

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Circuit Court Case No. 2023-CP-40-01759

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; and Zurn Industries, LLC,

Defendants,

of which

Asbestos Corporation Limited is the.....

Appellant,

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.; DeBeers PLC; DeBeers Centenary AG; DeBeers Consolidated Mines Ltd.; DeBeers S.A.; DeBeers UK Ltd.; DeBeers Jewelers US, Inc.; Angle 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 (USA) Jewelry Inc.; Forevermark US Inc.; Anglo American Crop Nutrients (USA), 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 SAS; Sparrows Offshore Group Ltd.; Hawk Bidco US Inc.; Arranco US, LLC; Sparrows Offshore, LLC; The Sparrows Group, LLC,.....

Third-Party Defendants,

of which

Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. are the Appellants.

NOTICE OF APPEAL (MODE OF TRIAL)

Please take notice that Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. (collectively, “Appellants”) appeal the circuit court order’s “Order Scheduling Trial Date” entered on June 20, 2024. The appealed Order setting the matter for a bench trial constitutes a deprivation of a constitutional right.¹ Appellants timely demanded a jury trial, and Appellants are entitled to a jury trial under South Carolina law.

This 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)

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 (“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), SCRCPP (“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), SCRCPP (“Any party may demand a trial by jury of any issue triable of right by a jury”); Rule 38(c), SCRCPP (“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.”).

strikes out an answer or any part thereof or any pleading in any action” See S.C. Code Ann. § 14-3-330(2) (2017).² Moreover, this Order *must* be appealed at this juncture.³

Appellants 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 underlying action. The case was remanded to South Carolina state court on August 13, 2024, making this notice timely. Appellants are in possession of all necessary transcripts for this appeal from the appropriate court reporter.⁴

Respectfully submitted,

Signature Page Attached

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)).

⁴ Pursuant to Rule 203(e)(1)(B), SCACR, the following related Appellate Case Numbers involve these Appellants: 2023-002009, 2023-002010, 2023-002011, 2024-000524, 2024-000916, 2024-001065 and 2024-001423.

Respectfully submitted,

Dated: August 30, 2024

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Aug 30 2024

PROOF OF SERVICE

I, the undersigned of the law offices of Gordon Rees Sculls Mansukhani LLP, attorneys for Appellants Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd., do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

Pleading(s): Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd.'s Notice of Appeal (Mode of Trial)

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August 30, 2024