

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

JOHN A. TIBBS AND MARGARET B. TIBBS,
Plaintiff,

Vs.

3M COMPANY, et al.,

Defendants.

In Re: Asbestos Personal Injury Litigation
Coordinated Docket

Civil Action No. 2023-CP-40-01759

**MOTION TO SEAL CONFIDENTIAL
SETTLEMENT AGREEMENT**

CAPE PLC, individually and as successor in
interest to CAPE ASBESTOS COMPANY
LIMITED, by and through its duly appointed
Receiver Peter D. Protopapas,

Third-Party Plaintiff,

v.

ESAB Corporation; *et al.*,

Third-Party Defendants

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

KEITH W. PARK, Individually and as the
Personal Representative of the Estate of
ISABELLA PARK,

Plaintiff,

Vs.

ARMSTRONG INTERNATIONAL, INC.,

Defendants.

In Re: Asbestos Personal Injury Litigation
Coordinated Docket

Civil Action No. 2021-CP-40-02727

**MOTION TO SEAL CONFIDENTIAL
SETTLEMENT AGREEMENT**

Pursuant to Rule 41.1, SCRCP, Peter D. Protopapas, in his capacity as the court-appointed Receiver for Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, n/k/a Cape Intermediate Holdings Ltd. (the “Receiver” and/or “Cape”) respectively submits the following Motion to Seal portions of the Confidential Master Settlement Agreement (the “Confidential Settlement Agreement”) between the Receiver and Anglo American US Holdings Inc. The Receiver requests this document be sealed and used solely for this Court’s in camera review.

APPLICABLE LAW

The Receiver files this motion pursuant to SCRCP 41.1, which sets out the procedures for parties to file a motion to file documents under seal. Rule 41.1(c) provides:

In determining whether to approve the filing of the settlement documents, in whole or in part, under seal, the court shall consider:

- (1) the public or professional significance of the lawsuit;
- (2) the perceived harm to the parties from the disclosure[;]
- (3) why alternatives other than sealing the documents are not available to protect legitimate private interests as identified by this Rule; and,
- (4) why the public interest, including, but not limited to, the public health and safety, is best served by sealing the documents.

Each of the factors dictates the attachments should be sealed.

ANALYSIS

The Receiver seeks to file the Confidential Settlement Agreement under seal because sealing the settlement agreement best balances the harm that will result to the parties and the public due to the disclosure of the agreement with South Carolina’s recognition of the public importance of maintaining open court proceedings. As discussed herein, the factors listed in Rule 41.1(c)

weigh in favor of sealing this settlement agreement.

a. The public or professional significance of the lawsuit

This Court has previously found in sealing a settlement agreement in similar litigation that “although the litigation of asbestos suits is of great public importance, the specific terms of the liquidation of Receiver assets arising from a settlement between the Receiver and the settling insurance company does not have great public significance.” *See James Franklin Davis v. 3M Co.*, Richland County Case No. 2022-CP-40-02381 (Order filed March 31, 2023). The Confidential Settlement Agreement at issue in this Motion to Seal settles claims brought in connection with the Receiver’s third-party complaint. Although underlying asbestos litigation between Cape and asbestos plaintiffs may have great public significance, the Confidential Settlement Agreement the Receiver seeks to seal relates to third-party complaint and the Receiver’s attempts to marshal assets in accordance with the receivership court’s orders. South Carolina has recognized the importance of maintaining open court proceedings and records. *See* Rule 41.1(a), SCRCP. However, this recognition stems from an attempt to prevent the public harm that often arises from parties who enter into secret settlement agreements with the intention of hiding known dangers and liability from the public.

In the instant case, the dangers of asbestos are well-known by the public, and the Receiver is not attempting to hide harmful information from the public. The Receiver does not attempt to seal any documents related to underlying actions. The Confidential Settlement Agreement does not make any specific references to the allegations or litigation surrounding pending asbestos suits. Instead, the settlement agreement is a way for the Receiver and Anglo American US Holdings Inc. and its past, present and future parents, subsidiaries and affiliates, including Anglo American plc and De Beers plc and their former, present, and future subsidiaries, which include all Anglo

American and De Beers entities that have been named defendants in this litigation (collectively, “Anglo American-De Beers”). to resolve claims related to the third-party complaint. This agreement allows the Receiver to establish a Qualified Settlement Fund (“the QSF”). While the Confidential Settlement Agreement will be sealed, the Receiver will file the QSF Operating Agreement, which is an attachment to the Confidential Settlement Agreement, publicly with the Court. Therefore, although underlying asbestos suits may have great public significance, the specific settlement agreement here does not have great public significance because it is related to the Receiver’s third-party complaint.

b. The perceived harm to the parties from disclosure

Sealing the Confidential Settlement Agreement in this case will help the Receiver continue to fulfill his court-appointed duties. The Confidential Settlement Agreement between the Receiver and Anglo American US Holdings Inc. was created in settlement negotiations subject to an absolute mediation privilege between the parties with the expectation of confidentiality. The disclosure of the information contained in the Confidential Settlement Agreement could be misappropriated and could chill the Receiver’s ability to equitably resolve its remaining disputes in this case and any other pending cases, which would prevent South Carolina citizens who may have legitimate claims against Cape for asbestos exposure from receiving fair compensation.

c. Why alternatives other than sealing the documents are not available to protect legitimate private interests

Sealing the Confidential Settlement Agreement at this time is the only way to fairly balance and protect the interests of the public with the interests of the settling parties. The Receiver requests the Court seal the Confidential Settlement Agreement, but the Receiver will file the QSF Operating Agreement, which is an attachment to the Confidential Settlement Agreement, in the

public docket. Thus, the Receiver is only requesting the Court seal the amount necessary to protect the legitimate private interests of the Receiver, Cape, and Anglo American-De Beers.

d. Why the public interest, including, but not limited to, the public health and safety, is best served by sealing the documents

As discussed above, sealing the Confidential Settlement Agreement promotes the public interest because the public has an interest in ensuring the Receiver is able to effectively marshal the assets of Cape in accordance with the receivership courts orders, including an interest that any settlements of other pending or future claims against Cape will not be chilled in order to help compensate persons who have been injured due to the exposure to asbestos. The public has an interest in the QSF, and the Receiver will file the QSF Operating Agreement. However, the public does not have an interest in the Confidential Settlement Agreement and its terms.

CONCLUSION

The Receiver respectfully submits that the confidential nature of the Confidential Settlement Agreement renders it of the type that should be sealed and for in camera review only, and therefore respectfully requests that this Court seal the Confidential Settlement Agreement.

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This 28th Day of October, 2025