cape Mines would be protected from default judgments with the Lichtenstein company "between them and any operations in the United States."[108] Penna described the Liechtenstein company—which had no employees and was just an invoicing entity, as being camouflaged to disguise from "plaintiffs in future U.S. asbestos litigation" (Cape's words) the fact that the company was still selling asbestos in this country. On July 29, 1980, Mr. Meyer wrote Richard Gaze at Cape advising on a variety of issues, but in closing Meyer wrote on Lord Bissell letterhead: "My deposition was taken last Thursday in the four Bloomington cases. I guess the main thing that came out was that I know nothing or that I can't remember anything."[109]

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[107] Memo to NAAC File re Liquidation of NAAC (April 7, 1978).

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

[109] Letter from M. Meyer to R. Gaze (July 29, 1980).

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

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

**First**, Cape instituted a Part 8 Proceeding in the High Court of England and Wales against the Receiver personally to seek injunctions against his further work as the court-appointed receiver of Cape in South Carolina.[110] In support of its Part 8 Proceeding, Cape filed a series of sworn statements of Ran Oren[111] and Cape's U.K. lawyers. These sworn statements set forth Cape's position on the facts that would require the English court to enjoin Mr. Protopapas from acting as the Receiver for Cape in South Carolina. This one-sided presentation included many incomplete statements as to the work of the receiver and this Court, including at least one

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

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

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

> It bears mentioning that at [the September 24, 2024] hearing, Toal J indicated her expectation that the Receiver's role would be "*to marshal the assets, including the bank accounts*" of the Cape Group. I have set out at length in Section I of Oren 1 the serious consequences this might have on the Cape Group, for example, under the power to obtain the financial records belonging to or pertaining to the Claimants, the Receiver could make direct contacts with the Claimants' bankers. That could cause disruption and interference in the Claimants' relationships with their banks, as it would be very difficult to control how that information was used by the Receiver.[112]

This Court did not state in the September 24 hearing that the Receiver should gain control of and use the Cape bank accounts. Mr. Oren took this Court's statements regarding the broad statutory authority given to receivers in South Carolina out of context. In the hearing, this Court engaged with counsel for Anglo American and De Beers (defendants in the Receiver's third-party declaratory judgment action in *Tibbs*, with whom the Receiver has recently resolved his claims) regarding the authority of the receiver to obtain documents from various sources relevant to the Cape receivership. The exchange occurred in the context of counsel noting that the

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

Court had granted the Receiver the power to review and obtain documents from any financial institution, bank, credit union, or savings and loan, among other entities.[113] The Court responded that finding all relevant documents is not uncommon, and continued as follows:

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

The first receivership I was ever involved in was as a practitioner. . . when we put [a life insurance company] into a state receivership, a South Carolina receivership, to marshal its assets, pay its creditors, make at least some recompense to even its shareholders, and move forward with the sale of the business in that regard. That's common in receiverships.

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

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[113] Transcript of Sept. 24, 2024 hearing at 42.

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

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

> protective orders are a way to do that. Some limitations on scope [] are a way to do that. But that's why those provisions are there.[114]

This explanatory exchange was made in the context of how and why South Carolina receivers marshal *documents*. Both Mr. Balber and this Court were well aware that the discussion was about the general powers of South Carolina receivers and, more specifically, the role and nature of the Cape receiver here. In that context, the discussion was about how best to access relevant historical financial records to determine the validity of the allegations that "these corporations are alleged to be part of a single group that is financially responsible for the supply to places in North and South Carolina."[115] While both parties were aware that South Carolina receivership law does allow the actual marshalling of a company's bank accounts, neither the Court nor Mr. Balber were discussing whether the Receiver could take over Cape's financial accounts in England or elsewhere.[116]

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[114] *Id.* at 44-45 (emphasis added).

[115] *Id.* at 44.

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

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

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

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

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

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

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

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

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

To the contrary, *Welch* explains that the South Carolina Supreme Court has "upheld the appointment of a Receiver before judgment where the plaintiff has made a prima facie showing that the defendant intends to fraudulently avoid or defeat the plaintiff's recovery." *Welch*, 916 S.E.2d at 330. *Welch* cited the

South Carolina Supreme Court's decision in *Virginia-Carolina Chemical Co. v. Hunter*, 84 S.C. 214, 66 S.E. 177 (1909), for the proposition that "when a debtor is trying to defeat his creditors by an act or course of conduct which indicates moral fraud—a conscious intent to defeat, delay, or hinder his creditors in the collection of their debts—then a court of equity will grant any relief within its jurisdiction appropriate and effective to protect creditors against the fraud without requiring the creditor to run the risk of losing his debt from the delay of obtaining judgment and a return of nulla bona on the execution." 84 S.C. 214, 220-21, 66 S.E. 177, 179.

*Welch* notes that Atlas Turner's first line of defense

> when faced with lawsuits—for allegedly causing serious injury and death to American workers and citizens related to the pernicious products it sold for profit even after the lethal risk these products posed was known—its tactic has been to claim that, if the courts exerted jurisdiction over them, it would offend the traditional notions of fair play and substantial justice due process guarantees. When that ploy fails, Atlas Turner's version of due process is to refuse to abide by court orders requiring it to answer basic information. It is alleged that Atlas Turner has come into our state, turned profits by selling its hazardous wares in our state, and inflicted grievous harm on citizens in our state. Then, when the shadow of the courthouse door falls upon it, it insists it was never here, and if a court asks anything about

> it, it responds: we have nobody who knows anything.

*Welch*, 916 S.E.2d at 331 (internal citations omitted). While Third-Party Defendants argue that moral fraud must present during the pendency of South Carolina litigation, the Supreme Court's explanation of Atlas Turner's conduct indicates that Atlas Turner's moral fraud began decades before the Welch case came into being—both in terms of the company's conduct related to the sale of its products *and* its development of a litigation strategy designed to ignore orders of courts that properly exercised jurisdiction over it.

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

Cape mined and distributed the most dangerous forms of asbestos in a manner far outstripping the damage done by Atlas Turner. Asbestos is a mineral that is mined from the ground.[117] There are three commercial types of asbestos: chrysotile, amosite and crocidolite.[118] Amosite and crocidolite—which are by far the most harmful to humans—were mined by Cape in South Africa.[119] Asbestos fiber is processed at the mines and then sold to manufacturers of asbestos-containing products, such as pipe insulation and brake linings.[120]

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[117] Robert L. Virta, *Asbestos: Geology, Mineralogy, Mining, and Uses*, U.S. Geological Survey Open-File Rep. 02-149, at 5 (2002).

[118] *See Id.*

[119] Jock McCulloch, *Surviving Blue Asbestos: Mining and Occupational Disease in South Africa* 115 (2002).

[120] Virta at 13.

Cape had a near monopoly on the global supply of amosite and crocidolite.[121] There were fewer than five principal asbestos mining companies world-wide, such as Cape.[122] Unlike the small group of miners, the defendant in *Welch*—Atlas Turner—was one product manufacturer of many hundreds.[123] Most of the manufacturers of asbestos-containing thermal insulation products in the United States filed for bankruptcy, and more than 60 of these companies established trusts to compensate asbestos victims.[124]

Certain asbestos mining companies, like Cape, were the source of all the amosite and crocidolite asbestos fibers used in South Carolina and the rest of the United States.[125] Cape was the spigot through

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[121] Jock McCulloch, *Asbestos Blues: Labour, Capital, Physicians & the State in South Africa* 27 (James Currey 2002).

[122] *Id.* at 30.

[123] *See, e.g.*, "Asbestos Manufacturers," The Mesothelioma Center (Nov. 14, 2024), https://www.asbestos.com/companies/.

[124] Ex. U.S. Gov't Accountability Off., GAO-11-819, *Asbestos Injury Compensation: The Role and Administration of Asbestos Trusts Highlights* (2011) (report noting that "about 100 companies have declared bankruptcy at least partially due to asbestos-related liability" and that "since 1988, 60 trusts have been established to pay claims").

[125] J.S. Harington & N.D. McGlashan, *South African Asbestos: Production, Exports, and Destinations*, 1959–1993, 33 AM. J. INDUS. MED. 321, 323 (1998) (reporting that in the early-1960s North America was a major recipient of South-African amosite and crocidolite exports). Karen Selby, *Mesothelioma in South Africa*, ASBESTOS.COM (Apr. 17, 2025), https://www.asbestos.com/mesothelioma/south-africa/ (noting South Africa supplied 97 % of the world's crocidolite and "practically all" amosite and that the mines were owned by

which hundreds of thousands of tons of asbestos flowed from its mines to almost 40 states, over 500 individual customers such as Johns-Manville Corp. and Pittsburgh Corning, and to 750 manufacturing plants.[126] Cape sold asbestos direct to customers in South Carolina, as well.[127] Cape was aware that its asbestos could ultimately expose people in any of the 50 states, regardless of where the products were manufactured.[128] Cape is therefore fundamentally different from Atlas Turner, which manufactured a product, spray limpet insulation, from the asbestos fiber it mined and sold that product to customers in the United States, including in South Carolina.

Further, the conduct of Atlas Turner touched people who used or worked around its products. Cape is different—its conduct touched every person who used or worked around ***any asbestos-containing product*** made by a multitude of manufacturers containing Cape asbestos[129]

The scale of Cape's asbestos fiber sales into the U.S. market, its indifference to the harm these sales

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companies including Cape Asbestos); *See also, e.g.*, North American Asbestos Corporation, "States Where Suits Have Been Filed and States We Shipped Asbestos To," at Cape_Receiver_00138819–21; North Am. Asbestos Corp., Customer List, at Cape_Receiver_00138265–282) (Oct. 6, 1976).

[126] *See id.*

[127] N. Am. Asbestos Corp., NAAC Sales List, NAAC-ML-025040; Ex. 69.

[128] Deposition of Richard Gaze at 26, *Yandle v. PPG Indus., Inc.*, No. TY-74-3-CA (E.D. Tex. June 4–5, 1975).

[129] Receiver for Cape PLC's Proposed Amended Third-Party Complaint, *Tibbs v. 3M Co.*, No. 2023-CP-40-01759 (S.C. Ct. Com. Pl. June 20, 2025).

would cause in light of the scope of its unique, early knowledge of the health hazards of asbestos, and the ruthlessness of its campaign to avoid U.S. liability from the raw asbestos fibers it sold to be used in every state in this country—a campaign that continues to this day—provides the foundation for Cape's unparalleled moral fraud.

On this foundation, Cape concocted a scheme to fully conceal assets that could be answerable to U.S. asbestos claimants to whom Cape deemed it has no "moral responsibility" more egregious than Atlas Turner's conduct in terms of its current and past disrespect for the South Carolina judicial system. Rather than appear in South Carolina to answer the *Park* complaint, or to object to the appointment of the Receiver, Cape ignored the existence of the action. Instead of engaging with the U.S. court system, it instituted parallel proceedings in England designed to ensure that if *Park*, any other plaintiff, or the Receiver sought to enforce any future judgment in England, it would be barred from doing so because another court already had considered the issues presented in an unrebutted presentation by Cape. Most recently, to further solidify its position should any party attempt to domesticate a U.S. order in England, Cape and Altrad, both entities within the same corporate group, entered into a settlement agreement to avoid a ruling against Altrad. Altrad's lawyers requested that a proceeding to confirm the appropriateness of that settlement agreement – again a one-sided presentation to an English court –take place before this Court's scheduled trial on the Receiver's third-party action against Altrad. All of these actions are undertaken to avoid enforcement of any judgment against Cape, without the risk of engaging in proceedings in a U.S. court.

Cape's conduct, as documented at length by both the Park Plaintiffs and the Receiver, demonstrate precisely the type of moral fraud – "a conscious intent to defeat, delay, or hinder his creditors in the collection of their debts" – the South Carolina Supreme Court held was sufficient to justify the appointment of a receiver in *Welch*.

***d. Analysis of facts related to the danger of Cape's insolvency under S.C. Code § 15-65-10(4)***

This Court appointed the Receiver over Cape under S.C. Code §§ 15-65-10(4) and (5). In addition to this Court's finding that Cape's moral fraud was sufficient to justify the appointment of a receiver over Cape under § 15-65-10(5), this Court finds that Cape's financial position renders it in danger of insolvency under § 15-65-10(4). The publicly available information regarding Cape suggests that Cape Intermediate Holdings Limited ("CIHL") is in danger of insolvency for two reasons.

First, CIHL is in imminent danger of insolvency because it is a non-operating shell company in a corporate structure subject to the full control of an ultimate parent – Altrad Investment Authority S.A.S. – that could eliminate, shift, or move the company at any time. This means that even though CIHL appears to declare an annual dividend each year, those are the profits of another company that are being funneled up the corporate chain to Altrad, and those profits easily could be shielded from plaintiffs. This is how the system was designed.

CIHL is a UK-registered holding company with no employees, physical assets, customer contracts, or operational footprint.[130] It exists solely as a corporate shell.[131] Ran Oren, Altrad Investment Authority S.A.S.'s CEO, is the sole officer and director of CIHL.[132] CIHL acts as a pass-through entity for profits of four entities it wholly owns: Cape Insulation Ltd., Cape Industries Ltd., Cape Building Products Ltd., and Altrad Services Ltd.[133] Importantly, though, the three Cape entities – Cape Insulation Ltd., Cape Industries Ltd., and Cape Building Products Ltd. – are legacy Cape companies that generate no revenue.

Altrad Services Ltd., which became a CIHL subsidiary *after* Altrad purchased Cape in 2017, is the only operational entity in the CIHL structure. In 2024, for example, Altrad Services Ltd. declared a £ 24,769,000 dividend based on its operating profits for that year.[134] Because CIHL wholly owns Altrad Services Ltd., that full dividend went to CIHL. CIHL, in turn, did not hold any portion of the dividend itself, but instead declared the full £ 24,769,000 as a

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[130] *See* CIHL Annual Report 3, 12, 14 (2025) ("Cape Intermediate Holdings had no employees in the current or prior year."); *id.* at 3 ("The Company is a non-trading holding company").

[131] *See id*. at 13 ("the director was not remunerated for his services to the Company during the year. No director accrued retirement benefits . . . during the current or previous year. [CIHL] had no employees during the current or prior year.").

[132] *Id*. at 8.

[133] See *id.* at 13; *see also* Altrad Services Ltd. Annual Report 33 (2025); Cape Insulation Ltd. Annual Report 9 (2025); Cape Industries Ltd. Annual Report 9 (2025); Cape Building Products Ltd. Annual Report 9 (2025).

[134] *See* Altrad Services Ltd. Annual Report at 9 (2025).

dividend to its shareholder.[135] Because of this, it is unclear whether CIHL holds any funds at all at any given moment – let alone sufficient funds to pay a judgment in the *Park* claim.

Indeed, the CIHL annual reports in the years prior to the Receiver's appointment demonstrate a shift in CIHL's ability to pay its own debts. In evaluating CIHL as a going concern, the 2020 Annual Report stated, "the director believes that the company is well placed to manage its business risks in the coming years."[136] The same section in the 2021 CIHL Annual Report, however, relied on Altrad to pay any CIHL debts in order for CIHL to remain a going concern: "The director has a reasonable expectation that [CIHL] will continue in operational existence for the foreseeable future having received a letter of support from [AIA]. This letter confirms continuing support for 12 months from the date of signing of these financial statements. The director has reviewed the resources of [AIA] and have concluded there is sufficient scope and headroom in its resources to adequately support [CIHL] over the next 12 months."[137]

This is further supported by the Altrad Group financial statements, which establish that CIHL has no money to pay asbestos claims other than a limited claim fund for asbestos claims of certain former Cape U.K. employees – funds that are untouchable for U.S.

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[135] *See* CIHL Annual Report at 7 (declaring 24,769,000 as dividends received for 2024).

[136] CIHL Annual Report at 6 (2020).

[137] CIHL Annual Report at 6 (2021).

plaintiffs who sue CIHL for their asbestos-related diseases.

Altrad purchased Cape in 2017. Altrad publishes financial results are part of a "Group" filing of all entities related to Altrad. According to Altrad's Interim Consolidated Financial Statements dated February 28, 2025, CIHL does not appear to maintain funds to pay any asbestos claims. Instead, Altrad reports only that "Management believes that, assuming no significant deterioration in business performance and no material change in legal precedence or judgments, the Group will be able to fund its subsidiary Cape Claims Services Limited to meet all claims to be settled under the Scheme of Arrangement settlement plan and the Group has sufficient funds to satisfy all other ***UK claims*** settled outside the Scheme of Arrangement."[138]

The Scheme of Arrangement to which Altrad refers is a 2006 court-ordered scheme for the payment of asbestos disease claims from former UK employees of certain Cape subsidiaries.[139] According to a 2022 annual report, Altrad Group had set aside £118 million to address certain ***non-U.S.*** historical claims relating to asbestos exposure, but also disclosed AIA's letter of support of it as a going concern.[140] However,

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[138] Altrad Grp., Interim Consolidated Financial Statements at 32 (Feb. 28, 2025) (emphasis added).

[139] *See id.*

[140] Altrad Services Limited Annual Report (2022), at Cape_Receiver_00248438 ("The Group continues to receive claims, from both individuals and insurance companies, in connection with historical alleged exposure to asbestos. Where claims are determined to have merit, the costs are provided for

according to an April 2025 news article, "Altrad's spokesperson told *The Times* it had never manufactured or sold asbestos but continues to support Cape's compensation scheme, which has paid over £60m to former employees who developed cancer following asbestos exposure, with a further £70m set aside."[141] This would mean Altrad only has £70m left to pay asbestos claims under the Scheme of Arrangement, and again, that is a restricted fund designed to pay certain UK claimants. A complete lack of clarity exists as to the actual amount of funds available to pay Cape claims as well as whether CIHL actually can access those funds. What is clear, though, is ***none*** of those funds are intended for U.S. plaintiffs.

CIHL is only funded for a limited period each year – theoretically the time between when Altrad Services pays its dividend and CIHL declares that money fully as a dividend to its parent - and even that structure is subject to change by Altrad at any time. Further, any funds earmarked for payment of asbestos claims by any Cape-related structure are not within CIHL and are limited to certain ***non-U.S.*** claimants. This narrow definition of future claims, combined with the fact that CIHL is a non-operational holding company, establishes the danger of imminent insolvency for CIHL.

Second, since 1978, Cape has avoided liability to U.S. litigants by refusing to appear in U.S. courts. As

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and claims are settled in the ordinary course, otherwise claims are defended.").

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https://www.healthandsafetyinternational.com/article/1913269/former-asbestos-firm-offers-victims-3m-gag-clause demonstrated above, Cape has gone to great lengths to protect itself against these liabilities, including creating a Liechtenstein offshore company. Faced with the possibility that U.S. litigants may now be able to access funds to pay future claims, and given that Cape is not a stand-alone company, but instead is a holding company within a large corporate structure, one should expect that Altrad will do anything to avoid its historical liabilities, including rendering the company fully insolvent. Indeed, Altrad already has informed the Receiver that it has entered into a "settlement agreement" with itself (between two Altrad entities) to release Mohed Altrad from any liabilities not only in *Park* and *Tibbs* but also in every other future U.S. personal injury action against any Cape entity.[142]

#### *e. The Receiver's authority to act in Tibbs*

The Third-Party Defendants argue that the Receiver has acted beyond the scope of his authority by filing the Third-Party Action in *Tibbs*. Additionally, the South Carolina Supreme Court Order in *Tibbs v. 3M Company*, Appellate Case Nos. 2024-001423, 2024-001499, 2024-000916, 2024-002114, 2024-002116, 2024-002117, and 2025-000052 remanded the cases to this Court and directed the Court to "[e]nsure the receiver has been authorized to conduct its work by an order filed in the specific case as to which the work is to take place." Slip Op. at 4 (June 26, 2025). The Order further notes, "[t]he receiver is not to be authorized to conduct work as to

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[142] Cape, Altrad, and Sparrows, Agreement for Full and Final Settlement and Release of Claims (2025).

a case in which no receiver appointment order has been filed." *Id.*

This Court finds that the Receiver referenced the Cape Receiver Appointment Order multiple times in *Tibbs*, including first in the Third-Party Complaint. *See* Third-Party Complaint at 10 ("On March 17, 2023, this Court appointed the Receiver to undertake actions to administer all assets of Third-Party Plaintiff. *See* Cape PLC Receivership Order."). The parties filed the Cape Receiver Appointment Order as an exhibit to at least 23 filings in *Tibbs*, including in the Receiver's Omnibus Memorandum in Opposition to Third-Party Defendants' Motions to Dismiss, filed on October 18, 2023.[143]

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[143] The full list is as follows: (1) Motion to Dissolve, Arranco US, LLC, Hawk Bidco (US), Inc., & Sparrows Offshore LLC, Aug. 21, 2023, Ex. E, (2) Motion to Dismiss, Altrad Investment Authority S.A.S., Sept. 1, 2023, Ex. 9 (3) Memo in Opposition to MTD, Cape Receiver, Oct. 18, 2023, Ex. 1; (4) Motion to Dissolve, Lightbox Jewelry Inc, Oct. 26, 2023, Ex. A; (5) Motion to Dissolve, Anglo American Crop Nutrients USA LLC, Oct. 26, 2023, Ex. A; (6) Motion to Dissolve, Anglo American Us Holdings Inc, Oct. 26, 2023, Ex. A; (7) Motion to Dissolve, De Beers Jewellers US Inc, Oct. 26, 2023, Ex. A.; (8) Motion to Dissolve, Element Six Technologies (OR) Corp, Oct. 26, 2023, Ex. A; (9) Motion to Dissolve, First Mode Holdings Inc, Oct. 26, 2023, Ex. A; (10) Motion to Dissolve, Forevermark U.S., Inc, Oct. 26, 2023, Ex. A; (11) Motion to Dissolve, Platinum Guild International Usa Jewelery Inc, Oct. 26, 2023, Ex. A; (12) Motion to Dissolve, Anglo American US Holdings Inc, Oct. 26, 2023, Ex. A; (13) Motion to Dismiss, Anglo American plc, Dec. 21, 2023, Ex. A; (14) MTD for Lack of SMJ, De Beers plc, Dec. 21, 2023, Ex. A; (15) MTD for Lack of SMJ, De Beers Centenary AG, Dec. 21, 2023, Ex. A; (16) MTD for Lack of SMJ, De Beers UK Limited, Dec. 21, 2023, Ex. A; (17) MTD for Lack of SMJ, De Beers Consolidated Mines Proprietary, Dec. 21, 2023, Ex. A; (18) MTD for Lack of SMJ,

This Court finds that the Receiver was authorized to file the Third-Party Complaint in *Tibbs* to seek declarations as to the nature of the relationships among Charter, Central Mining, and Cape; the status of the named Third-Party Defendants as successors to Cape and/or Charter and Central Mining; and that the Third-Party Defendants were unjustly enriched by their participation in Cape's scheme.

#### *f. Clarification of Scope of Receivership Appointment Order*

Finally, Third-Party Defendants argue that the Receiver has undertaken certain actions that are beyond the scope of the authority that should be granted to a receiver in South Carolina because certain language in *Welch* – in particular, language related to limiting the receivership to the entity's insurance assets – limits all South Carolina receiverships in the same manner. Additionally, the South Carolina Supreme Court Order in *Tibbs v. 3M Company*, Appellate Case Nos. 2024-001423, 2024-001499, 2024-000916, 2024-002114, 2024-002116, 2024-002117, and 2025-000052 remanded the cases to this Court and directed the Court to ensure "that the receiver's scope of authority is limited as set forth in *Welch*." Slip Op. at 4 (June 26, 2025).

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Anglo American plc, Dec. 21, 2023, Ex. A; (19) Motion to Dissolve, Anglo American Plc, June 24, 2025, Ex. B; (20) Memo in Opposition to Receiver's MTC, Anglo American plc, July 18, 2025, Ex. 2 at 48-51; (21) Supp. Memo in Support of Motion to Dissolve, Anglo American plc, July 31, 2025, Ex. A; (22) Receiver's Resp. in Opp. to TPD's Motions to Dissolve, Cape Receiver, Aug. 5, 2025, Ex. A; and (23) Receiver's Resp. to the Submission of Mohed Altrad, Cape Receiver, Aug. 5, 2025, Ex. D.

First, as to the Third-Party Defendants' contention that *Welch* requires limitation of this Court's appointment only to Cape's insurance assets, this Court finds that *Welch* does not require such a limitation. The *Welch* opinion recognized this Court's limitation on the Atlas receiver's powers to marshal only the insurance assets of Atlas Turner.[144] This Court appointed the Receiver "with the power and authority [to] fully administer **all insurance assets** of Atlas Turner, Inc.," and specified that the order "includes the right and obligation to **administer any insurance or indemnification assets of Atlas** as well as any claims related to the actions or failure to act of Atlas insurance carriers or other entities, including, but not limited to the officers, directors and/or shareholders of Atlas against which [] Atlas may have claims."[145]

The Cape receiver order includes no such limitation.[146] The receivership court appointed the Receiver "with the power and authority [to] fully administer **all assets of Cape**," and specifying that the order included, but was "**not limited to**" "the right and obligation to **administer any insurance assets of Cape** as well as any claims related to the

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[144] *See* Ex. 2, Order on Plaintiffs' Motion to Appoint A Receiver, *Welch v. 3M Co.*, No. 2022-CP-40-03834 at 6 (S.C. Ct. Com. Pl. Jun. 21, 2023).

[145] *Id.* (emphasis added).

[145] *Id.* (emphasis added).

[146] *See* Ex. 70, Order Appointing Receiver, *Park v. Armstrong Int'l, Inc.*, No. 2021-CP-40-02727 at 1 (S.C. Ct. Com. Pl. Mar. 16, 2023).

actions or failure to act of Cape's insurance carriers."[147]

This difference stems, in part, from the relative participation of these entities in U.S. asbestos litigation: because Atlas appeared in U.S. litigation but hid its insurance assets from plaintiffs, this Court found that it needed a receiver to determine the scope of insurance resources available to pay claims when Atlas was not forthcoming with such information. Cape, on the other hand, refused to participate whole cloth, which necessitated a broader appointment in light of facts known from the motion to appoint a receiver as to Cape's decades-old scheme of liability avoidance.

In the context of the Atlas Turner insurance assets receivership order, the South Carolina Supreme Court questioned the court's definition of Insurance Assets – a definition *not* present in the Cape receivership order because, again, the Cape receivership is more broadly defined. The definition included the following: "other information which is reasonably calculated to lead to the discovery of admissible evidence about those insurance policies or any other assets which are related to, touch or are otherwise relevant to such insurance."[148]

The Court found that definition too broad in the context of an insurance assets receivership: "We find equity only allows insurance policies that have the potential to cover Mr. Welch's injuries to be included in this definition, and we reverse and vacate the portion of this definition that allows the Receiver to

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[147] *Id.* (emphasis added).

[148] [citation].

have power over 'any other assets which are related to, touch or are otherwise relevant to such insurance."[149]

Nothing in *Welch* order requires application of this holding to South Carolina receiverships generally. Indeed, *Welch* recognized that a court may specify the assets included in the receivership: "it is well established that a Receiver has the right and duty to collect and accumulate the property and assets of the defendant specified in the appointment order, including its rights and claims."[150]

Second, as to the contention by the Third-Party Defendants that the Cape Receiver Appointment Order is otherwise overly broad, this Court acknowledges that certain portions of the Order can be clarified to better reflect the facts of the Cape receivership. This Court clarifies the *Park* Cape Receiver Appointment Order as follows:

1. The Court clarifies that the entity in receivership is "Cape Intermediate Holdings Limited, formerly known as Cape plc from 1989-2011, Cape Industries Limited from 1974 to 1989, and Cape Asbestos Company Ltd. from 1893 to 1974."
2. The Court clarifies that Cape Intermediate Holdings Limited is not dissolved and has not forfeited its charter. However, failed to answer the *Park* case.
3. The Court adopts all findings of fact as to Cape's moral fraud made herein to establish

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[149] *Id.*

[150] *Welch* at *11.

the appropriateness of appointment of the Receiver under S.C. Code § 15-65-10(5).

4. The Court adopts all findings of fact as to Cape's financial position so as to render it in danger of insolvency, therefore establishing the appropriateness of appointment of the Receiver under S.C. Code § 15-65-10(4).

5. The Court limits the authority of the Receiver to administer the assets of Cape responsive asbestos personal injury claims properly brought in South Carolina, as is appropriate given Cape's moral fraud in making the conscious decision not to participate in asbestos personal injury litigation in South Carolina despite having made direct sales of asbestos fiber into South Carolina.

6. The Court clarifies that upon appointment as Receiver over Cape, the Receiver was permitted to accept service on behalf of Cape through all the same mechanisms as service may be made on any corporation in South Carolina.

7. The Court clarifies that although the eleven enumerated activities in which the Court permitted the Cape Receiver to engage on page 2 of the Appointment Order are activities in which South Carolina receivers ordinarily may engage, these activities do not reflect the scope of the Cape Receiver's charge, with the exception of point 10, the power to "hire any person or company necessary to accomplish any right or power under this Order." Additionally, point 8, relating to financial records belonging to the Defendant, is

relevant, but should be and is clarified to reflect that the scope of the Receiver's charge includes the right to obtain from any third party copies of any records belonging or pertaining to the assets of Cape responsive to asbestos personal injury claims properly brought in South Carolina, including prior legal representation of Cape. The Court therefore strikes this paragraph from the appointment order, and replaces it with the following language: "In addition to the powers of the Receiver set forth herein, the Receiver shall have the right to (1) hire any person or company necessary to accomplish any right or power under this Order and (2) obtain from any third party copies of any records belonging or pertaining to the assets of Cape responsive to asbestos personal injury claims properly brought in South Carolina, including prior legal representation of Cape."

8. The Court confirms that the Receiver's litigation activity to date has been conducted within the scope of the Appointment Order.

IT IS SO ORDERED.

***[JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]***

Richland Common Pleas

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|---|---|
| **Case Caption:** | John A Tibbs , plaintiff, et al vs 3M Company , defendant, et al |
| **Case Number:** | 2023CP4001759 |
| **Type:** | Order/Other |

So Ordered

Jean H. Toal

Electronically signed on 2025-10-10 16:08:09

## APPENDIX F

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

| | |
|---|---|
| **KEITH W. PARK**, individually and as the Personal Representative of the Estate of **ISABELLA PARK**,<br><br>Plaintiffs,<br><br>v.<br><br>**ARMSTRONG INTERNATIONAL, INC.,** et al.<br><br>Defendants. | **C/A NO. 2021-CP-40-02727**<br><br>*In Re:* Asbestos Personal Injury Litigation Coordinated Docket<br><br>**ORDER** |

Plaintiffs have moved this Court to appoint a Receiver over Cape PLC, pursuant to S.C. Code § 15-65-10(4)-(5). This Court finds that the application is meritorious under the applicable statute because Cape PLC as the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) ("Cape Asbestos") and its subsidiaries and global affiliates (collectively, "Cape" or the "Company") have dissolved and Cape, a foreign corporation, has forfeited its charter and has further failed to answer this case and therefore, Plaintiffs request for an expedited ruling on this motion is appropriate and also granted.

Therefore, this Court hereby appoints Peter Protopapas be and hereby is appointed Receiver in this case pursuant to the South Carolina Law with the power and authority fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape whatever they may be. This order is inclusive of, but not limited to, the right and obligation to administer any insurance assets of Cape as well as any claims related to the actions or failure to act of Cape's insurance carriers.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the following rights, authority and powers with respect to the Respondent's property, to: 1) collect all accounts receivable of Respondent and all rents due to the Respondent from any tenant; 2) to change locks to all premises at which any property is situated; 3) open any mail addressed to the defendant and addressed to any business owned by the Respondent; redirect the delivery of any mail addressed to the Respondent or any business of the Respondent, so that the mail may come directly to the receiver; 4) endorse and cash all checks and negotiable instruments payable to Respondent, except paychecks for current wages; 5) hire a real estate broker to sell any real property and mineral interest belonging to the Respondents; 6) hire any person or company to move and store the property of Respondent; 7) to insure any property belonging to the Respondents (but not the obligation); 8) obtain from any financial institution, bank, credit union, savings and loan or title company, credit bureau or any other third party, any financial records belonging to or pertaining to the Defendants; 9) obtain from any landlord, building owner or building manager where the Respondent or the Respondent's business is a tenant, copies of the Respondent's lease, lease application, credit application, payment history and copies of Respondent's checks for rent or other payments; 10) hire any person or company necessary to accomplish any right or power under this Order; and 11) take all action necessary to gain access to all storage facilities, safety-deposit boxes, real property, and leased premises wherein any property of Respondent may be situated, and to review and obtain copies of all documents related to same.

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

The Court further orders that, as the Receiver Court, that the Receiver or Cape may not be sued outside this Court without obtaining the Receiver's consent or an order of this Court prior to doing so.

AND IT IS SO ORDERED.

[JUDGE'S E-SIGNATURE PAGE FOLLOWS]

Richland Common Pleas

| | |
|---|---|
| **Case Caption:** | Isabella Park , plaintiff, et al vs Armstrong International Inc , defendant, et al |
| **Case Number:** | 2021CP4002727 |
| **Type:** | Order/Appointment of Receiver |

So Ordered

Jean H. Toal

Electronically signed on 2023-03-16 11:28:55

**APPENDIX G**

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2025-002104

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

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Chesterton Company; ABB Inc.; Air & Liquid Systems Corporation; AIW-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited ASCO, L.P.; Atlas Asbestos Co.; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas CT, LLC; Cape PLC;

Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash

Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Incl; SPX Corporation; Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable, LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; and Zurn Industries, LLC,............ Defendants,

of which

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

and

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

v.

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

of which

Charter Consolidated Ltd.; ESAB Corporation; Central Mining & Investment Corporation Ltd; Mohed

Altrad; and Altrad Investment
Authority SAS, are the............................ Appellants.

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APPELLANTS' JOINT RESPONSE TO
"DOWNSTREAM DEFENDANTS'" BRIEF

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[ . . . ]

(4) the appointment order must contain all statutory safeguards, including the requirement that the order state a value on which a bond can be set, and the payment of which nullifies any receivership appointment.

(*See generally* Altrad Appellants' Br. at 14 n.3, 46–50; Altrad Appellants' Reply Br. at 7–10; *and* Charter Appellants' Response to Plaintiffs' Law Firms' Br. at 5–16.)

***None of these exist in this case, and that's undisputed.***

The ***only*** scenario where a court-appointed third party can purport to speak for and act on behalf of a company in the manner described by the "Downstream Defendants" is if a court appoints a ***custodian*** over a ***South Carolina corporation*** that is in the process of being ***judicially dissolved*** under ***Title 33***. *See* S.C. Code Ann. § 33-14-320(c)(2) (authorizing the court in a proceeding "to dissolve a corporation" to appoint a custodian who "may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors"); *id.* § 33-1-400(4) ("'Corporation' or 'domestic corporation' means a corporation for profit, ***which is not a foreign corporation***, incorporated pursuant or subject to the provisions of Chapters 1 through 20 of this Title.") (emphasis added).

The Appellants made ***this exact point*** in their opening brief and explained that any attempt to force that process onto a foreign entity like CIHL would violate the internal affairs doctrine, Due Process, the Commerce Clause, and the basic point of federalism that one state cannot reach outside of its own jurisdictional boundaries (as well as the plain language of Title 33 itself). (Altrad Appellants' Br. at 14 n.3.)[1]

This Court reinforced in *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 667, 916 S.E.2d 320, 334–35 (2025), that a putative receiver under Title 15 cannot exercise a company's "boardroom" authority—which litigation decisions (including when to appear, when to sue, when to defend, when to accept service, and everything else that comes with litigation) indisputably are.

And the Third Circuit made the same point unmistakably clear, rejecting this Receiver's attempt to supplant Whittaker Clark & Daniels's decision to pursue bankruptcy protection after the Asbestos Docket receivership appointment. *See Protopapas v. Brenntag AG (In re Whittaker, Clark & Daniels, Inc.)*, 152 F.4th 432, 447 (3d Cir. 2025) ("Thus, when it comes to control over corporate decision-making, a state 'has no interest in regulating the internal affairs

[1] In response to National Union's amicus filing, the putative Receiver claims that none of the Appellants argued "Title 33 in their principal briefs." (Putative Receiver's Resp. to National Union at 5.) This is obviously not true.

of foreign corporations.'" (quoting *Edgar v. MITE Corp.*, 457 U.S. 624, 645–46 (1982))).

In short, the "Downstream Defendants'" view of a receiver's role is contrary to the U.S. Constitution and the South Carolina Code, and it has already been rejected by this Court and others.

* * * * *

Just as with New Indy's filing, the Court should disregard the "Downstream Defendants'" brief. Their recycled *amici receptoris* talking points are wrong on the law and add nothing to the legal issues presented in this appeal.

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2025-002104

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

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Chesterton Company; ABB Inc.; Air & Liquid Systems Corporation; AIW-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited ASCO, L.P.; Atlas Asbestos Co.; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas CT, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.;

Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount

Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Incl; SPX Corporation; Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable, LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; and Zurn Industries, LLC,............ Defendants,

of which

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

and

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

v.

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

of which

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

APPELLANTS' JOINT RESPONSE TO MR. ASHMORE'S BRIEF

**RESPONSE TO MR. ASHMORE'S BRIEF**

Mr. Ashmore's brief describes his excellent work as a federal receiver and notes the open field in which he is allowed to run when performing that work in the federal courts in conjunction with federal criminal prosecutions. His brief shines a bright spotlight on a point the Appellants have repeatedly argued and for which the putative Receiver has never had any answer:

*South Carolina has no jurisdiction to authorize a receiver to exceed the boundaries of the State, including attempting to seize assets of, make litigation decisions on behalf of, and speak for an English company.*

This limitation is a function of the U.S. Constitution: Due Process, the Commerce Clause, and the basics of federalism that form the structure of the "more perfect Union" among the states. *See, e.g.*, *Carolina Trucks & Equip., Inc. v. Volvo Trucks of N. Am., Inc.*, 492 F.3d 484, 489–90 (4th Cir. 2007) ("The principle that state laws may not generally operate extraterritorially is one of constitutional magnitude. One state may not 'project its legislation' into another, as the Commerce Clause 'precludes the application of a state statute to commerce that takes place wholly outside of the State's borders, whether or not the commerce has effects within the State.").

This constitutional limitation on a state's jurisdictional reach has long been recognized in South Carolina:

- legislatively, *see, e.g.*, S.C. Code Ann. § 15-65-10(4) (authorizing a receivership only as to "property within this state" of a dissolved foreign business); *id.* § 33-1-400(4) (excluding "foreign corporations" from the definition of "corporation" for purposes of the South Carolina Business Corporation Act);

- by the federal courts, *see, e.g.*, *Johnson v. Aeropure Acquisition, Inc.*, Case No. 2:23-cv-3898-BHH, 2024 U.S. Dist. LEXIS 125009, at *10 (D.S.C. July 16, 2024) ("In sum, the Court holds that the South Carolina attachment statute does not apply extraterritorially to out-of-state property or to an out-of-state bank account. This interpretation is consistent with the questions of due process and comity that might arise if this Court were to issue extraterritorial writs of attachment.");

- and by this Court, *see, e.g.*, *Ex parte First Penn. Banking & Tr. Co.*, 247 S.C. 506, 508, 148 S.E.2d 373, 374 (1966) ("[T]he jurisdiction of a state is restricted to its own territorial limits."); *Boynton v. Consol. Indem. & Ins. Co.*, 180 S.C. 279, 293–94, 185 S.E. 731, 737 (1936) (holding that a circuit court was "without authority to appoint a Receiver" when there was "a total failure of any proof that [the foreign corporation] has property in this State"); *Frink v. Nat'l Mut. Fire Ins. Co.*, 90 S.C. 544, 549, 74 S.E. 33, 35 (1912) ("That a receiver has no extra territorial authority is too well settled to require the citation of authority."); *Pollock v. Carolina Interstate B&L Ass'n*, 48 S.C. 65, 74, 25 S.E.977, 980 (1896) (reiterating that "courts of equity cannot acquire extra territorial

> jurisdiction over property by appointing receivers" and "[t]he power of a receiver only extends to the boundaries of the territorial jurisdiction of the court appointing him" (quoting 20 Am. & Eng. Enc. Law at 65–66, and Gluck & Becker on Receivers at 3))).

This same constitutional limitation on a state's jurisdictional reach has been recognized as to the putative Receiver in particular. *See Protopapas v. Brenntag AG (In re Whittaker, Clark & Daniels, Inc.)*, 152 F.4th 432, 446–47 (3d Cir. 2025) ("So it is no surprise that the Constitution limits the authority a state court can exercise over a corporation incorporated in a sister state [or another country]. Those limitations are as intuitive as they make good sense." (citing the Due Process Clause and the Commerce Clause)).

At bottom, Congress alone, and not the legislature or judiciary of any individual state, can vest a receiver with multijurisdictional authority. Mr. Ashmore's brief highlights this point.

Mr. Ashmore suggests that the Court's enforcement of Title 15 as explained in *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 916 S.E.2d 320 (2025), and *Tibbs v. 3M Co.*, Appellate Case Nos. 2024-001423 *et al.* (2025), is "unworkable in practice." (Amicus at 2.) He further suggests that this Court's instructions "would materially impede" a receivership. (*Id.*)

This Court's instructions in *Welch* and *Tibbs*—namely, any appointment of a receiver under Title 15 must be limited to the specific plaintiff, in the specific case, for the specific property, regarding the specific claim that formed the basis appointment—all derive straight from the express language of South Carolina Code §§ 15-65-10 *et seq.*, which must be limited to in-state activity and in-state property as a constitutional matter.

By stark contrast, the receivership work Mr. Ashmore details in his amicus filing and upon which he bases his suggestions to this Court all arise under ***federal*** statutes. Congress has exercised its interstate authority by passing the very legislation upon which the appointments discussed in Mr. Ashmore's brief are based. His experiences as a ***federal*** receiver are necessarily different than those that could ever be constitutionally authorized by the South Carolina legislature or a South Carolina court because the legislation underlying his appointments is based on interstate activity:

| **Receivership Discussed in Mr. Ashmore's Brief** | **Statutory Basis for Each of Mr. Ashmore's Appointments** | **Citation to Appointment Order in Case** |
|---|---|---|
| *Ron Wilson* | 18 U.S.C. § 1956(b)(4)(A) (federal receiver for criminal money laundering), which incorporates 28 U.S.C. § 754 (giving multidistrict jurisdiction to | Case No. 8:12-cv-2078-JMC (D.S.C.) (Dkt. No. 1, July 25, 2012). |

| | | |
|---|---|---|
| | federal receivers) | |
| *Three Hebrew Boys* | 21 U.S.C. § 853(g) (federal receiver available to aid with forfeiture of property associated with crimes); *id.* § 853(*l*) (nationwide jurisdiction) | Case No. 3:10-cv-3141-MGL/MBS (D.S.C.) (Dkt. No. 43, Sept. 5, 2007). |
| *Womack* | 21 U.S.C. § 853(g) (federal receiver available to aid with forfeiture of property associated with crimes); *id.* § 853(*l*) (nationwide jurisdiction) | Case No. 6:00-cv-236-GRA-WMC (D.S.C.) (Dkt. No. 8, Jan. 12, 2000). |
| *Kohn / Future Income Payments* | 18 U.S.C. § 1956(b)(4)(A) (federal receiver for criminal money laundering), which incorporates 28 U.S.C. § 754 | Case No. 6:19-cv-1112-BHH (D.S.C.) (Dkt. No. 1, Apr. 15, 2019). |

| | | |
|---|---|---|
| | (giving multidistrict jurisdiction to federal receivers) | |

Mr. Ashmore's receivership experience—arising under ***federal*** statutes, and in support of ***federal*** criminal investigations—stands in vivid contrast to the limited role a receiver can play under Title 15, both as a matter of the plain language of the South Carolina Code and of the jurisdictional constraints of state laws under the U.S. Constitution.

In short, as a matter of constitutional law, this case cannot and will not impact any of Mr. Ashmore's work as a federal receiver assisting with federal criminal laws. His amicus filing, however, highlights and confirms the jurisdictional overreach of the circuit court.

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
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The Honorable Jean H. Toal
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Appellate Case No. 2025-002104

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

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of which

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

## APPELLANTS' JOINT RESPONSE TO "ASBESTOS VICTIMS'" BRIEF

[ . . . ]

But the law controls; it doesn't allow anything that has been happening below, ***and never has***.

Receiverships are creatures of statute. The U.S. Constitution and federalism define the boundaries of a state legislature and do not permit one state to reach beyond its borders. The South Carolina General Assembly has defined the boundaries of prejudgment receiverships in Title 15. Personal jurisdiction is bounded by Due Process. The internal affairs of foreign corporations are governed by the law of their jurisdiction of incorporation. And so on.

It appears that at no point in the history of South Carolina jurisprudence have Title 15 or its statutory predecessors been used to appoint a prejudgment receiver for anything other than holding property in a matter where the specific plaintiff seeks specific property or collection of a specific debt owed under a contract with that specific plaintiff. Nor has any South Carolina corporate receivership statute (now in Title 33) been used to assist with dividing up property for anything other than South Carolina entities. But there is certainly nothing in South Carolina jurisprudence allowing receiverships to be appointed prejudgment in a tort case—where the liability is unproven, the damages (if any) are unknown, and the plaintiffs are unidentified.

To counsel's awareness—prior to the putative receiverships currently arising from the Asbestos Docket—the South Carolina Code has ***never*** allowed a "receiver" to soak up a foreign company's assets, keep a huge portion for himself, and then run a claims program in South Carolina for unknown future tort claimants. Title 15 itself even includes safeguards from such a thing happening, including the requirement that any appointment must include a clause fixing the value of the property subject to the receivership so that a litigant can post a bond and vacate the appointment. S.C. Code Ann. § 15-65-60. There is no way to achieve the result below without ignoring the actual statutory language and extensive jurisprudence enforcing it.

M. Todd Carroll
Direct Dial: 803.454.7730
E-mail: todd.carroll@wbd-us.com

March 26, 2026

**Via Electronic Filing**
The Honorable Patricia A. Howard
Clerk of the South Carolina Supreme Court
supctfilings@sccourts.org

Re: *Tibbs v. Asbestos Corporation Ltd.*
Appellate Case No. 2025-002104
Notice of Additional Proceedings and Supplemental Authorities

Dear Ms. Howard:

We write to provide the Court with notice of two matters that are responsive to issues raised during the February 25, 2026 oral argument in this matter, as well as to provide supplemental authorities responsive to those same issues. Rule 207(b)(7), SCACR.

## I. Additional Proceedings in the Asbestos Docket: *Ross v. Ascend Performance Materials*

Approximately 11 minutes into the oral argument, Justice Hill inquired about whether the whole of a foreign company can be "in receivership" by virtue of an order from a South Carolina circuit court. The South Carolina Code expressly rejects such a notion: South Carolina Code §§ 15-65-10(4) (only "property within this State of foreign corporations" is eligible for a receivership order), 15-65-10(5) (the catch-all provision is limited by all other provisions of South Carolina law), 15-65-20 ("receiver of the property"), 15-65-30 ("the party whose property is sought"), 15-65-50 ("receiver of the property"), 15-65-60 ("redelivery of the property"), 15-65-60 ("appointed of any property"), 15-65-100 ("receivers of the property"), all make clear that a Title 15 receivership is only about "property," not companies. Likewise, South Carolina Code § 33-1-400(4) excludes "foreign corporations" from the definition of "corporation" for purposes of the South Carolina Business Corporation Act, rendering "foreign corporations" ineligible for a Title 33 receivership or custodianship.

Additionally, the Third Circuit's decision in *Protopapas v. Brenntag AG (In re Whittaker, Clark & Daniels, Inc.)*, 152 F.4th 432 (3d Cir. 2025), directly rejects this concept on Due Process and Commerce Clause grounds. *See generally* Joint Response to Mr. Ashmore's Amicus Brief *passim* (filed Feb. 23, 2026) (the U.S. Constitution prohibits states from reaching beyond their borders); Joint Response to the Asbestos Victims' Amicus Brief *passim* (filed Feb. 23, 2026) (surveying South Carolina receivership cases and confirming that nothing at all in the State's jurisprudence supports this putative receivership).

Along with lacking any legal authority, additional activity has happened in the Asbestos Docket that proves several of the Appellants' core points. Consider *Ross v. Ascend Performance Materials Operations, LLC*, Case No. 2024-CP-40-03710 (Asbestos Docket).

In *Ross*, the plaintiffs (represented by the same counsel as the *Tibbs* and *Park* plaintiffs) sued over 70 defendants in an asbestos personal injury case. No "Cape" defendant was included. The case was set for trial on September 22, 2025. (Docketing Order (July 31, 2024).) Three days before trial was to begin, the case was continued at the request of the single remaining defendant—Piedmont Insulation, Inc., which is a North Carolina company that this same putative Receiver claims to control. (Order of Continuance (Sept. 19, 2025).)

Within a month of the continuance, the putative Receiver announced a "settlement agreement" with the DeBeers/Oppenheimer Defendants in *Tibbs* through which the putative Receiver would pay out "claims" against Cape Intermediate Holdings Limited despite that company not being a party to *Tibbs*.

The *Ross* plaintiffs then promptly moved to amend their complaint to add Cape Intermediate Holdings Limited as a new defendant in *Ross*, which the circuit court granted two days later (motion filed October 27, 2025; order granting motion filed October 29, 2025). The *Ross* plaintiffs then:

(1) filed an amended summons and complaint that named Cape Intermediate Holdings Limited as a defendant (October 29, 2025 docket entry, copy attached);

(2) filed alleged proof of service of the summons and pleading on Cape Intermediate Holdings Limited (November 4, 2025 docket entry); and

(3) filed a motion for default against Cape Intermediate Holdings Limited (December 9, 2025 docket entry), which the circuit court granted the next day (December 10, 2025 docket entry), and which is now the subject of further proceedings below (copy of hearing notice attached).

The Altrad and Charter Appellants became aware of the pursuit of a default judgment in *Ross* after oral argument when counsel for the *Ross* plaintiffs copied them on an email to the circuit court about that case.

This activity in *Ross* underscores the impropriety of all proceedings in *Tibbs*:

- In *Ross*, the plaintiffs have named CIHL as an actual defendant; that has ***never happened*** in *Tibbs.*

As the Court is aware, the Altrad Parties have commenced exequatur proceedings in France regarding the English High Court's ruling in *Smith*. Mr. Protopapas is a party and has been properly served in those French proceedings as well.

On March 12, 2026, the French Court was scheduled to conduct its review of the request for exequatur of the English High Court's *Smith* decision. That review is part of the French court's process for ensuring that the due-process requirements for recognition of *Smith* have been satisfied before determining whether to grant exequatur (*i.e.*, recognition and enforceability) of that decision in France.

As the Court is aware, a prior decision involving Mr. Protopapas has already been recognized by the French courts, but only after confirming that the prior court was one of competent jurisdiction, that the prior order confirmed with international public policy, and that there was no fraud involved in the prior order. A copy of that prior exequatur decision begins on Page 2923 of the Record. These same due-process safeguards will no doubt be followed in the current French exequatur proceedings.

Importantly, *Smith* is consistent with the principle discussed during oral argument—particularly in response to Justice Hill's questions approximately 22 minutes into the argument—that a corporation's litigation decisions are controlled by its directors rather than an out-of-jurisdiction receiver.

In addition to *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640 (2025), and *Montgomery & Crawford, Inc. v. Arcadia Mills*, 173 S.C. 464 (1934), which were cited at oral argument, the following authorities make clear that only the directors, and not a putative receiver, control corporate decision-making, including litigation decisions:

- *Protopapas v. Brenntag AG (In re Whittaker, Clark & Daniels, Inc.)*, 152 F.4th 432 (3d Cir. 2025) (rejecting this specific receiver's attempt to override the decision of a board of New Jersey company to commence bankruptcy proceedings, and concluding that interference with litigation decisions by a receiver appointed by a South Carolina circuit court would violate the Due Process and Commerce Clauses); and
- S.C. Code Ann. §§ 33-8-101 (all "corporate powers" must be exercised and controlled by directors alone) and 33-3-102 (corporate powers include "sue and be sued, complain, and defend in its corporate name," and "make contracts").

We will provide further updates on the current French exequatur proceedings as they arise.

Best regards,

/s/ M. Todd Carroll
*Counsel for the Altrad Appellants*

/s/ A. Victor Rawl, Jr.
Gordon Rees Scully Mansukhani, LLP
*Counsel for the Charter Appellants, joining Part I*

cc: All Counsel of Record

Attachments: *Ross* Second Amended Complaint and *Ross* Notice of April 20, 2026 Hearing

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May 8, 2026

**<u>Via Electronic Filing</u>**
The Honorable Patricia A. Howard
Clerk of the South Carolina Supreme Court
supctfilings@sccourts.org

Re: *Tibbs v. Asbestos Corporation Ltd.*
Appellate Case No. 2025-002104
Second Notice of Additional Proceedings and Supplemental Authorities

Dear Ms. Howard:

Pursuant to Rule 208(b)(7), SCACR, the Charter Appellants join in the submission of the Altrad Appellants on April 30, 2026. Further, Charter Appellants respectfully provide the Court 1) notice of supplemental authority relevant to issues presented throughout the briefing, and 2) an update on Plaintiff Counsels' pursuit of a default judgment against Cape Intermediate Holdings Limited ("CIHL") in *Ross v. Ascend Performance Materials*, Case No. 2024-CP-40-03710 ("*Ross*").

**1. Third Circuit Opinion Regarding Constitutional Limits of Authority of South Carolina Receiver Appointed Over Foreign Corporation.**

As this Court is aware from the Altrad Appellants' submission, the Third Circuit's prior opinion in *Protopapas v. Brenntag AG (In re Whittaker, Clark & Daniels, Inc.)* has been superseded by a new precedential opinion issued on April 27, 2026. *See Protopapas v. Brenntag AG (In re Whittaker, Clark & Daniels, Inc.)*, Op. No. 25-1044 (3d Cir. Apr. 27, 2026). The Charter Appellants cited the prior opinion from the Third Circuit on Pages 39 – 40 of their initial brief (filed Dec. 10, 2025); Page 5 of their response to the so-called "Downstream Defendants'" amicus brief (filed Feb. 19, 2026); and Page 2 of their response to Mr. Ashmore's amicus brief as a federal receiver (filed Feb. 23, 2026). Although the verbiage in the opinion that was quoted in the Charter Appellants' brief has changed, the new opinion continued to stress and reiterate the same points the Charter Appellants previously relied upon, including:

- "[T]he Constitution places limits on the authority a state court can exercise over companies that are incorporated in a sister state." Slip Op. at 28.
- [W]hen it comes to control over corporate decision-making, a state 'has no interest in regulating the internal affairs of foreign corporations." Slip Op. at 29 (internal citations omitted).
- "The South Carolina Court could not unilaterally divest Whittaker's board of that authority [to make litigation decisions,

> including to commence bankruptcy proceedings], and, once appointed, the South Carolina Receiver had to convince a New Jersey [where Whittaker was incorporated] court to displace the board." Slip Op. at 53.

In lieu of enclosing an additional copy of the new opinion, the Charter Appellants respectfully refer the Court to Attachment No. 1 to the Altrad Appellants' April 30 submission.

**2. Plaintiffs' Counsel's[1] Decision to Seek Default Judgment Against CIHL in *Ross*.**

Approximately 63 minutes into the oral argument, Justice Few inquired about why Plaintiffs' Counsel did not seek a default judgment in *Park* against Cape and then about why Plaintiffs' Counsel sought the appointment of a prejudgment receiver in *Park* instead.

Plaintiffs' Counsel explained the reasons why a prejudgment receiver was sought - as opposed to obtaining a default judgment against CIHL (in cases other than *Tibbs* - as CIHL is not a party in *Tibbs*): 1) a default judgment would not be collectible against CIHL in the UK (because UK Courts have already determined that US Courts do not have jurisdiction over CIHL), 2) there are no known assets of CIHL in South Carolina, 3) to avoid impairing plaintiffs' ability to recover insurance assets, and 4) the desire to have a receiver "marshal" all assets of CIHL before seeking judgment in cases against CIHL, asserting

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[1] "Plaintiffs' Counsel" refers to the lawyers that represent the *Tibbs'* Plaintiffs, who are the same lawyers that represent(ed) plaintiffs in *Park* and many other asbestos cases – including in *Ross*. *See* Tibbs Final Response Brief, at p. 19 and p. 26, fn 27.

the belief that a prejudgment receiver appointed in *Park* should "marshal" all worldwide assets of CIHL in order to satisfy thousands of future claimants (and Plaintiffs' Counsels' future clients).

As pointed out in Charter Appellants' update to the Court on March 26, 2026, the week following oral argument Plaintiffs' Counsel requested a damages hearing against CIHL in *Ross.*[2]

> 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.

*See* Attachment 3, Brief of respondent Peter D. Protopapas, in his capacity as Receiver for Atlas Turner, Inc., in opposition to Atlas Turner 's Petition, p. 34 (emphasis added).

Respectfully submitted,

GORDON REES SCULLY MANSUKHANI

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[2] Plaintiffs' Counsel referenced *Ross* in its briefing to this Court: "Aside from the immediate *Tibbs* matter, in which the Receiver appeared to defend Cape, Cape has continued its policy of refusing to participate in U.S. litigation. Most recently, Cape was defaulted via a December 10, 2025 Order of Default for failing to appear in the matter of *Ross*…." Tibbs Final Response Brief, at p. 26, fn 27.

/s/ A. Victor Rawl, Jr.
*Counsel for the Charter Appellants*

Enclosures—Copies of Ross Motion and Order

cc: All Counsel of Record
Filed in Circuit Court

# APPENDIX H

## CONSTITUTIONAL PROVISIONS INVOLVED

### U.S. Const. amend. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### U.S. Const. art. I, § 8, cl. 3

The Congress shall have Power * * * To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.