

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

RECEIVED

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

Sep 25 2023

S.C. SUPREME COURT

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.

=====

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' REPLY IN SUPPORT OF THEIR  
JOINT MOTION TO CONSOLIDATE APPEALS FOR  
ORAL ARGUMENT AND CONCURRENT DECISIONS**

Respondents' return in opposition to Petitioners' joint motion to consolidate misses the mark. Respondents contend that the legal issues are not the same by explaining how the facts in each case are distinguishable. While Petitioners agree that Respondents' arguments would preclude consolidation of cases like these for trial, the arguments made do not go to the proper legal test in this Supreme Court context. This Court has decreed it proper, under Rule 214, SCACR, 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) (emphasis added). Thus, the touchstone of consolidation for oral argument in South Carolina's *appellate courts* centers on the degree of similarity of the *legal issues* involved, not whether the cases involve the same facts.

The now limited number of legal issues in the appeals before this Court on *certiorari* regarding these two mesothelioma judgments satisfy that test. The issue on appeal on the allocation of settlement proceeds question in both cases is whether Respondents' private, unilateral, and non-binding allocation of settlement proceeds to avoid a complete setoff is in accordance with law. The legal issue regarding the new trial *nisi additur* question in both cases is whether the circuit court improperly substituted its judgment for the jury's, absent a compelling reason for doing so. This Court will be addressing the issue of whether and to what extent a trial court's discretion in the *additur* context rises to the level of an abuse of discretion. It will also be considering, in both cases, whether speculation may play a role in a decision to order a new trial *nisi additur*. It makes sense for purposes of judicial uniformity and efficiency to concurrently consider these questions, which, if not identical, are substantially similar.

There is also a sufficient legal connection on the issue of substantial factor causation. This Court granted *certiorari* on this question in *Edwards*, but not *Jolly*. However, the *Edwards*

Respondent contends that the denial of certiorari on this issue in *Jolly* is dispositive of the causation issue in *Edwards*. Petitioners disagree, but this preclusion legal issue exists with respect to both cases.

Respondents do not dispute these fundamental points of legal commonality. Respondents instead recite different record facts below and summarily conclude that such differences are significant and will affect this Court's review. But simply making that broad assertion does not make it so. Respondents do not- and cannot- explain how or why consolidation for oral argument will unfairly prejudice either of them. Accepting Respondents' suggestion of how Rule 214 should be applied, coupled with the reality that each case has its own record, would result in no legal issues in separate matters being proper for oral argument consolidation at all. But that cannot be the core purpose of Rule 214. Instead, the Rule's purpose, as evidenced here, is to encourage concurrent and judicially efficient decisions on the same important legal issues to guide the bench and bar.

Respondents in *Jolly* state in their Return "[t]he legal questions accepted for review are not overlapping, but are highly case-specific and should be considered separately on their own merits." While it cannot be disputed that *Jolly* and *Edwards* have their own facts, and that each will be decided on their own merits, this point again does not go to the test here for consolidation for oral argument purposes. There is no reason to consider the same or substantially similar legal questions presented in *Edwards* and *Jolly* "separately" as urged by the *Jolly* Respondents. Instead, under Rule 214, SCACR, this Court has the discretion to, and should, consider those issues concurrently. Accordingly, the Court should consolidate Appellate Case Nos. 2022-000272 and 2022-001574 for oral argument and for concurrent decisions.

*(Signature on following page)*

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ C. Mitchell Brown

C. Mitchell Brown (12872)  
E-Mail: mitch.brown@nelsonmullins.com  
A. Mattison Bogan (72629)  
E-Mail: matt.bogan@nelsonmullins.com  
1320 Main Street / 17th Floor  
Post Office Box 11070 (29211-1070)  
Columbia, SC 29201  
(803) 799-2000

Attorneys for Petitioners Fisher Controls International LLC  
and Crosby Valve, LLC

And

C. Mitchell Brown (12872)  
E-Mail: mitch.brown@nelsonmullins.com  
Nelson Mullins Riley & Scarborough LLP  
1320 Main Street / 17th Floor  
Post Office Box 11070 (29211-1070)  
Columbia, SC 29201  
(803) 799-2000

William P. Early (15657)  
E-mail: willearly@piercesloan.com  
Pierce, Sloan, Wilson, Kennedy & Early, LLC  
PO Box 22437  
321 East Bay Street  
Charleston, SC 29413

S. Christopher Collier (admitted *Pro Hac Vice*)  
E-Mail: Chris.Collier@lewisbrisbois.com  
Lewis Brisbois Bisgaard & Smith LLP  
600 Peachtree Street, NE, Suite 4700  
Atlanta, GA 30308

Attorneys for Petitioner Scapa Waycross, Inc

Columbia, South Carolina

September 25, 2023