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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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

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Civil Action No. 2023-CP-40-01759  
Appellate Case No. 2024-

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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.**

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**NOTICE OF APPEAL**

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Please take notice that ArranCo US, LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC, 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 Appellate Case No.

2024-001497, fundamental issues regarding the authority of the Receiver to prosecute this action are before the South Carolina Supreme Court. And, in Appellate Case No. 2024-001446, issues relative to the 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 trial on the merits of the Receiver's claims. *See* Rule 205, SCACR. 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.<sup>1</sup>

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.<sup>2</sup> Accordingly, this Order is appealable pursuant to subsection 14-3-330(2) of the South

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<sup>1</sup> *See* Order in Appellate Case No. 2023-000727 (filed Nov. 21, 2023) (noting that the court will not take “action on any order which is not properly before it”); *see also* *Davis v. Parkview Apartments*, 409 S.C. 266, 281 & n.15, 762 S.E.2d 535, 543 & n.15 (2014) (characterizing unappealed discovery rulings as “law of the case” and refusing to address merits of orders underlying sanctions when each individual order was not appealed even though the orders themselves were, on their face, unappealable).

<sup>2</sup> 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.”).

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).<sup>3</sup> 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—as with the earlier order on appeal in Appellate Case No. 2024-001446—deprives them of this right. Moreover, this Order *must* be appealed at this juncture.<sup>4</sup>

ArranCo US, LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC, received written notice of entry of these Orders on October 2, 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.<sup>5</sup>

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<sup>3</sup> *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.”).

<sup>4</sup> *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)).

<sup>5</sup> 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, 2024-001064, 2024-001446 (if not consolidated as requested by the contemporaneously filed Motion to Consolidate), and 2024-001497.

Respectfully submitted,

s/Steven J. Pugh

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November 1, 2024

CERTIFICATE OF SERVICE

I, the undersigned of the law offices of Richardson Plowden & Robinson, P.A., attorneys 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**, 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).

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