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Oct 13 2025

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2025-001224
Case No. 2016-CP-10-03783

The Retreat at Charleston National Country Club Home Owners Association, Inc., and The Retreat at Charleston National Country Club Horizontal Property Regime, Plaintiffs,

v.

Winston Carlyle Charleston National, LLC; Colin R. Campbell Construction, Inc.; Colin Campbell, individually; Builders FirstSource-Southeast Group, LLC; Builders FirstSource, Inc.; America Roofing Concepts, Inc.; DVS, Inc.; Advanced Building Connection, LLC; Guy C. Lee Building Materials, LLC; WS Contractors, LLC; Dino Schwartz, Individually; Charleston Exteriors, LLC; ECC Contracting, LLC; Hurley Services, LLC; McDaniel Construction Co., LLC; AC Construction Corp.; AC Construction, Inc.; L&G Construction Group, LLC; Liollo Architecture; JC Contractors, LLC; Soto & Vasquez Construction, LLC; Costa De Oliveira Construction, LLC; Solesmar Jesus De Oliveria; Wilson Lucas Sales d/b/a Miracle Siding; Miracle Siding, LLC; Royal Homes of SC, Inc.; Collen Batissa; Christopher Batissa; Norma Ferreira Bruno; Mendez Construction, LLC; Juan Garza Ramos, individually; Juan Garza Ramos d/b/a Juan Constructors; Jessica Marroquin, individually; Jessica Marroquin d/b/a Marroquin Construction; Carlos Marroquin, individually; Carlos Marroquin Construction; Carlos and Jessica Marroquin d/b/a Marroquin Construction; Feliciano Cruz Silva; Garcia Roofing, LLC; Givair De Caris; and Mario Salgado; Defendants,

Builders FirstSource-Southeast Group, LLC, Third-Party Plaintiff, Petitioner

v.

Pohlman Quality Contractors; Pohlman Quality Exteriors; Palmetto Trim and Renovation; Edward Bruce Witham; and East Coast Carpentry, Third-Party Defendants,

Of which Palmetto Trim and Renovation; Hurley Services, LLC; ECC Contracting, LLC; East Coast Carpentry; AC Construction, Inc.; WS Contractors, LLC; Pohlman Quality Exteriors, Inc.; and L&G Construction Group, LLC are the Respondents.

**THE NATIONAL ASSOCIATION OF HOME BUILDERS’ AND THE
HOME BUILDERS ASSOCIATION OF SOUTH CAROLINA’S
REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE AMICI CURIAE**

The National Association of Home Builders (“NAHB”) and the Home Builders Association of South Carolina (“HBASC”) (“collectively “Amici”) filed a Motion for Leave to File an Amicus Curiae Brief, together with a conditional proposed amicus curiae brief, on September 2, 2025. On October 8, 2025, Respondents filed a return, arguing that Amici’s motion should be denied because their proposed amicus brief merely restates the legal arguments made by Appellant Builders FirstSource-Southeast Group (“BFS”) and offers no unique information or perspective that has not or could not be raised by BFS. Pursuant to Rule 240(f), Amici file this reply to show that Respondents’ opposition misconstrues both the role of an amicus curiae and the substance of Amici’s proposed brief. Accordingly, the Court should reject Respondents’ argument and grant Amici’s motion for leave to file an amicus brief.

I. Respondents’ Position Conflicts with the Governing Rules.

As an initial matter, Respondents’ argument that Amici’s motion should be denied because their arguments are too similar to the arguments of BFS is inconsistent with Rule 213 of the South Carolina Appellate Court Rules. Rule 213 expressly provides that an amicus brief must be “limited to argument of the issues on appeal as presented by the parties.” Thus, the mere fact that Amici address the same legal issues as BFS, and even if some of Amici’s arguments are the same or similar to a party in the case, this should not serve as a basis to deny the motion. If the Court adopted Respondents’ argument, it would effectively preclude nearly all amicus briefs, as amici must necessarily address the same issues already before the Court.

II. Amici’s Proposed Brief Would Serve the Intended Purpose of an Amicus Brief.

Respondents themselves acknowledge, citing 16 S.C. Jur. Brief of Amicus Curiae § 2, that a function of an amicus curiae is to “advise the judge of law not already known to the judge or brought to his attention by the parties” and that “a desirable [amicus] brief . . . brings matters to the Court’s attention that have not been . . . fully explored by the parties.” This is precisely what Amici seek to do.

While Amici’s brief complies with Rule 213 by limiting its arguments to the issues presented on appeal, it also identifies caselaw not addressed or fully explored by the other parties in the case and explains that the Court of Appeals’ decision conflicts with long-standing case law of the Supreme Court of South Carolina (referring to *South Carolina Electric & Gas Company v. Utilities Construction Company*, 244 S.C. 79, 135 S.E.2d 613 (1964), and as more recently interpreted and endorsed in *Ashley II of Charleston, L.L.C. v. PCS Nitrogen, Inc.*, 409 S.C. 487, 763 S.E.2d 19 (2014)). As a result, Amici’s position is that the Court of Appeals’ decision created inconsistency and conflict in South Carolina law regarding contractual indemnity. Neither the Appellant (BFS), nor the Respondents cited or discussed *South Carolina Electric & Gas Company v. Utilities Construction Company*, 244 S.C. 79, 135 S.E.2d 613 (1964), or this aspect of *Ashley II of Charleston, L.L.C. v. PCS Nitrogen, Inc.*, 409 S.C. 487, 763 S.E.2d 19 (2014), in their submissions to this Court.

Accordingly, Amici’s proposed brief fulfills the precise purpose of a “desirable” amicus filing by alerting the Court to controlling precedent that bears directly on the issues presented that has not been fully explained or explored by the other parties in the case.

III. The Dispute Over the Merits of Amici’s Arguments Highlights the Need for the Amicus Brief.

In their return, Respondents argue (albeit briefly) that *South Carolina Electric & Gas Company v. Utilities Construction Company*, 244 S.C. 79, 135 S.E.2d 613 (1964) and *Ashley II of Charleston, L.L.C. v. PCS Nitrogen, Inc.*, 409 S.C. 487, 763 S.E.2d 19 (2014), are materially distinguishable from this case. This only underscores the need for Amici’s participation in this appeal. Amici respectfully disagree with Respondents’ characterization, but that disagreement illustrates why this issue, one with significant ramifications for contractual indemnity and risk allocation across South Carolina, should be addressed fully in the briefs briefing rather than summarily in a few sentences opposing Amici’s motion for leave to file.

IV. Amici Offer Perspectives Unavailable from the Parties

Respondents’ Return acknowledges that one role of an amicus curiae is to “assist the Court by offering perspectives unavailable from the parties themselves.” Amici’s proposed brief does exactly that.

NAHB is a nonprofit trade association representing approximately 140,000 builders and associate members through roughly 700 affiliated state and local associations nationwide, including 15 in South Carolina. HBASC is the largest residential construction trade association in South Carolina, representing approximately 3,500 members, including contractors, subcontractors, developers, and other related occupations that build and develop houses, apartments, and condominiums in South Carolina.

When Amici explain that the Court of Appeals’ decision threatens to “disrupt foundational risk-allocation mechanisms widely used in the construction industry,” they provide an industry-wide perspective unavailable to the parties. Similarly, when Amici note that the contract terms deemed unconscionable by the Court of Appeals are “standard, business-to-business indemnity

provisions” used throughout the construction industry, they present a broader view of the decision’s potential impact, one that cannot be offered by the parties.

V. Amici Have No Direct Stake and Seek Only to Aid the Court

Amici’s participation is also meaningful because, unlike the parties, they have no direct financial interest in the outcome of this case. Instead, Amici were compelled to mobilize and incur legal fees to file their motion and proposed amicus brief to bring to the Court’s attention how the Court of Appeals’ decision would affect the broader construction industry in South Carolina. This independence enhances the credibility of their views. Even if the parties purport to make similar arguments, these, in contrast, may be discounted as self-interested advocacy. Amici’s motives are instead aligned with assisting the Court’s understanding of industry context and potential implications.

VI. Respondents Will Suffer No Prejudice

Respondents claim of prejudice is unfounded. They argue that allowing Amici to file would effectively expand BFS’s briefing page limits. The opposite is true. Under Rule 213, if the Court grants leave, it will specify the period during which any response to the amicus brief may be filed. Because there are seven Respondents, each may respond separately if desired. Thus, far from prejudicing Respondents, granting leave provides them with an opportunity for additional responsive briefing, if they so desired.

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CONCLUSION

Because Amici have an identifiable interest Under Rule 213 and because their proposed brief fulfills the purpose of an amicus brief filing, as explained by 16 S.C. Jur. Brief of Amicus Curiae § 2, Amici respectfully request that the Court grant their motion and accept Amici's accompanying brief conditionally filed with its motion on September 2, 2025.

s/ Taylor H. Stair

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