

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

**THE RECEIVER’S REPORT ON
ATTORNEYS’ CONTINGENCY FEE
REQUEST RELATED TO MOTION
TO APPROVE SETTLEMENT**

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

Third-Party Plaintiff,

v.

ANGLO AMERICAN PLC, individually and as
successor in interest to ANGLO AMERICAN
CORPORATION OF SOUTH AFRICA LTD., *et*
al.,

Third-Party Defendants.

Peter D. Protopapas, as the duly-appointed Receiver for Cape PLC, individually and as successor in interest to Cape Asbestos Company Ltd., n/k/a Cape Intermediate Holdings Ltd. (“the Receiver”), submits this Report on the Receiver’s Attorney’s Fees and Costs along with evidence for this Court’s *in camera* review in connection with the motion to approve confidential settlement agreement with Anglo American US Holdings Inc. (“Anglo American”). The settlement marks the resolution of over two years of complex litigation between the Receiver and the Anglo American-

De Beers Third-Party Defendants¹. However, the case remains pending and began trial against the remaining Third-Party Defendants on October 20, 2025. For the following reasons, the Receiver requests that this Court approve the Receiver’s attorneys’ contingency fee request in connection with the motion to approve settlement. The Receiver seeks the Court’s approval of the attorneys’ contingency fee of forty percent (40%) of the gross settlement amount between the Receiver and Anglo American US Holdings Inc. (for itself and its affiliates) and approval of reimbursement of costs incurred by the law firms to date. In light of the attorneys’ fee request, in part, to the Receiver’s law firm, the Receiver does not request a Receiver fee for his work to date.

BACKGROUND

A. The Receiver’s Investigation and the Subsequent Prosecution of this Action Required Expenditure of Significant Resources.

On March 17, 2023, this Court appointed a receiver for an entity identified as Cape PLC as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) pursuant to S.C. Code § 15-65-10(5), as well as § 15-65-10(4) in the alternative. Order, *Park et al. v. Armstrong Int’l, Inc. et al.*, No. 2021-CP-4002727 (Mar. 17, 2023) (“Appointment Order”), at 1. Pursuant to the Appointment Order and South Carolina law, the Receiver has “power and authority [to] fully administer all assets of Cape, . . . engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape”—in proper satisfaction of claims against Cape — “whatever they may be.” *Id.* The Appointment Order further vested the Receiver with “rights,

¹ These Third-Party Defendants included Anglo American US Holdings Inc., Anglo American plc, De Beers plc, De Beers Centenary AG, De Beers Consolidated Mines (Proprietary) Limited, De Beers UK Limited, Anglo American Crop Nutrients (USA), LLC, De Beers Jewellers Limited, De Beers Jewellers (US), Inc., Element Six US Corporation, Element Six Technologies US Corporation, Forevermark US, Inc., Platinum Guild International (U.S.A.) Jewelry, Inc., and Lightbox Jewelry Inc.

authority and powers with respect to” Cape’s property, including to “obtain from any . . . third party, any financial records belonging to or pertaining to” Cape. *Id.* at 2.

To fulfill his obligations to this Court, the Receiver performed his own investigation into, and sought information and documents from, the Third-Party Defendants regarding various facts alleged in the Third-Party Complaint, including their current or historical interests in Cape and South Africa asbestos, as well as their corporate interrelationships between and among each other, through written discovery requests, motions to compel, and deposition testimony.

The Receiver’s investigation in this case was significantly different than that of other receiverships because of the non-participation of certain Third-Party Defendants and the complicated nature of the liability case against them. The Receiver was required to locate and evaluate archives of documents in the United States and internationally – including in England, Scotland, and Australia – to fully understand the arrangement among the Third-Party Defendants for the mining of raw asbestos fiber in South Africa and ultimate sale to customers in South Carolina, as well as to locate evidence to establish successor liability for the modern entities identified in this case. This work included detailed research into archived materials, informational interviews with researchers and academics familiar with Cape and the Oppenheimer Group System, and careful study of the materials the Receiver located to build a complete declaratory judgment action. The Receiver’s lawyers spent more than one thousand hours on this historical case development, in large part because many of the Third-Party Defendants did not participate in discovery in this matter: almost every question the Receiver had required outside research to answer.

The Receiver also has engaged in significant discovery, motions practice, and briefing. The Receiver has produced 13,459 documents, totaling 260,126 pages, and received and reviewed

nearly 5,000 documents from the Anglo American-De Beers Third-Party Defendants. The Receiver's team has participated in countless meet and confers related to discovery issues that arose and taken five depositions in the case.

Since the filing of the Third-Party Complaint, the Receiver has filed at least 75 motions, opposition briefs, and other filings in this case. The filings in this case have been so extensive that the electronic filing case management system crashed in August 2025, and the parties were required to file materials traditionally for a period of time until the limits on the case management system could be increased. This Court has held eight status conferences and hearings in this matter on October 6, 2025, August 12, 2025, July 22, 2025, June 5, 2025, September 24, 2024, April 10, 2024, February 2, 2024, October 25, 2023. Each appearance before the Court required extensive preparation by the Receiver's team and related travel.

There have been 20 notices of appeal filed in the Court of Appeals arising from this case which necessitated extensive briefing on motions to dismiss and petitions for rehearing. Following the successful dismissal of those appeals, there were 10 petitions for writs of certiorari and numerous supplements to those petitions filed in the South Carolina Supreme Court, which necessitated extensive briefing and other appellate motions. There were additional filings at the appellate courts as to whether the bankruptcy stay involving ACL had any effect on the appeals involving the Cape receivership. Additionally, this case was removed to the federal court from June 28, 2024, to August 13, 2024, when the District Court granted the Receiver's motion to remand. The federal docket contains 76 docket entries in the less than two months that the case was pending in federal court.

Additionally, parties in this litigation have initiated litigation in foreign courts, including the United Kingdom, France, and Belgium, which has necessitated the Receiver and his counsel

to spend extensive time reviewing filings in foreign jurisdictions and correspondence relating to those filings and filing motions in the South Carolina circuit court and appellate courts to keep the South Carolina courts apprised of the foreign litigation. For example, since September 2024, the Receiver has been served over 120 times with filings related to foreign proceedings.

Trial in this matter started on October 20, 2025. Trial was previously scheduled in this case on April 15, 2024, December 9, 2025, and February 3, 2025, but was continued, in part, due to the non-participation and appeals. In preparing for the October trial, the Receiver hired expert witnesses and conducted extensive meetings with those expert witnesses to prepare their testimony for trial. These experts engaged in extensive file review, assisted the Receiver's team in developing trial strategies, prepared for their depositions, and prepared detailed presentations to be given to this Court at trial. The Receiver's team prepared trial exhibits, a trial witness list, and deposition designations; prepared for the cross-examination of potential witnesses; and prepared the Receiver's own trial presentation.

Given the complex nature of the dispute between the parties, combined with the long timeline of activities at issue in the case, the Receiver's team has dedicated substantial time and resources into creating a trial presentation and associated pre-trial memorandum that synthesized this complex information into a digestible form for the Court. This effort included carefully combing through the extensive document productions in the case, and all other written materials to distill the most important elements for trial; and preparing a concise yet appropriately detailed presentation for the trial, including an opening presentation, a closing presentation, and testimony from the Receiver's expert witnesses.

As of October 17, 2025, the Receiver's counsel have spent a total of 19,628.2 hours on this case, not including the time of the Receiver or his staff. Because the settlement does not end the case, the trial proceeded on October 20.

ARGUMENT

Counsel undertook this matter on a contingency fee basis with no guarantee of payment. In fact, no such case had ever succeeded in the past. Receiver and his counsel worked consistently in discovery and other motion practice to prepare the action for trial. Through the two-and-a-half years this matter has been pending, counsel undertook thousands of hours of work and incurred considerable costs.

This court may consider the traditional six-factor test to determine the amount of an award.

A. The Requested Attorney Fee Award is Consistent With the Six-Factor Analysis Under *Glasscock*

“The award of attorney fees and costs is a matter within the sound discretion of the trial judge.” *Taylor v. Taylor*, 333 S.C. 209, 215, 508 S.E.2d 50, 54 (Ct. App. 1998). In determining the amount of attorney's fee to award, the Court should consider: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. *Glasscock v. Glasscock*, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991). Considering these factors, the Receiver and his lawyers devoted significant time and resources to this action, and the negotiated attorney fee award properly reflects these efforts.

First, this action involved both a deep factual investigation into the corporate histories of the receivership entity and Third-Party Defendants as well as an analysis of complex legal issues. To address these issues, the Receiver required sophisticated lawyers who had knowledge of a range of issues.

Second, the Receiver's team worked thousands of hours in this litigation through the discovery, motions practice, appeal, and trial preparation in this case. The Receiver's team also incurred significant costs associated with investigation, discovery, expert engagement, and trial preparation in this case.

Third, the Receiver's team are known to the profession in South Carolina and elsewhere as elite lawyers in their areas of specialty. Specifically, for the last two years, Smith Robinson has been selected as a Best Law Firm, having received a Metropolitan Tier 1 recognition for the area of Commercial Litigation in Columbia, South Carolina. Further, both Jon Robinson and Murrell Smith of Smith Robinson have been elected for Membership in the American Board of Trial Advocates. Gallivan White and Boyd, founded more than seventy-five years ago, has received numerous honors and awards for its trial work. Its attorneys manage complex, high stakes litigation for clients and have tried hundreds of cases to verdict. It has been recognized as a Benchmark Litigation Highly Recommended Firm and been included in U.S. News & World Report's Best Law Firms list as well as has been ranked in Chambers USA multiple times. Additionally, GWB's attorneys have served in numerous leadership positions in legal organizations both in South Carolina and across the world, including the South Carolina Bar, the American Board of Trial Advocates, the International Association of Defense Counsel, the South Carolina Association of Defense Trial Attorneys, and the Association of Defense Trial Attorneys and maintains an exemplary reputation in the legal community. Additionally, the Morgan Lewis litigation team is highly-regarded, having received numerous accolades in insurance recovery and complex commercial litigation, including several consecutive years as Chambers ranked commercial litigators.

Fourth, because of the nature of the Receiver's role in marshaling the assets of a company, for a company that has avoided making assets available to claimants in the United States, the Receiver's team necessarily works entirely on a contingency fee basis. As a result, unless and until this Court considers an attorney fee award in this case, the Receiver's team has not been compensated for its work in connection with the Cape receivership.

Fifth and finally, the requested attorney fee and cost award is consistent with the customary legal fees for such actions and legal work, particularly considering the extensive litigation undertaken by the Receiver's team, as outlined hereinabove.

For all these reasons, the *Glasscock* factors weigh in favor of approving the requested attorney fee award.

The Receiver's effort in this action—undertaken at his own expense and at the expense of the three firms he hired to represent him on a contingent fee basis—were significant. In sum, the Receiver's counsel have spent a total of 19,628.2 hours on this case as of October 17, 2025. This does not include the time of the Receiver or his staff. The Receiver hired extremely capable local South Carolina counsel to represent him in the litigation, and he also hired a highly regarded national law firm with experience in asbestos litigation to support the Receiver's efforts. These efforts were in addition to and supported by highly capable lawyers and professional staff at the Receiver's law firm.

CONCLUSION

The Receiver was required to engage in the extensive work described above because of the complicated nature of the action and Third-Party Defendants' vigorous defenses. Accordingly, the Receiver respectfully requests that the Court exercise its sound discretion and approve the

Receiver's contingent attorney fees as outlined in the motion to approve the confidential settlement agreement submitted to the Court.

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This 28th Day of October, 2025

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