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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

Mohed Altrad and Altrad Investment Authority SAS are the Appellants.

MOTION TO CONSOLIDATE

Mohed Altrad and Altrad Investment Authority SAS file this motion contemporaneously with the Notice of Appeal of the circuit court’s October 2, 2024 Order. The Altrad Defendants respectfully request, for the reasons set forth below and pursuant to Rule 214, SCACR, this Order and related transcript and documents be consolidated with Appellate Case No. 2024-001446 pending before this Court. As explained in the Notice of Appeal, the appealed Order violates Rule 205, SCACR, in at least two ways and constitutes a continuation of the deprivation of the Altrad Defendants’ constitutional rights to a trial by jury.¹ The Notice of Appeal also notes it was filed out of an abundance of caution to avoid concerns of issue preservation and/or waiver and to provide the Court with a complete record.²

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.”).

² *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 un-

Rule 214 states: “Where there is more than one appeal from the same order, judgment, decision or decree, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated.” Rule 214, SCACR. Here, the pending appeal in Appellate Case No. 2024-001446 involves the deprivation of the Altrad Defendants’ (among others’) right to trial by jury. That same “question,” within Rule 214, is implicated by the entry of the appealed Order here. Moreover, the October 2nd Order compounds the prior mode-of-trial error case while also violating Rule 205’s jurisdictional prohibitions on proceeding below. Thus, there are common issues implicated, and consolidation would serve the purpose of providing the Court with a full record in Appellate Case No. 2024-001446.

As there is no other mechanism to properly put this Order before the Court and make it a part of the appellate record, this Motion to Consolidate should be granted. *See Limehouse v. Hulsey*, 404 S.C. 93, 96, 744 S.E.2d 566, 568 (2013) (applying Rule 214)

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appealed 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, un-appealable).

Respectfully submitted,

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November 1, 2024

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PROOF OF SERVICE

I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Appellants Altrad Investment Authority SAS and Mohed Altrad, 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:

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November 1, 2024