

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Jean H. Toal, Circuit Court Judge

Appellate Case No. 2019-001600

RECEIVED

DEC 20 2019

SC Court of Appeals

Rita Joyce Glenn, individually and as personal
representative of the Estate of Thomas Harold Glenn,
deceased,

Respondent,

v.

3M Company, f/k/a Minnesota Mining and Manufacturing Co.; Air & Liquid Systems Corporation, Individually and as Successor-In-Interest to Buffalo Pumps; Airgas USA, LLC; Aurora Pump; BW/IP Inc., a Subsidiary of Flowserve Corporation; 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, Inc.; Carboline Company; Crane Co. d/b/a Crane Chempharma & Energy d/b/a Aloyco, n/k/a Crane Energy Flow Solutions; Crosby Valve, Inc.; Dana Companies, LLC; Daniel International Corporation; Fisher Controls International, LLC.; Flowserve Corporation, Individually and as Successor in Interest to Anchor/Darling Valve Company; Flowserve Corporation, Individually and as Successor to Byron Jackson Pump Company; Fluor Daniel, Inc., f/k/a Daniel Construction Company, Inc.; Fluor Daniel Services Corporation; Foster Wheeler Energy Corporation; General Electric Company; Goodyear Tire & Rubber; Goulds Pumps, Inc.; Grinnell LLC, f/k/a Grinnell Corp, f/k/a ITT Grinnell Corp., Individually and as Successor to Kennedy Valve Manufacturing Co., Inc.; Hajoca Corporation; Imo Industries, Inc., Individually and as Successor-in-Interest to De Laval Turbine, Inc.; Ingersoll Rand Company; ITT Corporation; John Crane, LLC; Linde LLC, a Delaware Limited Liability Company, formerly known as the BOC Group, Inc. and/or Airco, Inc.; MP Supply, Inc. f/k/a Mill Power Supply; Metropolitan Life Insurance Company, a

wholly-owned subsidiary of MetLife Inc.; Sepco Corporation; The J.R. Clarkson Company Solely as a Successor by Merger to Anderson Greenwood & Co., f/k/a Kunkle Valve Company, Inc.; The Sherwin- Williams Company; Trane U.S. Inc., f/k/a American Standard, Inc.; United Conveyor Corporation; United Seal & Rubber Company, Inc.; Uniroyal, Inc., f/k/a United States Rubber Company, Inc.; Velan Valve Corporation; Viking Pump, Inc.; and Weir Valves & Controls USA, Inc., Individually and as Successor in Interest to Atwood & Morrill Co., Inc., Defendants,

Of which, Fisher Controls International LLC, is the Appellant.

APPELLANT’S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Pursuant to Rule 209 of the South Carolina Appellate Court Rules, Appellant Fisher Controls International LLC (“Fisher”) designates the following material for inclusion in the record on appeal:

Orders

1. Order Approving Wrongful Death and Survival Settlements filed November 7, 2017;
2. Order Granting Plaintiff’s Motion for Protection Against the Trial Preservation Deposition of Dr. Timothy Oury filed January 7, 2019;
3. Order Denying Defendant’s Motion to Reconsider filed January 7, 2019;
4. Order Granting Plaintiff’s Motion in Limine No. 8 to Strike Defendants’ Tissue Digestion and Preclude Any Evidence or Testimony Based on Defendants’ Tissue Digestion filed January 11, 2019;
5. Order on Defendant Fisher’s Post-Trial Motions filed August 22, 2019 (addressing Fisher’s motions for JNOV, new trial, new trial *nisi remittitur*, and setoff);

6. Order on Defendant Fisher's Post-Trial Motions filed August 22, 2019 (granting Plaintiff's motion for sanctions);

Pleadings

7. Plaintiff's Amended Complaint filed July 21, 2016;

8. Fisher's Answer to Plaintiff's Amended Complaint filed August 12, 2016;

Transcripts

9. January 9, 2019 Pretrial Hearing Transcript pp. 1–6, 34–41, 80–141, 147–61, 176–77;

10. Trial Transcript pp. 1–3, 89–93, 115–887, 898–991, 999–2421;

11. June 10, 2019 Post-Trial Hearing Transcript pp. 1–4, 25–185;

Motions and Memoranda

12. Plaintiff's Motion in Limine No. 1 Omnibus MIL filed February 9, 2018;

13. Plaintiff's Motion in Limine No. 6 to Exclude Unduly Speculative and Unreliable Opinion Testimony and Related Evidence filed February 9, 2018;

14. Fisher's Motion for Additional Pathology Testing filed December 6, 2018;

15. Defendants' Joint Motion in Limine No. 2 to Exclude Plaintiffs' Experts from Testifying That Every Exposure Contributes to Disease filed December 28, 2018;

16. Plaintiff's Motion in Limine No. 8 to Strike Defendants' Tissue Digestion and Preclude Any Evidence or Testimony Based on Defendants' Tissue Digestion filed December 28, 2018, with the following exhibits:

- a. Exhibit 1 – December 6, 2018 letter from Jonathan Holder to Tim Bouch and Yancey McLeod;

- b. Exhibit 2 – December 17, 2018 Email from Jonathan Holder to Tim Bouch
(and remainder of email chain included as Exhibit 2);
17. Fisher’s Response to Plaintiff’s Motion in Limine No. 1 filed January 4, 2019;
18. Fisher’s Response to Plaintiff’s Motion in Limine No. 6;
19. Plaintiff’s Consolidated Response to Defendants’ Motions to Exclude the Causation Testimony of Plaintiff’s Expert Witnesses filed January 4, 2019;
20. Plaintiff’s Motion for Protection Against the Trial Preservation Deposition of Dr. Timothy Oury filed January 4, 2019, with the following exhibits:
 - a. Exhibit A – Defendants’ Notice of Taking Trial Preservation Deposition of Dr. Tim D. Oury;
 - b. Exhibit B – November 28, 2018 report of Dr. Oury;
 - c. Exhibit C – December 18, 2018 supplemental report of Dr. Oury;
 - d. Exhibit E – RJ Lee Group digestion report;
21. Defendants’ Response to Plaintiff’s Motion in Limine to Strike Defendants’ Tissue Digestion and Preclude Any Evidence or Testimony Based on Defendants’ Tissue Digestion filed January 4, 2019, with the following exhibits:
 - a. Exhibit A – Email chain concluding with December 11, 2018 email from Jonathan Holder to Tim Bouch;
 - b. Exhibit C – December 4, 2018 email from Yancey McLeod to Reid Jensen;
 - c. Exhibit D – Email chain concluding with December 7, 2018 email from Theile McVey to Justice Toal;
 - d. Exhibit E – Email chain concluding with December 7, 2018 email from Trey Branham to Theile McVey;

- e. Exhibit F – Email chain concluding with December 7, 2018 email from Yancey McLeod to Trey Branham and Theile McVey;
 - f. Exhibit G – Email chain concluding with December 10, 2018 email from Yancey McLeod to Trey Branham and Theile McVey;
 - g. Exhibit H – Chain of Custody;
 - h. Exhibit I – Email chain concluding with December 11, 2018 Email from Yancey McLeod to Trey Branham;
 - i. Exhibit L – Affidavit of Drew R. Van Orden;
22. Defendant’s Response to Plaintiff’s Motion for Protection (and Rule 59(e) Motion to Alter or Amend) filed January 7, 2019;
23. Defendants’ Objection to Proposed Order and Supplemental Memorandum Opposing Motion in Limine filed January 10, 2019, with the following Exhibit:
- a. Exhibit A – Proposed Order Granting Plaintiff’s Motion in Limine No. 8;
24. Defendants’ Joint Motion to Include Other Potential Tortfeasors in the Apportionment of Fault and to Approve Defendants’ Proposed Verdict Form filed January 21, 2019, with the following exhibit:
- a. Exhibit A – Proposed Verdict Form of Defendants Fisher, Crosby, and Carboline;
25. Defendants Fisher and Crosby’s Joint Motion for a Directed Verdict;
26. Plaintiff’s Motion for Sanctions Against Defendant Fisher filed February 4, 2019;
27. Fisher’s Motion for Setoff and Production of Plaintiff’s Settlements and Payments From All Third Parties filed February 4, 2019;

28. Fisher's Motion for JNOV, New Trial, or New Trial *Nisi Remittitur* filed February 4, 2019;

29. Fisher's Response Opposing Plaintiff's Motion for Sanctions filed February 14, 2019, with the following exhibit:

a. Exhibit A – Affidavit of Timothy W. Bouch and accompanying exhibits;

30. Plaintiff's Response in Opposition to Fisher's Motion for JNOV, New Trial, or New Trial *Nisi Remittitur* filed March 5, 2019;

31. Fisher's Reply in Support of its Motion for JNOV, New Trial, or New Trial *Nisi Remittitur* filed March 20, 2019;

32. Plaintiff's Response in Opposition to Fisher's Motion for Setoff and Production of Plaintiff's Settlements and Payments From All Third Parties filed June 6, 2019;

33. Fisher's Reply in Support of its Motion for Setoff and Production of Plaintiffs' Settlements and Payments from All Third Parties filed June 9, 2019;

34. Fisher's Objection to Plaintiff's Proposed Order on Fisher's Post-Trial Motions, and Supplemental Memorandum in Support of Post-Trial Motions filed July 9, 2019, with the following exhibit:

a. Exhibit A – Plaintiff's Proposed Order on Fisher's Post-Trial Motions;

35. Response of Fisher to Plaintiff's Proposed "Order on Defendant Fisher Controls International LLC's Post-Trial Motions" (*10-Page Motion Concerning Sanctions*) filed July 9, 2019;

Trial Exhibits

36. Plaintiff's Exhibit 4 – November 1, 1985 Asbestos Replacement Program Memorandum;

37. Plaintiff's Exhibit 25 – June 7, 1972 Federal Register;
38. Plaintiff's Exhibit 28 – April 8, 1999 Memorandum titled “Results of Industrial Hygiene Air Monitoring Performed at Your Work Location on January 26, 1999 at the FSC Gonzales Facility”;
39. Defendants' Exhibit 9 – Duke Power Steam Production Department “Safe Working Practices When Working With Asbestos”;
40. Defendants' Exhibit 11 – Slide Highlighting 1972 OSHA Regulations;
41. Defendants' Exhibit 12 – Slide Highlighting 1972 OSHA Regulations;
42. Defendants' Exhibit 13 – September 22, 1972 Duke Power Safety Meeting Letter;
43. Defendants' Exhibit 36 – 1984 Duke document titled “Asbestos: How to Protect Yourself”;
44. Court's Exhibit 23 – Sworn Statement of Dr. Oury;

Other Materials

45. Defendants' Proposed Jury Charge filed January 22, 2019;
46. Verdict Form dated January 24, 2019;
47. Punitive Damage Verdict Form dated January 25, 2019;
48. Plaintiff's Proposed Order Granting Sanctions, submitted to the trial court via email on June 21, 2019; and
49. Affidavit of Yancey McLeod filed July 9, 2019 with the following exhibits:
 - a. Exhibit 2 – Excerpt from *Jolly v. General Electric Co., et al.* trial transcript;
 - b. Exhibit 3 – December 20, 2018 Email from Yancey McLeod, with attachments;

- c. Exhibit 4 – December 10, 2018 Email from Yancey McLeod to Trey Branham and Theile McVey, with attachment.

The undersigned counsel certifies, pursuant to Rule 209(c) of the South Carolina Appellate Court Rules, that this designation contains no matter which is irrelevant to the appeal.

(signature page attached)

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Columbia, South Carolina

December 20, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

SC Court of Appeals

Jean H. Toal, Circuit Court Judge

Appellate Case No. 2019-001600

Case No. 2015-CP-04-01607

Rita Joyce Glenn, Individually and as Personal
Representative of the Estate of Thomas Harold Glenn,.....

Respondent,

v.

3M Company, f/k/a Minnesota Mining and
Manufacturing Co., et al.,.....

Defendants,

Of which Fisher Controls International LLC, is the

Appellant.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellant, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

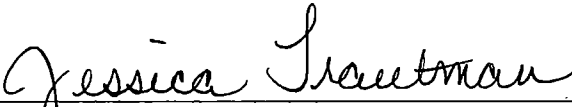
Pleadings:

Initial Brief of Appellant
Appellant's Designation of Matter

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Dec. 20, 2019



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December 20, 2019

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SC Court of Appeals

Via: Hand Delivery
The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1220 Senate Street, SC 29201

RE: Glenn, Thomas H., et al. v. Crosby Valve LLC, et al.
Case No. 2015-CP-04-01607
Appellate Case No. 2019-001600
Our File No. 044985/01502

Dear Ms. Kitchings:

Enclosed please find the original and one copy of Appellant's Initial Brief and Designation of Matter in regard to the above-referenced matter. We would ask that you file the original and return a clocked-in copy to us via our courier.

By copy of this letter to counsel of record, we are hereby serving them with a copy of same.

Very truly yours,

A. Mattison Bogan

AMB:jlt
Enclosures

cc: Theile B. McVey, Esquire
Jessica M. Dean, Esquire
Jonathan M. Holder, Esquire