NEUTRAL CITATION NUMBER: [2025] EWHC 2470 (Ch)

Case No: BL-2025-000785

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

7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: 30 September 2025

Before:
MR JUSTICE MARCUS SMITH

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Between:

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

Claimants

-and-

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

Defendants

Heard on 23 and 24 September 2025

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Mr Derrick Dale, KC and **Angus Groom** (instructed by **Enyo Law LLP**) for the **Claimants**
Mr William Willson (instructed by **Signature Litigation LLP**) for the **Second and Third Defendants**
The First Defendant was not represented and did not appear

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Approved Judgment

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MR JUSTICE MARCUS SMITH

A. Introduction

1. This Judgment disposes of a Part 8 Claim issued by the Claimants on 24 June 2025. The trial of the claim was expedited by order of Trower J on 25 July 2025, and was heard by me on 23 and 24 September 2025.

2. The matters before me are closely related to a Part 8 Claim heard by and disposed of by Mann J (sitting in retirement) in Cape Intermediate Holdings Ltd v. Protopapas [2024] EWHC 2999 (Ch) in a judgment dated 22 November 2024, which I shall refer to as the "Mann J Judgment". The terms and abbreviations used in this Judgment, including this term just used, are set out and defined in Annex 1 to this Judgment.

3. As was the case in the Mann J Judgment, the matters before me concern the relationship between proceedings in the courts of South Carolina, USA and the courts in this jurisdiction. By these proceedings, the Claimants seek various declarations and injunctive relief. These are described and ruled upon below. But before I come to the substance of the matters before me, it is necessary to begin with a description of the relevant proceedings and events, both in South Carolina and here. Sections B to N of this Judgment, accordingly, set out and (where necessary) make findings in relation to events and proceedings taking place in the US and the UK, not merely over the last months, but over the last decades. It is only at Section O that the substance of the matters at issue can directly be addressed, so dependent are they on the prior history. The substance of the Part 8 Claim before me is addressed in Sections O to U. Section V describes how I dispose of the matters before me.

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

4. On 4 June 2021 a claim was issued by Ms Isabella Park in South Carolina against a large number of companies. Ms Park claimed to have sustained asbestos-related injuries derived from her husband, who had worked with asbestos: Mann J Judgment/[42]. I shall refer to these proceedings as the "Park Proceedings". One of the many defendants named in the Park Proceedings was "Cape plc".

5. On 17 November 2021, the complaint in the Park Proceedings (now being pursued by Ms Park's son as her personal representative) was amended to add a further party, Cape Intermediate Holdings Ltd or "CIHL": Mann J Judgment/[42].

C. The "Cape" defendants to the Park Proceedings

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

i) The Cape group is a group of companies that was formerly involved in asbestos mining and distribution. Those activities have now ceased, and the business of the group centres on the provision of critical industrial services focused on the energy and natural resources sectors. The group employs 12,800 employees across 17 countries. In the year ended 31 August 2023, the group had recorded revenue of £848.4m and a profit of £62.6m: Mann J Judgment/[8].

ii) CIHL was incorporated in December 1893 under the name "The Cape Asbestos Company". The Cape group has, historically, been involved in the mining and manufacture of asbestos until the group started to curtail those activities when the associated health risks became more widely known. Originally, CIHL conducted all of the business, but (over time) parts of its business were devolved to other companies in the group: Mann J Judgment/[9].

iii) By 1961, CIHL was essentially a holding company. In May 1974, it changed its name to "Cape Industries Ltd" and changed it again to "Cape Industries plc" when it re-registered as a public company. There was a further name change to Cape plc in July 1989. In June 2011, the company's name was changed once more to "Cape Intermediate Holdings plc" and then – on de-registration as a public company in December 2013 – to "Cape Intermediate Holdings Ltd": Mann J Judgment/[10]. I shall use the term CIHL to refer indifferently to this company whatever name it may have used over its long history.

iv) Cape plc was – as I have described – a former name of CIHL, abandoned as long ago as June 2011: see [6(iii)]. There is a Cape plc within the Cape group, but this is a company incorporated in Jersey in 2011: (Mann J Judgment/[1]). Mann J referred to this company as "Cape Jersey") in preference to the term Cape plc (Mann J Judgment/[1]) because it appears that there is no intention, in the South Carolina proceedings, to bring claims against Cape Jersey, and that the reference to Cape plc is a reference to CIHL, but by an older (and now inaccurate) name: Mann J Judgment/[1], [138].

v) Because of the confusion surrounding the constitution of the South Carolina proceedings, it is necessary (i) to say something about Cape Jersey and (ii) to stress that it was entirely right and proper that Cape Jersey was a claimant in the proceedings before Mann J and is now a defendant before me. The uncertainties in the constitution of the South Carolina proceedings render it necessary that the protection of the English courts (to the extent that such protection is appropriate) be considered not merely in relation to CIHL but also in relation to Cape Jersey.

vi) Cape Jersey was formed in 2011. By virtue of a scheme of arrangement in that year it became the holding company of the Cape group, and has remained so ever since. It was incorporated in Jersey, but listed on the London Stock Exchange, with a tax residence in Jersey and Singapore: Mann J Judgment/[11].

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

D. Constitution of the Park Proceedings in South Carolina

7. As I have noted (at [6(iv)]), the reference to Cape plc in the Park Proceedings appears to be an erroneous reference to CIHL. The matter is not completely clear, because the manner in which "Cape plc" is said to be liable is not clearly articulated in the Park Proceedings, and the naming of the parties in those (and other proceedings) is much less clear than it ought to be. Nevertheless, the First Defendant to these proceedings – Mr Protopapas, whose role I shall come to describe – has indicated that the reference to "Cape plc" is intended to refer to CIHL. Of course, Mr Protopapas cannot actually speak for the plaintiffs in either the Park Proceedings or any other proceedings originated against the Cape group in the US.

8. I proceed on the basis that Cape Jersey has been joined to these proceedings (as it was to the proceedings before Mann J) for the avoidance of doubt because of the uncertainties in the constitution of the South Carolina proceedings. Cape Jersey has never been served in those proceedings and (again for the avoidance of any doubt) has not submitted to South Carolina jurisdiction.

9. So far as CIHL is concerned, (i) it is contended that the Park Proceedings have been properly served on CIHL, (ii) which contention is disputed by CIHL, but (iii) in any event CIHL has never responded to the process and has never submitted to the jurisdiction: Mann J Judgment/[42].

E. Apparent conclusion of the Park Proceedings

10. Chief Justice Toal is a retired Chief Justice in the State of South Carolina, but she retains her title. Like Mr Justice Mann (Mann J Judgment/[3]), I will refer to the judge by her title as Chief Justice Toal.

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

F. The receivership application in the South Carolina courts

12. On 6 March 2023, the plaintiff in the Park Proceedings issued a "Receivership Motion" seeking to appoint a receiver over CIHL: Mann J Judgment/[44]. According to the terms of the South Carolina Code (set out by Mann J at Mann J Judgment/[46]), "a receiver may be appointed (i) when a corporation has been dissolved, is insolvent or in imminent danger of insolvency or has forfeited its corporate rights and, in like cases, of the property within this State of foreign corporations and/or (ii) in such other cases as are provided by law or may be in accordance with the existing practice".

13. The jurisdictional basis for the receivership motion against CIHL was said to be the presence and operation in the US of an entity referred to as "NAAC". On that basis, the appointment of a receiver over CIHL was justified for all purposes, including but not limited to marshalling available assets of CIHL and its subsidiaries, successors and assigns: Mann J Judgment/[45]. NAAC stands for the "North American Asbestos Corporation", a directly and wholly owned subsidiary of CIHL established by CIHL in October 1953. NAAC was incorporated in the State of Illinois in the US to assist in the marketing of asbestos in the US, to act as a liaison between Egnep Pty Ltd (the principal asbestos mining company in the Cape Group until 1979: Mann J Judgment/[9]) and another Cape company (Casap) on the one hand and US purchasers of asbestos on the other, and to purchase and re-sell asbestos into the US market on its own account: Mann J Judgment/[12].

14. From the early 1970s, NAAC was the defendant in numerous product liability claims. It eventually ran out of insurance cover and was liquidated and then dissolved in 1978. It has never been restored: Mann J Judgment/[13].

15. Continental Productions Corporation or "CPC" took over from NAAC on its liquidation: Mann J Judgment/[32(ii)].

16. In the Mann J Judgment/[47], Mann J recorded:

    i) That the fundamental factual basis for appointing a receiver was the assertion that CIHL was operating through NAAC and CPC in the US. The Mann J Judgment refers to the confusion in the South Carolina proceedings regarding the entities within the Cape Group that are implicated in the Receivership Motion. It seems to me clear that the Receivership Motion can only (in the first instance) be directed to CIHL and not any other Cape group entity, including in particular Cape Jersey. That is because: (i) NAAC was a subsidiary of CIHL and not of Cape Jersey; (ii) Cape Jersey was incorporated (in 2011: see [6(iv)]) after NAAC was dissolved (in 1978: see [14]). Accordingly, I shall refer to CIHL from hereon, but any orders or declarations that I make will have to reflect the confusing way in which the South Carolina proceedings have been framed.

    ii) That the receivership was not merely sought against CIHL, but also over (i) its subsidiaries and global affiliates; and (ii) its successors and assigns, with an objective of "marshalling" the assets of CIHL: see

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

17. The receivership order sought in the Park Proceedings was made on 16 March 2023, without a hearing and without any substantive judgment stating the reasons for the making of the order: Mann J Judgment/[48]. I shall refer to it as the "Receivership Order". The order is appended to the Mann J Judgment.

18. Mr Peter Protopapas (the First Defendant in these proceedings) was appointed the receiver by way of the Receivership Order.

G. Exorbitant nature of the Receivership Order

19. As I shall come to describe, for the reasons given in the Mann J Judgment, Mann J declined to recognise the Receivership Order. This is an important holding for the purposes of this Judgment, and for that reason it will be necessary is summarise below (hopefully at not too great a length) the terms of the Mann J Judgment in this regard. Of course, the Mann J Judgment stands and should be read in its own right, but a summary is nevertheless necessary and appropriate in this Judgment. Of course, nothing in this Judgment can or is intended to detract from anything said by Mann J in the Mann J Judgment.

20. Mann J also observed that the Receivership Order – leaving on one side the question of recognition – was a remarkably wide one for any court to make:

    i) It would appear from the terms of the Receivership Order itself and from what Mr Protopapas had said that the Receivership Order has a "long-arm" effect, that is to say it can apply extra-territorially beyond the South Carolina territorial jurisdiction. Mann J observed (Mann J Judgment/[134]):

    > …The powers given to the receiver are apparently very long-arm and would be capable of being exercised worldwide, including this jurisdiction. He has not disavowed any intention so to use them. They are oppressive and have already been used to the disadvantage of CIHL. CIHL could seek to challenge them in South Carolina, but is, for very good reason, not willing to do acts which would, or might, amount to a submission to the jurisdiction when it laboured long and hard 35 years ago to demonstrate that it was not subject to it…
    >
    > Receivership orders generally without more do not have extraterritorial effect, as has been recognized in e.g. Re Whitaker Clark & Daniels Inc (a decision of the US Court of Appeals (Third Circuit)); Re Asbestos Corporation Ltd (a decision of the Superior Court in the Province of Quebec, Canada); and Masri v. Consolidated Contractors International (UK) Ltd (No 2) [2008] EWCA Civ 303 at [28] (Court of Appeal, England). The approach of most jurisdictions is that receiverships operate locally and where a receiver seeks to take steps in a foreign jurisdiction, (i) the receivership order must expressly so state and (ii)

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

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

H. Mr Protopapas as the First Defendant in these proceedings

21. It is convenient, at this point, to deal with this court's jurisdiction over Mr Protopapas. Mr Protopapas is the First Defendant in these proceedings. The Part 8 Claim initiating these proceedings was issued on 24 June 2025, permission for service out of the jurisdiction on Mr Protopapas was granted by Master Pester on an expedited basis by orders dated 25 June 2025 and 2 July 2025, and service was duly effected on Mr Protopapas on 2 July 2025.

22. Mr Protopapas has not acknowledged service nor filed any evidence. Nor has he sought to contest jurisdiction in these proceedings or to aver, in these proceedings, that this court has no jurisdiction over him.

23. I therefore hold that this court has personal jurisdiction over Mr Protopapas.

24. There is one point that (had he appeared before me on the question of jurisdiction) Mr Protopapas might have deployed, which is the provision at the end of the Receivership Order which provides:

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

25. Properly, the Claimants in these proceedings drew this provision to my attention. Clearly, Mr Protopapas has not consented to these proceedings being brought against himself (or, for that matter, CIHL). The provision in the Receivership Order reflects the doctrine articulated in Barton v. Barbour, 104 US 126 (1881)), on which Mr Protopapas would doubtless rely. The Claimants contended, and I agree, that this "Barton" provision in the Receivership Order does not assist Mr Protopapas for reasons given by Mann J (Mann J Judgment/[124]):

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

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

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

I. The Tibbs Proceedings

27. On 5 April 2023, a Mr and Mrs Tibbs commenced proceedings in the South Carolina courts (the "Tibbs Proceedings"). The claims advanced are similar to those made in the Park Proceedings and a similarly broad, scattergun, approach has been taken to the naming of defendants. One of these defendants is "Cape plc": Mann J Judgment/[51]. Precisely the same confusion as to defendant identity arises here. For the reasons I have given, it is appropriate to refer to CIHL as the primary Cape group target, and not Cape Jersey.

28. The Tibbs Proceedings have, apparently, been dismissed by consent: Mann J Judgment/[52]-[53]. Like the Park Proceedings, it is thus difficult to understand how the Tibbs Proceedings can continue. Yet (as I shall describe) that it what appears to be happening.

J. Third party claims

29. Relying upon the Receivership Order made in the Park Proceedings, Mr Protopapas, on 30 June 2023, initiated (by way of a "summons") third party proceedings on behalf of CIHL within the Tibbs Proceedings (the "Third Party Claim"). The Third Party Claim is advanced (to quote from the Mann J Judgment/[54]) "…against a number of companies, including a number of Cape group companies…The Cape related companies included Altrad companies (the group that had acquired the Cape group in 2017), and the Sparrows entities that were brought within the group much more recently (despite its being hard to see how they can be held responsible for acts done before they were brought into the group). Mr Mohed Altrad, founder of the Altrad group, is also sued personally…".

30. A number of points need to be made in relation to the Third Party Claim:

    i) Subsequent to the Mann J Judgment, Mr Protopapas produced a draft amended Third Party Claim, to which I propose to refer. A motion to amend the Third Party Claim is due to be heard by Chief Justice Toal

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

ii) It is the Third Party Claim that provides the basis for my statements (in [11] and [28]) that both the Park Proceedings and the Tibbs Proceedings are (in some way) on-going, contrary to the plaintiffs in those proceedings not actually pursuing their claims. The Park Proceedings are on-going because Mr Protopapas is, in the Tibbs Proceedings, deploying the Receivership Order made in the Park Proceedings. To the eyes of an English lawyer this would appear to be irregular, but this is a matter of South Carolina procedural law on which I cannot and do not comment further.

iii) Self-evidently, by virtue of the Third Party Claim, the Tibbs Proceedings are progressing, but again in what would appear to be an irregular way. Whilst this is again a procedural matter for the South Carolina courts, it is a matter that is of some relevance to the matters before me in these proceedings, and it is therefore necessary to say more.

iv) Receivers are agents of the company in respect of which they are appointed, and they have a basic duty "to act in its proper interests" (Mann J Judgment/[120]). In this case, Mr Protopapas appears to be doing the very reverse of this. As I have described, the plaintiffs in the Tibbs Proceedings do not have a judgment in their favour against CIHL, and do not appear to be pursuing their claims against CIHL. The Tibbs Proceedings have been dismissed by consent (Mann J Judgment/[52]). The trial before Chief Toal is not the trial of the plaintiff's allegations in the Tibbs Proceedings, but the trial of the Third Party Claim. It is – self-evidently – extremely odd for a third party claim to be tried in advance of the main action. This is very much "putting the cart before the horse".

v) What is more, the "defence" pleaded by Mr Protopapas on behalf of CIHL in the Tibbs Proceedings contains a denial in these terms (Mann J Judgment/[53]):

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

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

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

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

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

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

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

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

31. The various parties in what can loosely be called the Cape group were described at [6] (including in particular the status and position of CIHL) and [13]-[16] (dealing with NAAC and CPC). An understanding of the legal and factual relationship between CIHL and NAAC (and, to a limited extent, CPC) is critical to understanding the basis for both the Receivership Order and the Third Party Claim. The basis for making of the Receivership Order was briefly described in [16(i)]. It is now necessary to expand on this, and to explain how the same point drives the Third Party Claim.

32. Both the Receivership Order and the Third Party Claim are founded upon a theory that NAAC is part of a "single economic unit" that includes not only CIHL but later acquirers of the Cape group like Altrad UK Ltd (the Second Claimant), Altrad Investment Authority SAS (the First Claimant) and Mr Altrad (the Seventh Claimant).

33. These parties, and their acquisition of the share capital in Cape Jersey in 2017, were described in [6(vii)]. It is now appropriate, before coming to the single economic unit point, to describe the nature of the acquisition of Cape Jersey in greater detail. This is best done by quoting from the evidence of Mr Alcock in "Alcock 1"/[63]-[69]:

> **[63]** In 2017, Altrad UK acquired Cape Jersey through a public tender offer, which resulted in Cape Jersey becoming a wholly owned subsidiary of Altrad UK.
>
> **[64]** In late 2016 the Altrad Group entered discussions with the board of directors of Cape Jersey about a potential acquisition of the Cape Group.
>
> **[65]** The acquisition process, including due diligence, began in early 2017, ending in mid-2017 when a public tender offer ("PTO") was made – reflecting the fact that Cape Jersey was a publicly listed company on the London Stock Exchange. The terms of the PTO are set out in a Bid Conduct Agreement dated 7 July 2017. In this regard, the PTO stated that:
>
> **[65.1]** The cash offer for each share in Cape plc was 265 pence, which valued the entire issued share capital at £332.3 million.
>
> **[65.2]** The cash consideration would be financed by acquisition debt provided by BNP Paribas SA.
>
> **[66]** As part of the Bid Conduct Agreement, the Altrad Group confirmed an intention to procure that each member of the Cape Group honours its obligations under, or in connection with, the Cape Scheme.
>
> **[67]** The offer was conditional upon, among other matters, obtaining the required number of votes cast in favour of the acquisition. Subsequently, over 90% of the votes were cast in favour of the acquisition and Altrad UK was able to proceed to purchase 100% of the issued share capital of Cape Jersey

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

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

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

34. I was shown a great deal more evidence than this summary, including in particular the rest of Alcock 1 and also "Oren 1" and "Alcock 2", as well as voluminous exhibits to these statements. On the basis of this evidence – which is helpfully encapsulated in the paragraphs quoted at [33] – I make the following findings of fact:

    i) The Altrad group has itself had no involvement in the sale or distribution of asbestos or asbestos-related products in any part of the world, including in particular in the US. That is implicit in Alcock 1, but is explicitly stated in Oren 1/[54].

    ii) The acquisition of the shares in Cape Jersey by Altrad UK Ltd was on an arms' length basis, where a commercial or market price for those shares was agreed between a willing buyer and willing sellers (or at least 90% willing sellers, based on Alcock 1/[67] as quoted above).

    iii) The value paid by Altrad UK Ltd reflected or took into account the Cape group's exposure to asbestos claims. Every arms' length corporate acquisition involves an assessment (as part of the due diligence process) of the liabilities (actual and potential) of the to-be-acquired company. Altrad UK Ltd's acquisition of the shares in Cape Jersey expressly involved an evaluation of the Cape group's exposure to asbestos claims, which had been the subject of significant (and binding on me) judicial consideration in England. It will be necessary in due course to refer to and describe (i) the decision of Scott J and the Court of Appeal in Adams v. Cape Industries [1990] Ch 433 ("Adams v. Cape"), (ii) the "Cape Scheme" referred to in Alcock 1/[68] and (iii) the sanctioning of the Cape Scheme by David Richards J in an order dated 9 June 2006 (the "David Richards J Order"). For the present I confine myself to finding that the acquisition of the shares in Cape Jersey and the price that was paid for those shares was informed by each of Adams v. Cape, the Cape Scheme and the David Richards J Order. Doubtless there were many other factors informing the decisions of Altrad UK Ltd, but these three factors were all (both individually and in the aggregate) material to the decisions of Altrad UK Ltd and the wider Altrad group.

35. The basis for the making of the Receivership Order against CIHL was its corporate relationship with NAAC. Thus, the Receivership Motion states (at 4-5):

> After the onset of asbestos-related product liability litigation in the 1970s, Cape became especially concerned with its own liability. Thus, Cape Asbestos went through tortured machinations to make it *appear* it was reducing oversight over NAAC, but in reality, NAAC continued to operate as a mere division or instrumentality under Cape's domination and control.
>
> In addition, Cape began to engage in a campaign of litigation avoidance by refusing to accept process or appear in any proceedings in the United States, including failing to respond to the Second Amended Summons in this action, as properly served pursuant to Article 10 of the Hague Convention on March 8, 2022. According to Cape executives, this strategy was warranted because they "really cannot be said to have a moral responsibility [to respond to the suits] and are simply victims of [a] US product liability cult."

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

> Today, the assets of Cape are effectively with others. This case seeks declarations to establish that the historical entities intertwined with Cape – Anglo American plc, ESAB, Altrad, and certain De Beers entities – are together responsible for the historical and ongoing fraud perpetrated on the US market. Such a finding will allow the Receiver to administer the full assets of Cape, including all insurance coverage for these amalgamated entities. This litigation, squarely within the Receiver's charge, ultimately will marshal assets for the payment of legitimate claims brought by US workers against Cape. This Receivership, and particularly this third party action, represents the last opportunity for these entities to be held to account for their fraud on the US market. [at 8-9]
>
> …
>
> 23. Specifically, on information and belief, each of the third party defendants is subject to this Court's jurisdiction because each entity is part of an amalgamation with, part of a single business enterprise with, or an alter ego of North American Asbestos Company ("NAAC"), over which this court has personal jurisdiction. NAAC purposefully availed itself of the South Carolina market through direct sales of asbestos fiber into South Carolina…

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

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

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

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

39. By an order dated 22 November 2024 (the "Mann J Order"), Mann J made the following declarations and orders:

IT IS DECLARED THAT

1. The receivership order of the Court of Common Pleas for the Fifth Judicial Circuit of the State of South Carolina, County of Richmond ("the South Carolina Court") dated 16 March 2023 appointing Mr Peter Protopapas ("Mr Protopapas") as a receiver over CIHL ("the Receivership Order") is not recognised and has no legal effect in England and Wales and worldwide.

2. Mr Protopapas has an had no power or authority to act on behalf of CIHL in England and Wales or worldwide and has no power to or authority in respect of CIHL in England and Wales or worldwide to carry out the acts referred to in paragraphs 6-10 below.

3. The rights and duties of the directors of CIHL remain unaffected by the appointment of Mr Protopapas as receiver of CIHL pursuant to the Receivership Order.

4. Mr Protopapas has and had no power or authority of behalf of CIHL to act for or to bind CIHL in the South Carolina Court in respect of Park Claim and the Tibbs Claim…and has or had no power or authority on behalf of CIHL to issue or pursue third party claims including in the Tibbs claim against any of the third party defendants in those proceedings ("the 3P Complaint"), including (i) Mohed Altrad, (ii) Altrad Investment Authority SAS, (iii) Altrad UK Ltd, (iv) Cape UK Holdings Newco Ltd, (v) Cape Industrial Services Group Ltd, (vi) Cape Holdco Ltd, (vii) Altrad Services Ltd.

5. Mr Protopapas has and had no power or authority to accept service on behalf of CIHL in the claim brought in the South Carolina Court by a summons dated 11 November 2024 with claim number C/A No 2024-CP-40-06639 or any other legal proceedings issued against CIHL in the South Carolina Court or worldwide

AND IT IS ORDERED THAT

6. Mr Protopapas be restrained in England and Wales and worldwide from acting or purporting to act as agent or otherwise on behalf of CIHL pursuant to the Receivership Order.

7. Mr Protopapas be restrained in England and Wales and worldwide from appropriating, interfering with or usurping (in any way whatsoever) the lawful exercise of the rights and duties of the directors of CIHL.

8. Mr Protopapas be restrained from acting or purporting to act on behalf of CIHL in the Park Claim and the Tibbs Claim…

9. Mr Protopapas be restrained from continuing to prosecute the 3P Complaint…

10. Mr Protopapas be restrained from purporting to act of CIHL in the claim brought in the South Carolina Court by a summons dated 11 November 2024 and with claim number C/A No 2024-CP-40-06639 or in any other legal proceedings issued against CIHL in the South Carolina Court or worldwide.

40. The reasons for the Mann J Order are fully set out in the Mann J Judgment. That Judgment stands for itself and it would be inappropriate for me to repeat Mann J's reasoning in any detail. However, a summary is both appropriate and necessary for the purposes of this Judgment:

i) The basis for making the Receivership Order against CIHL was the operation of NAAC (and possibly CPC) in the US in circumstances where CIHL was operating through NAAC and CPC.

ii) This precise question was brought before the English courts and resolved by them in Adams v. Cape when a Mr Adams sought to enforce a default judgment in his favour obtained in the Federal Courts of Texas based on injuries said to have been caused by asbestos. One of the defendants against whom Mr Adams sought to enforce was CIHL: Mann J Judgment/[18].

iii) A court of a foreign country (here: the Texas courts) has jurisdiction to give a judgment in personam capable of enforcement or recognition as against the person against whom it was given where (in the only case relevant here: Mann J Judgment/[19]) the person against whom the judgment was given was, at the time the proceedings were instituted, present in the foreign country. For a natural person, this requires physical presence in the territory, and for a legal person it requires a fixed place of business in the territory: Mann J Judgment/[18].

iv) After a trial on the merits, Scott J held in Adams v. Cape that CIHL did not have a fixed place of business in the US, whether by itself or through the operations of NAAC or CPC: Mann J Judgment/[32]. As a consequence, there was no basis upon which Mr Adams could enforce

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

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

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

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

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

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

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

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

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

43. Drawing the threads together:

    i) Recognition of a foreign receivership such as that made in the Receivership Order requires a "sufficient connection" between the company over whom a receiver has been appointed and the jurisdiction in which the appointment is made.

    ii) In this case for the reasons articulated by Mann J in Mann Judgment/[101] ff (on what may loosely be called "judicial estoppel") the facts found in Adams v. Cape were binding on CIHL and Mr Protopapas (as soi-disant receiver) – see Mann Judgment/[110].

    iii) Applying the law (i.e. the "sufficient connection" test) to the facts (i.e. the absence of a connection between NAAC and CIHL found in Adams v. Cape) Mann J was compelled to conclude that there was no sufficient connection to justify the recognition of the Receivership Order.

M. The Cape Scheme and the David Richards J Order

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

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

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

46. Mr Protopapas chooses to characterise this shortfall in the assets of NAAC as a form of "moral fraud", but in reality it is no such thing. The question of whether a parent is liable for the acts of its subsidiary is a question of fact and law, and one with which the US courts are very familiar. On 3 December 1984, over 500,000 people in the vicinity of the Union Carbide India Ltd pesticide plant in Bhopal, India were exposed to the toxic gas methyl isocyanate. The accident caused around 16,000 deaths and over half a million injuries. The Indian company responsible for the accident was majority-owned by a US corporation, the Union Carbide Corporation. Although civil cases seeking compensation were filed in the US, they were dismissed by the US courts on the basis that the Indian company was a separate entity and that there was no "single economic unit" to enable US proceedings against US parents.

47. It was precisely this question that was before the English courts in Adams v. Cape. As I have described, Mr Adams was seeking to enforce a judgment in default obtained in his favour against NAAC in Texas against CIHL in England. The Court of Appeal held that NAAC (and indeed CPC) were not a "single economic unit" and that Mr Adams' enforcement action must therefore fail. In dismissing Mr Adams' appeal, the Court of Appeal said this in Adams v. Cape ([1990] Ch 433 at 544:

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

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

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

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

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

49. The unequivocal position (i) under English law (ii) on the facts of this case (iii) as found on the merits by a competent court of record in this jurisdiction and affirmed on appeal is that US plaintiffs are confined in their remedies to claims against NAAC as opposed to the wider Cape group.

50. The Cape Scheme described by Mann J in Mann J Judgment/[14]-[17] is predicated on the correctness and bindingness of the Court of Appeal's decision in Adams v. Cape. As a direct result of the decision in Adams v. Cape the Cape Scheme is limited to the compensation of UK claims against UK entities like CIHL.

51. The "Scheme of Arrangement" by which the Cape Scheme was implemented is very clear on this point. There is no need to set out the Scheme in detail. It is sufficient to refer to the definition, in the Scheme of Arrangement, of "Asbestos Personal Injury Claim", which means:

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

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

(a) by an individual resident in the United Kingdom on the Record Date; or

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

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

52. To be clear, neither NAAC nor CPC is a "Scheme Company" within the meaning of the Scheme of Arrangement. The Scheme of Arrangement articulating the Cape Scheme was approved by the David Richards J Order.

53. The Scheme of Arrangement is still running (Mann J Judgment/[14]). Indeed, it remains subject to the supervision of this Court, and (as I have described) the Altrad group committed to supporting the Cape Scheme when the group acquired Cape Jersey.

N. The Settlement Agreement

54. Proceedings and procedural steps based upon the Receivership Order continue in the US. The adverse effects of these steps as described by Mann J (Mann J Judgment/[113] ff) thus continue, notwithstanding the Mann J Order (which has been disregarded by Mr Protopapas).

55. On 11 April 2025, a "Settlement Agreement" was concluded between (i) the targets of the litigation in the US, as evinced by the Park Proceedings and the Tibbs Proceedings), namely CIHL and (for the avoidance of doubt) Cape Jersey and (ii) various the defendants to the Third Party Claim brought by Mr Protopapas. The parties to the Settlement Agreement are (without differentiation) referred to by me as the "Parties".

56. Following a series of detailed recitals (which I do not set out) the Settlement Agreement provides for the compromise and release of any and all disputes subsisting between the Parties and to dismiss all proceedings in respect of the "Allegations". The Allegations are broadly defined as meaning:

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

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

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

O. The claims in the present proceedings

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

IT IS DECLARED THAT

1. The Settlement Agreement has been entered into by lawfully authorised officers of the Claimants and of the Cape Parties and is lawfully binding on the parties to it.

2. The terms and legal effect of the Settlement Agreement are such that it releases and settles any claims (whether known or unknown) that the Cape Parties have against the Claimants related to or arising (i) from the claims and allegations made in the Tibbs Claim (including in the Third-Party Complaint made within it) and (ii) from any other claims made after the date of the Settlement Agreement in any asbestos-related personal injury claims that may be asserted in the USA based in part or in whole upon the Claimants' alleged liability for the acts and/or omissions of CIHL (all such claims together being "Settled Claims") (and for the avoidance of doubt it also releases and settles any judgments (and any claims based on or related to any judgments) obtained pursuant to the making of any such claims).

3. Pursuant to the terms of the Settlement Agreement, the Claimants have no liability to the Cape Parties for any Settled Claims and the Cape Parties have no lawful claims against any of the Claimants arising out of or in relation to any Settled Claims.

AND IT IS DECLARED THAT

4. The powers and lawful authority of the directors of CIHL are unaffected by the Receivership Order (which is not recognised and has no legal effect in England and Wales and worldwide).

5. Mr Protopapas has and had no power or lawful authority to take any steps or acts for, on behalf of, or in the name of CIHL, including (but without prejudice to the generality of the foregoing) in any Settled Claims.

AND IT IS ORDERED THAT

6. CIHL shall not take any step in the proceedings in the Third-Party Complaint (or in relation to any Settled Claims).

7. Mr Protopapas be restrained from taking any further step in the Third-Party Complaint (or in relation to any proceedings, including but not limited to any Settled Claims) in the name of or on behalf of CIHL.

8. Mr Protopapas shall forthwith take all and any steps to effect a final and with prejudice dismissal of the Third-Party Complaint against the Claimants with immediate effect and, in any event, Mr Protopapas is to have effected such a dismissal of the Third-Party Complaint against the Claimants within 14 days of the date of this order.

59. The orders and declarations sought in this draft can be grouped under the following heads:

i) Declarations as to the effect of the Settlement Agreement: see paragraphs 1 to 3 of the draft order.

ii) Declarations as to the status or powers vesting in (respectively) CIHL and Mr Protopapas so far as their power to act for CIHL is concerned: see paragraphs 4 and 5 of the draft order.

iii) Orders obliging a party (either CIHL or Mr Protopapas) to do or not do something: see paragraphs 6 to 8 of the draft order.

60. I shall consider these groups of orders and declarations in the order set out above, beginning with the declarations as to the effect of the Settlement Agreement.

P. The power in this court to make declarations

61. This court has a discretionary jurisdiction to grant declaratory relief under section 19 of the Senior Courts Act 1981 and rule 40.20 of the English Civil Procedure Rules or "CPR". In Rolls Royce plc v. Unite the Union [2009] EWCA Civ 387 at [120], the Court of Appeal summarised the approach to be taken in regard to the granting of declarations as follows:

i) The power of the court to grant declaratory relief is discretionary.

ii) There must, in general, be a real and present dispute between the parties before the court as to the existence or extent of a legal right between them. However, the claimant does not need to have a present cause of action against the defendant.

iii) Each party must, in general, be affected by the court's determination of the issues concerning the legal right in question.

iv) The fact that the claimant is not a party to the relevant contract in respect of which a declaration is sought is not fatal to an application for a declaration, provided that it is directly affected by the issue.

v) The court will be prepared to give declaratory relief in respect of a "friendly action" or where there is an "academic question" if all parties so wish, even on "private law" issues. This may particularly be so if it is a "test case", or it may affect a significant number of other cases, and it is in the public interest to decide the issue concerned.

vi) However, the court must be satisfied that all sides of the argument will be fully and properly put. It must, therefore, ensure that all those affected are either before it or will have their arguments put before the court.

vii) In all cases, assuming that the other tests are satisfied, the court must ask: is this the most effective way of resolving the issues raised? In answering that question it must consider the other options of resolving this issue.

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

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

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

62. Generally speaking, a court will consider whether the declarations sought are correct in law before turning to consider whether the court should exercise its discretion to make those declarations. In this case, because the declarations are so intrusive into the processes of a foreign court, it is appropriate to consider the question of whether the court should exercise its discretion to make declarations at all first.

63. The first declaration sought (paragraph 1 of the draft order: the Settlement Agreement has been lawfully entered into) can be regarded as merely an articulation of a specific consequence of the Mann J Judgment and the Mann J Order. That is not the case so far as the second declaration sought (paragraph 2 of the draft order: the claims on which the Third Party Claim rests have been compromised/released/settled) nor of the third declaration sought (paragraph 3 of the draft order: the Claimants are under no liability in respect of the Third Party Claim) are concerned. Quite clearly, the declarations have the effect of extinguishing the very subject-matter of the dispute that will be considered by Chief Justice Toal at the trial of Third Party Claim. Given that the declarations have such an effect on proceedings in another jurisdiction, they must be closely considered and be justifiable as a matter of international law, and having due regard to questions of comity.

64. Although there are considerations that point in different directions, I have reached the firm conclusion that (assuming the points of law articulated by the Claimants are correct) it is appropriate for me to make the declarations sought. I set out the various factors that have informed this conclusion in the paragraphs below.

(ii) *The absence of Mr Protopapas*

65. The fact that Mr Protopapas failed to appear before me is a relevant factor against the granting of declarations, but one of limited weight. As I have described (see Section H), Mr Protopapas is properly before the court (i.e. this court has personal jurisdiction over him). Mr Protopapas has not sought to challenge this court's jurisdiction.

66. Of course, I have not had the benefit of argument from Mr Protopapas, but I have a very good sense of the points that Mr Protopapas would make if he were before me from my consideration of the papers in the South Carolina proceedings, in particular (but not limited to) the Receivership Motion, the Receivership Order and the Third Party Claim. The Claimants and the Second and Third Defendants have been assiduous in putting before me the sort of points that Mr Protopapas might be inclined to take. I am satisfied (see Rolls Royce Principle (vi)) that all sides of the argument have been fully and properly put in the written and oral submissions that I have received.

(iii) *A "friendly action"*

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

(iv) *Comity*

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

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

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

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

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

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

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

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

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

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

70. Applying these considerations by analogy to the discretion that I have in regard to declarations, it is incumbent upon me to set out why I must, in this case, set aside the important question of comity and (assuming they are well founded) make the declarations sought.

(v) *Reasons why the South Carolina proceedings must be interfered with: interests of the Claimants and the Second and Third Defendants*

71. The shock expressed by the Supreme Court of South Carolina in Welch v. Advance Auto Parts at the infringement of comity apparently committed by the Mann J Order would (in my judgment) abate on a proper understanding of the facts and matters lying behind the Mann J Order. These facts and matters, in my judgment, entirely justify the Mann J Order. They also – together with other facts and matters relevant to these proceedings – justify the jurisdiction to make declarations that I am minded to exercise, provided of course the declarations sought are otherwise sound in law.

72. The Receivership Order is (for the reasons stated in [19]-[20]) exorbitant in nature. It has a "long-arm" effect that is highly unusual in receivership orders. Indeed, the Receivership Order appears to be more like a half-baked form of insolvency process, operating in clear disregard of internationally accepted standards of corporate insolvency. The reference in the draft amended Third Party Claim (see [36]) to administering and marshalling the full assets of Cape is particularly troubling.

73. Mr Protopapas has asserted a connection between NAAC and CIHL so as to justify the making of the Receivership Order in terms which are both bombastic and immoderate and very far from the objective parsing of the facts that a court is entitled to expect. The Receivership Motion (see [35]) makes sweeping and subjective allegations in regard to this connection.

74. It is a matter of serious concern that Mr Protopapas has failed to draw to the attention of Chief Justice Toal (or, if he has, Chief Justice Toal has failed to consider the point) the significance of the decision of the English Court of Appeal in Adams v. Cape. It appears to be common ground between the English and the South Carolina jurisdictions that some form of connection must exist between the company over which a receiver is appointed and the jurisdiction ordering the receivership. That being the case, a decision on the merits of a court of competent jurisdiction deciding this very issue of "connection" ought to have been placed before Chief Justice Toal by Mr Protopapas. The decision of the Court of Appeal in Adams v. Cape could then have received the careful and respectful consideration by the South Carolina court at the outset. That would have afforded the opportunity at the relevant

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

75. In these circumstances, one can see exactly why CIHL and Cape Jersey took the view that the court in South Carolina was purporting to exercise a jurisdiction so wide as to be an affront to notions of comity between courts of cognate jurisdiction. For the reasons outlined in the Mann J Judgment, and summarised in this Judgment, the Mann J Order was entirely justified and (if I may respectfully say so) the only order that Mann J could have made in these circumstances.

76. Moreover, there are a number of procedural concerns in regard to the conduct of the South Carolina receivership (in addition to the failure properly to consider the question of "connection") so as to justify CIHL and Cape Jersey in applying to the English courts for protection. They are clearly described in the Mann J Judgment and I have summarised them in this Judgment. Specifically:

    i) Mr Protopapas appears to be acting in breach of the basic duties of a receiver: see [30(iv)]. Indeed, Mr Protopapas is expressing himself with an immoderation that is regrettable, to say the least: see the content of the Third Party Complaint set out at [30(vi)].

    ii) Mr Protopapas is litigating the Third Party Claim without having established whether any liability exists against CIHL. Neither the claim in the Park Proceedings nor the claim in the Tibbs Proceedings has resulted in any judgment on the merits as against CIHL: see [11] and [28].

    iii) Mr Protopapas is not properly defending proceedings brought against CIHL. I have referred to the disingenuous "defence" of CIHL in the Tibbs Proceedings at [30(v)]. This is no defence, but rather a conduit by which the immoderate assertions made in the Third Party Claim can operate as disguised admissions by CIHL vis-à-vis the plaintiffs in the Tibbs Proceedings: see [30(vi)].

    iv) It is not understood how the Receivership Order made in the Park Proceedings can be deployed in the Tibbs Proceedings: see [30(ii)].

77. The Mann J Order has not been respected in South Carolina: instead, it has been characterised as a *brutum fulmen*, an empty noise: see [68]. Thus, it is no surprise that Mr Protopapas is pressing on with the Third Party Claim and that the courts in South Carolina are indulging him in this regard. This is quite plainly the sort of exceptional case considered in Re Maxwell Communications Corp plc (No 2) (see [69]) where the English court must intervene.

78. The progression of the Third Party Claim is doing real harm to the Claimants. They are faced with a claim – the Third Party Claim – which overtly threatens their financial standing, makes reputationally damaging (and unfounded) allegations, and threatens the Cape Scheme by which a class of victims of

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

79. I consider the declarations sought to be an extremely effective way of controlling the conduct of Mr Protopapas: for the declarations, if made, will have the effect of extinguishing the very claims Mr Protopapas seeks to advance by way of the Third Party Claim. I bear in mind that – as yet – the Claimants have received no protection from the English court. I consider that if the declarations can properly be made, they should for this reason alone be made. Although the Second and Third Defendants have the benefit of the Mann J Order, I consider that the declarations, if made, will confer substantial and necessary additional protection on these parties.

80. For these reasons, I conclude that if they can appropriately be made, I should exercise my discretion to give the declarations sought, notwithstanding the interference with the South Carolina proceedings that those declarations would give rise to.

81. So far, I have been considering the important need to protect the position of the Claimants and of the Second and Third Defendants. There is, however, an even weightier consideration in favour of exercising the discretion to make the declarations (if they can appropriately be made), to which I now turn.

(vi) Protecting the integrity of the English jurisdiction

82. One of the justifications for the grant of an anti-suit injunction is that such an injunction can serve to protect the jurisdiction of the English court. That justification applies with equal force to the declarations sought in the present case. This rationale in support of anti-suit injunctions is well-established in English law: see, for example, Raphael, The Anti-Suit Injunction, 2nd edition at [5.32]-[5.34].

83. The liability issues raised by the Third Party Claim constitute a collateral attack on the decision of the Court of Appeal in Adams v. Cape. As I have described, the question of "single economic unit" that lies at the heart of the Third Party Claim, whereby it is alleged that the Claimants and CIHL can be dragged into US proceedings by virtue of their connection with NAAC, is a matter that has already been decided by the English Court of Appeal in Adams v. Cape. The Third Party Claim thus constitutes the clearest possible collateral attack on a prior decision of a court of competent jurisdiction and thus constitutes a clear abuse of court process: see e.g. the decisions in Hunter v. Chief Constable of the West Midlands Police [1982] AC 529; Arthur JS Hall & Co v. Simons [2002] 1 AC 615; Secretary of State for Trade and Industry v. Bairstow [2003] EWCA Civ 321; Laing v. Taylor Walton (a firm) [2007] EWCA Civ 1147; Allsop v. Banner Jones Limited [2021] EWCA Civ 7. Although these cases concerned collateral attacks by the bringing of later English cases by a party, the anti-suit jurisdiction shows that the same

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

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

(vii) Conclusion

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

R. Are the declarations properly and soundly based?

(i) General points as to validity

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

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

(ii) Points taken by Mr Protopapas

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

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

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

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

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

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

(iii) Authority to conclude the Settlement Agreement

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

90. The significance of the Receivership Order on those otherwise authorised to enter into the Settlement Agreement is shortly dealt with. The Mann J

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

(iv) Sham

91. In Snook v. London and West Riding Investments Ltd [1967] 2 QB 786 at 802, Diplock LJ defined a "sham" as "acts done or documents executed by the parties to the "sham" which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create".

92. I do not consider it to be seriously arguable that the Settlement Agreement is a "sham" in this sense. I am in no doubt that the Parties' intentions are exactly in line with the effect of the Settlement Agreement, namely to extinguish the causes of action on which the Third Party Claim relies. I am sure that the Parties' intentions are exactly in line with what the Settlement Agreement in fact and in law achieves.

93. If, as I rather suspect, Mr Protopapas is using the term "sham" to make the point that the Settlement Agreement is done without authority because of the Receivership Order, the "sham" point makes more sense. But, for the reasons I have given, the point is a bad one. The Receivership Order is entirely ineffective before this court, applying (as it must) the relevant law, which is English law as the law determining CIHL's corporate functions and operation.

(v) Device

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

95. I reject any suggestion that the Settlement Agreement is an illegitimate device. It is in fact an attempt by the Parties to mitigate the consequences of Mr Protopapas' conduct in the US.

(vi) Other points

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

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

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

S. Conclusion in relation to declaratory relief

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

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

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

    i) For the reasons that I have given, it is appropriate to exercise this court's power to make declarations, even though they have (and are intended to have) extraterritorial effect and interfere (and are intended to interfere) with the processes of a court in another jurisdiction. The courts of this jurisdiction – like the US courts – place an extremely high value on comity between courts of different jurisdictions. However, those considerations are comprehensively outweighed by the need to ensure that (i) the interests of this jurisdiction, (ii) the interests of the Parties, the Claimants, the First and Second Defendants and those of the wider Cape and Altrad groups and (iii) the interests of existing and future claimants under the Cape Scheme are protected.

    ii) The declarations at paragraphs 4 and 5 of the draft order really do no more than articulate the consequences of the Mann J Judgment and the Mann J Order. The proceedings before Mann J involved only CIHL and Cape Jersey, and only they have the benefits of the Mann J Order. It is appropriate, given their interests, that the benefits of the Mann J Order extend to the Claimants, and I can see no harm in these declarations being repeated in the case of CIHL and Cape Jersey.

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

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

101. I would be prepared to make the order at paragraph 6 of the draft order, save for the prudential considerations that I raised with the Parties during the course of the hearing, and which they accepted. Paragraph 6 seeks to enjoin CIHL, preventing it from taking any step in the proceedings in the Third Party Claim.

102. To be clear, I consider that I have the jurisdiction to make an order of this sort, but it seems to me that the draft order at paragraph 6 should not be made, for pragmatic reasons. Mr Protopapas has shown a disregard of comity between nations, failing even to draw the implications of the anterior Cape litigation (specifically Adams v. Cape, the Cape Scheme and the David Richard J Order)

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

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

i) Mr Protopapas is properly before this court – although he has chosen not to exercise his right to be heard. Notwithstanding his choice in this regard, this court has personal jurisdiction over him.

ii) I do not need to rehearse the reasons why an anti-suit injunction is appropriate in this case, because those reasons are exactly the same as the remedy of the declarations at paragraphs 1-3 of the draft order. I refer to my earlier consideration.

iii) Whereas the declarations regarding the Settlement Agreement extinguish the subject-matter of the Third Party Claim, the injunctions at paragraphs 7 and 8 merely personally restrain Mr Protopapas from continuing with a claim that actually has no substance, because it has been extinguished by the Settlement Agreement.

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

iv) Mr Protopapas is properly before this court – although he has not chosen to exercise his right to be heard. Notwithstanding his choice in this regard, this court has personal jurisdiction over him.

v) I do not need to rehearse the reasons why an anti-suit injunction is appropriate in this case, because those reasons are exactly the same as the somewhat more aggressive remedy of the declarations at paragraphs 1-3 of the draft order. I refer to my earlier consideration.

vi) Whereas the declarations regarding the Settlement Agreement extinguish the subject-matter of the Third Party Claim, the injunctions

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

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

V. Disposition

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

Annex 1

TERMS AND ABBREVIATIONS USED IN THE JUDGMENT

([2] of the Judgment)

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

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