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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Jean Hoefer Toal, Chief Justice of the Supreme Court of South Carolina (Retired),
Acting as Circuit Court Judge

Appellate Case No. 2018-000385

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

vs.

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; AW. 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, Pennsylvania Corporation, f/k/a Westinghouse Electric Corporation; CGR
Products, Inc., f/k/a Carolina Gasket and Rubber company; CAN 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 Boe 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 & 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.....Respondents

vs.

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 as 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, Descendant.....Respondent.

vs.

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

Of which Covil Corporation is the Appellant.

SUPPLEMENTAL MOTION TO DISMISS

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SUPPLEMENTAL JOINT MOTION FOR VOLUNTARY DISMISSAL OF APPEAL

The parties to this appeal jointly filed a motion for voluntary dismissal of this appeal on May 23, 2019 pursuant to Rule 240 of the South Carolina Appellate Court Rules, which governs motions and petitions generally. Specifically, the parties moved pursuant to Rules 260(b) and 261(d) of the South Carolina Appellate Court Rules. Appellant Covil Corporation (Appellant Covil) and Appellees James Coleman Sizemore, as personal representative of the estate of respondent, Calvin Sizemore (Respondent Sizemore); Roxanne Falls, individually and as personal representative of the estate of respondent, Charlotte Gaye Smith (Respondent Smith); and Timothy W. Howe, individually and as personal representative of the estate respondents of Wayne Erwin Howe and Jeanette Howe (Respondent Howe) (jointly "the parties") jointly requested this Court to enter an order dismissing this appeal.

Rule 260(b) states that an agreement to dismiss an appeal does not need to "be in the form of a motion unless the parties request that the appellate court ... vacate a prior order, opinion, or judgment." Rule 261(d) of the Appellate Rules expressly allows agreements between parties that "request vacation of opinions, orders, decisions, and judgments previously issued in the matter."

On July 2, 2019, the Court denied the parties' joint motion, and reminded the parties that the agreement "must set forth facts that warrant this extraordinary relief." R. 261(d). The Court footnoted that the parties requested the court vacate only the Order in the case filed by Respondent Howe.

Accordingly, the parties clarify that they intended to include in their prior motion and therefore include in this supplemental motion a request to vacate the February 28, 2018 orders

striking Appellant's Answers in the actions filed by Respondent Smith and Respondent Sizemore as well as the March 1, 2018 order striking Appellant's Answer in the action filed by Respondent Howe.

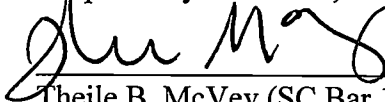
In further support of their motion, the parties set forth the following facts that warrant this extraordinary relief.

First, given the resolution of liability as to most every other Defendant in the underlying actions since the filing of this appeal, and the expense of a years-long appeal fight, Respondent Howe, Respondent Falls, and Respondent Sizemore each believe it in the best interest of each Estate represented to waive the underlying sanctions and request that the orders that are the subject of this appeal be vacated and the current trial date preserved. Second, Covil agrees to dismiss the appeal if the underlying sanctions are vacated. Third, the lower court set a trial date in the *Smith* matter as to a separate remaining defendant; therefore, the parties also agreed that if the dismissal of the appeal were granted, no motion for continuance of the trial date would be made by any party. **Finally, the relief requested by the parties is part of a negotiated settlement agreement involving multiple actions.**

CONCLUSION

For the forgoing reasons, the parties believe extraordinary relief is warranted. Accordingly, the parties request an Order vacating the February 28, 2018, and March 1, 2018 orders in the cases filed by Respondent Howe, Respondent Smith and Respondent Sizemore, dismissing the three above-captioned appeals, and remanding for trial as set by the lower court.

Respectfully submitted,



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July 9, 2019

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