

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
Jean H. Toal, Circuit Court Judge

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Civil Action No. 2023-CP-40-04072

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Michael L. Perry and Lonnie Long,..... Respondents,

v.

American International Industries et al.

Of whom Johnson & Johnson; LLT Management, LLC  
f/k/a LTL Management, LLC; Kenvue, Inc.; and Johnson  
& Johnson Holdco (NA), Inc. are the ..... Appellants.

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**MOTION FOR LIMITED REMAND**

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Pursuant to Rules 240 and 241 of the South Carolina Appellate Court Rules, Appellants Johnson & Johnson; LLT Management, LLC f/k/a LTL Management, LLC; Kenvue, Inc.; and Johnson & Johnson Holdco (NA), Inc. (“Appellants”) hereby move this Court for an order issuing a limited remand in this appeal for the purpose of allowing the trial court to rule on Appellants’ pending motion.

**BACKGROUND**

This matter was tried between August 5 and August 15, 2024. After the jury returned its verdict in favor of Plaintiffs, Appellants timely filed post-trial motions for JNOV, new trial, new trial nisi remittitur, setoff, and to stay. Respondents also submitted a brief on successor liability

relying on new and additional evidence that was not before the jury. Appellants filed a memorandum in opposition to this motion in which directed verdict motions were renewed.

On December 11, 2024, the Court issued an Order ruling on the J&J Defendants' motions for JNOV, new trial, new trial nisi remittitur, setoff, and to stay. Further, the court ruled on: (1) the issue of successor liability and (2) the Court's separate *de novo* statutory and constitutional review of the punitive damages verdict. The J&J Defendants timely filed a Rule 59(e) motion to reconsider on December 23, 2024 regarding, *inter alia*, the rationale of the Court relating to the successor liability and punitive damages rulings. On January 2, 2025, Respondents' counsel emailed the trial judge and her clerk and asked if the court would like them to submit a response to the motion to reconsider. However, as of the date of this filing, the parties have not received a response from the court and the court has yet to rule on that motion to reconsider. Therefore, out of necessity, and because of the decision in *Elam v. South Carolina Department of Transportation*, 361 S.C. 9, 602 S.E.2d 778 (2004), Appellants feel obligated out of an abundance of caution to file and serve a notice of appeal within thirty days after receiving written notice of entry of judgment to avoid a court or the opposing party taking the position that the Rule 59(e) motion to reconsider does stay the time for appeal. *See* Rule 203, SCACR.

### **ARGUMENT**

Appellants filed numerous motions to preserve their challenges for appellate review. Critically, one motion was filed pursuant to Rule 59(e). Appellants' filing and service of a notice of appeal and motion for limited remand are necessary here to protect Appellants' right to appeal and to avoid any potential argument that the Rule 59(e) motion is improperly "successive" under *Elam*, 361 S.C. 9, 602 S.E.2d 778 (2004).

In *Elam*, the Court held an appeal “may be barred due to untimely service of the notice of appeal when a party—instead of serving a notice of appeal—recaptions a written JNOV/new trial motion, which has been ruled on, and resubmits it as a virtually identical, written Rule 59(e) motion.” 361 S.C. 9, 20, 602 S.E.2d 772, 778 (2004). The Court discouraged the routine filing of both a Rule 59(e) motion and a notice of appeal. Appellants did not cavalierly serve and file the notice of appeal here, nor did they simply act out of “expedience” with regard to their Rule 59(e) motions. The *Elam* court clarified that a Rule 59(e) motion is proper and stays the time for appeal if it raises new or different issues than prior post-trial motions or seeks a ruling on issues not yet ruled upon by the trial court. *Id.* Appellants believe their Rule 59(e) motion falls within this description, but they cannot be certain that opposing counsel or the Court will necessarily agree.

The *Elam* court reinforced the catastrophic consequences that occur if a party incorrectly believes its Rule 59(e) motion is proper. *Id.* at 25, 602 S.E.2d at 780 (“If a party is unsure whether he properly raised all issues and obtained a ruling, he must file a Rule 59(e) motion or an appellate court may later determine the issue or argument is not preserved for review. But in filing the motion, he may unwittingly forfeit the right to an appeal if an appellate court later determines the Rule 59(e) motion was unnecessary because he already had raised the issue and obtained a ruling.”). Unfortunately, while a party may analyze the propriety of a Rule 59(e) motion before filing it, the party’s good faith belief in the propriety of the motion is of no value if a court disagrees.

Appellants believe their Rule 59(e) motion is proper and comports with *Elam* because the motion to reconsider raises new or different issues than other post-trial motions and seeks a ruling on issues not yet ruled upon by the trial court. *See id.* at 26, 602 S.E.2d at 781 (finding a Rule 59(e) motion stayed the time to appeal because it “involve[d] a first, written Rule 59(e) motion,

not a second one,” and the moving party “did not simply resubmit a virtually identical, written Rule 59(e) motion raising the same issues on which it already had obtained a ruling by virtue of a previous, written JNOV/new trial motion”). Appellants, therefore, believe their motion to reconsider stays the time for appeal. *See* Rule 203(b)(1), SCACR. However, opposing counsel or the Court may not agree, under these circumstances. This is a multi-million-dollar judgment situation. In an abundance of caution and to fully protect their right to appeal, Appellants served and filed a notice of appeal. They now seek a limited remand allowing the trial court to rule upon their pending motion to reconsider. A limited remand will ensure the trial court has an opportunity to rule on all outstanding issues before presenting this Court with a complete appeal, furthering the interests of justice and judicial economy.

### **CONCLUSION**

Appellants respectfully request this Court hold the appeal in abeyance and remand for a limited ruling on the pending motion to reconsider. Appellants further request the Court stay any briefing deadlines during the pendency of the remand.

Respectfully submitted,

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January 13, 2024

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**PROOF OF SERVICE**

I, the undersigned Administrative Assistant, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellants, certify that I have served all counsel in this action with a copy of the document(s) specified below a copy by electronic mail to each attorney listed below using their primary email address listed in the Attorney Information System.

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January 13, 2025