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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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

Appellate Case No. 2025-000065

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.

**REPLY TO RETURN TO MOTION FOR LIMITED REMAND**

In this \$40 million judgment matter, Appellants filed their Rule 59(e) motion and explained in the motion why they did so: namely, the trial court arguably did not rule expressly rule on certain successor liability arguments made by Appellants, and the trial court made constitutional and statutory findings related to punitive damages for the first time in her post-trial motions order, which findings Appellants contested with the Rule 59(e) motion. Respondents’ response highlights the danger in this area of practice and why filing the notice of appeal was necessary. Rather than consent to the limited remand, Respondents oppose it—even when the trial judge has indicated how she will rule. There will be no delay.

Appellants, per Rule 59(g), sent a copy of their Rule 59(e) motion directly to the trial court on December 23, 2024. On January 2, 2025, Respondents’ counsel asked the trial court if it desired any response to the motion from them. The trial court did not respond. Finally, 18 days after filing

the Rule 59(e) motion, Appellants filed a notice of appeal from the trial court's post-trial motions order, and subsequently filed the motion for limited remand with this Court so that the trial court could rule on the 59(e) motion.<sup>1</sup>

Appellants did not simply file a notice of appeal and a Rule 59(e) motion at the same time. They believed in good faith they should make the 59(e) filing to ensure preservation of certain arguments. The trial judge has acknowledged in an email emanating from a motion filed in a different action that she does not intend to grant Appellants' Rule 59(e) motion or change her rulings in this matter. (*See* 1/17/2025 email, attached as **Exhibit A.**) However, the trial judge did not act on the Rule 59(e) motion for 18 days, thus necessitating the notice of appeal action Appellants took.

Tellingly, Respondents in their Return "take no position" on whether the Rule 59(e) motion was timely here. Respondents are implying that they may argue that the Rule 59(e) motion did not toll the time for filing the notice of appeal of the trial court's post-trial motions order. However, because they "take no position," they thus do not actually advance that argument. Respondents, therefore, present no reason why this Court would not grant the limited remand motion.

Based on all these circumstances, a limited remand should be very brief. Contrary to Respondents' accusation, Appellants are not trying to unnecessarily lengthen the litigation. If anything, Respondents' filed opposition to the motion to remand in the face of the trial judge's express statement that she does not intend to change her rulings is causing unnecessary delay. Respondents could have simply consented to the motion for limited remand instead. Appellants have no objection to the limited remand being expedited and time-limited since all that is

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<sup>1</sup> Also pending is a motion to reconsider the trial court's bond ruling.

apparently needed is for the trial judge to enter a formal order memorializing what she has already said will be her ruling.

**CONCLUSION**

For the reasons stated in their motion and herein, Appellants respectfully request this Court hold the appeal in abeyance and issue an expedited limited remand for the trial court to issue a ruling on the pending motion to reconsider. This Court has done so in other matters, albeit not in published opinions, of which Appellants are aware. Appellants further request the Court stay any briefing deadlines during the pendency of the remand.

Respectfully submitted,

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January 29, 2024

# **EXHIBIT A**

**(01/17/2025 email)**

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**From:** Toal, Jean <JToal@sccourts.org>  
**Sent:** Friday, January 17, 2025 4:49 PM  
**To:** Theile McVey  
**Cc:** Blake Williams; Bridenback, Tasha; Kevin Paul; Elizabeth Moultrie; Jamie Rutkoski; Roxana Martinez; Scott Pepin; zzWilliam Coates; SingewaldC@whiteandwilliams.com; JMTechman@ewhlaw.com; ASRogers@ewhlaw.com; KEBaird@ewhlaw.com; PLSisk@ewhlaw.com; PAMcGrath@ewhlaw.com; Mark Phillips; robert.meriwether@cs-law.com; jase.glenn@cs-law.com; sc-asbestos@cs-law.com; Matt Patterson; Mitch Brown; Matt Bogan; Deirdre McCool; Kelli Martin; Meredith Keane; sguerriere@grsm.com; ehawkins@grsm.com; vrawl@grsm.com; wkleindienst@grsm.com; jldleon@grsm.com; Bahnson-GRSM@grsm.com; leslie.packer@elliswinters.com; ashley.brathwaite@elliswinters.com; curtis.shiple@elliswinters.com; joe.hammond@elliswinters.com; CovilParalegal@elliswinters.com; derrick.foard@elliswinters.com; Scottie.Lee@elliswinters.com; AGeddes@maynardnexsen.com; AWaring@maynardnexsen.com; aaustin@maynardnexsen.com; KJones@maynardnexsen.com; bjowers@maynardnexsen.com; RCavalchire@maynardnexsen.com; spugh@richardsonplowden.com; wharte@richardsonplowden.com; CMcQueen@richardsonplowden.com; jelliott@richardsonplowden.com; HElliott@richardsonplowden.com; cberthelsen@richardsonplowden.com; mdalton@richardsonplowden.com; asanzgiri@richardsonplowden.com; bnicholson@richardsonplowden.com; carlpierce@piercesloan.com; pattwilliams@piercesloan.com; bensmoot@piercesloan.com; carsonparker@piercesloan.com; jameskennedy@piercesloan.com; elizabethtaylor@piercesloan.com; daniellynch@piercesloan.com; treypierce@piercesloan.com; willearly@piercesloan.com; robinspitz@piercesloan.com; kristinhoward@piercesloan.com; anniefranklin@piercesloan.com; hollyparker@piercesloan.com; elizabeth.oneill@wbd-us.com; WBD.SCASBESTOS@wbd-us.com; Kimberly.Sullivan@wbd-us.com; Todd.Carroll@wbd-us.com; Sarah.Wells@wbd-us.com; Ted.Roberts@wbd-us.com; Brian.Zemil@wbd-us.com; Geoff.Pashke@wbd-us.com; Matt.Robusto@wbd-us.com; Michael.Bogle@wbd-us.com; Julie.wallace@wbd-us.com; Deborah.Lehman-Wooten@wbd-us.com; Philip.Reid@vonbriesen.com; Rhyan.lindley@vonbriesen.com; Maria.Piraino@vonbriesen.com; PReid@vonbriesen.com; RLindley@vonbriesen.com; Laurie.mcleroy@vonbriesen.com; dconner@hsblawfirm.com; sfrick@hsblawfirm.com; tfreedle@hsblawfirm.com; sturner@hsblawfirm.com; gsimpson@hsblawfirm.com; Chris.collier@lewisbrisbois.com; Rondell.Warren@lewisbrisbois.com; aries@smithlaw.com; ckiger@smithlaw.com; cparker@smithlaw.com; aserrat@smithlaw.com; Cbona@smithlaw.com; mmontgomery@robinsongray.com; rhutchens@robinsongray.com; hsaxby@robinsongray.com; vcordoni@robinsongray.com; krozelsky@spencerfane.com; jgray@spencerfane.com; adickerson@spencerfane.com; hlee@spencerfane.com; nearly-soppa@spencerfane.com; jennamcgee@parkerpoe.com; connorhoy@parkerpoe.com; nicknybo@parkerpoe.com; jonathanhall@parkerpoe.com; mattlahiff@parkerpoe.com; kellygouin@parkerpoe.com; celestemallett@parkerpoe.com; ymcleod@maronmarvel.com; grouse@maronmarvel.com; bi@maronmarvel.com; jrenner@maronmarvel.com; kln@maronmarvel.com; cla@maronmarvel.com; FOcel@maronmarvel.com; CGourdine@maronmarvel.com; mmiller@maronmarvel.com; SILICA - Daniel White; rtate@gwblawfirm.com; wmaurides@gwblawfirm.com; jlaffitte@gwblawfirm.com; ctowers@gwblawfirm.com; chip.collins@mgclaw.com;

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**Subject:** Re: Patterson vs. 4520 Corp., Inc., et al.; C/A No. 2024CP4002293

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Report Suspicious

Blake : I do not intend to change the successor liability ruling I made in the Perry matter, the J&J case I tried last year. With respect, I deny your Motion to continue this matter. Best regards, Jean Toal  
Sent from my iPhone

On Jan 17, 2025, at 3:58 PM, Theile McVey <tmcvey@kassellaw.com> wrote:

\*\*\* EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Chief Justice Toal:

As you know Mr. Williams represents the J & J entities. The two defendants we added are the J & J entities that they say are the successors to the J & J entities we have previously named. It is a bit disingenuous to argue that these are brand new defendants. They are not. They are one and the same. And as the Court will recall from the Perry case, J&J only wants us to discuss the J & J entities and not get into the successor issue until after there is a verdict. Respectfully, this case should not be continued.

Please let me know if you would like us to file a responsive pleading and we would be happy to do so. Thanks,  
Theile

From: Blake Williams <blake.williams@nelsonmullins.com>  
Sent: Friday, January 17, 2025 3:52 PM  
To: Toal, Jean <JToal@sccourts.org>; tbridenback@sccourts.org

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Subject: Patterson vs. 4520 Corp., Inc., et al.; C/A No. 2024CP4002293

Chief Justice Toal,

Plaintiffs recently amended the pleadings in this matter to add two new parties that I represent. We respectfully exercise our right under Rule 40(b) to have the trial date continued to at least 180 days from the January 10, 2025 filing date of the amended pleading. We would respectfully request that the Court take action on this motion at its earliest convenience because critical case deadlines involving expert discovery and mediation are fast approaching, including a mediation set by Plaintiffs' counsel for March 11 and 12.

Thank you for your attention to this matter. I have copied the full distribution list on this email.

Thank you,

[<http://www.nelsonmullins.com/img/ecard-logo.png>]

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Jan 29 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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

Appellate Case No. 2025-000065

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

v.

American International Industries et al.

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

**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.

PLEADING(s): Reply to Return to Motion for Limited Remand

Counsel Served:

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January 29, 2025