

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
In the Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No.: 2026-
Case No.: 2026-CP-40-08457

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Sep 22 2026

SC Court of Appeals

Roger D. Stiwinter and Phyllis G. Stiwinter,.....

Plaintiffs,

v.

3M Company; A. Lynn Thomas Company, Incorporated; A.O. Smith Corporation; ABB Inc.; Air & Liquid Systems Corporation; Alfa Laval Inc.; Alfol Inc.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; ASCO, L.P.; Atlas Turner, Inc.; B & D Marine and Industrial Boilers, Inc.; Badham Insulation Company; Badham Insulation Company, Inc.; Bahnson, Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; BW/IP Inc.; CIL, Inc.; Canvas CT, LLC; Canvas MW, LLC; Canvas SX, LLC; Cape Intermediate Holdings Limited; Carboline Company; Carrier Corporation; Carver Pump Company; CB&I Laurens, Inc.; Clarkson Brothers, Incorporated; Clyde Union Inc.; Compudyne, LLC; Cooper Industries, LLC; Copeland Corporation LLC; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling PFT Corp.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Duke Energy Carolinas, LLC; Ecodyne Corporation; Electrolux Home Products, Company, Inc.; ESAB Corporation; Fisher Controls International LLC; Flowserve Corporation; Flowserve US Company; Flowserve US Inc.; Fluor Constructors International, Inc.; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; G. Denver and Co., LLC; Gardner Denver Nash, LLC; General Dynamics Corporation; General Electric Company; Gould Electronics Inc.; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Henry Pratt Company, LLC; Howden North America Inc.; IMO Industries Inc.; Industrial and Commercial Insulation, Inc.; International Paper Company; ITT LLC; J.D. Shields Corporation; Metropolitan Life Insurance Company; MP Supply, Inc.; MRC Global (US) Inc.; NIBCO Inc.; Occidental Chemical

Corporation; Paramount Global; Payne & Keller Company; PECW Holding Company; Plastics Engineering Company; Redco Corporation; Rentavla LLC; Riley Power Inc.; Rockwell Automation, Inc.; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Siemens Industry, Inc.; Spirax Sarco, Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; Sterling Wander LLLP; Taco, Inc.; Teachey Mechanical, Inc.; Teachey Service Company, Inc.; Union Carbide Corporation; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc; Vistra Intermediate Company LLC; The Walworth Company; Warren Pumps LLC; Watts Regulator Co.; The William Powell Company; Wind Up, Ltd.; York International Corporation; Zurn Industries, LLC; and Zuuk International, Inc. Defendants,

of which

ESAB Corporation is the Appellant.

APPELLANT ESAB CORPORATION'S EXPLANATION OF APPEALABILITY

Appellant ESAB Corporation serves this memorandum with its Notice of Appeal to set out, at the outset, why the orders appealed from are immediately appealable under S.C. Code Ann. § 14-3-330(1) and (2). Appellant attempted to avoid this appeal by filing a Rule 59(e), SCRCF motion... Appellant is direct about the headwind: the denial of a Rule 12(b)(2), SCRCF, motion is ordinarily not immediately appealable, *Mid-State Distribs., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993), and this Court and the Supreme Court have dismissed many interlocutory appeals by asbestos defendants on this docket as premature. This appeal is taken because the August 11, 2026 Order is not the ordinary Rule 12(b)(2) denial those cases addressed, and because, under the mode-of-trial doctrine, a failure to appeal the order now would risk forfeiting review of its findings forever.

STATEMENT OF THE CASE

Respondents are personal injury plaintiffs with alleged exposure to asbestos that ended by approximately 2010. Respondents sued ESAB Corporation, a Delaware corporation incorporated May 19, 2021, with its principal place of business in Maryland. It is undisputed that ESAB Corporation did not exist during any period of alleged exposure. It has never mined, manufactured, sold, or distributed asbestos or any asbestos-containing product, and has no assets, property, or accounts in South Carolina. Every fact on which Respondents' amalgamation theory rests — the mining, sale, and distribution of Cape asbestos, the operation and 1978 liquidation of NAAC, the alleged concealment of hazards — occurred decades before ESAB Corporation existed. The Complaint contains no allegation that ESAB Corporation is the successor of any direct or indirect subsidiary; and it pleads no merger, no assumption of liabilities, no ESAB Corporation product, act, or omission during the exposure period, and no ESAB Corporation contact with South Carolina from which the claims arise. The Complaint pleads thirteen causes of action. One — the Eleventh, for "Amalgamation of Interest and Single Business Enterprise Liability" — is pled against ESAB Corporation alone; its prayer asks the court to "declare that ESAB was or is part of an amalgamation of interests and common business enterprise with Cape, and thereby liable to the Plaintiff for his damages." Compl. ¶ 321. The remaining counts, including fraudulent misrepresentation and the product claims premised on successor responsibility, are jury counts; ESAB Corporation has demanded a jury trial.

ESAB Corporation moved to dismiss under Rule 12(b)(2), SCRCPP, and, in the alternative only, under Rules 12(b)(6), 12(b)(7), and 9(b) and the Door Closing Statute. Its memorandum stated, in footnote 1, that it "does not seek—nor consent to—the Court's consideration of the other bases for its motion to dismiss or any rulings on the merits of any claims prior to a ruling on the personal jurisdiction issue," and that its alternative arguments were "expressly contingent on the

Court denying" the Rule 12(b)(2) motion. When the circuit court directed Respondents to circulate a proposed order, ESAB Corporation filed, on August 4, 2026, a Response and Objection identifying the proposed order's merits findings, its reliance on the *Tibbs* record and the Receiver's third-party complaint in that separate action, and its attribution of pre-2021 conduct to the entity formed in 2021. ESAB Corporation proposed express language confining any denial to a prima facie jurisdictional determination. On August 11, 2026, the court entered Respondents' proposed order essentially verbatim.

On August 21, 2026, ESAB Corporation served a Rule 59(e) motion asking the court to confine the Order to a prima facie determination, to delete or qualify its merits findings, and to state that nothing in it constituted a final finding that ESAB Corporation is responsible for Cape's conduct or liabilities. The motion stated that, absent such clarification, ESAB Corporation would be compelled to notice a protective appeal. On August 26, ESAB Corporation answered, preserving its jurisdictional defense and demanding a jury. On September 18, 2026, the court denied the Rule 59(e) motion without clarification, in an order that also recites, as established, that ESAB Corporation is "a party to an ongoing scheme to avoid liability for its conduct and the conduct of other entities with which it acted together to sell thousands of tons of raw asbestos fibers in the U.S. market and then abandon its liability to U.S. plaintiffs." Four days earlier, in *Tibbs v. 3M Co.*, C/A No. 2023-CP-40-01759, the Receiver had asked the same court to take judicial notice of the August 11 Order as evidence of ESAB Corporation's South Carolina contacts, and the court indicated it would take the request up. (*Tibbs* Tr. Sept. 14, 2026, at 17:3–11.) Written notice of entry of the September 18 Order was received September 18; this appeal followed within thirty days. Rule 203(b)(1), SCACR.

ARGUMENT

I. The August 11 Order "involves the merits" within § 14-3-330(1) because it finally determines every element of the Eleventh Cause of Action and deploys those determinations to dispose of independent defenses.

An order denying a Rule 12(b)(2) motion ordinarily decides nothing on the merits: it determines only that the plaintiff has made a prima facie showing sufficient to proceed, and the jurisdictional facts remain for trial, where the defendant "still may show that there is a lack of personal jurisdiction." *Mid-State*, 310 S.C. at 335, 426 S.E.2d at 780–81. The corollary is that an intermediate order which "finally determine[s] some substantial matter forming the whole or a part of some cause of action or defense" involves the merits and is appealable under § 14-3-330(1). *Brown v. County of Berkeley*, 366 S.C. 354, 622 S.E.2d 533 (2005). The question is what the August 11 Order did, not what it was labeled. See, e.g., *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 539, 773 S.E.2d 144, 147 (2015) (an appellate court's review of trial court orders is not constrained by how the order is styled; the court should look to the effect of an interlocutory order to determine its appealability). Set against the elements of the Eleventh Cause of Action, every liability element has a corresponding declarative finding:

Element of the Eleventh Cause of Action	Corresponding statement in the August 11 Order	Prima facie qualifier?
Unified, integrated, and intertwined operations with Cape for a common business purpose (Compl. ¶ 316)	"ESAB is responsible for and amalgamated with" Central Mining, Charter, and Cape (Order at 4); "intertwined operations among ESAB, Charter, Central Mining, and Cape" (Order at 9).	None. Stated declaratively, in the present tense.
Common purpose directed at the U.S. and South Carolina asbestos market (¶ 317(i))	Operations "coordinated to exploit the U.S. asbestos market (including South Carolina)" (Order at 9).	None.
Ongoing scheme to evade responsibility while	Section heading: "ESAB's Continued Attempts to Avoid Responsibility" (Order at 6); a "byzantine web to appear	The Introduction uses "alleged party" once; the headings

Element of the Eleventh Cause of Action	Corresponding statement in the August 11 Order	Prima facie qualifier?
financially benefitting (§ 317(ii))	separate while avoiding liability"; the enterprise "hid known health risks, and avoided responsibility when liability materialized" (Order at 3, 9).	and body findings are declarative.
Bad faith, abuse, fraud, wrongdoing, or injustice from blurring of legal distinctions (§ 318 — the <i>Pertuis</i> element)	Section heading: the enterprise "perpetrated a fraud on the U.S. market" (Order at 5); "treating ESAB and Cape as separate would defeat justice" (Order at 9).	The "defeat justice" conclusion carries no prima facie qualifier.
Attribution and requested declaration of responsibility (§§ 319, 321)	"ESAB is responsible for Cape's actions" (Door Closing Statute ruling, Order at 10); "Cape acted as agent for ESAB" (specific-jurisdiction ruling, Order at 9).	None. Both statements are categorical.

Three features of that mapping establish that the Order involves the merits.

First, the findings are load-bearing, not rhetorical. The Order denies the Door Closing Statute defense "because ESAB is responsible for Cape's actions" (Order at 10), and it holds Cape dispensable under Rule 19 because "complete relief is available against ESAB under veil-piercing/amalgamation theories" (Order at 10–11). Neither ruling is part of a Rule 12(b)(2) inquiry, neither is governed by the prima facie standard, and both were decided against ESAB Corporation on the strength of a determination that ESAB Corporation is answerable for Cape's conduct. An order that deploys a merits conclusion to dispose of distinct defenses has, in substance, finally determined that matter — whatever the prima facie recitations elsewhere in it. And it did so over ESAB Corporation's express statement that it did not consent to any merits ruling before a ruling on personal jurisdiction, and that its alternative grounds were contingent on the denial of the Rule 12(b)(2) motion. The court did not deny the jurisdictional motion and then take up the alternative grounds on their own terms; it decided them in the same order, as merits rulings, on the jurisdictional findings.

Second, the ordinary safety valve is structurally unavailable for this claim. The reason a prima facie jurisdictional ruling is provisional is that the defendant may still disprove jurisdiction at trial. *Mid-State*, supra. But amalgamation and veil piercing are equitable theories tried to the court, not to a jury. *Pertuis v. Front Roe Rests., Inc.*, 423 S.C. 640, 817 S.E.2d 273 (2018); *Walbeck v. I'On Co.*, 439 S.C. 568, 889 S.E.2d 537 (2023) The finder of fact for the Eleventh Cause of Action is the same judge who has now declared, over written objection, that the enterprise "perpetrated a fraud," that corporate separateness "would defeat justice," and that "ESAB is responsible for Cape's actions." For the equitable count, the factfinder has already announced every element. If those statements stand, the "trial" of the equitable claim would resolve little beyond damages under the tort theories — which is the definition of a matter finally determined.

Third, the findings are already operating as adjudications beyond this case. ESAB Corporation faces parallel motions on materially identical grounds in many other actions on the coordinated docket, brought by the same counsel. Respondents' counsel in those matters can be expected to cite the August 11 Order — and its unqualified findings — as authority in those matters. That is not speculation. On September 14, 2026, the Receiver in *Tibbs* asked the circuit court to take judicial notice of the August 11 Order as evidence of ESAB Corporation's jurisdictional contacts, and the court indicated it would consider the request. (*Tibbs* Tr. Sept. 14, 2026, at 17:3–11.) And on September 18 the circuit court itself recited the Order's findings as established facts in a sanctions order precluding ESAB Corporation from asserting a privilege challenge. An order offered and received as evidence of adjudicated facts in other proceedings is not functioning as a prima facie ruling.

The significance of the sequence by which the Order was entered should not be understated. The court was asked, in writing and with a redline, to disclaim merits findings before entry; it

entered Respondents' order with those findings intact. It was asked again by Rule 59(e) motion to confine the Order to a prima facie determination; it denied the motion without clarification. The findings are therefore not loose drafting that can be explained away later. They are language the court retained after twice being asked to remove it.

II. The Order affects a substantial right within § 14-3-330(2) because it withdraws issues common to the jury counts from the jury, and such an order must be appealed now or not at all.

Section 14-3-330(1) permits an intermediate order involving the merits to be appealed immediately or from final judgment at the appellant's election; the subsection's proviso preserves intermediate orders for review on appeal from the final judgment. The mandatory doctrine lives in § 14-3-330(2), which governs orders affecting a substantial right — most prominently, orders affecting the mode of trial. An order that deprives a party of a jury trial on issues it is entitled to have tried to a jury must be appealed immediately, and the failure to do so waives the right to appeal the issue. *Foggie v. CSX Transp., Inc.*, 313 S.C. 98, 431 S.E.2d 587 (1993); *Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985); *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 511 S.E.2d 372 (Ct. App. 1998).

The Order's unqualified findings on agency, fraud, and attribution resolve issues common to the jury counts — the fraudulent-misrepresentation claim and the product claims premised on successor responsibility. If those findings bind going forward, the Order withdrew jury issues from the jury and decided them from the bench; and the September 18 Order's recital of ESAB Corporation as "a party to an ongoing scheme" shows that the circuit court treats them as binding. An order depriving a party of its right to a jury trial on legal claims is the paradigm § 14-3-330(2) mode-of-trial order. ESAB Corporation acknowledges that the Order does not formally refer anything to a non-jury proceeding or strike the jury demand, and that a court which resolves

doubtful appealability against interlocutory review should hesitate to spring a waiver trap on the same ambiguity. But the characterization is available to Respondents, and the consequence if it were accepted after the appeal window closed would be total: the findings adjudicating every element of the equitable count, and the common issues of fraud and agency, would become unreviewable.¹ ESAB Corporation therefore asserts appealability under both subsections, so that under every characterization of the Order the appeal is timely.

III. This is not the ordinary Rule 12(b)(2) denial that *Mid-State* and the premature-appeal cases addressed.

The Supreme Court, in dismissing premature interlocutory appeals on this docket, has said that it "would not hesitate" to act in a proper case. *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 916 S.E.2d 320 (2025). The record distinguishing this appeal did not exist in the appeals that were dismissed: an order making ultimate findings on fraud, agency, and successor responsibility; entered verbatim from the prevailing party's draft after the court was expressly asked, with a redline, to confine its ruling to a prima facie determination; using those findings dispositively against independent defenses that the movant had expressly declined to have decided in that posture; denied clarification a second time on a Rule 59(e) motion that identified each finding by page; directed at an equitable claim the same judge will try; and already offered as evidence of adjudicated facts in another action before the same court. If the Order made no merits determination and decides nothing that binds the factfinder or the jury, this Court can say so, and

¹ Where a case presents both legal and equitable issues, the legal issues are for a jury's determination and the equitable issues are for the court. If both are to be determined in the same proceeding, the legal issues are to be determined first, and the jury's findings are binding on the court in the determination of the equitable issues. *E.g.*, *Bateman v. Rouse*, 358 S.C. 667, 596 S.E.2d 386 (Ct. App 2004). *See, also*, *Johnson v. South Carolina Nat. Bank*, 292 S.C. 51, 55, 354 S.E.2d 895, 897 (1987) (when issues common to both legal and equitable claims are to be tried in a single proceeding, legal issues are to be determined first, and the findings of the jury are binding on the sitting judge, as trier of the equitable claims).

ESAB Corporation will have obtained by dismissal of the appeal the very clarification it sought below twice but did not obtain. What ESAB Corporation cannot risk is an order that is treated as an adjudication in the circuit court and in the parallel actions and as a non-appealable prima facie ruling in this Court.

IV. The appeal is protective, its cost if dismissed is bounded, and the circuit court's characterization of its order does not control.

ESAB Corporation does not contend that a routine prima facie jurisdictional ruling is appealable, and it asked the circuit court to state that the order was so limited. The September 18 Order's statement that it "is not an appealable order" describes the September 18 discovery rulings, not the August 11 Order, and in any event a trial court's characterization of its own order does not determine appealability under § 14-3-330. If the appeal is dismissed as interlocutory, the result is bounded — the cost of the appeal, and full preservation of final-judgment review under the proviso to § 14-3-330(1) — and the dismissal itself is insurance, because Respondents could not thereafter argue that ESAB Corporation waived a mandatory immediate appeal when this Court has held the appeal premature. If ESAB Corporation had not appealed and the Order were later recharacterized as a § 14-3-330(2) order, review of the findings would be waived permanently. A bounded cost on one side; an unbounded loss on the other. And independent of appellate doctrine, an unchallenged order would hand Respondents an acquiescence narrative in this case and in many others — that findings ESAB Corporation "never even tried to appeal" are settled. A timely notice of appeal answers that narrative on the record.

V. ESAB Corporation is participating in discovery under preserved objection.

This appeal is not brought for the purposes of delay. ESAB Corporation is fully participating in discovery. ESAB Corporation produced Rita J. Herring, whose affidavit supported its motion to dismiss, for deposition on March 18, 2026; on September 20, 2026 it identified its

Rule 30(b)(6) designee and produced 2,431 pages of documents, and its designee will appear for the deposition ordered for September 23. Participation in discovery after an adverse jurisdictional ruling does not waive the preserved defense, *Abdulla v. S. Bank*, 439 S.C. 391, 887 S.E.2d 138 (Ct. App. 2023), and it does not waive this appeal. Every filing maintains ESAB Corporation's objection to personal jurisdiction and objection under the Due Process Clause of the Fourteenth Amendment expressly.

CONCLUSION

The August 11 Order, as left standing by the September 18 Order, finally determines every element of the Eleventh Cause of Action and uses those determinations to dispose of independent defenses; it withdraws issues common to the jury counts from the jury; and it is already being used as an adjudication elsewhere. It is immediately appealable under § 14-3-330(1) and (2).

Respectfully submitted,

Dated: September 22, 2026

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PROOF OF SERVICE

I, the undersigned of the law offices of Gordon Rees Sculls Mansukhani LLP, attorneys for ESAB Corporation, do hereby certify that I have served a copy of the foregoing Memorandum in Support of Appealability on all counsel of record by electronic mail and through the Court's electronic filing system, including:

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[All other counsel of record in Case No. 2025-CP-40-08457 — per the coordinated-docket service list.]

Dated: September 22, 2026

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