FILE NAME: Cape Asbestos (CAPE)

DATE: 2023

DOC#: CAPE102

DOCUMENT DESCRIPTION: Legal - Tibbs Case - Cape Third Party Complaint

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

JOHN A. TIBBS and MARGARET B. TIBBS,

Plaintiffs,

v.

3M COMPANY; 4520 CORP., INC.; A.O. SMITH CORPORATION; A.W. HESTERTON 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.; LOWSERVE CORPORATION; FLOWSERVE US INC.; FLUOR CONSTRUCTORS

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C/A No. 2023-CP-40-01759

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

**SUMMONS**

INTERNATIONAL; FLUOR CONSTRUCTORS INTERNATIONAL, INC.; FLUOR DANIEL SERVICES; ORPORATION 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.

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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,

v.

ANGLO AMERICAN PLC, individually and as successor in interest to ANGLO AMERICAN CORPORATION OF SOUTH AFRICA LTD.; DE BEERS PLC; DE BEERS CENTENARY AG; DE BEERS CONSOLIDATED MINES LTD.; DE BEERS S.A.; 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; THE SPARROWS GROUP, LLC,

Third-Party Defendants.

TO THE ABOVE-NAMED THIRD-PARTY DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Original Third-Party Complaint in this action, a copy of which is hereby served on you, and to serve a copy of your Answer to the said Third-Party Complaint upon the subscribers at Post Office Box 7368, Columbia, South Carolina 29202, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Third-Party Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in such Third-Party Complaint.

*[Signature page follows]*

Respectfully submitted,

**GALLIVAN, WHITE & BOYD, P.A.**
By: /s/ John T. Lay, Jr.
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*Attorneys for Third-Party Plaintiff*

Dated: June 30, 2023

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

JOHN A. TIBBS and MARGARET B. TIBBS,

Plaintiffs,

v.

3M COMPANY; 4520 CORP., INC.; A.O. SMITH CORPORATION; A.W. HESTERTON 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.; LOWSERVE CORPORATION; FLOWSERVE US INC.; FLUOR CONSTRUCTORS

C/A No. 2023-CP-40-01759

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

**THIRD-PARTY COMPLAINT**

INTERNATIONAL; FLUOR CONSTRUCTORS INTERNATIONAL, INC.; FLUOR DANIEL SERVICES; ORPORATION 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.

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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,

v.

ANGLO AMERICAN PLC, individually and as successor in interest to ANGLO AMERICAN CORPORATION OF SOUTH AFRICA LTD.; DE BEERS PLC; DE BEERS CENTENARY AG; DE BEERS CONSOLIDATED MINES LTD.; DE BEERS S.A.; 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; THE SPARROWS GROUP, LLC,

Third-Party Defendants.

**COMES NOW** Cape PLC, individually and as successor in interest to Cape Asbestos Company Ltd. ("Third-Party Plaintiff"), by and through its duly appointed receiver Peter D. Protopapas (the "Receiver"), complaining of the Third-Party Defendants Anglo American PLC (individually and as successor in interest to Anglo American Corporation of South Africa Ltd.), De Beers PLC, De Beers Centenary AG, De Beers Consolidated Mines Ltd., De Beers S.A., 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 (collectively, "Third-Party Defendants"), who through undersigned counsel respectfully shows unto the Court as follows:

## INTRODUCTORY STATEMENT

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

## PARTIES

1. Third-Party Plaintiff, appearing by and through its duly appointed Receiver, who maintains his principal place of business in Richland County, South Carolina, brings this third-party complaint. 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.

2. The Receiver is informed and believes that Third-Party Defendant Anglo American PLC (individually and as successor in interest to Anglo American Corporation of South Africa Ltd.) is

a corporation organized under the laws of England, United Kingdom, with its principal place of business located in London, England, United Kingdom.

3. The Receiver is informed and believes that Third-Party Defendant De Beers PLC is a corporation organized under the laws of the Bailiwick of Jersey, with its principal place of business located in St. Helier, Jersey.

4. The Receiver is informed and believes that Third-Party Defendant De Beers Centenary AG is a corporation organized under the laws of Switzerland, with its principal place of business in Emmenbrücke, Switzerland.

5. The Receiver is informed and believes that Third-Party Defendant De Beers Consolidated Mines Ltd. is a corporation organized under the laws of the Republic of South Africa, with its principal place of business in Kimberly, Northern Cape, South Africa.

6. The Receiver is informed and believes that Third-Party Defendant De Beers S.A. is a corporation organized under the laws of the Grand Duchy of Luxembourg, with its principal place of business in the Grand Duchy of Luxembourg.

7. The Receiver is informed and believes that Third-Party Defendant De Beers UK Ltd. is a corporation organized under the laws of England, United Kingdom, with its principal place of business in London, England, United Kingdom.

8. The Receiver is informed and believes that Third-Party Defendant De Beers Jewellers Ltd. is a corporation organized under the laws of England, United Kingdom, with its principal place of business in London, England, United Kingdom.

9. The Receiver is informed and believes that Third-Party Defendant De Beers Jewellers US, Inc. is a corporation organized under the laws of the State of Delaware, with its principal place of business in Fairfield County, Connecticut.

10. The Receiver is informed and believes that Third-Party Defendant Anglo American US Holdings Inc. is a corporation organized under the laws of the State of Delaware, with its principal place of business in New Castle County, Delaware.

11. The Receiver is informed and believes that Third-Party Defendant Element Six US Corp. is a corporation organized under the laws of the State of New York, with its principal place of business in Harris County, Texas.

12. The Receiver is informed and believes that Third-Party Defendant Element Six Technologies US Corp. is a corporation organized under the laws of the State of Delaware, with its principal place of business in Santa Clara County, California.

13. The Receiver is informed and believes that Third-Party Defendant Element Six Technologies (OR) Corp. is a corporation organized under the laws of the State of Delaware, with its principal place of business in Multnomah County, Oregon.

14. The Receiver is informed and believes that Third-Party Defendant First Mode Holdings, Inc. is a corporation organized under the laws of the State of Delaware, with its principal place of business in King County, Washington.

15. The Receiver is informed and believes that Third-Party Defendant Platinum Guild International (U.S.A.) Jewelry Inc. is a corporation organized under the laws of the State of New York, with its principal place of business in New York County, New York.

16. The Receiver is informed and believes that Third-Party Defendant Lightbox Jewelry Inc. is a corporation organized under the laws of the State of Delaware, with its principal place of business in Kent County, Delaware.

17. The Receiver is informed and believes that Third-Party Defendant Forevermark US Inc. is a corporation organized under the laws of the State of Delaware, with its principal place of business in Fairfield County, Connecticut.

18. The Receiver is informed and believes that Third-Party Defendant Anglo American Crop Nutrients (U.S.A.), LLC is a corporation organized under the laws of the State of Colorado, with its principal place of business in Burleigh County, North Dakota.

19. The Receiver is informed and believes that Third-Party Defendant Charter Consolidated Ltd. is a corporation organized under the laws of England, United Kingdom, with its principal place of business located in Essex, England, United Kingdom.

20. The Receiver is informed and believes that Third-Party Defendant ESAB Corporation is a corporation organized under the laws of the State of Delaware, with its principal place of business in Montgomery County, Maryland.

21. The Receiver is informed and believes that Third-Party Defendant Central Mining & Investment Corporation Ltd. is a corporation organized under the laws of England, United Kingdom, with its principal place of business located in Essex, England, United Kingdom.

22. The Receiver is informed and believes that Third-Party Defendant Cape Holdco Ltd. is a corporation organized under the laws of England, United Kingdom, with its principal place of business in Warrington, England, United Kingdom.

23. The Receiver is informed and believes that Third-Party Defendant The Law Debenture Corporation PLC is a corporation organized under the laws of England, United Kingdom, with its principal place of business in London, England, United Kingdom.

24. The Receiver is informed and believes that Third-Party Defendant Cape Industrial Services Group Ltd. is a corporation organized under the laws of England, United Kingdom, with its principal place of business in Warrington, England, United Kingdom.

25. The Receiver is informed and believes that Third-Party Defendant Mohed Altrad is an individual who resides in Montpelier, France.

26. The Receiver is informed and believes that Third-Party Defendant Altrad UK Ltd. is a corporation organized under the laws of England, United Kingdom, with its principal place of business in Warrington, England, United Kingdom.

27. The Receiver is informed and believes that Third-Party Defendant Cape UK Holdings NewCo Ltd. is a corporation organized under the laws of England, United Kingdom, with its principal place of business in Warrington, England, United Kingdom.

28. The Receiver is informed and believes that Third-Party Defendant Altrad Services Ltd. (f/k/a Cape Industrial Services Ltd.) is a corporation organized under the laws of England, United Kingdom, with its principal place of business in Warrington, England, United Kingdom.

29. The Receiver is informed and believes that Third-Party Defendant Altrad Investment Authority S.A.S. is a corporation organized under the laws of France, with its principal place of business in Florensac, France.

30. The Receiver is informed and believes that Third-Party Defendant Sparrows Offshore Group Ltd. is a corporation organized under the laws of Scotland, United Kingdom, with its principal place of business in Aberdeen, Scotland, United Kingdom.

31. The Receiver is informed and believes that Third-Party Defendant Hawk BidCo US Inc. is a corporation organized under the laws of the State of Delaware, with its principal place of business in Harris County, Texas.

32. The Receiver is informed and believes that Third-Party Defendant Arranco US, LLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business in New Castle County, Delaware.

33. The Receiver is informed and believes that Third-Party Defendant Sparrows Offshore, LLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business in Harris County, Texas.

34. The Receiver is informed and believes that Third-Party Defendant The Sparrows Group LLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business in Harris County, Texas.

35. The Receiver believes that one or more additional companies were likewise involved in the alleged acts described herein and are liable for the same alleged harms under the same or similar theories of liability ("Additional Third-Party Defendants"). Those Additional Third-Party Defendants may include one or more companies operated or managed by organizations located in the United States, United Kingdom, South Africa, Luxembourg, Lichtenstein, Switzerland, or other jurisdictions, which have been used to obfuscate responsibilities with and control over Cape PLC during the relevant period alleged herein, which were or are alter ego entities of Cape PLC,

or which otherwise facilitated, took part in, or benefited from the liability-avoidance scheme described herein. When the identities of these Additional Third-Party Defendants become known to Third-Party Plaintiff, this Complaint may be amended *nunc pro tunc* to state the identities of such Additional Third-Party Defendants.

## JURISDICTION

36. This Court has jurisdiction over the matters alleged herein pursuant to S.C. Code Ann. §§ 36-2-802 and 36-2-803, Article V of the Constitution of the State of South Carolina, and the Court's plenary powers. This Court appointed Peter D. Protopapas as Receiver of Third-Party Plaintiff.

37. Upon information and belief, each of the Third-Party Defendants is subject to this Court's jurisdiction because, among other things, this action arises from the acts of each Third-Party Defendant, and/or their agents, co-conspirators, predecessors in interest, and/or amalgamated corporate parents: (i) transacting business in the State; (ii) contracting to supply services or things in the State; (iii) committing a litany of tortious acts in whole or in part in the State; (iv) causing injuries and deaths in the State by acts or omissions outside the State, while regularly conducting or soliciting business, engaging in a persistent course of conduct, or deriving substantial revenue from goods used or consumed or services rendered in the State; (v) having an interest in, using, or possessing real property in the State; (vi) entering into a contract to be performed in whole or in part by either party in the State; and/or (vii) producing, manufacturing, or distributing goods with the reasonable expectation (or in this case, the actual knowledge) that those goods are to be used or consumed in the State and were so used or consumed. *See* S.C. Code §§ 36-2-803(A)(1)–(5), (7)–(8).

## VENUE

38. Venue is proper in this Court as it is the Receiver Court with cases pending and anticipated new filings in this Court. Further, on March 3, 2019, pursuant to the Order of the Supreme Court of South Carolina, Order Number 2017-03-03-01, the Honorable Jean H. Toal was appointed to have jurisdiction in all circuits in the State to dispose of all pretrial matters and motions, as well as trials, arising out of asbestos and asbestos litigation filed within the state court system. Thus, the Honorable Jean H. Toal will have jurisdiction over this matter.

## FACTUAL BACKGROUND

39. Although this complaint arises out of events commencing many decades ago and continuing for decades, those events led to and resulted in asbestos-related disease that continues to be diagnosed in and suffered by residents of South Carolina to this day. As described in detail below, Third-Party Defendants (including their predecessors in interest) are directly responsible for injuries caused by these events, especially by the sale and use of asbestos or asbestos-containing products throughout the United States, including in South Carolina.

40. Cape PLC is the successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) and its subsidiaries and global affiliates (collectively, "Cape"), which was and is a private company organized and existing under the laws of the United Kingdom, with its principal place of business in England. At all times relevant, Cape was deeply involved in all elements of the global asbestos industry, mining hundreds of thousands of tons of raw asbestos in Apartheid-era South Africa and then selling asbestos fiber to scores of manufacturers of asbestos-containing products in the United States—substantial quantities of which were used in South Carolina.

41. Cape's historic operations involved a complex scheme to sell millions and millions of dollars of asbestos—knowing with certainty that it would kill and maim tens of thousands of Americans—while, at the same time, developing and executing on a ploy to escape any legal or financial responsibility to the people harmed by intentionally depleting its U.S.-based subsidiary of attachable assets. It is sadly unsurprising that Cape, acting with various other foreign entities, concocted this scheme, because Cape boldly admitted that it had **no** "moral responsibility" to the people injured or killed by Cape's asbestos products. CAPE000486. Executing on that scheme, Cape allowed default judgments against it in asbestos lawsuits across the United States, and simply absconded, leaving no assets for recovery. Ultimately, as averred below, Cape and its affiliated domestic and foreign entities got extraordinarily wealthy off the suffering and deaths of tens of thousands, and then cheated the system to escape responsibility for its and their tortious misconduct.

42. How does a company like Cape pull off such a scheme? Because Cape was part of a South African mining empire that enjoyed unparalleled political power, resource wealth, commercial and legal deviousness, and wholesale antipathy towards ethical business practices and any decent concept of responsibility. More specifically, Cape was the industrial gem of the Anglo and De Beers mining houses, which were controlled by the powerful Oppenheimer family of Johannesburg. *See, e.g.*, Laurie Flynn, *Studded with Diamonds and Paved with Gold: Miners, Mining Companies and Human Rights in Southern Africa* 180 (1992) [hereinafter, "Flynn (1992)"] ("Cape Industries, a British-registered part of Harry Oppenheimer's Anglo American empire . . . [was] among the biggest asbestos producers from the beginning . . . .").

43. As averred herein, those Third-Party Defendants are responsible for a scheme that included, without limitation, the following acts:

a. Failing to follow corporate formalities among affiliated entities, with a select few entities and individuals dominating the management and operations of Cape and its parent company, Charter Consolidated Ltd.;

b. Leveraging that common ownership and control of numerous mining and other investment entities to effectively dominate the South African economy and global market for certain forms of asbestos;

c. Creating and operating a byzantine web of entities with the deliberate purpose of avoiding public scrutiny and escaping the liabilities of the affiliated companies and their shareholders;

d. Siphoning funds from entities within that web, including Cape's sole American subsidiary, to maximize the financial return to Cape's overseas owners, eliminate liabilities, and escape responsibility by neutralizing the risk of asset attachment by tort creditors; and

e. Destroying corporate records and publicly misrepresenting the nature of Cape's business and liability-avoidance scheme in the United States, all designed to avoid responsibility to the tens of thousands of people injured by Cape asbestos.

44. Each of the named Third-Party Defendants facilitated and caused Cape's U.S.-based sales and liability-avoidance scheme, or otherwise acted as successors in interest to or beneficiaries of entities involved in that scheme, and, thus, are responsible for the alleged bodily injury underlying the claims against Cape PLC across the United States, including specifically in South Carolina.

## I. Cape Was Established As Part of a South African Mining Empire.

45. Cape: A De Beers-Affiliated Project. From its beginning, Cape was formed to act in coordination with powerful mining interests in South Africa. Specifically, in 1891, Francis Oats—a director and eventual chairman of De Beers Consolidated Mines Ltd. (collectively with its affiliates and successors in interest, as named as Third-Party Defendants herein, "De Beers")—formed the Cape Mineral Syndicate to exploit asbestos reserves that had been recently re-discovered in the Orange River Valley in South Africa. Two years later, on December 28, 1893, the Cape Asbestos Company Ltd. was organized in the United Kingdom for the express purpose of: (i) taking over the Cape Mineral Syndicate's mining operations, and (ii) manufacturing asbestos products in England. As a De Beers-affiliated company, Cape was co-founded by Oats and his close business associate, Ludwig Breitmeyer (also a future De Beers director), while another De Beers director, Rudolf Hinrichsen, was installed as Cape's first chairman. Jock McCulloch, *African Issues: Asbestos Blues: Labour, Capital, Physicians & the State in South Africa* 43 (Indiana Univ. Press 2002) [hereinafter, "McCulloch (2002)"]. Thus, from its founding, Cape's operations and ownership were integrated with the interests of De Beers.

46. Wernher, Beit & Co. In the 1890s, Breitmeyer was "a partner in the London [mining finance] firm of Wernher, Beit & Co.," which—with its branch in South Africa, *i.e.*, Hermann, Eckstein & Co.—"became famous as the Corner House" Group. *Cape Asbestos (1893–1953): The Story of The Cape Asbestos Company Limited* 16 (1953) [hereinafter, "Cape Diamond Jubilee"]; Sir J. Percy Fitzpatrick, *South African Memories* 14 (1932). The Corner House Group was the most powerful mining finance house in South Africa at the time and was founded by London-based "Randlords" Alfred Beit and Julius Wernher. *See* Martin Meredith, *Diamonds, Gold and*

*War: The British, the Boers, and the Making of South Africa* 187 (2007) [hereinafter "Meredith (2007)"] ("At first, Eckstein's office in Johannesburg was called 'Beit's building'; but it later became known as Eckstein's Corner and then as the Corner House; and what it represented was the most powerful group of financiers in southern Africa."); *id.* at 294 (noting that "foreign mining magnates" such as Wernher and Beit "were dubbed by the British press" as "the Randlords," who "indulge[d] in luxury lifestyles in Britain" from their fortunes made in Africa).[1]

47. Role at De Beers and Cape. The members of the Corner House Group, particularly Alfred Beit, were fundamental to the amalgamation of diamond-mining interests that occurred with the formation of De Beers Consolidated Mines Ltd. in 1888. *See id.* at 247 ("The mastermind behind the amalgamation of the diamond mines in Kimberly was not [Cecil] Rhodes but . . . Alfred Beit – 'Little Alfred' – to whom he invariably turned for solutions.").[2] In turn, Ludwig Breitmeyer served as alternate director on the De Beers board for Alfred Beit, while being intimately involved in Cape's founding and becoming Cape's first long term Chairman (from 1894 until his death in 1930). *See* Cape Diamond Jubilee (1953) at 6, 16 (noting Breitmeyer became Cape's Chairman

[1] *See also, e.g.*, Sir J. Percy Fitzpatrick, *South African Memories* 157 (1932) ("In few countries . . . did any single business firm bulk as big [as] . . . Wernher, Beit & Co. Their great wealth and power on the diamond fields, where . . . they were the real backers of [Cecil] Rhodes in his great work [*e.g.*, the amalgamation of interests at De Beers], and on the Witwatersrand gold fields, where under the name of H. Eckstein & Co., their position, power and influence were overwhelmingly predominant, made them of necessity a very great factor in [South Africa].").

[2] *See also, e.g.*, Sir J. Percy Fitzpatrick, *South African Memories* 27, 33, 90 (1932) ("Alfred Beit has been very generally regarded as the ablest business man South Africa has ever known. He was very much more than just a financier. . . . There can be no doubt whatever that Beit was Rhodes's financial genius, and without him the great creations which are credited to Rhodes would not have been accomplished. . . . When the big amalgamation was completed and the De Beers Consolidated created, Rhodes, Beit and Wernher were made life-governors with a share in ultimate profits, which . . . proved of enormous value afterwards.").

after the first one died). In that role, Breitmeyer managed Cape in the company's infancy, while it was funded and controlled by members of the Corner House Group (*i.e.*, the key members of De Beers). *See id.* at 12, 16.

48. Breitmeyer's Personal Rise. While acting as Cape's Chairman, Breitmeyer was part of the Corner House Group's continued dominance over mining in South Africa into the 1920s (until that role was overtaken by a relative newcomer, *see infra* ¶ 49). For example, in 1905, on information and belief, Breitmeyer was involved in the organization of the Central Mining & Investment Corp. Ltd. ("Central Mining") to take over the assets and business interests of Wernher, Beit & Co., which included interests in Cape Asbestos. *See, e.g.*, Duncan Innes, *Anglo American and the Rise of Modern South Africa* 55 (1984) [hereinafter "Innes (1984)"] ("[T]he House of Wernher Beit expanded considerably at this time, changing its name to Central Mining in 1905[.]").[3] In 1912, moreover, Breitmeyer became a full-time De Beers director. *See* Hedley A. Chilvers, *The Story of De Beers* 307 (1939) ("BREITMEYER, L. Director from December 5, 1912, to the date of his death, March 13, 1930. Was alternate to A. Beit from May 14, 1888, to June 25, 1889, and from May 18, 1891, to February 6, 1896."); De Beers 1930 Annual Report, at 3 (Oct. 13, 1930) (Sir Ernest Oppenheimer, as the new De Beers Chairman, reporting "regret to record the death . . . of [a] valued friend and colleague, Mr. L. Breitmeyer, who had been a Director of the Company for the past 18 years").

[3] *See also Archives Hub: Papers of the Central Mining and Investment Corporation*, https://archiveshub.jisc.ac.uk/search/archives/780f1a0a-48ec-3e42-8e82-53503070110e; *Company Information: Central Mining & Investment Corporation Limited (The)*, https://find-and-update.company-information.service.gov.uk/company/00084511.

49. The Oppenheimer–Anglo Takeover of De Beers. In or around 1925, at a critical juncture in South African mining history, Breitmeyer sought to take control of De Beers, but was thwarted by Sir Ernest Oppenheimer—who, soon after, became De Beers' chairman. *See* Hedley A. Chilvers, *The Story of De Beers* 227 (1939) ("Offers for the purchase of the Company's diamonds were received in 1925 from L. Breitmeyer and friends and from Sir Ernest Oppenheimer and friends for a period of five years from January 1, 1926. The offer of the latter was accepted . . . ."); De Beers 1930 Annual Report, at 3 (Oct. 13, 1930) (noting leadership of Oppenheimer). Critical to his success as the new De Beers chairman, Ernest Oppenheimer also controlled the Anglo American Corporation of South Africa Ltd. (collectively with its affiliates and successors in interest, including Anglo American PLC, "Anglo"), which Oppenheimer formed in September 1917 to bring about an "amalgamation between" various mines and other business interests. *See* David Pallister et al., *South Africa Inc.: The Oppenheimer Empire (Revised & Updated Ed.)* 54–55 (Yale Univ. Press 1988) [hereinafter, "Pallister (1988)"].

50. Anglo's Interest in Cape. In the aftermath of the Oppenheimer-led takeover of De Beers, Breitmeyer maintained his directorship at De Beers and his Chairmanship at Cape. *See, e.g.*, De Beers 1930 Annual Report, at 3 (Oct. 13, 1930) (noting long, continued role as De Beers director); Cape Diamond Jubilee (1953) at 6 (chronology of Cape's initial leadership). However, Breitmeyer died soon after (in 1930), with Central Mining or other affiliates of the Corner House Group continuing to control Cape.[4] On information and belief, however, soon after the Oppenheimer-led

[4] *See, e.g.*, McCulloch (2002) at 8 (observing that by 1944, "the major shareholders [in Cape] were the Central Mining and Investment Corporation of London and the estate of the late Alfred Beit," who had died nearly four decades prior in 1906); Cape Diamond Jubilee (1953) at 35, 48, 61 (referencing Central Mining and other affiliates of the Corner House Group involved with leadership and operations at Cape).

takeover of De Beers, Anglo and its affiliated entities developed direct and indirect ties (including by assuming contracts and liabilities) in various businesses affiliated with the Corner House Group, including Central Mining and Cape. *See cf.* Hedley A. Chilvers, *The Story of De Beers* 227 (1939) ("The new (Oppenheimer) Syndicate took over in October the stock of diamonds of the old (Breitmeyer) Syndicate and all contracts and liabilities."). And at minimum, Anglo's "involvement in Cape Asbestos grew during the Second World War," because by then, Central Mining had become affiliated as an "Oppenheimer company" and was also Cape's "majority shareholder." Geoffrey Tweedale & Laurie Flynn, *Piercing the Corporate Veil: Cape Industries and Multinational Corporate Liability for a Toxic Hazard, 1950–2004*, 8 Enterprise & Society 268, 274 (2007) [hereinafter, "Tweedale & Flynn (2007)"]. Moreover, by 1949, "Central [Mining] had a majority on the board of directors of Cape," *id.*, and by 1958 (at the latest), Anglo had executed a "take over [of] Central Mining," Pallister (1988) at 120.

51. Cape as Part of an Empire. In other words, by the middle of the twentieth century, Cape was the asbestos-mining leg of an amalgamated mining empire based out of South Africa that included the De Beers diamond monopoly and mining powerhouse of Anglo associated with the Oppenheimer business dynasty.[5]

52. Benefits of Anglo Affiliation. Cape's affiliations—especially with Anglo—were key to Cape's success, because Anglo (i) acted as "South Africa's largest and most influential corporation," (ii) dominated the mining industry, and (iii) "ma[de] up the core of the country's

[5] While started by Sir Ernest Oppenheimer, leadership at Anglo was passed down to his son, Harry Oppenheimer, who is now succeeded by the founder's grandson, Nicholas ("Nicky") Oppenheimer, reportedly the third wealthiest man in Africa. *See* Rob LaFranco *The Forbes Billionaires List: Africa's Billionaires* (Jan. 30, 2023), https://www.forbes.com/lists/africa-billionaires/?sh=5a12a2a724d5.

economy." Pallister (1988) at 25 ("The old adage that what is good for General Motors in the United States is far more apposite to Anglo and South Africa. Certainly Anglo controls a far greater proportion of the South African economy than [GM] could ever hope to achieve in the USA."). For example, Central Mining (as controlled by Anglo) leveraged its expertise and methods in gold mining to improve the performance at Cape mines by seconding employees to Cape in South Africa—but with Anglo, not Cape, paying their compensation. *See* McCulloch (2002) at 51–52 (detailing "claims that seconded staff kept their original medical aid and pension entitlements [of Central Mining], and their salaries were paid by the parent company Anglo American").[6]

53. <u>The Deviousness of Its Business Structure.</u> Exhibiting extraordinary business and legal deviousness, the Oppenheimer family (along with their close associates) structured and coordinated "a web of secret companies" to avoid financial liabilities, including tax liabilities. Pallister (1988) at 25; *see also* Stefan Kanfer, *The Last Empire: De Beers, Diamonds, and the World* 292, 316–17 (1995) [hereinafter, "Kanfer (1995)"] (noting that the Anglo businesses were often investigated for "illegally doing business in the [United] States"). Outwardly, however, the Oppenheimer family and its associates did not acknowledge the true extent of cross-associations between their various companies—which in the aggregate allowed the Oppenheimer family to dominate the South African economy. *See, e.g.*, A.J.W. Owston Tr. 31–32 (Aug. 22, 1984) (Charter executive director and Anglo employee claiming not to know who controls Anglo or De

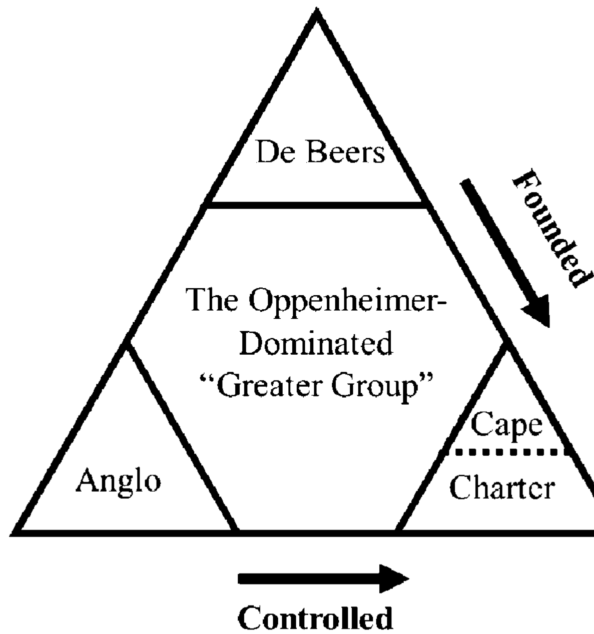
[6] In turn, in later years (*see infra* ¶ 54), Charter could "call on the comprehensive technical services of Anglo," which Charter acknowledged "contributed greatly to the examination and evaluation of the many mining and prospecting projects initiated by or brought to" Charter. *See* Charter 1966 Annual Report, at 24 (May 31, 1966).

Beers, but admitting the greater group enjoyed having "inside South Africa dozens of subsidiaries in all kinds of activities").[7]

54. The Creation of Charter. After World War II, the Oppenheimer family sought to extend its business holdings internationally, including by consolidating companies with ownership and control of Cape. Thus, in 1965, Central Mining merged with two other mining and investment companies (The British South Africa Company and The Consolidated Mines Selection Company Ltd.) to form Charter Consolidated Ltd. ("Charter"). Anglo created Charter to serve as Anglo's "international investment arm," Pallister (1988) at 345, thereby creating an Oppenheimer-controlled corporate triumvirate—with Charter being the third of "three essential companies" of what insiders called "the greater group," *i.e.*, Anglo, De Beers, and Charter. *See* A.J.W. Owston Tr. 31–32, 66 (Aug. 22, 1984); J.A.B. Nichols Tr. 10, 61(Aug. 29, 1984).[8]

[7] *See also* Pallister (1988) at 25 ("Technically there are simply two major South African publicly quoted companies, the Anglo American Corporation of South Africa . . . and De Beers Consolidated Mines, with an admitted close working relationship and various cross-holdings with other companies. Because the boards of [Anglo] and De Beers present their companies as independent entities on stock exchanges and to business partners and governments around the world, they can never formally admit that the two operate as inseparable twins.").

[8] *See also, e.g., Charter Website: History* (Dec. 12, 2008), https://web.archive.org/web/20081212114613/http://www.charter.ie/chtr_int/about/history/; (noting that "[v]arious companies within the Anglo American Corporation of South Africa have held an interest in Charter Consolidated shares").




55. <u>Charter's 1969 "Takeover" of Cape.</u> Although Charter had both direct and indirect interests in Cape from its founding, it purported to only have a minority interest initially, before quickly accumulating shares and acquiring majority ownership by 1969. *See* Charter 1965 Annual Report, at 5 (May 19, 1965) (listing Cape as a "principal interest[]" of Charter at its founding); Charter 1968 Annual Report, at 34 (May 28, 1968) (reporting 19.5% interest in Cape and the "mining and manufacture of asbestos"); Charter 1969 Annual Report, at 7, 25, 31 (June 3, 1969) (reporting 25.3% interest in Cape and efforts to obtain majority ownership through takeover offers to other unidentified Cape shareholders). On information and belief, in 1969 and prior years, Charter or other Anglo-affiliated entities purchased Cape shares from other companies associated (previously) with the Corner House Group, including, without limitation, Rand Mines Ltd., Rand Mines Holdings Ltd., or their affiliates, in which Charter and Anglo also held large ownership interests. *See* Charter 1969 Annual Report, at 28, 32 (June 3, 1969) (noting 15.9% interest in Rand Mines Ltd. and 23.6% interest in Transvaal Consolidated Land & Exploration Company Ltd.).

Indeed, at its founding, Charter touted its close relationship with these and other members of the Corner House Group. *See, e.g.*, Charter 1965 Annual Report, at 7 (May 19, 1965) (noting shared interests involving Charter, Central Mining, and Rand Mines Ltd. under section of report titled "CORNER HOUSE GROUP"); Innes (1984) at 212–13 (stating that "as part of the Corner House Group, Rand Mines had become one of the country's leading mining houses," but eventually fell under the control of Anglo by the early 1960s); *see also* Meredith (2007) at 302 (detailing the founding of Rand Mines in 1893, which was formed by the contribution of mining claims and "five existing companies" by H. Eckstein & Co., with "the partners in Eckstein, including Beit and Wernher in London," receiving shares in the new entity).

56. Charter: A Shell Game. In the end, Charter's purported "takeover" of Cape was nothing more than a continuation of other Oppenheimer-affiliated entities' control of Cape over the prior decades,[9] and serves as only one example of the many corporate shell games used by the Oppenheimer business empire to obscure their financial interests globally.

57. One Main Office for One Enterprise. Similarly, the corporate separation between Charter and Anglo was superficial. By way of example only, Charter and Anglo shared common office space at 40 Holborn Viaduct in London, employed personnel who routinely switched roles between the entities, and each had boards that were dominated by the Oppenheimer family and their business associates/servants. *See, e.g.*, E.G. Rudland Tr. 7–8, 21–22 (Apr. 7, 1981) (describing overlapping personnel and directorships); House of Commons, Expenditure Comm.,

[9] *See, e.g.*, Charter 1966 Annual Report, at 7 (May 31, 1966) (noting Central Mining "acquired interests in . . . asbestos, . . . besides a number of industrial interests in the United Kingdom"); Charter 1970 Annual Report, at 16 (June 18, 1970) (noting that "there has long been a close association [of Cape] with Charter through one of its forerunners," *i.e.*, Central Mining).

Session 1973–74, *Fifth Report: Wages and Conditions of African Workers Employed by British Firms in South Africa* 22–23 (Jan. 22, 1974) [hereinafter, "House of Commons Rep."] (noting that Charter "even allow[s] Anglo American to supply directors for Charter representation on boards"); Peter Schmeisser, *Harry Oppenheimer's Empire: Going for Gold*, N.Y. Times, Mar. 19, 1989 [hereinafter, "Schmeisser Article"] (noting common office space of De Beers, Anglo, and Charter in London, as well as overlapping directors among the Oppenheimer companies); Charter 1965 Annual Report, at 10 (May 19, 1965) (as part of the Charter merger, there was an "[i]ntegration of the London staffs" of the three merged companies, with the new organization located at 40 Holborn Viaduct); Charter 1966 Annual Report, at 24 (May 31, 1966) (noting merged companies were also combined "with the London staffs of Anglo . . . and Consolidated Share Registrars Limited" to create a "wholly owned subsidiary, Charter Consolidated Services Limited," which also took over the office lease and "provide[d] staff and services in London, not only for all companies in the Charter . . . group, but also for the Anglo . . . , De Beers and Corner House groups").

58. Charter's Role in the Empire. Consistent with this scheme, Charter operated such that its "every move was made in the interests of De Beers and Anglo"—furthering the amalgamated Oppenheimer empire's effort "to extend [its] grasp to North America," while allowing it to "unobtrusively buy, spawn or control" varied and sizeable business interests around the world through a "series of . . . cross-holdings." Kanfer (1995) at 291–92, 315 (describing Charter as one side of a "pyramid" of global business interests).[10]

[10] *See also, e.g.*, Schmeisser Article ("The structure of Oppenheimer's empire is dizzyingly complex and nearly impenetrable to outsiders. He wields his power indirectly, through pyramided holding companies, interlocking shareholdings and a myriad of cross-directorships. As a result of this operating strategy, few people are aware that in the last two decades scores of businesses in

59. Domination of Charter. The Oppenheimers consistently sat on Charter's board of directors after its founding,[11] while at the same time dominating Charter's share ownership.[12] Indeed, Charter's management was a long continuation of Randlord-style business, in which the "real proprietors" and "owners" of a business (such as the Oppenheimer family) participate primarily in profits, while local affiliated entities (such as Charter and Cape) profit by the grace of the Randlords—with an "unwritten obligation of honour to respect [Randlord] wishes and position." Sir J. Percy Fitzpatrick, *South African Memories* 90–91 (1932) (Corner House Group representative in Johannesburg detailing this norm between De Beers and Corner House Group members). Thus, it was clear to all, including Members of Parliament, that "[w]here Anglo American lead, Charter Consolidated are prepared to follow." House of Commons Rep. at 23.

60. Charter's Investment in South Africa. By the early 1970s, Charter became the largest English corporate investor in South Africa—albeit, one investing primarily in Anglo-affiliated entities, including its own parent Anglo (in which Charter had a 10% equity stake). *Id.* at 22. Uniquely, in contrast to other corporate investors who sought majority ownership (and thus control) over their South African businesses, Charter had a minority stake (usually around 10%)

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the United States [and elsewhere] have been founded or purchased with Oppenheimer capital and are managed by Oppenheimer loyalists while maintaining no legal ties to South Africa.").

[11] *See, e.g.*, Charter 1967 Annual Report, at 4 (June 9, 1967) (noting Oppenheimer's role as chairman, beginning a two-year term in that role); Charter 1971 Annual Report, at 3 (June 1, 1971) (noting Sir Philip Oppenheimer's role as Deputy Chairman and a member of the executive committee).

[12] *See, e.g.*, Anglo 1979 Annual Report, at 69 (June 22, 1979) (indicating that both Harry and Nicky Oppenheimer had 18,333,268 beneficial shares in Anglo, with the next highest directorship holding being 30,000 shares); Charter 1968 Annual Report, at 10 (May 28, 1968) (indicating that Harry Oppenheimer dominated ownership of Charter with 5,004,600 shares).

in most of its South African investments, with one notable exception: its majority ownership of Cape. *Id.* at 22 & n.1.

61. Charter's Interest in Cape. Charter's "largest industrial subsidiary company" was Cape, with Charter even seconding and compensating key personnel for Cape's management. J.N. Clarke Tr. 14, 17–18 (Apr. 21, 1983); *see also, e.g.*, G.A. Higham Tr. 7–9, 28, 87 (Oct. 3, 1984) (Cape Chairman admitting that Charter had been paying his compensation for years and that he acts as Chairman for "a number of Charter's [other] industrial subsidiaries" as well). In other words, although most of Charter's assets were tied up in minority investment interests—effectively operating as a holding company—Cape was Charter's primary operating company and "principal industrial subsidiary." *See* Charter 1972 Annual Report, at 15 (May 30, 1972) (also emphasizing Cape's profitability). In turn, Charter used its "close association" with other South African companies, namely Anglo, to "exercise . . . influence" in Apartheid-era South Africa, *see* House of Commons Rep. at 22—thereby allowing Cape to profitably mine and export asbestos to the United States for decades.

62. Clear Takeaway, Despite Complexity. Ultimately, although the facts are complex, it is clear that through an "Anglo holding company" (*i.e.*, Charter), Cape and its subsidiaries were part of the "Anglo American Group of Companies"[13] that dominated the South African mining

[13] As explained by Anglo, the "term 'group' has a wider meaning in the South African mining industry than its statutory definition of a parent company and its subsidiaries . . . . The mining finance houses in South Africa have traditionally operated 'the group system', whereby the parent house not only administers companies that are not necessarily subsidiaries, but provides them with a full range of administrative and technical services and is able, by virtue of its financial strength and standing, to assure them of capital for expansion and development. Thus the Anglo American Corporation Group comprises a large number of companies that are closely linked to [Anglo] but which are not generally subsidiaries or controlled companies as defined in the statutes." Anglo 1974 Annual Report, at 3 (Apr. 28, 1975).

economy during the twentieth century. Innes (1984) at 271, 283 (listing Cape among other Anglo subsidiaries in a published history about Anglo and its importance in South Africa); *see also, e.g.*, Schmeisser Article (reporting that the Oppenheimer family "has dominated the South African economy for nearly half of [the twentieth] century" and that "Anglo American, which accounts for more than 50 percent of the stocks traded on the Johannesburg stock exchange, permeates every conceivable corner of the South African marketplace").

63. A Profitable Mid-Century Business. In turn, Cape reflected the Oppenheimer empire's shared commercial interest[14] in the high-growth, highly profitable asbestos industry after World War II. *See, e.g.*, Jock McCulloch & Geoffrey Tweedale, *Defending the Indefensible: The Global Asbestos Industry and Its Fight for Survival* 37 (Oxford Univ. Press 2008) [hereinafter, "McCulloch & Tweedale (2008)"] (observing that "the major [asbestos] companies derived the bulk of their profits from" asbestos mines); Charter 1970 Annual Report, at 12, 16 (June 18, 1970) (reporting a "substantial jump in trading profits for the year . . . due to the inclusion of earnings from Cape Asbestos").[15]

[14] *See, e.g.*, Anglo 1976 Annual Report, at 7 (Mar 25, 1977) (reporting that Anglo had "important interests in the production of . . . asbestos" through Charter); De Beers 1978 Annual Report, at 48–49, 52 (Mar. 30, 1979) (referencing "strengthening [of] De Beers' earnings base," which through Anglo and Charter, "the London-based mining finance house," included interests in "asbestos . . . and other minerals, and in industrial enterprises in the United Kingdom"); Charter 1972 Annual Report, at 39 (May 30, 1972) ("In mining, the Anglo American Corporation group and its close associate De Beers Consolidated Mines Limited have important interests in the production of . . . asbestos.").

[15] *See also, e.g.*, Charter 1970 Annual Report, at 31 (June 18, 1970) (reporting that the sale of asbestos fibre contributed the most to the company's trading profit); Charter 1972 Annual Report, at 3 (May 30, 1972) (noting among top "[f]eatures of the year" that Cape's "profits increased from £2,528,000 to £3,098,000"); Charter 1977 Annual Report, at 47 (June 9, 1977) (noting £9,831,000 pre-tax trading profit from mining and sale of asbestos fibre and 28.2% profit margin from the same, *i.e.*, the highest among Charter's manufacturing subsidiaries).

64. Goal of Corporate Complexity. Although the precise "connection between Cape, Charter, Central Mining and Anglo American is complex," McCulloch (2002) at 51–52, that complexity reflects an intentional scheme to obfuscate corporate relationships and ownership interests while minimizing the amalgamated business empire's liability risks, including for asbestos (as well as taxes).[16]

65. The Point of Charter. Specifically, Charter was designed to serve as a corporate cushion—a products-liability patsy—for Anglo that could (i) promptly purge itself of substantial cash (through dividends based on new profits, or by otherwise reallocating assets among holding companies through more complex transactions) to Oppenheimer-affiliated entities, and (ii) add a "formal" degree of separation between Anglo and Cape, *i.e.*, a profitable asbestos business, but one they knew would injure tens of thousands and thus created a substantial risk of liability in the future. *See infra* ¶¶ 81–88 (detailing working conditions and known disease in South Africa and England); *see also cf.* Jock McCulloch & Pavla Miller, *Mining Gold and Manufacturing Innocence: Occupational Lung Disease and the Buying and Selling of Labour in Southern Africa* 390–91 (2023) (noting "Charter's controlling share in Cape gave Anglo American a commercial interest in the asbestos industry" and "Anglo American's board reason to monitor" alleged liabilities of Cape).

[16] As described later, *infra* ¶¶ 89–105, when the victims of this scheme began to sue and win verdicts, Anglo implemented additional—but still wholly superficial—corporate changes to further distance itself from its asbestos business and mitigate its U.S. liability risk, with Cape Asbestos (i) dropping *Asbestos* from its name, (ii) ceasing to appoint Cape officials to the board of its American subsidiary (NAAC) as a "sensible precaution," (iii) interjecting another entity (Cape Industries Overseas Ltd.) between NAAC and Cape, to add yet *another* degree of superficial separation between Anglo and its U.S. asbestos business, and (iv) purporting to close NAAC and sell its South African asbestos mines, for the purpose of evading creditors, while Anglo continued to profit from the sale of asbestos through other entities.

66. Infamous Recognition for Success. Through these corporate maneuvers, Cape, as "part of the great South African conglomerates of De Beers and Anglo-American Corporation, provides a classic example of . . . tactics" centered on hiding behind a corporate-veil fiction, *i.e.*, "us[ing] complex and confusing corporate structures to distance themselves from liability." McCulloch & Tweedale (2008) at 181 (also describing recognition by judicial tribunals that "Cape operated worldwide as a single economic unit" and provided "false testimony" about its organization).

67. Control as the Key to Success. The Oppenheimer "family's control [of these enterprises] and its personal wealth" was consistently the "key" to coordinating the management of their businesses, including Charter and Cape. *See* Pallister (1988) at 41 (noting that apart from Oppenheimer kin, the "powerful inner cabinet that [took] the most sensitive and important decisions" for the global empire was limited to (i) two individuals who had each served as Chairmen of Charter, and (ii) former personal assistants who were "considered to be part of the 'family'").

68. Domination of the South African Mining Economy. In the end, the amalgamated Oppenheimer empire, as effectuated by De Beers, Anglo, and Charter primarily, was astonishingly successful in its domination of the South African mining economy—making up 10% of South Africa's GDP and 30% of its exports in 1973, while controlling or producing 40% of South Africa's gold, 80% of the world's diamonds, a sixth of the world's copper, and most of South Africa's coal. Tweedale & Flynn (2007) at 274; *see also, e.g.*, Charter 1972 Annual Report, at 39 (May 30, 1972) (reporting Anglo's dominance of gold, coal, and uranium mining in South Africa).

69. Control of Asbestos Supply. In fact, Cape controlled 90% of the global supply of amosite[17] asbestos and dominated the distribution of other types of asbestos as well—effectively enjoying a monopoly over a then-highly sought industrial resource. *See Hammond v. N. Am. Asbestos Corp.*, 454 N.E. 2d 210, 217 (Ill. 1983); *see also* McCulloch & Tweedale (2008) at 28 (describing industrial preference for amosite "in the construction and repair of ships").

## II. Cape Created NAAC to Facilitate Its Asbestos Scheme.

70. A U.S. Subsidiary to Fuel Growth. As part of the Oppenheimer empire's global expansion, on October 14, 1953, Cape established the North American Asbestos Corporation ("NAAC") as a direct subsidiary domiciled in Illinois. *See, e.g.*, CAPE001511. Although Cape had been profitable for years, including "return[ing] a strong dividend" for shareholders (*i.e.*, Oppenheimer-affiliated interests) from 1936 to 1951, "the company's most bountiful years were the two decades until 1976"—the period when Cape operated NAAC to provide raw asbestos fiber to customers in the United States, the company's most important market. McCulloch (2002) at 68.

71. U.S. Industry Connections. Previously, Cape had already been marketing its asbestos to numerous U.S.-based customers, including having an important business relationship with, among other companies, Union Asbestos & Rubber Co. (UNARCO) since the 1930s to create "Unibestos" insulation. For the sake of continuity, and to leverage established client connections, Cape Chairman Ronald Dent selected UNARCO Vice President, Bob Cryor, to be NAAC's first

[17] The name for this unique form of asbestos is derived from its association with a Cape business division in South Africa—*i.e.*, AMOSA, Asbestos Mines of South Africa. Flynn (1992) at 192.

President—a role that Cryor filled until his death from mesothelioma in 1970. *See, e.g.*, *Cameron v. Owens-Corning Fiberglas, Corp.*, 695 N.E.2d 572, 578 (1998).[18]

72. NAAC's Role at Cape. Cape designed NAAC to operate as Cape's wholly controlled instrumentality for the "purpose of expediting and facilitating the movement" of asbestos from South African mines into the United States (including South Carolina).[19] To facilitate this, 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 the proper distribution of asbestos products from Africa "all the way through to the customer's plant," including to locations in South Carolina or through South Carolina ports.[20] NAAC "effect[ively] . . . put the Mines at every U.S. port." CAPE000988–89. By 1970, NAAC 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." CAPE000878–79.

[18] Important to Cape, Cryor also had established relationships with executives at Johns-Manville Corp. (one of Cape's most important customers). Indeed, Johns-Manville Corp. trusted Cryor so much as to admit to him a company policy of not telling employees about their asbestos disease—out of fear that they would stop working and file claims, and instead choosing to withhold the information and let workers die to "save a lot of money." Paul Brodeur, *Outrageous Misconduct: The Asbestos Industry on Trial* 276–77 (1985).

[19] *See* CAPE000110–12 (1982 court filing describing NAAC's history); CAPE000177 (identifying NAAC as the sole U.S.-based entity of the Cape mining division); CAPE000869 (1973 letter describing NAAC as "a division of Cape Asbestos Co. Ltd., with corporate offices in London").

[20] *See* CAPE000263–66 (describing intended business of NAAC); CAPE000333 (1975 Cape cover letter of NAAC director resignations); CAPE000729 (appointment announcement describing NAAC as "specialize[d] in marketing and distribution of Blue and Amosite asbestos in the United States, Canada, Mexico and the Caribbean"); CAPE000988–89 (1969 NAAC memorandum describing customer services).

73. Cape's Business in South Carolina. In coordination with, and at the direction of, the amalgamated global Cape/Oppenheimer network, NAAC sold millions and millions of dollars of asbestos mined from South Africa to numerous U.S.-based clients, which used or distributed asbestos products in South Carolina. *See, e.g.*, CAPE000994–95 (NAAC letter identifying certain clients). NAAC's own records show that Cape sold asbestos to companies in South Carolina, including to Raybestos Manhattan, Inc. in North Charleston and Westinghouse Electric Corp. in Hampton, as well as to facilities on the South Carolina–Georgia border (*e.g.*, Babcock & Wilcox in Augusta, GA and Dow Chemical in Savannah, GA). *See also, e.g.*, S. Purrington Tr. 9–10, 64 (Aug. 25, 1986) (NAAC clerical worker from 1961 to 1978 identifying Dow Chemical as one of NAAC's three primary customers).

74. The Disastrous Impact on South Carolinians. In turn, those Cape products caused individuals (including residents of South Carolina) to be exposed to asbestos and suffer bodily injury, which has resulted in myriad suits against Cape ("Asbestos Suits"), including this suit filed by John A. Tibbs and Margaret B. Tibbs.

75. Goal of National Distribution. In addition, Cape and NAAC implemented a "conscious pattern of product distribution [of asbestos] nationally"—particularly, amosite, over which Cape had a monopoly. *See In re: Asbestosis Cases*, Case No. 78-CP-06-105, Order, at 3 (S.C. Common Pleas Apr. 7, 1980) [hereinafter, "S.C. 1980 Order"] (rejecting objection to the exercise of personal jurisdiction over NAAC in South Carolina); *see also* Flynn (1992) at 188 ("What Cape did [in the United States of America] is not dissimilar to the situation where someone fires a gun into a crowd of people. You may not know which of them will be killed but you know for certain that some of them will be killed.").

76. <u>Prevalence of Cape's Asbestos.</u> Cape's amosite (along with Cape's other types of mined asbestos) was an ingredient in the most popular and dominant asbestos products in the market, which were used in virtually every state, including products "used in [South Carolina]." *See* S.C. 1980 Order, at 3; *see also, e.g.*, Raybestos-Manhattan 1963 Annual Report, at 2 (Mar. 13, 1964) (Cape's major customer in South Carolina touting: "Whoever you are, whatever your business, a [Raybestos-Manhattan] product touches your life."); *Parker v. Bell Asbestos Mines, Ltd.*, 607 F. Supp. 1397, 1403–04 (E.D. Pa. 1985) (rejecting argument that Charter was entitled to dismissal, given possibility that plaintiff could "prove that Charter controls Cape, and that Cape has deliberately avoided liability to American plaintiffs, [such that] it will be fair to ask Charter to stay and defend Cape's position"). In short, Cape deliberately and purposefully availed itself of the entirety of the United States market for asbestos fiber, including the South Carolina market.

77. <u>Management at NAAC.</u> The volume of Cape's asbestos supply to the United States was breathtaking given the ostensibly small footprint of NAAC, "which was essentially a one-man operation" consisting of an operational lead supported by four office clerical personnel.[21] All key decisions, however, including with respect to the fulfillment of specific purchase orders, were closely coordinated with and directed by other Cape entities, or made by a board comprised of Cape executives and lawyers (until Cape executives resigned in 1975, in what they described at the time as a "sensible precaution" against U.S. litigation). *E.g.*, CAPE000333.[22]

[21] *See* CAPE000110–12 (describing NAAC's lean staffing); CAPE001514 ("Despite the volume of sales and profits of NAAC, our operation is a very small one, with only a total of 5 employees.").

[22] *See also, e.g.*, CAPE001528 (listing six directors in 1970).

78. A Pawn in the Oppenheimer Empire. In selecting directors to participate in this worldwide scheme, Cape Chairman Ronald Dent—also a director for Charter and several other Charter-owned companies, apart from NAAC and Cape—valued "the type of man who would fit into our scheme of things . . . without causing embarrassment all around." CAPE000261–62; *see also* Charter 1972 Annual Report, at 33 (May 30, 1972) (noting Dent's role as a Charter director and ownership of Cape shares, which were also directly owned by other Charter directors).

79. Domination of American Subsidiary. NAAC's operations and decision-making were wholly dominated by Cape and its owners, including Charter and other affiliated mining/investment interests in South Africa. How dominated was NAAC? The company could not "borrow one dollar without [Cape's] approval" and was routinely forced to withdraw cash to pay dividends to Cape, thereby minimizing NAAC's available assets that could be reached by American creditors.[23] Astoundingly, NAAC's then-President Bob Cryor admitted that NAAC relegated its interests to Cape as "part of a coordinated group with responsibilities to the whole" group. CAPE000931–32.

80. NAAC's Failure to Purchase Adequate Insurance. Cape's domination also influenced and controlled NAAC's risk management decision-making, including its purchase of insurance. Officially, Cape had a company-wide policy to purchase insurance "at minimum cost consistent with adequate cover." CAPE0001465. But in reality, NAAC felt "pressure from [its] Home Office in London [that] forced [it] to seek lower rates" and choose carriers and policy terms based solely on short-term cost. *See* NAAC Letter to J. Kirk of Talbot Bird & Co. (Nov. 17, 1959). Because of

[23] *See, e.g.*, CAPE001507 (1976 letter noting borrowing limit); CAPE000816 (1976 board minutes showing payment of $250,000 dividend).

Cape's domination of NAAC, and as a part of the liability-avoidance scheme, Cape directed NAAC to buy wholly inadequate insurance coverage to address its massive future products-liability exposure.

## III. Cape Led Efforts in the U.S. and Internationally to Hide the Risks of Asbestos.

81. Known History of Illness in South Africa. Early in its history—even before setting up operations in the United States—Cape's management and ownership knew of the serious health hazards posed by their South African asbestos, as illness was endemic among Cape's own employees. For example, because child labor was extensively used in the South African asbestos mining industry and Cape lacked basic industrial hygiene measures, Cape was responsible for causing "radiologic asbestosis with cor pulmonale [*i.e.*, heart failure]" in Black children "before the age of 12." Dr. Gerrit Schepers, "Discussion," *Ann. N.Y. Acad. Sci.*, 132:246 (1965).[24]

82. Infamy for South African Conditions. Indeed, Cape's operations in South Africa were so infamous that they became a case study—literally—in corporate irresponsibility. *See* Patricia Werhane et al., *Case Study: South African Mining and Asbestos-Related Diseases*, Univ. of Va. Darden School of Bus., at 7 (Apr. 11, 2006) ("[L]ong after the hazards of asbestos were well known to the company as well as the mining community in general, Cape took advantage of lax labor

[24] Years later, Dr. Schepers provided a detailed account of his time at a Cape mine in Penge, South Africa, including seeing (i) "a big strong man with a sjambok whip," whose apparent job was "to hit a hessian sack on the ground below the end of a chute," and (ii) inside the battered sack, a "boy of ten or twelve," whose job was "to get inside the bag and trample down the fluffy asbestos. He was cheaper than machinery or safe sacks. He was covered from top to toe in asbestos dust so I grabbed him and took him off to the X-ray machine. The X-ray showed he was already suffering from asbestosis. I was told that Cape employed a lot more children and I gave instructions to my technician that he was to round up all the children in the village with the little Cape Asbestos copper identification bands riveted around their wrists – identification tags, just like slaves, so they couldn't run off. A number of the other children had asbestosis too. The conditions were unbelievable." Flynn (1992) at 192–93.

legislation . . . [and also] benefited from cheap labor. Whole families, including children as young as 12 years, were involved in the mining and milling operations at Cape's facilities, and workers handled asbestos with their bare hands. Not only Cape workers, but also those who lived in the communities around Cape mines were exposed to high levels of asbestos that were sometimes 30 times higher than the legal limit in Britain. One of Cape's asbestos mills at Prieska was in the center of town, close to a church and school. One medical doctor stated that he diagnosed 900 mesothelioma victims, including his own son."). Cape allowed these "work practices" to continue because they "were profitable for employers and Cape's management readily acknowledged the importance of the mines to its success." McCulloch & Tweedale (2008) at 44–45.

83. Known History of Illness in England. Likewise, Cape's operations in England were infamous for lacking basic hygiene measures, such that a medical examination of 80 workers in 1928 "showed that nearly all had 'definite evidences' of asbestosis." Geoffrey Tweedale, *Magic Mineral to Killer Dust: Turner & Newall and the Asbestos Hazard* 20 (Oxford Univ. Press 2000) [hereinafter, "Tweedale (2000)"]; *see also, e.g.*, Flynn (1992) at 180 ("[Cape's] British factories had been shown to be so negligently run that they brought death, disease and injury to the communities around them"). Among Cape's managers and owners, the danger of asbestos exposure was well known, with scientific studies repeatedly re-establishing a link between exposure to asbestos and illness.[25]

[25] *See, e.g.*, R. Gaze Tr. 2, 111 (June 5, 1975) (Cape official admitting knowledge of asbestosis risk "since the first day [he] was employed" there in 1943); J. Christopher Wagner et al., *Diffuse Pleural Mesothelioma and Asbestos Exposure in the North Western Cape Province*, 17 Brit. J. Indus. Med. 260, 261–62 (1960) (study published by South African researchers linking mesothelioma with occupational and non-occupational exposure to Cape asbestos); Richard Doll, *Mortality from Lung Cancer in Asbestos Workers*, 12 Brit. J. Indus. Med. 81, 86 (1955) (concluding from data that "lung cancer was a specific industrial hazard of certain asbestos

84. Apathy to Personal Suffering. Nevertheless, the dangers of asbestos were hidden from Cape employees (and the general public) and atrocious conditions at Cape facilities continued for decades—causing widespread disease and later becoming focal points of damning exposés on the asbestos industry. *See* Tweedale (2000) at 238, 251, 255–56 (noting various documentaries showing, among other things, a Cape manager who "always kept a black tie in his desk for funerals").

85. Lobbying and Perpetuating Misinformation in the United States. Yet, while having knowledge of these health hazards, and while peddling a toxic product throughout the United States (including in South Carolina), Cape used misinformation to influence public and corporate opinions about asbestos—working with government officials to protect South African (*i.e.*, Oppenheimer) business interests.[26] Cape acted as head cheerleader for the continuation of the asbestos trade, taking a keen interest in organizing efforts to downplay knowledge of the health hazards posed.[27]

86. Examples of U.S. Misinformation Efforts. For example, in 1954, the year after NAAC's establishment, Cape became a member of the U.S.-based Asbestos Textile Institute, which organized regular meetings to discuss developments in the asbestos industry, including the

workers"); *see also* McCulloch & Tweedale (2008) at 8–9, 119–20 (listing various studies of, or laws concerning, asbestos disease from 1898 to 1964, and noting that "[f]ew medical authors ever expressed doubt about the relationship between malignant mesotheliomas and asbestos exposure, and by 1953, the issue seemed to be fairly well resolved").

[26] *See, e.g.*, CAPE000955 (official of South African mining holding company, Cape Asbestos South Africa (Pty.) Ltd., writing to NAAC as a fellow member "of the Cape Asbestos Group and the Charter Consolidated Group," and introducing as a resource the Commercial Counsellor at the South African Embassy in Washington, DC).

[27] *See, e.g.*, CAPE000130 (Cape Asbestos Fibres Limited prioritizing efforts to "organise a body of medical opinion that is prepared to stand up" to critical opinions).

prospect of governmental regulation. Above all other companies, Cape was especially keen to suppress knowledge about the risks of asbestos. Thus, when Johns-Manville proposed labeling on bags of asbestos in 1968, Cape had a "bitter" response, suggesting that such a step should never be taken unilaterally by one producer. *Dring v. Cape: Key Points from Documents Obtained by the Asbestos Victims Support Groups Forum UK*, at 23 (*available at* https://asbestosforum.org.uk/cape-documents/) [hereinafter, "Dring Documents"]. And once Johns-Manville finally decided to adopt a warning label, Cape proposed use of an inaccurate warning that inhalation of only "substantial quantities" of asbestos could be harmful. *Id.* at 21.

87. Lobbying and Perpetuating Misinformation in England. In England in the 1950s and 1960s, Cape joined forces with other companies in the British asbestos industry to establish the Asbestosis Research Council and the Asbestos Information Committee, which worked to "publish several reassuring booklets on the use of asbestos." Tweedale (2000) at 174, 191. In addition, in or around 1966–68, Cape lobbied the British Occupational Hygiene Society to weaken protections for workers from a "no dust policy" to a "maximum allowable concentration approach," while continuing its misinformation campaign in the public and its strong-arm tactics designed to deter other manufacturers from introducing warning labels. Dring Documents, at 1.

88. Hiding the Truth to Profit. A linchpin of these schemes was Cape's role in providing misleading reassurances to the government and public about the dangers of asbestos, which conflicted with Cape's own internal data on the health risks of asbestos. Ultimately, when faced with a decision of shutting down the business (particularly, its South African mines) or "suppress[ing] knowledge of disease," Cape "chose[] the latter" and "worked hard to keep information about mesothelioma secret." McCulloch & Tweedale (2008) at 120.

## IV. Cape Implemented a Strategy to Evade Liability in the United States.

89. Initial Maneuvers to Evade Liability Risk. In the early 1970s, after the onset of asbestos-related products-liability litigation, *see, e.g.*, *Borel v. Fibreboard Paper Prods. Corp.*, 493 F.2d 1076 (5th Cir. 1973) (successful suit by insulation worker, widely acknowledged to have precipitated a wave of asbestos litigation in the 1970s), Cape and its affiliated entities undertook numerous actions in a deliberate effort to escape responsibility for the harm caused by Cape asbestos products.[28] For example, Cape went through tortured machinations to make it *appear* it was reducing oversight over NAAC, but in reality, NAAC continued to operate as a controlled instrumentality under Cape's domination.[29] And these changes were the result of careful assessments by Cape officials—with the help of its lawyers and other advisors—regarding how to minimize the liability exposure of not only Cape, but Cape's parent (Charter) and its other South African affiliates. *See* CAPE000141 (NAAC counsel advising Cape on risk of judgments attaching to Charter assets).

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

[29] *See* CAPE000123 (NAAC discouraging Cape visits to the U.S. in 1978 or else negate "maneuvers" related to "continued problems with product liability litigation"); CAPE000152 (1975 letter suggesting to "disassociate the Parent Company as fully as possible from the operating companies"); CAPE000154 (1975 letter raising whether to "do something to change the identity of NAAC in order to avoid exposing the company unnecessarily," while doing "everything possible to maintain a successful selling operation in the United States"); CAPE000166–67 (1974 lawyer letter 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"); CAPE000333 (1975 Cape Asbestos letter 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).

90. Public Downplaying of Responsibility. At first, at least in their public statements, Charter and Cape "strenuously contested" their liability and concluded that "no material liability is likely to arise as a result of the actions," because "[i]n the opinion of American legal advisers, the amounts claimed are highly speculative and conjectural and have only a tenuous basis in law or in fact." Charter 1975 Annual Report, at 30 (June 3, 1975).

91. Implementing Liability-Avoidance Strategy. In parallel, and central to that claim and their plan to avoid liability, Cape directed a campaign of litigation avoidance by refusing to accept process or appear in any U.S. proceedings. That campaign continues unabated today, as evidenced by Cape's failure to respond to the Second Amended Summons in this action, which was served pursuant to Article 10 of the Hague Convention on March 8, 2022.[30]

92. Opinion of Moral Irresponsibility. More broadly, according to Cape executives, this strategy was warranted because they "really cannot be said to have a moral responsibility [to respond to the suits] and are simply victims of the US product liability cult." Tweedale & Flynn (2007) at 283; CAPE000486.

93. Financials Based on Immoral Opinion. In addition, despite knowing the liability risk, Cape and its affiliates—including its parent company, Charter—refused to make any provision for or reserve of cash to address that liability. *See* CAPE000781 (1971 correspondence regarding Charter's annual report). Indeed, for most of NAAC's existence under Charter, Charter refused to

[30] *See* CAPE000550–51 (NAAC personnel opining in 1978 "that it is most unlikely that any plaintiff would bother to pursue collection of any default judgments against Cape"); CAPE000702 (NAAC counsel in 1979 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").

even acknowledge NAAC, despite listing various other Cape subsidiaries in England, South Africa, and other countries as among Cape's subsidiaries. *See, e.g.*, Charter 1970 Annual Report, at 10 (June 18, 1970) (listing Cape entities in South Africa, England, and Ireland).

94. Cape Liquidates NAAC as Part of Its Liability-Avoidance Scheme. Ultimately, to avoid liability to the tens of thousands of people injured or killed by its asbestos, Cape decided to liquidate NAAC, effective January 31, 1978 (though articles of dissolution were filed later, on or around May 19, 1978). *See, e.g.*, CAPE001035 (April 1978 letter noting liquidation and requesting, "for safety's sake," that Cape officials stop sending accounting memoranda to former NAAC officials). Existing commercial debts of NAAC were paid, with any 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. (formed in 1975 to create the *appearance* of separation). *See* CAPE000593 (noting conveyance of assets); CAPE000149 (noting new entity).

95. Liquidation Despite Continued Profitability. The decision to liquidate NAAC occurred notwithstanding consistent years of record profits from Cape's sale of asbestos fiber in the United States. *See, e.g.*, Charter 1976 Annual Report, at 7, 38–39 (June 8, 1976) (reporting £10.2 million of operating profit "in spite of difficult trading conditions," with the "greatest increase" in improved profit "arising in the mining division, which raised total tonnage both mined and sold," even despite "substantial price increases"); Charter 1977 Annual Report, at 7, 11, 13 (June 9, 1977) (reporting another "record year" from Cape with pre-tax profit of £14.2 million, with the "mining division again perform[ing] exceptionally well").

96. NAAC's Minimal Assets at Liquidation. As part of its overall scheme, and in light of Cape's funneling of cash from NAAC to overseas entities over many years, NAAC's assets at liquidation were minimal, as an absolute matter, and especially when compared to the total wealth of Cape and the broader Oppenheimer empire.[31]

97. Accepting Defaults to Perpetuate the Liability-Avoidance Scheme. NAAC's liquidation was central to Cape's liability-avoidance strategy, and was predicated 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.[32] That strategy, more broadly, was taken right out of the Oppenheimer empire's operational playbook in the United States: (i) profit greatly from a business (including for the sale of asbestos), (ii) extract those profits from the United States to foreign entities, across an ever-changing, byzantine corporate structure, (iii) undercapitalize the United States operating entity, (iv) liquidate ownership interests when they sensed liability was imminent, while otherwise maintaining that there was no physical presence in the United States, and (v) retain overseas the massive financial fruits of their unlawful schemes, which, as to asbestos sales, were at the expense of dead and dying Americans, including South Carolinians. *See, e.g.*, Kanfer (1995) at 317–18 (describing De Beers' abrupt sale of equity in an American company to avoid antitrust liability,

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[31] *See, e.g.*, CAPE000701 (Cape counsel writing in 1979 with respect to whether the remaining assets in the NAAC liquidating trust should be written off, soon after its creation); CAPE000702 (1979 correspondence noting that NAAC's auditor "agree[d] that the potential loss of all NAAC's outstanding assets is not material in the Cape Group context" (capitalization altered)); CAPE000722 (1978 correspondence noting judgment non-enforceability and "[auditor] advice to [Cape] that the loss of NAAC's outstanding assets is not material in the Cape Group context").

[32] *See, e.g.*, CAPE000141–43 (1975 legal letter advising Cape on default-judgment risk); CAPE000566 (1978 memorandum agreeing that it would be in the "best interests of Cape companies other than NAAC" to make "no response" to litigation); CAPE000617–19 (summarizing 1984 deposition testimony regarding litigation strategy).

which had previously been hidden by "the usual thicket of [European] registrations," such that "financial facts were buried in the records of some 300 interlocking corporations").

98. Continuation of the Asbestos Business. Even before NAAC's dissolution, Cape contemplated ways to continue the flow of asbestos to U.S. customers and asbestos profits out of the United States, despite the formality of liquidating NAAC.[33]

99. Creation of New American and Foreign Entities. To facilitate this ruse, Gerry Morgan (NAAC's final President) formed Continental Products Corporation ("CPC") to act as a commission agent for the future sales of asbestos from South Africa in the United States. Conveniently, CPC used the same NAAC address in Chicago, Illinois, and received funding from Cape in London. And CPC acted with South African mines to sell through a Lichtenstein-based entity named Associated Mines Company ("AMC") associated with Cape or other Oppenheimer-affiliated business interests. *See, e.g.*, CAPE000386; CAPE000531 (announcement of CPC as "Agent to handle the North American requirements for Amosite and Crocidolite asbestos fibre").

100. Transfer of IP Rights to New Entities. Brazenly, Cape even directed the transfer of certain intellectual property owned by NAAC for future use by CPC and AMC. *See, e.g.*, M. Meyer Tr. 14–18 (May 18, 1982) (describing the assignment of the "Noramite" trademark for certain asbestos mats and plastics).

101. Objective of New Entities. Ultimately, the "purpose of this corporate arrangement [was] to eliminate or reduce as much as possible the exposure in the United States of [South African mining

[33] *See, e.g.*, CAPE000728 (1977 meeting memorandum involving Cape officials "to discuss liquidation of NAAC and formation of new off-shore company to service North American market").

companies] to lawsuits brought against it under theories of strict liability concerning products liability on the sale of asbestos in the United States." CAPE000377–79.

102. Selling Mines as Part of the Liability-Avoidance Scheme. Outside of the United States, Cape took additional steps to disassociate itself from asbestos generally, despite its long-held role "as a major world producer of asbestos fibre" and "the Cape name [being] synonymous with asbestos." Cape 1980 Review, at 2. On June 29, 1979, Cape sold "the whole of [its] asbestos mining interest in South Africa" to Transvaal Consolidated Land and Exploration Company Ltd. ("Transvaal"), *id.*, earning proceeds of £15.1 million to "finance the group's expansion in other areas of its business," Charter 1979 Annual Report, at 12 (July 4, 1979).

103. Anglo's Continued Interest in Asbestos. Although Charter asserted that "mining subsidiaries in South Africa were sold *outside* the group," *id.* at 35 (emphasis added), its own annual reports from prior years establish that Charter had previously owned the purchasing entity, Transvaal, and still had a financial interest in Transvaal, including through either another Anglo entity or Charter's interest in Barlow Rand Ltd. *See* Charter 1965 Annual Report, at 3, 5 (May 19, 1965) (listing Transvaal as a "principal interest[]," along with Rand Mines Ltd.); Charter 1972 Annual Report, at 12 (May 30, 1972) (referencing merger between Rand Mines Ltd. and Thos Barlow & Sons Ltd. in June 1971, resulting in Charter acquiring a 3.86% interest in the merged company, Barlow Rand Ltd., in exchange for its previous 15.9% interest in Rand Mines Ltd.); Charter 1973 Annual Report, at 8 (June 21, 1973) (reporting that Charter sold its interest in Transvaal in April 1972 "to companies in the Anglo American Corporation group").[34]

[34] *See also, e.g.*, Joseph Lelyveld, *The Many Faces of Barlow Rand Ltd.*, N.Y. Times, Apr. 11, 1982 (noting Barlow Rand was "the second-biggest industrial and mining group in South Africa," after "the vast Anglo-American Corporation and its chairman, Harry F. Oppenheimer, whose place

104. Cape's Business Pivot. In 1982, Cape purported to cease all manufacturing of asbestos products.[35] Unfathomably, even for a collective of companies as devious as these, Cape refocused its business on—wait for it—asbestos removal. This is not fiction; it has been proudly touted by Cape.[36]

105. The Scheme Was Contemptibly Successful. Within years of executing the liability-avoidance scheme, business historians recognized that "Cape Industries"—as part of Charter, *i.e.*, Anglo's international/industrial investment arm—was "astonishingly adept at extricating itself from the [asbestos] business without paying huge compensation." Pallister (1988) at 345.

## V. The Oppenheimers Implemented a Strategy to Further Evade Responsibility.

106. Empire Restructuring to Mitigate Risk. Tellingly, while Cape implemented its liability-avoidance strategy, the Oppenheimer family similarly made changes to its investments to remove power and assets from Charter and relegate it to the periphery of the empire. On information and belief, these changes were motivated because the Oppenheimers and their partners (i) understood that Charter, like Cape, faced substantial financial exposure for asbestos-related liabilities in the United States, and (ii) were concerned those liabilities would also attach to Anglo and De Beers. *See, e.g.*, Charter 1980 Annual Report, at 34 (June 24, 1980) (reporting that Charter had been

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in the moneyed portion of [South African] society makes him a one-man aristocracy"); Flynn (1992) at 194 ("In the end the company became so worried about the extent of Anglo American's liabilities for deaths and injuries that they sold the mines, including Penge, to Barlow Rand, another company with strong connections to Harry Oppenheimer.").

[35] *Cape Website: Our History* (May 17, 2013), https://web.archive.org/web/20130517130040/http:/www.capeplc.com/about-cape/our-history.aspx.

[36] *Cape Website: Our Services, Insulation* (Oct. 20, 2012), https://web.archive.org/web/20121020173812/http://www.capeplc.com/services-and-markets/our-services/insulation.aspx.

named a defendant in U.S. asbestos litigation "in its capacity as the holding company of" Cape and had been told that certain U.S. corporations would seek to hold Charter liable for their own liability).

107. The Oppenheimers' Transfer of Shares. For example, beginning in the late 1970s, the Oppenheimer family began to substantially sell or otherwise divest their direct financial interests in Charter. *See, e.g.*, Charter 1977 Annual Report, at 47 (June 9, 1977) (indicating decrease in direct interest of Harry Oppenheimer); Charter 1983 Annual Report, at 41 (June 21, 1983) (indicating "nil" interest of the two listed Oppenheimers by April 1982).

108. Minorco's Rise. Around 1980—*i.e.*, soon after Cape's sale of asbestos mines—the Minerals and Resources Corporation ("Minorco") "over[took] Charter as the group's overseas flagship." Pallister (1988) at 122; *see also* Donald G. McNeil Jr., *A Diamond Cartel May Be Forever; The Hereditary Leader of De Beers Pursues Post-Apartheid Growth*, N.Y. Times, Jan. 12, 1999 [hereinafter, "McNeil Article"] (reporting that Minorco had been created previously to evade anti-Apartheid sanctions).[37]

109. Charter's Fall. As part of that pivot to Minorco, there was a "divestiture by Charter of its strategic holdings in Anglo American, De Beers and Anglo American Investment Trust," which was a "very major step" in reorganizing the amalgamated Oppenheimer business empire and reducing (but not eliminating) Anglo's "interference" with Charter. *See* A.J.W. Owston Tr. 67 (Aug. 22, 1984). As part of this divestiture, Charter "disposed of nearly all [its] investments in South Africa and adjoining territories," which involved a "major restructuring" that Charter

[37] *Available at* https://www.nytimes.com/1999/01/12/business/international-business-diamond-cartel-may-be-forever-hereditary-leader-de-beers.html.

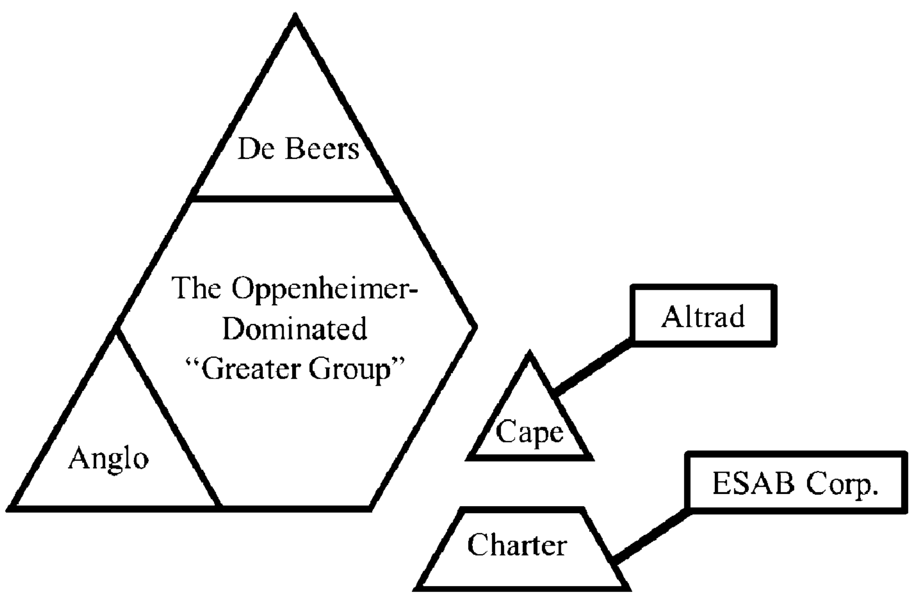
acknowledged "substantially changed" its "assets and business interests." Charter 1980 Annual Report, at 5, 9 (June 24, 1980). Although Charter was purported to have received "a substantial amount of cash" from that sale, proceeds were used to repay debt and acquire Minorco shares. *See id.* at 5–6.

110. Charter's Exile. Due to these restructurings, Anglo stopped acknowledging Charter as a material part of the Oppenheimer business empire—as it had been effectively replaced by Minorco. *Compare* Anglo 1977 Annual Report, at 3 (Mar. 25, 1977) (organizational chart portraying Charter on equal footing to Anglo and De Beers), *with* Anglo 1983 Annual Report, at 5 (June 28, 1983) (updated organizational chart making no reference to Charter at all). By the end of the 1980s, the Oppenheimers had stopped serving on the Charter board of directors all together, after unwinding themselves from Charter's assets and associated liabilities. *See* Charter 1989 Annual Report, at 46 (June 10, 1989) (no Oppenheimer listed for the Charter board of directors).

111. A Weakened Charter. For its part, after disposing of its South African investments, Charter touted a renewed focused on its operating subsidiaries in the United Kingdom, rather than acting primarily as a holding company for Oppenheimer business interests. *See, e.g.*, Charter 1986 Annual Report, at 2 (July 3, 1986) ("Charter has undergone a major change in recent years. The business has been extensively reshaped and much of the capital employed is now in operating companies."). However, without the backing of Anglo as a corporate patron, and with Cape no longer directly engaged with its main historical business—*i.e.*, mining and selling asbestos—both Charter and Cape were unable to achieve growth and profitability comparable to what they enjoyed in decades earlier as part of the Oppenheimer business empire.

## VI. In Subsequent Years, There Have Been Changes to Third-Party Defendants.

112. Changes to the Former Asbestos-Mining Empire. Following Cape's escape from the United States, it changed its name and organization, and so did its affiliated companies and other actors that were part of the Cape liability-avoidance scheme. Certain of those entities and persons are named as Third-Party Defendants in this action, including as successors in interest and beneficiaries of Cape's liability-avoidance scheme, co-responsible for Cape's tortious conduct.




113. Changes to Cape. Since the 1970s, Cape Asbestos Company Ltd. has undergone several changes to its organization, including (i) changing its name to Cape Industries Ltd. in 1974 (*i.e.*, removing "Asbestos" from its name, soon after the onset of asbestos products-liability litigation); (ii) re-registering as a public company and changing its name to Cape Industries PLC in 1981; (iii) shortening its name to Cape PLC in 1989; (iv) changing its name to Cape Intermediate Holdings PLC in 2011; and (v) re-registering as a private company to become Cape Intermediate Holdings Ltd. in 2013. And as of 2016, Cape Holdco Ltd. (controlled by Cape Industrial Services

Group Ltd.) and The Law Debenture Corporation PLC were registered as Persons with Significant Control of Cape.

114. Unmet Responsibilities. Although Cape in the prior decades had entered into certain agreements to compensate for illness and death resulting overseas from its products (such as entering into a "Scheme of Arrangement" with former employees in 2006), Cape has done **nothing** about its massive unpaid responsibility for the death and illness caused by its asbestos products in South Carolina and elsewhere in the United States.

115. Other Responsible Cape Entities. In addition, on information and belief, Cape has sold off certain subsidiaries or affiliates that were a part of Cape's unlawful liability-avoidance scheme, but which have yet to be identified. Accordingly, the Receiver reserves the right to name those entities and/or their successors in interest as Additional Third-Party Defendants.

116. Altrad's Acquisition and Subsequent Ownership of Cape. On or around October 9, 2017, Altrad Investment Authority S.A.S. (a French company), through Altrad UK Ltd. (controlling Cape UK Holdings Newco Ltd.), acquired and has since controlled Cape. Those entities are owned and controlled by the multinational Altrad Group, which has renamed certain Cape entities as well, including Altrad Services Ltd. (f/k/a Cape Industrial Services Ltd.).

117. Altrad's U.S. Subsidiaries. In addition, the Altrad Group acquired Sparrows Offshore Group Ltd. in 2022, which established the Altrad Group's presence in the United States through its (i) operations in the southern United States, and (ii) ownership of U.S.-registered entities,

including Hawk BidCo US Inc., Arranco US, LLC, Sparrows Offshore, LLC, and the Sparrows Group, LLC.[38]

118. Altrad's Owner. The Altrad Group—and thus Cape—is controlled by its French–Syrian President and Founder, Mohed Altrad, a/k/a the "Scaffolding King." *See* Altrad 2022 Annual Report, at 36 (Feb. 9, 2023);[39] *see also* Gaspard Sebag & Tara Patel, *Billionaire Scaffolding 'King' Guilty of Bribing Rugby Boss*, Bloomberg (Dec. 13, 2022) (reporting Mr. Altrad's recent corruption conviction, punished with an 18-month suspended jail term and €50,000 fine).[40]

119. Altrad Third-Party Defendants. Ultimately, each of the entities identified in paragraphs 113, 116, and 117, with Mohed Altrad, are either successors in interest to Cape and its numerous subsidiary and affiliated entities, or beneficiaries from Cape's liability-avoidance scheme, or both, and are collectively referred to as the "Altrad Third-Party Defendants."

| **ALTRAD AND CAPE-AFFILIATED ENTITIES ("ALTRAD THIRD-PARTY DEFENDANTS")** | | |
|---|---|---|
| Cape Subsidiaries / Control:<br>• Cape Holdco Ltd.<br>• The Law Debenture Corp. PLC<br>• Cape UK Holdings NewCo Ltd.<br>• Cape Indus. Servs. Grp. Ltd.<br>• Altrad Servs. Ltd. (f/k/a Cape Indus. Servs. Ltd.) | Altrad Ownership:<br>• Mohed Altrad<br>• Altrad Inv. Auth. S.A.S<br>• Altrad UK Ltd. | United States Subsidiaries:<br>• Sparrows Offshore Grp. Ltd.<br>• Hawk Bidco US Inc.<br>• Arranco US, LLC<br>• Sparrows Offshore, LLC<br>• The Sparrows Grp., LLC |

[38] *See, e.g., Altrad Completes Acquisition of Engineering and Maintenance Specialist Sparrows Group*, Altrad (July 12, 2022), https://www.altrad.com/en/newsreader/altrad-completes-acquisition-of-engineering-and-maintenance-specialist-sparrows-group.html; *Sparrows Website: Global Locations*, https://www.sparrowsgroup.com/global-locations.

[39] *Available at* https://newsmanager.altrad.com/files/altrad-group/news/2023/02/09_annual-report-2022/annual-report_2022_en_double_br-min.pdf.

[40] *Available at* https://www.bloomberg.com/news/articles/2022-12-13/scaffolding-billionaire-convicted-of-corruption-over-sponsorship#xj4y7vzkg.

120. Involvement of Affiliated Oppenheimer Businesses. At all times relevant to Cape's business in the United States and its perpetuation of the liability-avoidance scheme, Cape was owned, controlled, operated by, and dominated in furtherance of and in concert with Oppenheimer business interests in South Africa, the United Kingdom, and elsewhere—to those entities' substantial financial benefit.

121. Oppenheimer Third-Party Defendants. Those dominating, conspiring, facilitating, or otherwise financially benefiting entities include Anglo American Corporation of South Africa Ltd. (as predecessor in interest to Anglo American PLC) and De Beers PLC, De Beers Centenary AG, De Beers Consolidated Mines Ltd., De Beers S.A., De Beers UK Ltd., and De Beers Jewellers Ltd. Those entities currently have presence, operations, and business in the United States, including in South Carolina, through 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., and Anglo American Crop Nutrients (U.S.A.), LLC. All of these companies are collectively referred to as the "Oppenheimer Third-Party Defendants," with Anglo American PLC acting as ultimate parent company for each. *See, e.g.*, Anglo 2022 Annual Report, at 283 (Feb. 22, 2023).[41]

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[41] *Available at* https://www.angloamerican.com/~/media/Files/A/Anglo-American-Group-v5/PLC/investors/annual-reporting/2022/aa-annual-report-full-2022.pdf. In 1998, Anglo American Corporation of South Africa Ltd. moved its headquarters to London and re-registered as Anglo American PLC, which involved complex changes to its corporate structure that included absorbing Minorco and moving assets out of South Africa (thereby mitigating the risk of post-Apartheid nationalization). *See* McNeil Article. In November 2011, moreover, the Oppenheimer family sold its direct stake in the De Beers Group to Anglo American PLC for $5.1 billion, while (on information and belief) retaining indirect ownership through other entities. *See, e.g.*, Mark Scott, *Anglo American in Deal to Take Control of De Beers*, N.Y. Times, Nov. 4, 2011.

122. Increased U.S. Activities. Since closing NAAC and implementing their liability-avoidance scheme, the Oppenheimer Third-Party Defendants have increased their business activities in the United States, with certain of them using courts in the United States to enforce trademarks or other valuable rights, including under the De Beers name.[42]

<table>
<tr><th colspan="2">ANGLO AMERICAN PLC<br>("OPPENHEIMER THIRD-PARTY DEFENDANTS")</th></tr>
<tr><td>"De Beers Group" Subsidiaries:<br>• De Beers PLC<br>• De Beers Centenary AG<br>• De Beers Consol. Mines Ltd.<br>• De Beers S.A.<br>• De Beers UK Ltd.<br>• De Beers Jewellers Ltd.</td><td>United States Subsidiaries:<br>• De Beers Jewellers US, Inc.<br>• Anglo Am. US Holdings Inc.<br>• Element Six US Corp.<br>• Element Six Techs. US Corp.<br>• Element Six Techs. (OR) Corp.<br>• First Mode Holdings, Inc.<br>• Platinum Guild Int'l (U.S.A.) Jewelry Inc.<br>• Lightbox Jewelry Inc.<br>• Forevermark US Inc.<br>• Anglo Am. Crop Nutrients (U.S.A.), LLC</td></tr>
</table>

123. Changes to Charter. In 1993, after the broader Oppenheimer empire had demoted Charter's role in the business, Charter re-registered as a public company, becoming Charter PLC. In 1996, Charter sold its interest in Cape for approximately £48 million. In 2008, a new holding company, Charter International PLC, took over Charter PLC,[43] and then, effective January 13, 2012, Colfax Corporation ("Colfax") acquired Charter at a $2.4 billion valuation, with Charter enjoying minimal

[42] *See, e.g.*, *De Beers UK Ltd. v. Adwar Casting, Co., Ltd.*, No. 4:10-cv-00843, ECF No. 3 (W.D. Mo. Sept. 15, 2010) (corporate disclosure statement of plaintiff identifying De Beers UK Ltd. as a wholly owned subsidiary of De Beers Centenary AG); *De Beers Centenary AG v. John-Robert:Hasson*, No. 1:10-cv-23024, ECF No. 1 (S.D. Fla. Aug. 23, 2010) (action initiated by De Beers entity).

[43] *See Charter Website: History* (Dec. 12, 2008), https://web.archive.org/web/20081212114613/http://www.charter.ie/chtr_int/about/history/.

debt on its balance sheet. *See* Colfax Corp. Form 8-K (Jan. 17, 2022);[44] Colfax Corp. Schedule 14A (Dec. 19, 2011).[45] In making that acquisition, Colfax disclosed Charter's exposure to asbestos-related lawsuits in the United States, but the companies (i) assessed it as not having "a material effect on Charter's financial position," (ii) dismissed any associated expenses as "negligible," and (iii) ultimately made no provision for Charter's asbestos liability. Colfax Corp. Schedule 14A (Dec. 19, 2011).

124. Charter Third-Party Defendants. By 2022, Colfax sold its interests in Charter's businesses, including, on information and belief, those associated with Cape-related liabilities—namely, ESAB Corporation. *See Enovis (Formerly Colfax) Completes Spin-Off of ESAB Corporation* (Apr. 5, 2022).[46] On information and belief, ESAB Corporation is currently the parent company of, as well as a successor in interest to, Charter Consolidated Ltd., along with Charter's subsidiary Central Mining & Investment Corporation Ltd., and each is collectively referred to as "Charter Third-Party Defendants."

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44 *Available at* https://www.sec.gov/Archives/edgar/data/1420800/000134100412000060/cfx_8k.htm.

45 *Available at* https://www.sec.gov/Archives/edgar/data/1420800/000114420411070464/v242942_defm14a.htm.

46 *Available at* https://ir.enovis.com/news-releases/news-release-details/enovis-formerly-colfax-completes-spin-esab-corporation.

**FIRST CAUSE OF ACTION**
**UNJUST ENRICHMENT**
**(Against All Third-Party Defendants)**

125. Third-Party Plaintiff incorporates by reference paragraphs 1 through 124 as though fully set forth herein.

126. Under the cause of action for unjust enrichment, a party can recover restitution as a remedy if the party shows: (i) that it conferred a non-gratuitous benefit on the defendant; (ii) that the defendant realized some value from the benefit; and (iii) that it would be inequitable for the defendant to retain the benefit without paying the plaintiff for its value.

127. Each of the Altrad Third-Party Defendants, the Charter Third-Party Defendants, and the Oppenheimer Third-Party Defendants, including their predecessors in interest, received a non-gratuitous benefit from Cape as a result of the liability-avoidance scheme described herein, including the domination of NAAC's risk-management decisions (resulting in the purchase of wholly inadequate insurance) and the extraction of massive cash payments and other assets to entities outside of the United States.

128. Each of the Altrad Third-Party Defendants, the Charter Third-Party Defendants, and the Oppenheimer Third-Party Defendants realized substantial monetary value from the non-gratuitous benefit described herein and above.

129. It would be inequitable for these Third-Party Defendants to retain any such benefit without paying the Receiver for its value.

130. The proper and appropriate remedy under the circumstances here is for the Court to exercise its equitable power and authority to require that each of the Altrad Third-Party Defendants, the Charter Third-Party Defendants, and the Oppenheimer Third-Party Defendants to

return funds that have been wrongfully diverted from meeting obligations and responsibilities in the United States, in an amount to be proven at trial.

## SECOND CAUSE OF ACTION
## CONSTRUCTIVE TRUST
## (Against All Third-Party Defendants)

131. Third-Party Plaintiff incorporates by reference paragraphs 1 through 130 as though fully set forth herein.

132. A constructive trust is a duty or relationship imposed by courts of equity to prevent the unjust enrichment of the holder of title to, or of an interest in, property which such holder acquired through fraud, breach of duty, or some other circumstance, making it inequitable for him to retain it against the claim of the beneficiary or the constructive trust. A constructive trust is a fiction of equity, brought into operation to prevent unjust enrichment through the breach of some duty or other wrongdoing. There is a common, indispensable element in the many types of situations out of which a constructive trust is deemed to arise—which is some fraud, breach of duty, or other wrongdoing by the holder of the property.

133. Each of the Altrad Third-Party Defendants, the Charter Third-Party Defendants, and the Oppenheimer Third-Party Defendants have taken possession of property—cash and other assets—which they should not have taken through the wrongful acts alleged herein.

134. The funds that they or their predecessors in interest have wrongfully diverted should have remained available to bodily-injury claimants in the United States, including in South Carolina, providing additional resources to meet Cape's obligations to the tens of thousands of individuals harmed.

135. But for the false or misleading statements made by each of the Altrad Third-Party Defendants, the Charter Third-Party Defendants, and the Oppenheimer Third-Party Defendants, or their predecessors in interest, to hide the true nature of Cape's unethical business practices and the known harms associated with its asbestos products, the funds would and should have been accessible to third-party claimants.

136. The proper and appropriate remedy under the circumstances here is for the Court to exercise its equitable power and authority to require each of the Altrad Third-Party Defendants, the Charter Third-Party Defendants, and the Oppenheimer Third-Party Defendants to return funds that have been wrongfully diverted from meeting Cape's obligations and responsibilities in the United States, in an amount to be proven at trial.

## THIRD CAUSE OF ACTION
## ALTER EGO AND VEIL-PIERCING LIABILITY
## (Against All Third-Party Defendants)

137. Third-Party Plaintiff incorporates by reference paragraphs 1 through 136 as though fully set forth herein.

138. South Carolina recognizes the imposition of liability under an "alter ego" theory based on a factual assessment of several factors, including: (i) common ownership; (ii) financial dependence; (iii) the degree of selection of executive personnel and failure to observe corporate formalities; and (iv) the degree of control over marketing and operational policies.

139. Likewise, under a veil-piercing theory, South Carolina recognizes attaching liability to a shareholder through a two-part test involving, first, an eight-factor analysis of the shareholder's relationship to the corporation and, second, proof of an element of injustice or fundamental unfairness if the acts of the corporation are not regarded as the acts of the equity owners. As part

of the first step, the eight factors are: (i) whether the corporation was grossly undercapitalized; (ii) failure to observe corporate formalities; (iii) non-payment of dividends; (iv) insolvency of the debtor corporation at the time; (v) siphoning of funds of the corporation by the dominant stockholder; (vi) non-functioning of other officers, directors, or stockholders; (vii) absence of corporate records; and (viii) the fact that the corporation was merely a façade for the operations of the dominant stockholder. In turn, to prove fundamental unfairness, the plaintiff must establish that: (i) the defendant was aware of the plaintiff's claim against the corporation, and (ii) thereafter, the defendant acted in a self-serving manner with regard to the property of the corporation and in disregard of the plaintiff's claim in the property.

140. Numerous facts support the conclusion that, in furtherance of the ends of justice, the Court may exercise personal jurisdiction over Third-Party Defendants and impose liability on them for acts of Third-Party Plaintiff, which Third-Party Defendants are responsible for having dominated, controlled, facilitated, or benefited from, including, without limitation:

a. The sale and distribution of asbestos in the United States, including to facilities in South Carolina or in asbestos-containing products used in South Carolina;
b. The failure to follow corporate formalities between Third-Party Plaintiff and each of the Third-Party Defendants;
c. The common and intentionally obfuscated ownership interests of the Third-Party Defendants;
d. The financial, marketing, and operational dependence of Cape on those Third-Party Defendants;

e. The domination and control of Third-Party Defendants over Cape's and NAAC's executive personnel and boards of directors, which caused, among other things, NAAC to fail to safeguard the interests of personal-injury claimants by placing adequate products-liability insurance;

f. The funneling of assets out of the United States to escape attachment by personal-injury claimants, and the resulting gross undercapitalization of NAAC in the United States;

g. The absence of, and intentional destruction of, corporate records related to the events described herein;

h. The establishment or use of Third-Party Plaintiff and NAAC as sham entities and a façade for the operations of Oppenheimer interests in South Africa and elsewhere, thereby misrepresenting the true origin of Cape's products (including Cape's use of child laborers), the grave health hazards associated with those products, and the ownership of Cape's business (including ownership by African oligarchs); and

i. The self-serving actions of Third-Party Defendants, despite their having knowledge that Cape's asbestos and asbestos-containing products would cause bodily injury to tens of thousands of individuals in the United States, including in South Carolina, and result in claims for reimbursement.

141. The damages alleged against Third-Party Plaintiff in the Asbestos Suits resulted from the actions of Third-Party Defendants or their predecessors in interest, which dominated, controlled, facilitated, or benefited from Cape's successful asbestos business and liability-avoidance scheme. Accordingly, the proper and appropriate remedy under the circumstances here is for the Court to

declare that the Third-Party Defendants are alter egos of Third-Party Plaintiff and thereby liable to Third-Party Plaintiff and/or the Receiver for Asbestos Suits.

**FOURTH CAUSE OF ACTION**
**ACCOUNTING**
**(Against All Third-Party Defendants)**

142. Third-Party Plaintiff incorporates by reference paragraphs 1 through 141 as though fully set forth herein.

143. South Carolina recognizes the equitable action for an accounting, which implies that a defendant is responsible to the plaintiff for money or property as the result of a contract or some other fiduciary relationship. Accounting is particularly appropriate where there is a need for discovery. *See Consignment Sales, LLC v. Tucker Oil Co.*, 391 S.C. 266, 273 (S.C. Ct. App. 2010); *Rogers v. Salisbury Brick Corp.*, 299 S.C. 141, 145–46 (1989).

144. As alleged herein, this lawsuit involves an international, decades long scheme designed to profit from the sale of harmful asbestos fiber into the United States, including for use in South Carolina.

145. That scheme was intentionally designed to obfuscate the relationships between numerous, large corporations, and its direct purpose was to frustrate creditors and avoid liability, while retaining untold millions of dollars siphoned to foreign entities and individuals.

146. Given this long, complex history, a full accounting of each of the Third-Party Defendants, including for any records related to the allegations herein, is appropriate for the purpose of discovery.

## PRAYER FOR RELIEF

WHEREFORE, Third-Party Plaintiff, by and through its duly appointed Receiver, demands judgment against Third-Party Defendants as follows:

A. For the Court to exercise its equitable power and authority against the Third-Party Defendants as requested herein;

B. For a full accounting of each of the Third-Party Defendants' records and other information related to the allegations herein, including the extent to which each of the Third-Party Defendants has financially benefited from the liability-avoidance scheme; and

C. For such other and further relief as the Court may deem just and proper, including pre-judgment and post-judgment interest as provided by South Carolina law.[47]

*[Signature block on following page]*

[47] This third-party action does not include or otherwise involve any claim arising under the Constitution, laws, or treaties of the United States, nor does this third-party action involve the vindication of any federal rights.

Dated: June 30, 2023
Columbia, South Carolina


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