



July 9, 2024

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**SC Court of Appeals**

**Sent Via U.S. Mail**

Jenny A. Kitchings  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29211

Re: Zitek v. IBP Asset, LLC, et al.  
Appellate Case No. 2023-001401  
Our File No.: 6035-0008

Dear Ms. Kitchings:

Pursuant to Rule 208(b)(7), SCACR, Respondent IBP Assets, LLC d/b/a Blue Ridge Building Products provides the following response to Appellant's supplemental citation letter dated July 8, 2024.

The case Appellant cited, Midland Insurance Co. v. Delta Lines, Inc., 530 F. Supp. 190 (D.S.C. 1982), is not new. Not only does it pre-date the arguments to the trial court, it pre-dates most of the authorities cited in the initial briefs. See Matsell v. Crowfield Plantation Cmty. Servs. Ass'n, Inc., 393 S.C. 65, 70 n.2, 710 S.E.2d 90, 93 n.2 (Ct. App. 2011) (holding that supplementary citations may not be used to raise new issues on appeal).

The citation is inapposite. In the first place, federal opinions are not controlling in state courts. Midlands lacks persuasive value because subsequent state decisions did not follow it.

Contrary to Appellant's characterization, this Court did not merely distinguish Midlands, it specifically rejected it. Fed. Pacific Elec. v. Carolina Prod. Enters., 298 S.C. 23, 378 S.E.2d 56 (Ct. App. 1989) ("We do not ignore Midlands . . . ; rather, we elect not to follow it."). In Federal Pacific, this Court considered various interpretations of "clear and unequivocal" and rejected the view that "words of general import are sufficient." 298 S.C. at 26-27, 378 S.E.2d at 57-58. In so doing, this Court declined to adopt the Midlands analysis. This Court elected to follow the Supreme Court of South Carolina's lead as set forth in Murray v. The Texas Co., 172 S.C. 399, 174 S.E.231 (1934). This Court subsequently followed Federal Pacific in Concord and Cumberland Horizontal Property Regime v. Concord & Cumberland, LLC, 424 S.C. 639, 647, 819 S.E.2d 166, 171 (Ct. App. 2018). As this Court recognized in Concord and Cumberland, the Supreme Court has (subsequent to Midlands) also adopted the strict interpretation of "clear and unequivocal."

Therefore, Midlands is no longer good law in this State. The controlling case on this issue is currently Concord and Cumberland, and that case was briefed by both parties.

Respondents also disagree that Midlands is factually “on all fours” with this case. In Midlands, the indemnitor (Delta) and the indemnitee (Strick) were both named as defendants in the suit. They both cross-claimed, blaming each other. 530 F. Supp. at 191. It was undisputed that the plaintiff’s injury occurred while Delta was using equipment manufactured by Strick. Id. at 192. Based on these allegations, Midlands is a “concurrent negligence” case.

In the current case, as in Federal Pacific, respondents were not named in the suit. 298 S.C. at 26, 378 S.E.2d at 57. Respondents in this appeal are in a position similar to that of the innocent tenant in Federal Pacific, making this a “sole negligence” case. Midlands is distinguishable even if it were authoritative.

Respectfully submitted,

*s/Timothy J. Newton*

Timothy J. Newton

TJN/dlb  
Enclosure