

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

Jean H. Toal, Acting Circuit Court Judge

Appellate Case No. 2022-000272

Beverly Dale Jolly and Brenda Rice Jolly, ..... Respondents,

v.

General Electric Company, et al., ..... Defendants,

Of whom Fisher Controls International LLC and Crosby  
Valve, LLC are the..... Petitioners.

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THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM YORK COUNTY  
Court of Common Pleas

Jean H. Toal, Circuit Court Judge

Appellate Case No. 2022-001574

Stephen R. Edwards, Individually and as Personal  
Representative of the Estate of Steven Redfearn  
Stewart, Respondent,

v.

Scapa Waycross, Inc., Petitioner.

**PETITIONERS' JOINT MOTION TO CONSOLIDATE APPEALS FOR  
ORAL ARGUMENT AND CONCURRENT DECISIONS AND TO ORALLY ARGUE  
AGAINST PRECEDENT**

Pursuant to Rules 214 and 240 of the South Carolina Appellate Court Rules (“SCACR”), Petitioners Fisher Controls International LLC and Crosby Valve, LLC in Appellate Case No. 2022-000272, and Scapa Waycross, Inc., in Appellate Case No. 2022-001574, jointly move this Court to consolidate these pending appeals for oral argument and for the issuance of concurrent decisions. In support of this motion, Petitioners respectfully show the Court as follows:

1. The underlying actions for both appeals were circuit court trials involving alleged asbestos exposure. This Court granted certiorari in both Appellate Case No. 2022-000272 and Appellate Case No. 2022-001574 following the Court of Appeals’ affirmance of judgments entered in favor of Plaintiffs. Certiorari was granted on the following two overlapping questions of law:

a. Whether the Court Of Appeals erred by affirming the trial court’s Order granting a new trial *nisi additur* regarding which, Petitioners argue, compelling reasons were not given for invading the jury’s province;

and

b. Whether the Court Of Appeals erred by affirming the trial court’s setoff calculation based on Plaintiffs’ internal unilateral allocation of settlement proceeds to avoid a complete Setoff.

2. The appeals share additional features of commonality that bolster consolidation for oral argument here. As the Respondent in *Edwards* noted in his brief to this Court, *Jolly* is also an asbestos case that involved a challenge to the circuit court denial of Petitioner-Defendants’ JNOV motion based on the specific causation. While this Court denied certiorari on the causation issue in *Jolly*, it granted certiorari on the causation issue in *Edwards*. The Respondent in *Edwards* takes the position that since this Court denied the *Jolly* petition for certiorari as to the JNOV motion on causation, such should be binding on this Court in *Edwards*. Respondent’s preclusion argument provides further indicia of how the cases are intertwined. The *Edwards* Petitioner disagrees with

Respondent's preclusion argument and believes *Jolly* should be overruled regarding its substantial factor causation rulings, stating so in its briefing.

3. This Court has concluded that it is appropriate to consolidate appeals for merits disposition where "they involve the same legal issues." *Crawford v. Cent. Mortg. Co.*, 404 S.C. 39, 44, 744 S.E.2d 538, 540 (2013), *citing and quoting*, Rule 214, SCACR ("Where there is more than one appeal from the same order, judgment, decision or decree, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated.")

4. The lower courts and bar would likewise benefit from the guidance of comprehensive and uniform concurrent rulings from this Court on these important legal issues.

5. Under these circumstances, particularly as briefing is now complete in both cases, considerations of judicial economy and consistency support oral argument consolidation here. Accordingly, this Court should consolidate Appellate Case No. 2022-000272, and Appellate Case No. 2022-001574 for oral argument and issue concurrent decisions. Furthermore, and pursuant to Rule 217, Petitioners respectfully move the Court for leave to orally argue against precedent in *Jolly* when these matters later come before this Court for merits disposition, to the extent such a motion is necessary.

### **CONCLUSION**

For the reasons stated above, the Court should consolidate Appellate Case Nos. 2022-000272 and 2022-001574 for oral argument and concurrent decisions, and for all other purposes deemed appropriate by the Court, and further grant Petitioners leave, to the extent necessary, to orally argue against *Jolly* precedent as requested herein.

(Signature Page Follows)

Respectfully submitted,

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