

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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**RECEIVED**

APPEAL FROM HORRY COUNTY  
Court of Common Pleas  
Paul M. Burch  
Circuit Court Judge

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JUL 01 2013

S.C. SUPREME COURT

On Certiorari to the Court of Appeals of South Carolina  
Opinion No. 4617 (S.C. Ct. App. filed September 9, 2009)  
Appellate Case No. 2010-149288

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RESPONSE IN OPPOSITION TO RESPONDENTS' MOTION TO  
SUPPLEMENT THE RECORD ON APPEAL

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Thelma M. Poch, as Personal  
Representative for the Estate of  
Kenneth O. Poch, .....Petitioner,

v.

Bayshore Concrete  
Products/South Carolina, Inc.,  
Bayshore Concrete Products  
Corporation, Tidewater  
Skanska Group, Inc., and  
Tidewater Skanska, Inc., .....Defendants,

of whom Bayshore Concrete  
Products/South Carolina, Inc.,  
Bayshore Concrete Products  
Corporation are the .....Respondents.

and

Kevin Key and Sandra Key, .....Petitioners,

v.

Bayshore Concrete  
Products/South Carolina, Inc.,

**Bayshore Concrete Products Corporation, Tidewater Skanska Group, Inc., and Tidewater Skanska, Inc.,.....Defendants,**

**of whom Bayshore Concrete Products/South Carolina, Inc., Bayshore Concrete Products Corporation are the .....Respondents.**

**and**

**Thelma M. Poch, as Personal Representative for the Estate of Kenneth O. Poch and Julius Poch, .....Petitioners,**

**v.**

**Bayshore Concrete Products/South Carolina, Inc., Bayshore Concrete Products Corporation, Tidewater Skanska Group, Inc., and Tidewater Skanska, Inc.,.....Defendants,**

**of whom Bayshore Concrete Products/South Carolina, Inc., Bayshore Concrete Products Corporation are the .....Respondents.**

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843.577.3700  
Attorneys for Petitioners**

Petitioners submit the following in opposition to Respondents' Motion to Supplement the Record on Appeal:

### ARGUMENT

The proposed Appendix to the Record on Appeal contains incomplete, uncertified, and unauthenticated documents that were not presented to the trial court. Their late submission without excuse, coupled with their intrinsic inadmissibility as evidence, renders them wholly inadequate for consideration by this Court. Additionally, the late disclosure of the documents in the proposed Appendix prevented Petitioners from having a fair opportunity to elicit testimony and conduct discovery concerning the alleged applicability of the policy and raises significant questions that are best, and most efficiently, handled by the trial court, thus supporting Petitioners' argument for reversal. Finally, the proposed Appendix has no effect on a reversal based on Bayshore SC and Bayshore Corp. (VA)'s relationship as co-subcontractors. Accordingly, this Court must deny the Respondents' motion and reverse the court below in the appeal in chief to allow all issues to be fully explored and this case to be resolved on its merits.

**I. The proposed Appendix is an impermissible attempt to introduce new evidence that was not available at the trial court.**

An Appendix to the Record on Appeal proposed under Rule 212, SCACR, should be used for the correction of the existing record, not the creation of a new record. Cf. Fed. R. App. P. 10(e)(2);<sup>1</sup> In re Application of Adan, 437 F.3d 381, n. 3 (3rd Cir. 2006) ("Rule 10(e)(2) allows amendment of the record on appeal only to correct inadvertent omissions,

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<sup>1</sup> "If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded...."

not to introduce new evidence.”) (quoting United States ex rel. Mulvaney v. Rush, 487 F.2d 684, n. 5 (3rd Cir. 1973) (“The purpose of the rule is to permit correction or modification of the record transmitted to the Court of Appeals so that it adequately reflects what happened in the District Court.”)). The proposed Appendix is not corrective, it is additive: it contains nearly 900 pages of new (yet incomplete), unauthenticated documents that were never referred to or disclosed to the trial court. This is not the purpose of Rule 212(b), SCACR, and Respondents’ motion should be denied.

**II. The proposed appendix raises issues that need to be resolved at the trial court.**

Consideration of an *uncertified* copy of what Respondents admit is an *incomplete* copy of an insurance policy raises practical issues that are best addressed by the lower court. While this Court reviews this appeal *de novo*, this does not mean that this Court is a substitute for a trial court with full powers of discovery:

Some advocates mistakenly describe the *de novo* standard of review as a *de novo* scope of review. Although *de novo* is often described as a “do over” standard, it is not a *de novo* proceeding.... During a *de novo* review, only the specific decision challenged by the appellant is rewound. The appellate court places itself in the shoes of the lower court at the time of the lower court’s decision and makes its own determination in that same context. **The evidence is limited to the materials presented below**, and the parties may not use their appeal to fill the gaps exposed in the trial court’s order with new testimony.

Kevin Eberle, *Leveling the Playing Field: South Carolina Standards of Review*, South Carolina Lawyer (July 2012) at 40 (emphasis added). The proposed Appendix to the Record on Appeal raises a number of new issues that only<sup>2</sup> a *de novo* hearing (*i.e.*

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<sup>2</sup> While it may be theoretically possible that this Court could exercise its plenary authority to allow the parties to conduct discovery to develop testimony on these matters,

reversal and remand of the opinion before this Court) can address.

The alleged insurance policy is not a certified copy and is otherwise unauthenticated, and is thus unsuitable for use as evidence. Rule 901, SCRE. Respondents attempt to cure this deficiency by reference to the affidavit of Richard Stadler. (R. p. 845). Yet, Stadler's testimony is inadequate to certify or authenticate this document. Stadler's affidavit does not identify the policy he contends provides coverage by reference to policy number, the named insured or any other effective means of identification. Indeed, nothing in the record supports the assertion that the policy Stadler referenced in his affidavit is the same policy Respondents are today presenting to the Court. Moreover, a certified copy is: "A duplicate of an original (usu. official) document, certified as an exact reproduction usu. by the officer responsible for issuing or keeping the original." Black's Law Dictionary 360 (8th ed. 2004). Stadler does not testify that he is the records custodian of the document or that he received the policy from a records custodian. Finally, because the document is not certified, there is nothing in the record to demonstrate that it is a copy of the policy paid for by the insured rather than a copy of some quote or proposal that was never purchased. Additional testimony also not before the court is therefore needed to verify the authenticity and applicability of the document presented.

More importantly, Respondents have presented an incomplete copy. (Exhibit A to Motion, pp. 1-2). The explanation for the incompleteness of the alleged policy is

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it is more judicially efficient to reverse the court below and remand to the trial court for discovery and a new hearing.

incoherent.<sup>3</sup> Nevertheless, having a complete policy is critically important due to the effect that exclusions and endorsements have on coverage – what one portion of an insurance policy appears to grant or cover is taken away or excluded by the terms of controlling exclusions, forms, endorsements, and amendments located in different portions of the policy. Here, the Additional Insured Endorsement, a key document, is missing, along with a number of items listed on the Incomplete Policy notification forms. (Exhibit A to Motion, pp. 1-2).

It also appears that not all of the documents making up the Appendix were produced in discovery, at least not in their present format. These documents are responsive to multiple discovery requests, the first of which was served on Respondents on April 28, 2004,<sup>4</sup> yet the Respondents failed to provide at least some of these materials and instead presented Petitioners with an affidavit stating that they did not possess them.<sup>5</sup> The discovery abuse afforded by this 11<sup>th</sup> hour production of documents should alone prevent Respondents from being allowed to use them to support their claims at this late date. Rule 37, SCRCF; see e.g. Historic Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 435, 673 S.E.2d 448, 457 (2009) (excluding documents disclosed on the eve of trial). Respondents' late disclosure has prevented Petitioners from using the discovery process to address matters that the newly produced materials bring forth.

As an additional practical matter, because this document was also not presented to the trial court it is effectively impossible for Petitioners to comply with Rule 212(b),

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<sup>3</sup> For example: "Discrepancy between form list and content used not listed." (Exhibit A to Motion, p. 1).

<sup>4</sup> See footnote 8, *infra*.

<sup>5</sup> See footnote 8, *infra*.

SCACR: “In response to [the motion to supplement], the other party(s) shall designate any supplemental materials which that party desired to add if the Court grants the motion.” Petitioners are significantly prejudiced in counter-designating documents to address the proposed Appendix when the record on this matter was not developed before the trial court and at least a portion of the contents of the proposed Appendix have been hidden for nine years.<sup>6</sup>

### **III. Consideration of the proposed Appendix does not support Respondents’ arguments.**

Even if this Court were to consider Respondents’ supplemental materials, Respondents still cannot prevail in this appeal. Respondents claim that they have provided the policy referenced by Richard Stadler in his affidavit (R. p. 845), but Stadler’s affidavit makes only a vague and conclusory statement about insurance coverage and does not even state whether he had a copy of the incomplete policy offered in the Appendix. In fact all that Stadler’s affidavit demonstrates is that he is “familiar with” an insurance policy he contends “would have provided Workers’ Compensation coverage for the direct employees of Job Place and Personnel Resources who were leased

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<sup>6</sup> However, should this Court grant Respondents’ motion, Petitioners offer the following preliminary counter-designation with the intent to demonstrate that Petitioners requested that Respondents produce all insurance policies that they contended provided coverage for the claim: (1) Petitioners’ April 28, 2004 Requests for Production and Interrogatories to Respondents; (2) Respondents’ November 3, 2004 Response to Requests for Production and Interrogatories; (3) Petitioners’ September 13, 2005 Second Set of Requests for Production to Respondents; (4) Respondents’ December 27, 2005 Responses to Interrogatories and Requests for Production; (5) Respondents’ January 9, 2006 Responses to Second Set of Interrogatories and Requests for Production; and (6) January 18, 2006 affidavit of Donnie Kellum (employee of Respondents who swore: “...what has been provided accounts for everything we have that is responsive to [Petitioners’] discovery requests...”). (Exhibit 1 to Response to Motion, pp. 1-2).

to Bayshore, specifically including Kevin Key and Kenneth Poch.” (R. p. 845). Stadler’s testimony does not indicate that Bayshore Corp. (VA) would have had coverage in place for employees that it did not lease and there is no evidence in the Record to demonstrate that Bayshore Corp. (VA) leased Poch and Key. In fact, the record is clear that Bayshore Corp. (VA) did not enter into any contract to lease Poch and Key. Accordingly, Stadler’s affidavit evidence is inadequate to demonstrate that Bayshore Corp. (VA) met its statutory requirements and this incomplete, uncertified policy Respondents offer does nothing to provide further support for this claim. Respondents present no coverage opinions regarding this policy’s applicability in this regard and no affidavits authenticating the policy. Accordingly, there is no means by the present record to assess the validity of Respondents’ assertion of coverage for Bayshore Corp. (VA) even with the addition of this purported insurance policy.

Rather, instead of making Respondents’ claim stronger, the face of the purported policy raises additional issues and questions concerning coverage that cannot be adequately answered by the evidence currently in the record.<sup>7</sup> Looking at the documents designated as Bates numbers<sup>8</sup> “TRAVELERS DOC MGMT00001” (“01”) and “TRAVELERS DOC MGMT00002” (“02”), both appear to be the Information Page (or page 1) for a workers’ compensation policy number WVK2900560 – but Respondents provide no explanation as to why these materials contain two strikingly similar “first” pages. (Exhibit 2 to Response to Motion, pp. 1-2). There should only be one first page,

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<sup>7</sup> As set forth in Section II, *supra*, exploration of these issues is best and most efficiently handled by the trial court.

<sup>8</sup> Not all pages of the Exhibit to Respondents’ motion are numbered, which creates additional confusion as to what pages are being referenced or are missing.

or Information Page. Significantly, 01 does not include South Carolina among the states covered by the policy, although 02 does reference the Workers' Compensation law of South Carolina. Both pages reference the same policy number, but cite different premium amounts and appear to have been issued by different offices – 01 was issued by the “Jerico” office in Jerico, NY,<sup>9</sup> while 02 was issued by the “Edison” office in Islein, NJ. Neither Information Page is countersigned or dated in the appropriate location. Accordingly, this prompts the question as to which (if any) is the proper first page of this policy. If 01 is the correct page for this policy, then it does not provide coverage for workers in South Carolina. (Exhibit 2 to Response to Motion, p. 1).

It is further unclear whether the policy applies to either Bayshore entity. The policy defines the “insured” as the “employer named in Item 1 of the Information Page”, and the only entity that appears in that item on either Information Page provided by Respondents is “Tidewater Skanska Group, Inc.” (Exhibit 1 to Response to Motion, pp. 1-2; Exhibit D to Motion, TRAVELERS DOC MGMT000074). In support of their assertion that the Bayshore entities are also covered insureds under this policy Respondents reference one of the several “Extension of Information Pages” (Exhibit C to Motion, TRAVELERS DOC MGMT00006). While the Bayshore entities are listed on TRAVELERS DOC MGMT00006, the reference to the Extension of Information Pages on the Information Page(s) (01 and 02) appears to relate back to the “other workplaces”

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<sup>9</sup> An “Introduction” page produced as part of the proposed Appendix also references the Jerico office, lending support to the proposition that 01 is indeed the “correct” Information Page, although confusingly this page references a different policy number even though it was produced by Respondents as being part of the same policy. (Exhibit 3 to Response to Motion, p.1).

section, and thus do not name additional *insureds* as Respondents assert, but rather additional *workplaces* at which Tidewater Skanska Group, Inc. is afforded coverage under the policy. This reference, combined with the apparent lack of an Additional Insured endorsement, mitigates in favor of finding that the Bayshore entities were not covered by this alleged policy.

Looking further, if indeed the Bayshore entities were other insureds covered by this policy, there is still no evidence that the coverage extended to the type of demolition work that was being performed by Poch and Key at the site. The Stadler affidavit is silent on this issue. (R. p. 845) It appears likely, however, that their scope of work was not covered. The Schedule of Operations pages included in the Appendix that appear to reference South Carolina do not include coverage for work that would be classified as demolition or construction work to the site. (Exhibit 4 to Response to Motion, TRAVELERS DOC MGMT00271-272). In contrast, the Schedule of Operations that references operations performed in Virginia includes “Construction or Erection Permanent Yard” as a covered activity, which may be interpreted to include dismantling the work yard. (Exhibit 5 to Response to Motion, TRAVELERS DOC MGMT00281-286, pg. 2). Nonetheless, such activities do not appear to be covered for workers in South Carolina.

Just as it was Respondents’ burden to prove this issue at the trial court, it was also their burden to provide a sufficient record on which this Court may base its decision.<sup>10</sup>

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<sup>10</sup> As Chief Justice Toal as noted:

The incomplete, uncertified, unauthenticated documents attached to Respondents' motion are not reliable enough for this Court to use to support a decision in Respondents' favor in the appeal.

Finally, consideration of Respondents' proposed Appendix has no effect whatsoever on this Court's reversal based on Argument I of Petitioners (Brief pp. 6-19): because Bayshore Corp. (VA) was acting as a subcontractor of Bayshore SC (and thus was a co-subcontractor with Petitioners), it is not entitled to protection under the Workers' Compensation Act. The existence or non-existence of a workers' compensation policy has no effect on reversal under this analysis.

### CONCLUSION

For the argument set forth above Petitioners ask this Court to deny Respondents' motion and reverse the court below in the appeal in chief to allow this case to be fully resolved on its merits.

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The task of designating is highly significant because it defines the scope of the record to be considered on appeal. Because only matters contained in the record will be considered by the appellate court, the resolution of the case on appeal depends to a considerable extent on what is, or is not, included in the record.

Jean Hofer Toal, et al., Appellate Practice in South Carolina 132 (2nd ed. 2002) (citing Rule 210(h), SCACR).

Dated: June 27 2013

  
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and

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843-737-7300 (phone)  
Attorneys for Petitioners

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF Horry ) CASE NO.: 03-CP-26-6824

THELMA M. POCH, as Personal )  
Representative for the ESTATE OF )  
KENNETH O. POCH, )  
Plaintiff, )

vs. )

BAYSHORE CONCRETE )  
PRODUCTS/SOUTH CAROLINA, )  
INC., BAYSHORE CONCRETE )  
PRODUCTS CORPORATION, )  
SKANSKA AB, SKANSKA USA )  
CIVIL, INC., BEERS SKANSKA, )  
SKANSKA USA BUILDING, INC., )  
SKANSKA PROJECT )  
DEVELOPMENT USA, TIDEWATER )  
SKANSKA GROUP, INC., )  
TIDEWATER SKANSKA, INC., )  
and SKANSKA USA, INC., )  
Defendants. )

AFFIDAVIT OF DONNIE KELLAM

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF Horry ) CASE NO.: 03-CP-26-6825

KEVIN KEY and SANDRA KEY, )  
Plaintiffs, )

vs. )

BAYSHORE CONCRETE )  
PRODUCTS/SOUTH CAROLINA, )  
INC., BAYSHORE CONCRETE )  
PRODUCTS CORPORATION, )  
SKANSKA AB, SKANSKA USA )

Blumberg No. 5138  
PETITIONER'S  
EXHIBIT  
1

CIVIL, INC., BEERS SKANSKA, )  
SKANSKA USA BUILDING, INC., )  
SKANSKA PROJECT )  
DEVELOPMENT USA, TIDEWATER )  
SKANSKA GROUP, INC., )  
TIDEWATER SKANSKA, INC., )  
and SKANSKA USA, INC., )  
Defendants. )

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF Horry ) CASE NO.: 03-CP-26-6826

THELMA M. POCH, Individually and )  
as Personal Representative for the )  
ESTATE OF KENNETH O. POCH )  
and JULIUS. POCH, )  
Plaintiff, )

vs. )

BAYSHORE CONCRETE )  
PRODUCTS/SOUTH CAROLINA, )  
INC., BAYSHORE CONCRETE )  
PRODUCTS CORPORATION, )  
SKANSKA AB, SKANSKA USA )  
CIVIL, INC., BEERS SKANSKA, )  
SKANSKA USA BUILDING, INC., )  
SKANSKA PROJECT )  
DEVELOPMENT USA, TIDEWATER )  
SKANSKA GROUP, INC., )  
TIDEWATER SKANSKA, INC., )  
and SKANSKA USA, INC., )  
Defendants. )

The undersigned deponent, being duly sworn, says:

1. I, Donnie Kellam, am the Safety Director for Bayshore Concrete Products Corporation and Bayshore Concrete Products/South Carolina, Inc.
2. That I have reviewed the Plaintiffs' Second Interrogatories and Requests for Production of Documents.
3. That after thoroughly searching and reviewing all files, databases, storage facilities, and sources of information at my disposal, that what we have provided to date, is everything that we are able to locate that is responsive to Plaintiff's requests.
4. That I am the records custodian for Bayshore Concrete Products Corporation and Bayshore Concrete Products/South Carolina, Inc., with respect to documents relating to or concerning the operation of Bayshore Concrete Products/South Carolina, Inc. and that there are no other employees or offices where this information would be located.
5. That every effort has been made to locate the requested information and materials and what has been provided accounts for everything we have that is responsive to Plaintiff's discovery requests that have been served upon us.

  
Donnie Kellam

Sworn to before me this

18<sup>th</sup> day of January, 2006



Notary Public for Virginia

My Commission Expires: April 30, 2008

**Insurer:**

ST. PAUL FIRE & MARINE INSURANCE COMPANY  
 385 WASHINGTON STREET  
 ST. PAUL MN 551020  
 NCCI COMPANY NO. 13706  
 NJTIN

**WORKERS COMPENSATION AND  
 EMPLOYERS LIABILITY INSURANCE  
 POLICY**

**INFORMATION PAGE**

POLICY NUMBER      from      POLICY PERIOD to      PREV. COVERAGE      AGENCY      A/C MO  
 WVK2900560      08/31/01      08/31/02      WVK2900560      3168001      08/01

**NAMED INSURED AND ADDRESS**

**AGENT**

**ITEM 1.**

TIDEWATER SKANSKA GROUP INC.  
 809 SOUTH MILITARY HIGHWAY  
 P O BOX 57  
 NORFOLK VA 23501C5  
 FEIN 541889672 Risk I.D. No. 918143742

ALLIED COVERAGE CORP/KCA  
 390 NORTH BROADWAY  
 JERICHO NY 117531

INSURED IS CORPORATION

OTHER WORKPLACES NOT SHOWN ABOVE:      SEE EXTENSION OF INFORMATION PAGE

**ITEM 2.**      POLICY PERIOD: FROM 08/31/01 TO 08/31/02  
 12:01 AM STANDARD TIME AT THE INSURED'S MAILING ADDRESS.

**ITEM 3.**      **A.** WORKERS COMPENSATION INSURANCE: PART ONE OF THE POLICY APPLIES TO THE WORKERS  
 COMPENSATION LAW OF THE STATES LISTED HERE:  
 AL, AZ, CA, CO, DC, FL, GA, ID, KS, KY, MD, ME, MO, MT, NC, NM, NV, N  
 UT, VA7

**B.** EMPLOYERS LIABILITY INSURANCE: PART TWO OF THE POLICY APPLIES TO WORK  
 IN EACH STATE LISTED IN ITEM 3.A. THE LIMITS OF OUR LIABILITY UNDER PART TWO ARE:  
 BODILY INJURY BY ACCIDENT      2,000,000      EACH ACCIDENT  
 BODILY INJURY BY DISEASE      2,000,000      POLICY LIMIT  
 BODILY INJURY BY DISEASE      2,000,000      EACH EMPLOYEE

**C.** OTHER STATES INSURANCE: PART THREE OF THE POLICY APPLIES TO THE STATES LISTED HERE: ALL  
 STATES EXCEPT THOSE DESIGNATED IN ITEM 3.A ABOVE, AND ND, OH, WA, WV, WY.

**D.** THIS POLICY INCLUDES THESE ENDORSEMENTS AND SCHEDULES:  
 SEE EXTENSION OF INFORMATION PAGE FORMING PART OF THIS POLICY.

**ITEM 4.**      THE PREMIUM FOR THIS POLICY WILL BE DETERMINED BY OUR MANUALS OF RULES, CLASSIFICATIONS,  
 RATES, AND RATING PLANS. ALL INFORMATION REQUIRED BELOW IS SUBJECT TO VERIFICATION AND  
 CHANGE BY AUDIT.

**CLASSIFICATION OF OPERATIONS**

ST LOC CODE	PRM-BASIS	RATE	EST
TYPE	TOT-EST	PER \$100	ANNUAL
NO      RSK	ANN-REMUN	REMUN	PREMIUM

SEE EXTENSION OF INFORMATION PAGE

TOTAL ESTIMATED TERRORISM COST

MINIMUM PREMIUM

TOTAL ESTIMATED COST      \$197,811.00

DEPOSIT      \$197,811.00

PREMIUM ADJUSTMENTS DUE TO AUDIT WILL BE MADE UPON POLICY EXPIRATION

COUNTERSIGNED THIS      DAY OF

AUTHORIZED REPRESENTATIVE

**OFFICE:**

JERICHO  
 ONE JERICHO PLAZA  
 JERICHO NY 117530

(516) 949-3700

WC 00 00 01A

INSURED COPY  
 ISSUE DATE 01/21/02



**Insurer:**

ST. PAUL FIRE AND MARINE INS CO  
385 WASHINGTON ST  
ST. PAUL MN 55102  
NCCI COMPANY NO. 13706  
NJTIN

**WORKERS COMPENSATION AND  
EMPLOYERS LIABILITY INSURANCE  
POLICY**

**INFORMATION PAGE**

POLICY NUMBER      from      POLICY PERIOD to      PREV. COVERAGE      AGENCY      A/C MO  
WVK2900560      08/31/01      08/31/02      WVK2900560      3168001      08/01

**NAMED INSURED AND ADDRESS**

**AGENT**

**ITEM 1.**

TIDEWATER SKANSKA GROUP INC.  
809 SOUTH MILITARY HIGHWAY  
P O BOX 57  
NORFOLK VA 23501  
FEIN 541889672 Risk I.D. No. 918143742

ALLIED COVERAGE CORP/KCA  
390 NORTH BROADWAY  
JERICHO NY 11753

INSURED IS CORPORATION

OTHER WORKPLACES NOT SHOWN ABOVE:      SEE EXTENSION OF INFORMATION PAGE

**ITEM 2.**      POLICY PERIOD: FROM 08/31/01 TO 08/31/02

12:01 AM STANDARD TIME AT THE INSURED'S MAILING ADDRESS.

**ITEM 3.**

**A.** WORKERS COMPENSATION INSURANCE: PART ONE OF THE POLICY APPLIES TO THE WORKERS COMPENSATION LAW OF THE STATES LISTED HERE:

AL, AZ, CA, CO, DC, FL, GA, ID, KS, KY, MD, ME, MO, MT, NC, NM, NV, NY, OK, SC, TX, UT, VA

**B.** EMPLOYERS LIABILITY INSURANCE: PART TWO OF THE POLICY APPLIES TO WORK IN EACH STATE LISTED IN ITEM 3.A. THE LIMITS OF OUR LIABILITY UNDER PART TWO ARE:

BODILY INJURY BY ACCIDENT      \$2,000,000      EACH ACCIDENT  
BODILY INJURY BY DISEASE      \$2,000,000      POLICY LIMIT  
BODILY INJURY BY DISEASE      \$2,000,000      EACH EMPLOYEE

**C.** OTHER STATES INSURANCE: PART THREE OF THE POLICY APPLIES TO THE STATES LISTED HERE: ALL STATES EXCEPT THOSE DESIGNATED IN ITEM 3.A ABOVE, AND ND, OH, WA, WV, WY.

**D.** THIS POLICY INCLUDES THESE ENDORSEMENTS AND SCHEDULES:  
SEE EXTENSION OF INFORMATION PAGE FORMING PART OF THIS POLICY.

**ITEM 4.**

THE PREMIUM FOR THIS POLICY WILL BE DETERMINED BY OUR MANUALS OF RULES, CLASSIFICATIONS, RATES, AND RATING PLANS. ALL INFORMATION REQUIRED BELOW IS SUBJECT TO VERIFICATION AND CHANGE BY AUDIT.

**CLASSIFICATION OF OPERATIONS**

ST LOC CODE TYP  
NO      RSK

PRM-BASIS      RATE      EST  
TOT-EST      PER \$100      ANNUAL  
ANN-REMUN      REMUN      PREMIUM

SEE EXTENSION OF INFORMATION PAGE

TOTAL ESTIMATED TERRORISM COST  
MINIMUM PREMIUM      \$3,404      TOTAL ESTIMATED COST      \$188,544  
DEPOSIT      \$188,544

PREMIUM ADJUSTMENTS DUE TO AUDIT WILL BE MADE UPON POLICY EXPIRATION

COUNTERSIGNED THIS      DAY OF

AUTHORIZED REPRESENTATIVE

**OFFICE:**

EDISON  
METRO PARK PLAZA  
ISELIN NJ 08830

732-494-3800

WC 00 00 01A

INSURED COPY  
ISSUE DATE 01/21/02

**INTRODUCTION**

**The St Paul**

This policy protects against a variety of losses. There are also some restrictions. We've written this policy in plain, easy-to-understand English. We encourage you to read it carefully to determine what is and what is not covered, as well as the rights and duties of those protected.

Policy Number: KK02900157

JERICO  
ONE JERICO PLAZA  
JERICO NY 11753-1680

In return for your premium, we'll provide the protection stated in this policy.

Your policy is composed of General Rules, an explanation of What To Do If You Have A Loss, one or more Coverage Summaries, and one or more Insuring Agreements explaining your coverage. It may also include one or more endorsements. Endorsements are documents that change your policy. The Policy Forms List shows all the forms included when this policy begins.

We, us, our, and ours mean **St. Paul Fire and Marine Insurance Company**. We're a capital stock company located in St. Paul, Minnesota.

One of our authorized representatives will also countersign the policy.

The words you, your, and yours mean the insured named here, which is a/an CORPORATION

This policy will begin on 08/31/00 and will continue until 08/31/03

TIDEWATER SKANSKA GROUP INC.  
809 SOUTH MILITARY HIGHWAY  
P O BOX 57  
NORFOLK VA 23501

Your former policy number: NEW is automatically replaced

Your premium for the policy period shown is: \$264,064.00\*\*

However, please refer to the Premiums section of the General Rules to see how final premiums are determined.

\*\*SEE COMPOSITED RATED PREMIUM ADJUSTMENT SUMMARY-GL088

Our authorized representative is:

3168001  
ALLIED COVERAGE CORP/KCA  
390 NORTH BROADWAY  
JERICO NY 11753

*Jay S. Fishman*  
President

Authorized Representative

Date

*A. D. Jacobberg*  
Secretary

Processing Date 01/23/01 13:05 003

**Insurer:**

ST. PAUL FIRE AND MARINE INS CO  
 385 WASHINGTON ST  
 ST. PAUL MN 55102  
 NCCI COMPANY NO. 13706  
 NJTIN

**WORKERS COMPENSATION AND  
 EMPLOYERS LIABILITY INSURANCE  
 POLICY**

**AMENDED EXTENSION OF INFORMATION PAGE**

EFF. 08/31/01 SUPERSEDES ANY PREV. DECLARATIONS W/ SAME # FOR THIS POL. PERIOD

<b>POLICY NUMBER</b>	<b>from</b>	<b>POLICY PERIOD to</b>	<b>PREV. COVERAGE</b>	<b>AGENCY</b>	<b>A/C MO</b>
WVK2900560	08/31/01	08/31/02	WVK2900560	3168001	08/01

**NAMED INSURED AND ADDRESS**

**ITEM 1.**

TIDEWATER SKANSKA GROUP INC.  
 809 SOUTH MILITARY HIGHWAY  
 P O BOX 57  
 NORFOLK VA 23501  
 FEIN 541889672 Risk I.D. No. 918143742

**AGENT**

ALLIED COVERAGE CORP/KCA  
 390 NORTH BROADWAY  
 JERICHO NY 11753

**\*\*SCHEDULE OF OPERATIONS\*\***

**SCHEDULE  
 PAGE  
 1**

**ITEM 4**

ST	LOC	CODE	TYP	CLASSIFICATION OF OPERATIONS	PRM-BASIS TOT-EST ANN-REMUN	RATE PER \$100 REMUN	EST ANNUAL PREMIUM
		NO	RSK				
SC	005	3724		MILLWRIGHT WORK NOC & DRIVERS 08/31/01 TO 08/31/02	3,312	7.15	237
SC	005	4034		CONCRETE PRODUCTS MFG & D 08/31/01 TO 08/31/02	IF ANY	5.67	0
SC	005	5057		IRON OR STEEL: ERECTION NOC 08/31/01 TO 08/31/02	26,347	17.28	4,553
SC	005	5222		CONCRETE CONSTR BRIDGES OR CULVERTS 08/31/01 TO 08/31/02	137,703	12.94	17,819
SC	005	5222	F	CONCRETE CONSTR BRIDGES OR CULVERTS 08/31/01 TO 08/31/02	IF ANY	31.06	0
SC	005	5403		CARPENTRY NOC 08/31/01 TO 08/31/02	4,275	14.05	601
SC	005	6003		PILE DRIVING 08/31/01 TO 08/31/02	27,386	12.16	3,330

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 ISSUE DATE 03/22/02**



Named Insured: TIDEWATER SKANSKA GROUP INC.

Policy Number: WVK2900560

AMENDED EXTENSION OF INFORMATION PAGE

\*\*SCHEDULE OF OPERATIONS(Cont.)\*\*

SCHEDULE  
PAGE  
2

ST	LOC	CODE	TYP	CLASSIFICATION OF OPERATIONS	PRM-BASIS TOT-EST ANN-REMUN	RATE PER \$100 REMUN	EST ANNUAL PREMIUM
		NO	RSK				
SC	005	6217		EXCAVATION & DRIVERS 08/31/01 TO 08/31/02	6,894	6.08	419
SC	005	8742		SALESPERSONS, COLLECTORS OR MESSENGERS--OUTSIDE 08/31/01 TO 08/31/02	IF ANY	.60	0
SC	005	8810		CLERICAL OFFICE EMPLOYEES NOC 08/31/01 TO 08/31/02	13,058	.22	29
SC	045	4034		CONCRETE PRODUCTS MFG & D 08/31/01 TO 08/31/02	IF ANY	5.67	0
SC	045	8810		CLERICAL OFFICE EMPLOYEES NOC 08/31/01 TO 08/31/02	IF ANY	.22	0
SC		9837		PREMIUM FOR INCREASED LIMITS PART TWO 08/31/01 TO 08/31/02		4.300%	1,160
SC		9840		PREMIUM FOR ADMIRALTY LIMITS - \$1,000,000 08/31/01 TO 08/31/02		4.16	0
SC				TOTAL PREMIUM SUBJECT TO THE EXP MOD			28,148
SC		9898		PREM MODIFIED 08/31/01 TO REFLECT EXP MOD OF 08/31/01 TO 08/31/02		.5900	16,607
				TOTAL ESTIMATED STANDARD PREMIUM			16,607
SC		9859		DEDUCTIBLE FACTOR AND PREMIUM CREDIT 08/31/01 TO 08/31/02		.08050	15,270-
SC		0063		PREMIUM DISCOUNT, IF APPLICABLE			0
SC		0900		EXPENSE CONSTANT, WHEN APPLICABLE			230
				TOTAL ESTIMATED PREMIUM			1,567
				TOTAL ESTIMATED COST			1,567

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ISSUE DATE 03/22/02

**Insurer:**

ST. PAUL FIRE AND MARINE INS CO  
 385 WASHINGTON ST  
 ST. PAUL MN 55102  
 NCCI COMPANY NO. 13706  
 NJTIN

**WORKERS COMPENSATION AND  
 EMPLOYERS LIABILITY INSURANCE  
 POLICY**

**AMENDED EXTENSION OF INFORMATION PAGE**

EFF. 08/31/01 SUPERSEDES ANY PREV. DECLARATIONS W/ SAME # FOR THIS POL. PERIOD

POLICY NUMBER	from	POLICY PERIOD to	PREV. COVERAGE	AGENCY	A/C MO
WVK2900560		08/31/01 08/31/02	WVK2900560	3168001	08/01

NAMED INSURED AND ADDRESS	AGENT
<b>ITEM 1.</b>	
TIDEWATER SKANSKA GROUP INC.	ALLIED COVERAGE CORP/KCA
809 SOUTH MILITARY HIGHWAY	390 NORTH BROADWAY
P O BOX 57	JERICO NY 11753
NORFOLK VA 23501	
FEIN 541889672 Risk I.D. No. 918143742	

**\*\*SCHEDULE OF OPERATIONS\*\***

SCHEDULE  
 PAGE  
 1

**ITEM 4**

ST	LOC	CODE	TYP	CLASSIFICATION OF OPERATIONS	PRM-BASIS	RATE	EST ANNUAL
		NO	RSK		TOT-EST	PER \$100	PREMIUM
					ANN-REMUN	REMUN	
VA	001	3724		MILLWRIGHT WORK NOC & D 08/31/01 TO 08/31/02	166,656	5.54	9,233
VA	001	5057		IRON OR STEEL: ERECTION NOC 08/31/01 TO 08/31/02	474,374	20.18	95,729
VA	001	5183		PLUMBING NOC & D 08/31/01 TO 08/31/02	205,134	4.89	10,031
VA	001	5213		CONCRETE CONSTR NOC 08/31/01 TO 08/31/02	833,316	8.50	70,832
VA	001	5213	F	CONCRETE CONSTR NOC 08/31/01 TO 08/31/02	IF ANY	17.09	0
VA	001	5222		CONCRETE CONSTR BRIDGES OR CULVERTS 08/31/01 TO 08/31/02	3,089,755	10.22	315,773
VA	001	5222	F	CONCRETE CONSTR BRIDGES OR CULVERTS 08/31/01 TO 08/31/02	IF ANY	20.54	0

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 ISSUE DATE 03/22/02

Blumberg No. 5136  
 PETITIONER'S  
 EXHIBIT  
 5

Named Insured: TIDEWATER SKANSKA GROUP INC.

Policy Number: WVK2900560

AMENDED EXTENSION OF INFORMATION PAGE

\*\*SCHEDULE OF OPERATIONS(Cont.)\*\*

SCHEDULE  
PAGE  
2

ST	LOC	CODE	TYP	CLASSIFICATION OF OPERATIONS	PRM-BASIS TOT-EST ANN-REMUN	RATE PER \$100 REMUN	EST ANNUAL PREMIUM
		NO	RSK				
VA	001	5403		CARPENTRY NOC 08/31/01 TO 08/31/02	179,471	7.59	13,622
VA	001	5403	F	CARPENTRY NOC 08/31/01 TO 08/31/02	IF ANY	15.26	0
VA	001	6003		PILE DRIVING 08/31/01 TO 08/31/02	500,003	16.13	80,650
VA	001	6003	F	PILE DRIVING 08/31/01 TO 08/31/02	IF ANY	32.42	0
VA	001	6217		EXCAVATION NOC & DRIVERS 08/31/01 TO 08/31/02	217,948	6.12	13,338
VA	001	6217	F	EXCAVATION & DRIVERS 08/31/01 TO 08/31/02	IF ANY	12.30	0
VA	001	6252		CAISSON WORK--NOT PNEUMATIC-- ALL OPERATIONS 08/31/01 TO 08/31/02	IF ANY	24.15	0
VA	001	7046	M	VESSELS-NOT SELF-PROPELLED COVERAGE UNDER ADMIRALTY LAW: PROGRAM I 08/31/01 TO 08/31/02	410,268	10.00	41,027
VA	001	7309	F	STEVEDORING: NOC 08/31/01 TO 08/31/02	IF ANY	20.15	0
VA	001	7855		RAILROAD CONSTRUCTION: LAYING OR RELAYING OF TRACK OR MAINTENANCE OF WAY BY CONTRACTOR-NO WORK ON ELEVATED RAILROADS-& DRIVERS 08/31/01 TO 08/31/02	IF ANY	6.67	0
VA	001	8227		CONSTRUCTION OR ERECTION PERMANENT YARD 08/31/01 TO 08/31/02	1,384,611	3.17	43,892

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ISSUE DATE 03/22/02

Named Insured: TIDEWATER SKANSKA GROUP INC.

Policy Number: WVK2900560

AMENDED EXTENSION OF INFORMATION PAGE

\*\*SCHEDULE OF OPERATIONS(Cont.)\*\*

SCHEDULE  
PAGE  
3

ST	LOC	CODE	TYP	CLASSIFICATION OF OPERATIONS	PRM-BASIS TOT-EST ANN-REMUN	RATE PER \$100 REMUN	EST ANNUAL PREMIUM
		NO	RSK				
VA	001	8742		SALESPERSONS, COLLECTORS OR MESSENGERS--OUTSIDE 08/31/01 TO 08/31/02	833,316	.39	3,250
VA	001	8810		CLERICAL OFFICE EMPLOYEES NOC 08/31/01 TO 08/31/02	4,525,624	.16	7,241
VA	016	3724		MILLWRIGHT WORK NOC & D 08/31/01 TO 08/31/02	4,110	5.54	228
VA	016	5057		IRON OR STEEL: ERECTION NOC 08/31/01 TO 08/31/02	20,551	20.18	4,147
VA	016	5183		PLUMBING NOC & D 08/31/01 TO 08/31/02	41,103	4.89	2,010
VA	016	5190		ELECTRICAL WIRING-WITHIN BUILDINGS & D 08/31/01 TO 08/31/02	20,551	3.03	623
VA	016	5213		CONCRETE CONSTR NOC 08/31/01 TO 08/31/02	4,110	8.50	349
VA	016	5213	F	CONCRETE CONSTR NOC 08/31/01 TO 08/31/02	IF ANY	17.09	0
VA	016	5221		CONCRETE OR CEMENT WORK-- FLOORS, DRIVEWAYS, YARDS OR SIDEWALKS--& DRIVERS 08/31/01 TO 08/31/02	4,110	4.10	169
VA	016	5403		CARPENTRY NOC 08/31/01 TO 08/31/02	4,110	7.59	312
VA	016	5474		PAINTING OR PAPER HANGING NOC & D 08/31/01 TO 08/31/02	4,110	7.07	291

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Named Insured: TIDEWATER SKANSKA GROUP INC.

Policy Number: WVK2900560

AMENDED EXTENSION OF INFORMATION PAGE

\*\*SCHEDULE OF OPERATIONS(Cont.)\*\*

SCHEDULE  
PAGE  
4

ST	LOC	CODE	TYP	CLASSIFICATION OF OPERATIONS	PRM-BASIS TOT-EST ANN-REMUN	RATE PER \$100 REMUN	EST ANNUAL PREMIUM
		NO	RSK				
VA	016	5606		CONTRACTOR--EXECUTIVE SUPERVISOR CONSTRUCTION SUPERINTENDENT 08/31/01 TO 08/31/02	32,882	2.54	835
VA	016	8810		CLERICAL OFFICE EMPLOYEES NOC 08/31/01 TO 08/31/02	8,221	.16	13
VA	022	5222		CONCRETE CONSTR BRIDGES OR CULVERTS 08/31/01 TO 08/31/02	IF ANY	10.22	0
VA	022	5222	F	CONCRETE CONSTR BRIDGES OR CULVERTS 08/31/01 TO 08/31/02	IF ANY	20.54	0
VA	022	5506		STREET OR ROAD CONSTRUCTION: PAVING OR REPAVING & D 08/31/01 TO 08/31/02	2,500,669	6.23	155,792
VA	022	5507		STREET OR ROAD CONSTRUCTION: SUB-SURFACE WORK & D 08/31/01 TO 08/31/02	IF ANY	6.31	0
VA	022	8227		CONSTRUCTION OR ERECTION PERMANENT YARD 08/31/01 TO 08/31/02	IF ANY	3.17	0
VA	022	8810		CLERICAL OFFICE EMPLOYEES NOC 08/31/01 TO 08/31/02	255,331	.16	409
VA	023	4034		CONCRETE PRODUCTS MFG & D 08/31/01 TO 08/31/02	9,321,000	6.15	573,242
VA	023	7046	M	VESSELS-NOT SELF-PROPELLED COVERAGE UNDER ADMIRALTY LAW: PROGRAM I 08/31/01 TO 08/31/02	IF ANY	10.00	0
VA	023	7309	F	STEVEDORING: NOC 08/31/01 TO 08/31/02	33,500	20.15	6,750

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ISSUE DATE 03/22/02

Named Insured: TIDEWATER SKANSKA GROUP INC.

Policy Number: WVK2900560

AMENDED EXTENSION OF INFORMATION PAGE

\*\*SCHEDULE OF OPERATIONS(Cont.)\*\*

SCHEDULE  
PAGE  
5

ST	LOC	CODE	TYP	CLASSIFICATION OF OPERATIONS	PRM-BASIS TOT-EST ANN-REMUN	RATE PER \$100 REMUN	EST ANNUAL PREMIUM
		NO	RSK				
VA	023	7855		RAILROAD CONSTRUCTION: LAYING OR RELAYING OF TRACK OR MAINTENANCE OF WAY BY CONTRACTOR-NO WORK ON ELEVATED RAILROADS-& DRIVERS 08/31/01 TO 08/31/02	IF ANY	6.67	0
VA	023	8810		CLERICAL OFFICE EMPLOYEES NOC 08/31/01 TO 08/31/02	1,645,500	.16	2,633
VA	046	4034		CONCRETE PRODUCTS MFG & D 08/31/01 TO 08/31/02	6,058,215	6.15	372,580
VA	046	7309	F	STEVEDORING: NOC 08/31/01 TO 08/31/02	21,883	20.15	4,409
VA	046	8810		CLERICAL OFFICE EMPLOYEES NOC 08/31/01 TO 08/31/02	1,069,901	.16	1,712
VA		9816		PREMIUM FOR INCREASED LIMITS PART TWO 08/31/01 TO 08/31/02		4.300%	76,974
VA		9840		PREMIUM FOR ADMIRALTY LIMITS - 08/31/01 TO 08/31/02	\$1,000,000	4.16	129,645
VA				TOTAL PREMIUM SUBJECT TO THE EXP MOD			2,037,741
VA		9898		PREM MODIFIED 08/31/01 TO REFLECT EXP MOD OF 08/31/01 TO 08/31/02		.5900	1,202,267
				TOTAL ESTIMATED STANDARD PREMIUM			1,202,267
VA		9859		DEDUCTIBLE FACTOR AND PREMIUM CREDIT 08/31/01 TO 08/31/02		.08050	1,105,485-
VA		0063		PREMIUM DISCOUNT, IF APPLICABLE			0
VA		0900		EXPENSE CONSTANT, IF APPLICABLE			0
				TOTAL ESTIMATED PREMIUM			96,782
				TOTAL ESTIMATED COST			96,782

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INSURED COPY  
ISSUE DATE 03/22/02

The **St Paul**

**Insurer:**

ST. PAUL FIRE AND MARINE INS CO  
385 WASHINGTON ST  
ST. PAUL MN 55102  
NCCI COMPANY NO. 13706

**WORKERS COMPENSATION AND  
EMPLOYERS LIABILITY INSURANCE  
POLICY**

**EXTENSION OF INFORMATION PAGE**

<b>POLICY NUMBER</b>	<b>from</b>	<b>POLICY PERIOD to</b>	<b>PREV. COVERAGE</b>	<b>AGENCY</b>	<b>A/C MO</b>
WVK2900560	08/31/01	08/31/02	WVK2900560	3168001	08/01

**NAMED INSURED AND ADDRESS**

**ITEM 1.**

TIDEWATER SKANSKA GROUP INC.  
809 SOUTH MILITARY HIGHWAY  
P O BOX 57  
NORFOLK VA 23501  
FEIN 541889672 Risk I.D. No. 918143742

**AGENT**

ALLIED COVERAGE CORP/KCA  
390 NORTH BROADWAY  
JERICO NY 11753

**\*\*PREMIUM ADJUSTMENT SCHEDULE\*\***

**SCHEDULE  
PAGE  
1**

<b>STATE</b>	<b>CODE NO.</b>	<b>DESCRIPTION OF CHANGE</b>	<b>PREMIUM</b>
VA	0987	FLAT CHARGE FOR FOREIGN COVERAGE	\$0.
		TOTAL PREMIUM ADJUSTMENT	\$0.

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ISSUE DATE 03/22/02

**THE STATE OF SOUTH CAROLINA  
In the Supreme Court**

---

**APPEAL FROM HORRY COUNTY  
Court of Common Pleas  
Paul M. Burch  
Circuit Court Judge**

---

**On Certiorari to the Court of Appeals of South Carolina  
Opinion No. 4617 (S.C. Ct. App. filed September 9, 2009)**

---

**CERTIFICATE OF SERVICE**

---

**Thelma M. Poch, as Personal  
Representative for the Estate of  
Kenneth O. Poch, .....Petitioner,**

**v.**

**Bayshore Concrete  
Products/South Carolina, Inc.,  
Bayshore Concrete Products  
Corporation, Tidewater  
Skanska Group, Inc., and  
Tidewater Skanska, Inc., .....Defendants,**

**of whom Bayshore Concrete  
Products/South Carolina, Inc.,  
Bayshore Concrete Products  
Corporation are the .....Respondents.**

**and**

**Kevin Key and Sandra Key, .....Petitioners,**

**v.**

**Bayshore Concrete  
Products/South Carolina, Inc.,  
Bayshore Concrete Products**

**Corporation, Tidewater  
Skanska Group, Inc., and  
Tidewater Skanska, Inc.,.....Defendants,**

**of whom Bayshore Concrete  
Products/South Carolina, Inc.,  
Bayshore Concrete Products  
Corporation are the .....Respondents.**

**and**

**Thelma M. Poch, as Personal  
Representative for the Estate of  
Kenneth O. Poch and Julius  
Poch, .....Petitioners,**

**v.**

**Bayshore Concrete  
Products/South Carolina, Inc.,  
Bayshore Concrete Products  
Corporation, Tidewater  
Skanska Group, Inc., and  
Tidewater Skanska, Inc.,.....Defendants,**

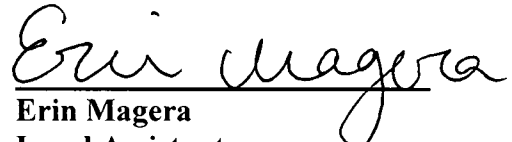
**of whom Bayshore Concrete  
Products/South Carolina, Inc.,  
Bayshore Concrete Products  
Corporation are the .....Respondents.**

---

**I certify that I have served the *Petitioners' Response in Opposition to  
Respondent's Motion to Supplement the Record on Appeal* on the Clerk of the  
Supreme Court at P.O. Box 11330, Columbia, SC 29211 and on counsel for the  
Respondents by serving copies of the same via U.S. Mail on June 27, 2013 to the  
following:**

**Barrett R. Brewer**  
**Clawson & Staubes, LLC**  
**126 Seven Farms Drive, Suite 200**  
**Charleston, SC 29492**  
**843.577.2026**  
**Attorneys for Respondents**

**John R. Kuhn**  
**Kuhn & Kuhn, LLC**  
**39 Broad St., Suite 301**  
**Charleston, SC 29401**  
**843.577.3700**  
**Attorneys for Petitioners**

  
**Erin Magera**  
**Legal Assistant**

**June 27, 2013**