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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
Acting Circuit Court Judge

Appellate Case No. 2024-
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. Hesterton 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.; Lowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services; Orporation 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.; 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 (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

Please take notice that Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. appeal the circuit court order entitled “Scheduling Order” entered on October 2, 2024 (the “Order”). For the reasons set forth in the contemporaneously filed Motion to Consolidate, this Order and the related transcript should be included as part of the appellate record in Appellate Case No. 2024-001446, currently pending before this Court.

As an initial matter, the appealed Order was entered in contravention of Rule 205, SCACR. There currently exist two pending appeals relevant to this appealed Order. In Supreme Court Case No. 2024-001423 (among others), fundamental issues regarding the existence of and authority of the Receiver to prosecute this action are before the South Carolina Supreme Court. And in Appellate Case No. 2024-001446, issues regarding the circuit court’s deprivation of a right to trial by jury are before this Court.

As a result of these appeals, individually and collectively, Rule 205 should operate to prevent all action by the lower court as to matters affected by those appeals, which would include scheduling, or rescheduling, a bench trial on the merits of the Receiver’s alleged claims. As this Court has made clear that it will not take action on orders not properly before it, this Notice of Appeal is filed out of an abundance of caution to avoid issues of issue preservation and/or waiver and to provide the Court with a complete record.

Moreover, in continuing to set this case for trial over the objections of parties to the case, the appealed Order constitutes a continuation of the deprivation of one or more constitutional

rights. Accordingly, this Order is immediately appealable pursuant to South Carolina Code § 14-3-330(2), 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”

The Charter Defendants (among others) demanded a jury trial and are entitled to one under South Carolina law, both as to (1) the Plaintiffs’ claims against Cape, which do not exist and from which the Receiver’s claims allegedly derive; and (2) the Receiver’s so-called derivative claims, which cannot be considered as a matter of law unless and until any liability is first held against Cape on the Plaintiffs’ claims). As with the earlier order on appeal in Appellate Case No. 2024-001446, the Order presented in this appeal deprives them of this constitutional right. Moreover, this Order *must* be appealed at this juncture.

The Charter Defendants received written notice of entry of these Orders on October 2, 2024, making this notice timely. They are in possession of all necessary transcripts for this appeal from the appropriate court reporter. As with their prior filings, the Charter Defendants notice this appeal without waiving, but instead while specifically preserving, their objections to personal jurisdiction.

Signature Page Attached

Respectfully submitted,

Dated: November 1, 2024

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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): Notice of Appeal

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