

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Jean H. Toal, Circuit Court Judge

Case No. 2018-001965

RECEIVED

FEB 10 2020

SC Court of Appeals

Jerry Howard Crawford, individually and as Personal Representative of the Estate of Evelyn Kay Crawford, Respondent

v.

Celanese Corporation, Aurora Pump Company; Carrier Corporation, CNA Holdings, LLC, f/k/a Hoechst Celanese Corporation; Covil Corporation; Crane Co., Daniel International Corporation f/k/a Daniel Construction Company, Inc.; Flowserve Corporation, individually and as successor-in-interest to Anchor/Darling Valve Company, and individually as successor-in-interest to Durco Pumps; Flowserve, US Inc.; Fluor Constructors International, f/k/a Fluor Corporation; Fluor Constructors, International, Inc.; Fluor Daniel Services Corporation, Fluor Enterprises, Inc.; Ford Motor Company; Genuine Parts Company, d/b/a Rayloc (a/k/a NAPA); The Goodyear Tire & Rubber Company; Goulds Pumps, Inc.; Grinnell, LLC f/k/a Grinnell Corp., f/k/a ITT Grinnell Corp.; Honeywell International, Inc., f/k/a Allied-Products Liability Signal, Inc., sued as successor-in-interest to Bendix Corporation; Ingersoll-Rand Company; John Crane, Inc., Metropolitan Life Insurance Company, a wholly owned subsidiary of Metlife Inc.; National Automotive Parts Association, (NAPA); Parker-Hannifin Corporation, Pneumo Abex, LLC, successor-in-interest to Abex Corporation; Spirax Sarco, Inc.; SPX Cooling Technologies, Inc., individually and as successor-in-interest to Marley Cooling Towers, Co.; Standard Motor Products, Inc.; sued as successor-in-interest to EIS Automotive, United States Fidelity & Guaranty Company; and The William Powell Company, Defendants,

Of Which, Covil Corporation is the Appellant.

RESPONDENT'S REPLY IN SUPPORT OF MOTION TO DISMISS APPEAL

Respondent offers this brief reply in support of his motion to dismiss Appellant Covil Corporation's appeal of Judge Toal's Order granting Respondent a new trial pursuant to the Thirteenth Juror Doctrine, given that the grant of a new trial was based upon questions of fact or upon mixed questions of law and fact. Covil's arguments to the contrary, this Court should grant Respondent's motion to dismiss.

Covil spends much of its response in opposition to Respondent's motion to dismiss prematurely arguing the merits of its appeal. In doing so, Covil highlights the factual intricacies in this appeal and that this appeal present mixed questions of law and fact. It is clear from both Respondent's motion and Covil's response thereto that Judge Toal's granting of a new trial was wholly based on the facts presented to Judge Toal during the time of trial and during presentation of Respondent's motion for relief. As such, according to the holding in *Robinson v. Fuller*, 249 S.C. 342, 344, 154 S.E.2d 431 (1967); *Rowe v. Frick*, 250 S.C. 499, 159 S.E.2d 47 (1968); *Sellers v. Sears Roebuck & Co.*, 252 S.C. 271, 166 S.E.2d 1 (1969); and *Taylor v. Devore*, 253 S.C. 393, 171 S.E.2d 158 (1969), Covil's appeal should be dismissed.

In support of its opposition, Covil cites *South Carolina State Highway Dept. v. Clarkson*, 267 S.C. 121 (1976), a case which does not overrule any of the cases cited by Respondent in support of his position that Covil's appeal should be dismissed. In fact, the *Clarkson* Court approvingly cited a number of cases supporting Respondent's position that Covil's appeal must be dismissed. In *Sellers v. Collins*, 212 S.C. 26, 46 S.E.2d 176, the Court wrote, as acknowledged by the *Clarkson Court*, that

'It is well settled in this State that an order granting or refusing a new trial when based solely on an error of law is subject to review by this Court. But when the order is based upon questions of fact, or upon both questions of law and fact, it is not appealable.'

Clarkson, 267 S.C. at 125-26. In fact, the Court, citing *Mims v. Coleman*, 248 S.C. 235, 149 S.E.2d 623, went on to restate the rule:

‘An order granting a new trial on factual grounds is not appealable. But the question of existence or nonexistence of evidence is one of law; and to that extent such an order is subject to our review. . . . Our inquiry here must, therefore, be limited to the question of whether there was any evidence from which the jury might reasonably have inferred that respondent's injuries were proximately caused by negligence of the appellant. If that question is answered in the affirmative the appeal must be dismissed, for this court has no power to weigh conflicting evidence in a law case. But if there was no evidence of actionable negligence on the part of the appellant, there was no conflicting evidence to be weighed, and the order granting a new trial on the ground stated by the trial judge would be erroneous as a matter of law.’

Id. at 127. Importantly, the *Clarkson* Court specifically refused to “overrule our prior decisions in which the statement is made that an order granting a new trial upon the facts is not appealable[.]”

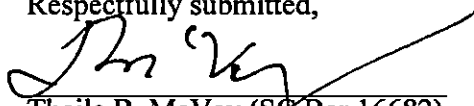
Id. Further, the Court went on to state that the rule had been “soundly applied to limit review . . . to a determination of whether there was an abuse of discretion amounting to an error of law.” *Id.*

Judge Toal’s order granting Respondent a new trial based on the facts and new evidence presented to her is not a question of whether there has been an error of law. The decision was based solely on the facts. Covil’s appeal challenging that order is not appealable pursuant to precedent from this state and the appeal must be dismissed.

CONCLUSION

For the above reasons and the reasons expressed in Respondent’s opening motion, Respondent respectfully requests that this Court dismiss Appellant Covil Corporation’s Notice of Appeal as the Circuit Court’s Order granting Respondent a new trial pursuant to the Thirteenth Juror Doctrine is not immediately appealable as the Order was not based solely on an error of law. Consequently, Respondent requests that this matter be remanded to the Circuit Court for further proceedings.

Respectfully submitted,



Theile B. McVey (SC Bar 16682)

tmcvey@kassellaw.com

KASSEL MCVEY, ATTORNEYS AT LAW

1330 Laurel Street

Post Office Box 1476

Columbia, South Carolina 29202

803-256-4242

803-256-1952(Facsimile)

Other email: emoultrie@kassellaw.com

Aaron Chapman (*Pro hac vice*)

DEAN OMAR BRANHAM, LLP

302 N. Market Street, Suite 300

Dallas, Texas 75202

214-722-5990

214-722-5991 (Facsimile)

COUNSEL FOR RESPONDENT

February 10, 2020

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

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

RECEIVED

Appellate Case No. 2018-001965
Case No. 2017-CP-42-04429

FEB 10 2020
SC Court of Appeals

Jerry Howard Crawford, Individually and as Personal Representative of the Estate of Evelyn Kay Crawford, Respondent,

v.

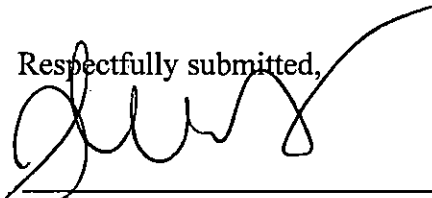
Celanese Corporation; Aurora Pump Company; Carrier Corporation; CAN Holdings LLC, f/k/a Celanese Corporation f/k/a Hoechst Celanese Corporation; Covil Corporation; Crane Co.; Daniel International Corporation f/k/a Daniel Construction Company, Inc.; Flowserve Corporation, individually and as successor-in-interest to Anchor/Darling Valve Company and individually and as successor-in-interest to Durco Pumps; Flowserve US Inc.; Fluor Constructors International, f/k/a Fluor Corporation; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; Ford Motor Company; Genuine Parts Company, d/b/a Rayloc (a/k/a NAPA); The Goodyear Tire & Rubber Company; Goulds Pumps, Inc.; Grinnell, LLC, f/k/a Grinnell Corp, f/k/a ITT Grinnell Corp.; Honeywell International, Inc., f/k/a Allied-Products Liability Signal, Inc., sued as successor-in-interest to Bendix Corporation; Ingersoll Rand Company; John Crane, Inc.; Metropolitan Life Insurance Company, a wholly-owned subsidiary of Metlife Inc.; National Automotive Parts Association (NAPA); Parker-Hannifin Corporation; Pneumo Abex, LLC, successor in interest to Abex Corporation; Spirax Sarco, Inc.; SPX Cooling Technologies, Inc., individually and successor in interest to Marley Cooling Towers Co.; Standard Motor Products, Inc., sued as successor-in-interest to EIS Automotive; United States Fidelity & Guaranty Company; The William Powell Company, Defendants,

Of Which Covil Corporation is the Appellant.

PROOF OF SERVICE

I certify that I have served Respondents' Reply in Support of His Motion to Dismiss Covil Appeal (2018-001965) on Appellants by depositing a true and correct copy of it in the United States Mail, postage prepaid, on February 10, 2020, addressed to its attorneys of record, Ashley K. Brathwaite of Ellis & Winters, LLP; 4131 Parklake Avenue; Suite 400; Raleigh, North Carolina 27612.

Respectfully submitted,



Theile B. McVey (SC Bar No. 16682)

tmcvey@kassellaw.com

John D. Kassel (SC Bar No. 03286)

jkassel@kassellaw.com

KASSEL MCVEY, ATTORNEYS AT LAW

1330 Laurel Street

P.O. Box 1476

Columbia, South Carolina 29202-1476

803-256-4242

803-256-1952 (Facsimile)

Other email: emoultrie@kassellaw.com

Jonathan Holder (SC Bar No. 77935)

jholder@dobslegal.com

Ka'Leya Hardin (pending *pro hac vice*)

khardin@dobslegal.com

DEAN OMAR BRANHAM SHIRLEY, LLP

302 N. Market Street, Suite 300

Dallas, Texas 75202

Telephone: (214) 722-5990

Attorneys for Respondents

February 10, 2020

Columbia, South Carolina.

JOHN D. KASSEL
ATTORNEY AT LAW
JKASSEL@KASELLAW.COM

KASSEL  McVEY

1330 LAUREL STREET
POST OFFICE BOX 1476
COLUMBIA, SC 29202

THEILE B. McVEY
ATTORNEY AT LAW
TMCVEY@KASELLAW.COM

TEL. 803-256-4242
FAX 803-256-1952
WWW.KASELLAW.COM

JAMIE R. RUTKOSKI
ATTORNEY AT LAW
JRUTKOSKI@KASELLAW.COM

February 10, 2020

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
1015 Sumter Street
Post Office Box 11629
Columbia, South Carolina 29211-1629

RECEIVED
FEB 10 2020
SC Court of Appeals

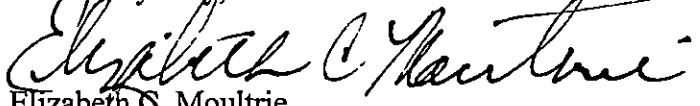
Re: *Jerry Howard Crawford, etc., et al. v. Celanese Corporation, et al.; of whom Covil Corporation is the Appellant.*
Appellate Case No.: 2019-001965

Dear Ms. Kitchings:

Enclosed herewith please find the original and one (1) copy of Respondents' Reply in Support of His Motion to Dismiss Appeal of Covil Corporation in connection with the above-entitled matter, along with our Proof of Service of same. Please file the original return a clocked copy me to me via the courier delivering this letter.

Thank you for your consideration of this request. By copy of this letter, I am serving a copy of the enclosed on counsel of the appellant.

Yours very truly,


Elizabeth C. Moultrie
Senior Paralegal to John D. Kassel,
Theile B. McVey and Jamie Rae Rutkoski

TBM:ecm

Enclosures

cc: Ashley M. Braithwaite, Esquire (w/enclosures)
ACOR as appropriate