

The South Carolina Court of Appeals

Timothy W. Howe, Individually and as Personal
Representative of the Estate of Wayne Erwin Howe,
Deceased, and Jeanette Howe, Respondents,

v.

Air & Liquid systems Corp., Individually and as
successor-in-interest to Buffalo Pumps, Inc.; Airco, Inc.;
Airgas USA, LLC f/k/a National Welding Supply, Inc.;
Albany International Corp.; Asten-Johnson, Inc.; Aurora
Pump Company; A.W. Chesterton Company; Beloit
Corporation; Black Clawson Converting Machinery
LLC, Individually and as a subsidiary of Davis-Standard
LLC; CBS Corporation, A Delaware corporation f/k/a
Viacom, Inc., Successor by merger to CBS Corporation,
A Pennsylvania Corporation, f/k/a Westinghouse Electric
Corporation; CGR Products, Inc. f/k/a Carolina Gasket
and Rubber Company; CNA Holdings, Inc. f/k/a Hoechst
Celanese Corporation (sued individually and as successor
in interest to Fiber Industries, Inc.); Cleaver Brooks, Inc.;
Covil Corporation; Crane Co.; Crown Cork & Seal
Company, Inc.; Daniel International Corporation; Davis-
Standard Corporation, LLC; Dezurik, Inc. d/b/a Dezurik-
APCO Williamette Eagle, Inc.; Fisher-Klosterman, Inc.,
as successor-in-interest to Buell Engineering Co.;
Flowserve Corporation, Individually and as successor-in-
interest to Durco Pumps; Fluor Daniel Services
Corporation; Foster Wheeler energy Corporation;
General Electric Company; The Gorman-Rupp
Company; Goulds Pumps, Incorporated; Ingersoll-Rand
Company; Linde, LLC f/k/a The Boc Group, Inc. f/k/a
Airco, Inc.; Marsulex Environmental Technologies
Corporation, Individually and as successor-in-interest to
Buell Engineering Co.; Metropolitan Life Insurance
Company, A wholly-owned subsidiary of Metlife Inc.;
Peerless Pump Company; Presnell Insulation, Inc; Riley
Power, Inc., Individually and as successor-in-interest to

Babcock Borsig Power, Inc. and Riley Stoker Corporation, Individually and as successor-in-interest to D.B. Riley; SCAPA Waycross, Inc.; Sepco Corporation; SPX Cooling Technologies, Inc. f/k/a Marley Cooling Technologies, Inc. f/k/a The Marley Cooling Tower Co.; Sterling Fluid systems (USA) LLC; Trane U.S., Inc. f/k/a American Standard, Inc. f/k/a American Radiator & Standard Manufacturing Company; Union Carbide Corporation; Uniroyal, Inc. f/k/a United States Rubber Company, Inc.; United Conveyor Corporation; Velan Valve Corp.; Viking Pump, Inc.; Warren Pumps LLC; Yuba Heat Transfer Corporation; Zurn Industries, Defendants,

Of which Covil Corporation is the Appellant.

AND

Roxanne Falls, Individually and as Personal Representative of the Estate of Charlotte Gaye Smith, Respondent,

v.

CBS Corporation, a Delaware corporation f/k/a Viacom, Inc., successor by merger to CBS Corporation, a Pennsylvania Corporation f/k/a Westinghouse Electric Corporation; CNA Holdings, Inc. f/k/a Hoechst Celanese Corporation, sued individually and a successor-in-interest to Fiber Industries, Inc.; Cleaver-Brooks, Inc.; Covil Corporation; Daniel International Corporation; Fluor Daniel, Inc. f/k/a Daniel Construction Company, Inc.; Fluor Daniel Services Corporation; Foster Wheeler Energy Corporation; General Electric Company; MP Supply, Inc. f/k/a Mill-Power Supply Co. and Mill Power Supply Company; Resolute FP US, Inc.; Union Carbide Corporation; United States Fidelity Guaranty Company; Uniroyal, Inc. f/k/a United States Rubber Company, Inc. and United Conveyor Corporation, Defendants,

Of which Covil Corporation is the Appellant.

AND

James Coleman Sizemore, as Personal Representative of
the Estate of James Calvin Sizemore, Decedent,
Respondent,

v.

Bowater Paper Mill; E.I. Du Pont De Nemours and
Company; Foster Wheeler Energy Corporation; Daniel
International Corporation f/k/a Daniel Construction
Company, Inc.; Resolute FP US Inc. f/k/a Bowater
Incorporated; CBS Corporation, A Delaware Corporation
f/k/a Viacom, Inc. successor-by-merger to CBS
Corporation, A Pennsylvania Corporation f/k/a
Westinghouse electric Corporation; Cleaver-Brooks, Inc
f/k/a Aqua-Chem, Inc. d/b/a Cleaver-Brooks Division;
Covil Corporation; Fluor Constructors International f/k/a
Fluor Corporation; Fluor Constructors International, Inc.;
Fluor Daniel Services Corporation; Fluor Enterprises,
Inc.; General Electric Company d/b/a Rayloc a/k/a
NAPA; Georgia-Pacific Consumer Products LP;
Honeywell International, Inc. f/k/a Allied-Products
Liability Signal, Inc., sued as successor-in-interest to
Bendix Corporation; SCANA Corporation d/b/a South
Carolina Electric & Gas; Riley Power, Inc. f/k/a Riley
Stoker Corporation and D.B. Riley, Inc.;

AND

Waste Management of South Carolina, Inc., successor by
merger to USA Waste of South Carolina, Inc., successor
by merger to Chambers Medical Technologies, Inc.,
Defendants,

Of which Covil Corporation is the Appellant.

ORDER

Appellant and Respondents have filed a joint motion to dismiss this appeal and to vacate the trial court's March 1, 2018 order striking Appellant's Answer in the action filed by Respondent Howe.¹ Rule 261(d) of the South Carolina Appellate Court Rules provides that the parties "may request vacation of opinions, orders, decisions and judgments previously issued in the matter" as part of a settlement agreement, but the agreement "must set forth the facts that warrant this extraordinary relief." Here, the parties explain they have reached an agreement, however, the agreement fails to set forth the facts that warrant vacating the March 1, 2018 order as required by Rule 261(d). Accordingly, the motion is denied. Nothing prevents the parties from resubmitting an agreement that sets forth sufficient facts or an agreement without a request for vacation.

James E. Lockery

C.J.

Thomas C. Hill

J.

Paul W. Thomas

J.

Columbia, South Carolina

FILED

June 28, 2019

¹ We note the parties did not include in their agreement a request to vacate the February 28, 2018 order striking Appellant's Answer in the action filed by Respondent Smith or the February 28, 2018 order striking Appellant's Answer in the action filed by Respondent Sizemore.

cc:

The Honorable Jean Hoefer Toal

Theile Branham McVey, Esquire

John D. Kassel, Esquire

Jonathan Marshall Holder, Esquire

Mark H. Wall, Esquire

Morgan S. Templeton, Esquire

Renee Melancon, Esquire

Ashley K. Brathwaite, Esquire