

RECEIVED

Aug 30 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Court of Common Pleas
The Honorable Jean H. Toal, Circuit Court Judge

Civil Action No. 2023-CP-40-01759
Appellate Case No.

John A. Tibbs and Margaret B. Tibbs.....**PLAINTIFFS,**

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Chesterton Company; ABB Inc.; Air & Liquid Systems Corporation; Aiw-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited; ASCO, L.P.; Atlas Asbestos Co; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries Of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas Ct, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Inc.; SPX Corporation; Stafford Insulation Company; Standard Insulation Company Of N. C., Inc.; Starr Davis Company, Inc.; Starr Davis Company Of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves And Controls Us, Inc.; Velan Valve Corp.; Viking Pump, Inc.; Vistra Intermediate Company LLC; The William Powell

Company Wind Up, Ltd.; Yuba Heat Transfer LLC; Zurn Industries, LLC.....**DEFENDANTS,**

and

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..... **RESPONDENT,**

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa LTD., De Beers PLC, individually and as successor in interest to De Beers S.A., De Beers Centenary AG, De Beers Consolidated Mines Ltd., n/k/a De Beers Consolidated Mines Proprietary Ltd., De Beers UK Ltd., De Beers Jewellers LTD., De Beers Jewellers US, Inc., Anglo American US Holdings Inc., Element Six US Corp., Element Six Technologies US Corp., Element Six Technologies (OR) Corp., First Mode Holdings, Inc., Platinum Guild International (U.S.A.) Jewelry Inc., Lightbox Jewelry Inc., Forevermark US Inc., Anglo American Crop Nutrients (U.S.A.) LLC, Charter Consolidated Ltd., ESAB Corporation, Central Mining & Investment Corporation Ltd., Cape Holdco Ltd., The Law Debenture Corporation PLC, Cape Industrial Services Group Ltd., Mohed Altrad, Altrad UK Ltd., Cape UK Holdings Newco Ltd., Altrad Services, Ltd., f/k/a Cape Industrial Services Ltd., Altrad Investment Authority S.A.S., Sparrows Offshore Group Ltd., Hawk Bidco US Inc., ArranCo US, LLC, Sparrows Offshore, LLC, and The Sparrows Group, LLC.....**THIRD-PARTY DEFENDANTS,**

Of which ArranCo US, LLC, Hawk Bidco US Inc., and Sparrows Offshore, LLC are the.....**APPELLANTS.**

NOTICE OF APPEAL (MODE OF TRIAL)

Please take notice that ArranCo US, LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC, appeal the circuit court order entitled “Order Scheduling Trial Date” entered on June 20, 2024. The appealed Order constitutes a deprivation of one or more constitutional rights.¹ This

¹ S.C. Const. art. I, § 14; *see also* U.S. Const. amend. VII (“[T]he right of trial by jury shall be preserved”); *Lane v. Gilbert Constr. Co.*, 383 S.C. 590, 600, 681 S.E.2d 879, 884 (2009) (“The right to trial by jury is a fundamental right.”). The South Carolina Rules of Civil Procedure reiterates this constitutional mandate, both in Rule 38(a) concerning the right to trial by jury and in Rule 42(b) governing bifurcation. *See, e.g.*, Rule 38(a), SCRCPP (“The right of trial by jury as declared by the Constitution . . . shall be preserved to the parties inviolate.”); Rule 42(b), SCRCPP

Order is immediately appealable pursuant to subsection 14-3-330(2) of the South Carolina Code which allows for appellate review of any “order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action” See S.C. Code Ann. § 14-3-330(2).² ArranCo US, LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC, demanded a jury trial; are entitled to one under South Carolina law; and the appealed Order deprives them of this right. Moreover, this Order *must* be appealed at this juncture.³

ArranCo US, LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC, received written notice of entry of these Orders on June 20, 2024. A Notice of Removal was filed with the United States District Court for the District of South Carolina on June 28, 2024 by another party to the

(“The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim . . . or third-party claim[] or of any separate issue . . . always preserving inviolate the right of trial by jury as declared by the Constitution”); see also Rule 38(a), SCRCP (“Issues of fact in an action for the recovery of money only or of specific real or personal property must be tried by a jury, unless a jury trial be waived.”); Rule 38(b), SCRCP (“Any party may demand a trial by jury of any issue triable of right by a jury”); Rule 38(c), SCRCP (“In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable.”).

² See also *Cobb v. S.C. Dep't of Transp.*, 365 S.C. 360, 363, 618 S.E.2d 299, 300 (2005) (“If an order deprives a party of a mode of trial to which that party is entitled as a matter of right, the order is immediately appealable and failure to do so forever bars appellate review.”); *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72, 533 S.E.2d 331, 333 (2000) (“Pursuant to § 14-3-330(2), this Court as held on numerous occasions that when a trial court’s order deprives a party of a mode of trial to which it is entitled as a matter of right, such order is immediately appealable.”).

³ *Satcher v. Satcher*, 351 S.C. 477, 490, 570 S.E.2d 535, 542 (Ct. App. 2002) (“Orders affecting the mode of trial affect substantial rights protected by statute and must, therefore, be immediately appealed. *Lester v. Dawson*, 327 S.C. 263, 266, 491 S.E.2d 240, 241 (1997). ‘Moreover, the failure to timely appeal an order affecting the mode of trial effects a waiver of the right to appeal that issue.’ *Id.*” (footnote omitted)).

underlying action. The case was remanded to South Carolina state court on August 13, 2024, making this notice timely. ArranCo US, LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC are in possession of all necessary transcripts for this appeal from the appropriate court reporter.⁴

Respectfully submitted,

s/Steven J. Pugh

Steven J. Pugh (S.C. Bar No. 14341)
Benjamin P. Carlton (S.C. Bar No. 101142)
Carmen V. Ganjehsani (S.C. Bar No. 73515)
Ashwin R. Sanzgiri (S.C. Bar No. 105198)
RICHARDSON, PLOWDEN & ROBINSON, PA
1900 Barnwell Street
Columbia, South Carolina 29201
Tel.: (803) 771-4400
spugh@richardsonplowden.com
bcarlton@richardsonplowden.com
cganjehsani@richardsonplowden.com
asanzgiri@richardsonplowden.com

*Attorneys for Third-Party Defendants ArranCo US,
LLC, Hawk Bidco (US) Inc., and Sparrows Offshore,
LLC*

August 30, 2024

⁴ Pursuant to Rule 203(e)(1)(B) of the South Carolina Appellate Court Rules, the following related Appellate Case Numbers involve these Appellants: 2023-002007, 2024-000916, 2024-000524, and 2024-001064.

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., for Appellants ArranCo US, LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC, do hereby certify that I have this date served the foregoing **NOTICE OF APPEAL (MODE OF TRIAL)**, by personally serving the same pursuant to Section (d)(1) of the Supreme Court's Order dated April 24, 2024, on all counsel of record using the primary email addresses listed in the Attorney Information System (if applicable).

Parties Served:

John T. Lay, Jr. (jlay@gwblawfirm.com)
Gray T. Culbreath (gculbreath@gwblawfirm.com)
Lindsay A. Joyner (ljoyner@gwblawfirm.com)
Laura W. Jordan (ljordan@gwblawfirm.com)
Eleanor L. Jones (ejones@gwblawfirm.com)
Jonathan M. Robinson (jon@smithrobinsonlaw.com)
Shanon N. Peake (shanonp@smithrobinsonlaw.com)
G. Murrell Smith, Jr. (murrell@smithrobinsonlaw.com)

Troy S. Brown (troy.brown@morganlawis.com)
Dana E. Becker (dana.becker@morganlewis.com)
Brady Edwards (brady.edwards@morganlewis.com)
Robert W. Jacques (robert.jacques@morganlewis.com)
Paul A. Scrudato (paul.scrudato@morganlewis.com)

Counsel for the Receiver for Cape PLC

Theile B. McVey (tmcvey@kassellaw.com)
John D. Kassel (jkassel@kassellaw.com)
Jamie D. Rutkoski (jrutkoski@kassellaw.com)
Charles William Branham, III (tbranham@dobslegal.com)
Kevin W. Paul (kpaul@dobslegal.com)
David Christopher Humen (dhumen@dobslegal.com)

Counsel for Plaintiffs

James H. Elliott, Jr. (jelliott@richardsonplowden.com)
Cameron D. Berthelsen (cberthelsen@richardsonplowden.com)

Counsel for AA/DB Non-US Third-Party Defendants

John S. Nichols (john@bluesteinattorneys.com)
A. Victor Rawl, Jr. (vrawl@grsm.com)

Counsel for Co-Appellants ESAB Corporation; Central Mining and Investment Corp., Ltd.; and Charter Consolidated Ltd.

M. Todd Carroll (todd.carroll@wbd-us.com)
Kevin A. Hall (kevin.hall@wbd-us.com)
M. Elizabeth O'Neill (elizabeth.oneill@wbd-us.com)

Counsel for Co-Appellants Mohed Altrad and Altrad Investment Authority SAS

/s Ashwin R. Sanzgiri

Ashwin R. Sanzgiri

Date: August 30, 2024

From: [Ashwin Sanzgiri](#)
To: [Vic Rawl](#); [John Nichols](#); [Meredith Brown](#); tmcvey@kassellaw.com; jkassel@kassellaw.com; kpaul@dobslegal.com; jrutkoski@kassellaw.com; tbranhm@dobslegal.com; achapman@dobslegal.com; dhumen@dobslegal.com; khardin@dobslegal.com; tbarnes@dobslegal.com; pdp@rplegalgroup.com; jchandler@rplegalgroup.com; bb@rplegalgroup.com; Kevin.Hall@wbd-us.com; Elizabeth.ONeill@wbd-us.com; [James Elliott](#); [Cameron Berthelsen](#); [Steve Pugh](#); [Ben Carlton](#); [Carmen Ganjehsani](#); jon@smithrobinsonlaw.com; murrell@smithrobinsonlaw.com; ljoyner@gwblawfirm.com; jlay@gwblawfirm.com; gculbreath@gwblawfirm.com; lordan@gwblawfirm.com; ejones@gwblawfirm.com; troy.brown@morganlawis.com; dana.becker@morganlewis.com; brady.edwards@morganlewis.com; robert.jacques@morganlewis.com; paul.scrudato@morganlewis.com; shanonp@smithrobinsonlaw.com; [Charity McQueen](#); Donna.Yingling@wbd-us.com; Todd.Carroll@wbd-us.com; [Helen Elliott](#)
Subject: Notice of Appeal (Mode of Trial) (Civil Action No. 2023-CP-40-01759)
Date: Friday, August 30, 2024 2:41:30 PM
Attachments: [Notice of Appeal - Sparrows Appellants 08-30-24.pdf](#)
[Order - Scheduling Bench Trial \(3488769\).pdf](#)


Good morning,

Please find served upon you on behalf of ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC a Notice of Appeal and copy of the Order on appeal. These are served in the above-referenced case and will be filed with the Court of Appeals of South Carolina later today.

Please let me know if you have any questions.

Thank you and I hope you all have an enjoyable holiday weekend,

Ashwin Sanzgiri

HOME	BIO	LOCATION
	Ashwin R. Sanzgiri Attorney ASanzgiri@RichardsonPlowden.com	Richardson Plowden & Robinson, P.A. 1900 Barnwell Street Columbia, SC 29201 Tel: 803.576.3732 Fax: 803.779.0016 www.RichardsonPlowden.com

The information contained in this e-mail message may be attorney-client privileged, attorney work product, or strictly confidential information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone at (803) 771-4400 and permanently delete this e-mail.