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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. 2024-001862
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, Incl; 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 theAppellant,

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.

CHARTER DEFENDANTS' PETITION FOR REHEARING AND SUGGESTION OF
REHEARING *EN BANC*

Appellants Charter Consolidated Ltd.; ESAB Corporation; and Central Mining & Investment Corporation Ltd. (the “Charter Defendants”) respectfully request rehearing, including *en banc* rehearing, of this Court’s *sua sponte* and incorrect Order dated November 5, 2024.¹ The Court recently reaffirmed that appealability is determined from the substance of the order: “‘The substance of the relief sought,’ not the form, is typically what matters.” *Brawley v. Richland County*, Op. No. 6090, Howard Adv. Sh. 37, at 26 (S.C. Ct. App. Sept. 25, 2024) (quoting *Standard Fed. Sav. & Loan Ass’n v. Mungo*, 306 S.C. 22, 26, 410 S.E.2d 18, 20 (Ct. App. 1991)). However, the Court overlooked the substance of the order on appeal which stated: “This case is scheduled for [bench] trial on February 3-7, 2025. IT IS SO ORDERED.” The dismissal Order itself demonstrates that this Court misunderstood and/or overlooked the basis of the appeal and contemporaneous motion to

¹ By making this filing, the Charter Defendants do not waive, but instead specifically preserve, all defenses asserted and objections previously made regarding these proceedings through its written motions, oral arguments, memoranda and briefs, responsive pleadings, served responses, and appellate filings, including, *inter alia*, that: the Court lacks personal jurisdiction over each of the Charter Defendants; the Court lacks subject matter jurisdiction; the Receiver was improperly appointed; the receivership appointment order(s) are void, the Cape PLC receivership was improperly continued and modified and an entirely new receivership was granted over the separate entity named Cape Intermediate Holdings Limited (“CIHL”); the Receiver lacks standing; the Receiver’s claims improperly pled, should be severed, and/or fail under Rules 12(b) and 14, SCRCPP; and these proceedings and the claims asserted and relief sought against the Charter Appellants violate their fundamental procedural and substantive constitutional rights and protections.

consolidate, as it cites cases regarding “discovery orders” that have nothing to do with the mode-of-trial issues put before the Court. The Court’s dismissal of this appeal should be reheard, including *en banc*, and Charter Defendants should have the right to brief and argue the mode of trial issues on the merits.

The Charter Defendants are entitled to a jury trial because Third-Party Plaintiffs are seeking money damages. Further, Charter Defendants are entitled to a jury trial on the first-party claim against Cape PLC, from which the Charter Defendants’ alleged “third-party” liability supposedly derives. The circuit court deprived Charter Defendants of jury-trial rights by its June 20, 2024, Order.² This deprivation of rights is continued by the circuit court’s October 2, 2024, Order (and its relation to the prior June 20 Order.) This Court’s unprompted dismissal of this most recent appeal prevents the creation of a full record for review of the deprivation of jury trial rights below. The Receiver himself stated, in filings below, that his third-party claims include claims at law. This is a classic mode-of-trial appeal, and the order dismissing it should be reheard.

Further the order(s) had to be appealed immediately. South Carolina law is settled that orders depriving a litigant of its right to a jury trial must be appealed at once. *See, e.g., Lester*, 327 S.C. at 266, 491 S.E.2d at 241 (failure to immediately appeal “an order affecting the mode of trial effects a waiver of the right to appeal that issue”); Jean H. Toal, *et al., Appellate Practice in South Carolina* 156 (“[T]he failure to timely appeal an order affecting the mode of trial effects a waiver of the right to appeal that issue.”); *id.* at 157 (reiterating that “these orders must be appealed immediately”).

In support of this petition for rehearing, Charter Defendants incorporate by reference and adopt all arguments and authorities raised by and/or included in 1) Altrad Defendants’ Petition for

² The June 20 Order is the subject of Appellate Case No. 2024-001446.

Rehearing and Suggestion of Rehearing *En Banc* filed in this appeal on November 20, 2024, and 2) the Charter Appellants' filings, including briefs and related materials filed with this Court in Appellate Case No. 2024-001446 (mode of trial appeal of June 20, 2024, Order). *Cf.* Rule 208(b)(6), SCACR ("In cases involving more than one appellant or respondent, including cases consolidated for appeal, any number of parties may join in a single brief, and any party may adopt by reference all or any part of the brief of another."). See also *Stanley Smith & Sons, Inc. v. Dumas*, 315 S.C. 30, 33, 431 S.E.2d 595, 596 (Ct.App.1993) (the Court of Appeals took notice of the contents of the appellate record in another, unrelated case).

For the above reasons, Charter Defendants respectfully request that the Court grant this petition and rehear this matter in an *en banc* capacity.

Respectfully submitted,

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Dated: November 20, 2024

PROOF OF SERVICE

I, the undersigned of the law offices of Gordon Rees Scully 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 Defendants' Petition for Rehearing and Suggestion of Rehearing *En Banc*

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November 20, 2024