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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

Case No. 2022-CP-26-06116

Flatiron Constructors, Inc.,

Appellant,

v.

TranSystems Corporation,

Respondent.

RECORD ON APPEAL - VOLUME IV

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	C.A. NO. 2022-CP-26-06116
	)	
Flatiron Constructors, Inc.,	)	
	)	PLAINTIFF'S OPPOSITION TO
Plaintiff,	)	DEFENDANT'S MOTION FOR
	)	SUMMARY JUDGMENT
v.	)	
	)	
TranSystems Corporation,	)	
	)	
Defendant.	)	
	)	

Plaintiff Flatiron Constructors, Inc. ("FCI") hereby submits its Opposition to Defendant TranSystems Corporation's ("TSC") Motion for Summary Judgment filed on April 4, 2023, (hereinafter "TSC's MSJ" or "MSJ"). For the reasons set forth herein, FCI respectfully requests that the court deny TSC's MSJ in all respects.

SUMMARY OF ARGUMENT

The South Carolina Supreme Court long ago recognized that, in South Carolina, a contractor such as FCI can sue an engineer such as TSC for purely economic loss arising from professional negligence. *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones, & Goulding, Inc.*, 320 S.C. 49, 463 S.E.2d 85 (1995). In hopes of avoiding this well-established principle of South Carolina law, TSC takes the court on a largely irrelevant odyssey through the inapplicable jurisprudence of Idaho, Vermont, Maryland, and Indiana. *See* MSJ, pp. 10-17. To further obscure the point, TSC cites cases that, with a single exception, do not address the instant scenario, which is a construction contractor's negligence lawsuit against a project engineer. Yet, TSC acknowledges that a construction contractor's entitlement to bring such a suit hinges upon the "special relationship" between contractors and engineers. This special relationship makes TSC's discussion of products liability cases and lawsuits between condominium owners and engineers

generally immaterial to the analysis. MSJ, p. 10 (citing *Tommy L. Griffin*, 320 S.C. at 55, 463 S.E. 2d at 89). Thus, TSC's cited case law is irrelevant to the court's inquiry and only proves that courts in other jurisdictions may view the issue differently than the courts in South Carolina, a fact that the Supreme Court in *Tommy L. Griffin* openly acknowledged. *Id.* at 52-53, 463 S.E.2d at 87. Notably, the court in *Tommy L. Griffin* also listed approximately 17 other jurisdictions in which courts, like those in South Carolina, allow a construction contractor to bring a negligence action against engineers or architects for purely economic losses. *Id.* at n. 1.

TSC further misapprehends the law by arguing that a professional engineer cannot owe a duty of care to a contractor giving rise to an action in negligence because such a duty "would create an improper and impermissible conflict of interest" for the engineer. MSJ, p. 12. Yet, the Supreme Court in *Tommy L. Griffin* clearly recognized that the professional engineer in that case "owed a duty to the contractor not to negligently design or negligently supervise the project." *Id.* 56, 463 S.E.2d at 89 (emphasis added). TSC makes no effort to reconcile its "impermissible conflict of interest" argument with the established South Carolina law. Indeed, no reconciliation is possible. TSC is simply wrong.

In short, the law in South Carolina is clear. A professional engineer like TSC that negligently supervises construction is liable to a contractor like FCI for economic loss. Hence, TSC's MSJ must be denied based upon applicable South Carolina Supreme Court precedent. As set forth herein, TSC wielded tremendous power on the Project allowing it to improperly halt FCI's work, delay construction, reject compliant work, and cause FCI to suffer significant damages. Thus, TSC had a special relationship with FCI that obligated TSC to conduct itself in accordance with the applicable standard of professional care or to face liability to FCI. At the very least, a genuine issue of material fact exists concerning the true nature of TSC's relationship with FCI.

TSC's attacks on FCI's other causes of action are similarly unfounded. For example, TSC provides no contractual language demonstrating an intent to prohibit third-party beneficiaries, yet claims that "the plain, unambiguous language of the Project Contracts" demonstrates such an intent. MSJ, p. 18. Similarly, TSC claims, without evidence, that it has an agency relationship with SCDOT which provides TSC a qualified immunity from liability for tortious interference. TSC's contract with Horry County contains no language supporting an agency relationship and TSC puts forth no evidence in support of its claim of immunity. Further, in its argument against FCI's South Carolina Unfair Trade Practice Act ("SCUTPA") claims, TSC provides no factual support whatsoever and wrongly claims that it is exempt from liability under SCUTPA because "the practice of engineering and the provision of CEIT Services is permitted" by South Carolina regulations. MSJ, p. 21. TSC's positions find no basis in fact or the applicable law. Hence, none of these arguments support a dispositive motion at this point in the proceeding.

ATTENTION TO TSC'S RESEARCH

From FCI's perspective, TSC's MSJ pushes the limit of acceptable case citation and interpretation. Thus, close attention must be paid to the cited authorities. For example, TSC appears to modify some quotations to include language not necessarily found in the cited reference. Further, TSC adds interpretive annotations not reflective of the case language at issue. In other areas, TSC references South Carolina secondary sources anchored in law that has been overruled by the State Supreme Court. Such liberties cannot support a motion for summary judgment which should only be granted when based upon sound, firmly-established principles of law.

More specifically, TSC injects argumentative language into quotations from the Construction Contract and interpretive case law thereby altering the apparent intentions of the parties and the impact of certain legal authorities. On MSJ p. 7, for instance, TSC adds the phrase

“[to include firm providing CEIT services]” to § 105.5(2) of the Standard Specifications apparently to describe “authorized representatives and inspectors.” The insertion of this phrase suggests that TSC (the firm providing CEIT services) was somehow separate and apart from the Project Resident Construction Engineer, or “RCE.” Yet, as set forth herein, TSC *was* the RCE in relation to FCI. Hence, TSC wielded substantial control over nearly every aspect of FCI’s work. *See* pp. 10-12, *supra*.

Similarly, on MSJ p. 9, TSC adds the word “[potential]” to “contractual duties” in a quote from the decision in *Colleton Prep Acad., Inc. v. Hoover Universal, Inc.*, 379 S.C. 181, 666 S.E.2d 247 (2008) (*abrogation recognized by Sapp v. Ford Motor Co.*, 386 S.C. 143, 687 S.E.2d 47 (2009)). Thus, TSC declares that, “In South Carolina, courts evaluate tort claims under the economic loss rule by evaluating ‘whether or not the alleged tortfeasor acted in a way that violated a legal duty aside from his [potential] contractual duties.’” Although the decision in *Colleton Prep Academy* is irrelevant to the instant case for other reasons (it is a products liability case), TSC’s illogical injection of argument into the court’s decision should be summarily discarded. Apparently, TSC hopes to limit the law’s recognized exceptions to the economic loss doctrine by expanding contractual duties to include the nebulous concept of “potential” contractual duties. TSC’s flawed reasoning suggests that if exceptions to the economic loss doctrine arise from the existence of a legal duty “aside from...contractual duties,” then expanding contractual duties to include “potential” contractual duties would somehow reduce the breadth of any exceptions. This, of course, misses the point. First, a party either has contractual duties or it does not. A party does not have “potential” contractual duties. Second and most important, exceptions to the economic loss doctrine are based upon a “separate” duty not existing in contract. Thus, in *Tommy L. Griffin*, the South Carolina Supreme Court held that the engineer owed a duty to the contractor not to

commit professional malpractice even though the parties had *no* contract between them. A broader swath of contractual duties in TSC's contract with Horry County for "Construction, Engineering and Inspection Services" ("Engineering Contract") does not reduce the breadth of the economic loss exception. *See* MSJ, Ex. E.

TSC's citation missteps continue on MSJ p. 17 where TSC cites to the Indiana Supreme Court claiming that the court decided what factors should be considered to determine "whether an...engineer owes any duty to the employees [or] independent contractors on a construction site..." *Indianapolis-Marion Cty. Pub. Library v. Charlier Clark & Linard, P.C.*, 929 N.E.2d 722, 737 (Ind. 2010). This is not what the court decided. The court's finding was not about "employees [or] independent contractors," but "employees *of* independent contractors." *Id.* (emphasis added). In other words, the Indiana court was focused on the relationship between the engineer and the contractor's employees, not the engineer and the contractor itself. The Indiana court, therefore, was analyzing a much more attenuated relationship than the one that existed between TSC and FCI.

Perhaps, more important, however, is the fact that the Indiana court cites a South Carolina Law Review article to support its position on the economic loss doctrine. *Id.* TSC features the Indiana court's quote of the article on MSJ, p. 17. Presumably, TSC is tempting this court to believe that the Indiana decision is somehow relevant to South Carolina law on the economic loss doctrine. Yet, the cited article, S. R. Barrett, Jr., *Recovery of Economic Loss in Tort for Construction Defects: A Critical Analysis*, 40 S.C. L.Rev. 891 (1989), was written before the South Carolina Supreme Court's decision in *Tommy L. Griffin*. As such, the article relies heavily upon the South Carolina Court of Appeals' decision, *Carolina Winds Owners' Association v. Joe Harden Builder, Inc.*, 297 S.C. 74, 374 S.E.2d 897 (Ct. App. 1988). *See* 40 S.C. L.Rev. 891, 931.

The *Carolina Winds* decision was the very case that the lower court in *Tommy L. Griffin* relied upon to hold that the contractor could not recover economic loss for the tort of professional malpractice. *Tommy L. Griffin*, 320 S.C. 49, 53, 463 S.E.2d 85, 87. Of course, the South Carolina Supreme Court reversed the lower court's decision. In doing so, it noted that other State Supreme Court decisions had "overruled *Carolina Winds*. Therefore, any reliance on *Carolina Winds* by the trial judge was an error of law." *Id.* Similarly, TSC's citation to the Indiana court's decision and TSC's quotation from the referenced South Carolina Law Review article reflect an erroneous interpretation of South Carolina law.

STANDARD OF REVIEW

To prevail in its MSJ, TSC must demonstrate that "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits...show that there is no *genuine* issue as to any *material* fact and that the moving party is entitled to a judgment as a matter of law. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) (emphasis in original) (citing Rule 56(c), SCRCp). On a motion for summary judgment, "the moving party carries the burden of proof even when the nonmoving party does not submit any evidence in opposition. *Beneficial Fin. I, Inc. v. Windham*, 431 S.C. 256, 267, 847 S.E.2d 793, 799 (Ct. App. 2020).

Moreover, "summary judgment is not appropriate...when further inquiry into the facts of the case is desirable to clarify the application of the law." *Cullum Mechanical Constr. Co. v. S.C. Baptist Hosp.*, 344 S.C. 426, 432, 544 S.E.2d 838, 841 (2021). In deciding whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to FCI as the non-moving party. *Id.*

RELEVANT PROCEDURAL BACKGROUND

As TSC indicates, FCI initially filed its Complaint in April of 2018. The Parties stayed the action for approximately two and half years until September of 2020, as the Project work continued. The Parties then exchanged limited written discovery and produced some, but not all, documents responsive to competing Requests for Production. On October 11, 2021, the court struck the case pursuant to Rule 40(j) of the SCRCP. The court restored the matter to the active docket on September 27, 2022. TSC then filed the instant MSJ on April 4, 2023. To date, document productions are incomplete, and no depositions have been taken by either side.

In its MSJ, TSC references FCI's action against the South Carolina Department of Transportation ("SCDOT") and Horry County ("HC/SCDOT Action"). MSJ, p. 4. Although included in TSC's "Relevant Procedural History," TSC fails to explain any relevance of the HC/SCDOT Action to the instant matter. Indeed, there is none. Horry County and SCDOT owe duties to FCI separate and apart from the duties owed by TSC. This is evident in the way the South Carolina Supreme Court in *Tommy L. Griffin* ignored resolution of the contractor's claims against the owner when confirming the engineer's duty to the contractor. In that case, the contractor also made claims against the owner, but the owner paid the contractor for the extra costs which the owner had caused the contractor. *Id* at 52-53, 463 S.E.2d at 87. Despite these contractor-vs.-owner claims, the Court went on to evaluate the engineer's relationship with the contractor and held that the engineer "owes a professional duty to the [contractor] arising separate and distinct from any contractual duties between the parties or with third parties." *Id.* at 56, 463 S.E.2d at 89.

RELEVANT FACTUAL BACKGROUND

TSC downplays the extent of its duties and influence on the Project related to FCI. *See* MSJ, pp. 5-8. Again, under the prevailing law, this Court's inquiry must focus on the special

relationship between TSC and FCI, not TSC's relationship with SCDOT nor even TSC's relationship with Horry County. *Tommy L. Griffin*, 320 S.C. at 54-56, 463 S.E.2d at 88-89. However, to discern the nature of this most relevant relationship, the Court certainly must examine both TSC's contract with Horry County for "Construction, Engineering and Inspection Services" ("Engineering Contract") (*See* MSJ, Ex. E) and FCI's Contract with Horry County ("Construction Contract") (*See* MSJ, Ex. A). The Court also must evaluate TSC's actual assertion of authority with regard to FCI's construction performance and determine whether TSC established the type of "special relationship" with FCI giving rise to a duty owed to FCI to conduct TSC's services within the applicable standard of care. 320 S.C. at 54-56, 463 S.E.2d at 88-89.

The Engineering Contract required TSC to provide engineering services as described in ATTACHMENT "A". MSJ, Ex. E, p. 21/28 (pdf. p. 538). The Engineering Contract also provided that "A 'Certification Agreement' is attached hereto and specifically made a part hereof. The 'certification' will be executed if agreed by the parties as applicable." MSJ, Ex. E., Sec. II, C. (emphasis added). TSC and Horry County executed the "Certification" on October 10, 2011. MSJ, Ex. E, p. 16/28 (pdf. p. 533).¹ Presumably, this meant that TSC and Horry County agreed that the Certification was applicable to TSC's duties and obligations.

A. TSC's Certification Responsibilities

In the Certification executed between Horry County and TSC, Horry County assigned to TSC "all project plan and specification reviews including the approval of all information, dimensions, quantities, details and designs involved in the preparation and production of the

¹ TSC's MSJ does not include page numbers for its exhibits. To assist the Court in locating references to MSJ exhibits, FCI will include a reference to the .pdf page number which refers to the document page number when the Memorandum in Support of the MSJ and its exhibits are combined into a single .pdf document.

project plans and specifications.” MSJ, Ex. E, p. 08/28 (.pdf p. 525). TSC accepted this responsibility. TSC also certified, among other things, that:

- TSC was a South Carolina registered engineering firm. *Id.* p. 16/28 (.pdf p. 533);
- all project plans and specifications would be checked in their entirety for completeness, correctness, accuracy and consistency. *Id.* p. 07/28 (.pdf p. 524);
- all work would be performed in accordance with the special provisions and specifications. *Id.* p. 23/28-25/28 (.pdf p. 540-42); and
- all work would be performed so as to meet or exceed the reasonable standard of care of the engineering profession. *Id.* p. 16/28 (.pdf p. 533).

Even though TSC and Horry County signed the Certification, TSC’s MSJ includes the Affidavit of Mr. Peter Strub stating that “TranSystems never prepared, signed, or sealed any design plans for the Project.” MSJ, Ex. F. Although Mr. Strub affirms that, “the Engineering Certification for Plans and Specifications was never performed by TranSystems,” Mr. Strub does not indicate that the Engineering Contract was ever amended to delete the Certification. *Id.* Rather, he simply asserts that TSC did not perform some of the required duties. *Id.* Thus, TSC remained obligated to check the plans and specifications, perform work in accordance with the specifications, and perform so as to meet or exceed the reasonable standard of care of the engineering profession.

B. TSC’s Attachment “A” Responsibilities

TSC’s “Scope of Services” pursuant to Attachment “A” of the Engineering Contract included “construction management, construction engineering, assurance and acceptance inspection, sampling, testing, and construction survey verifications to determine compliance with the contract requirements.” MSJ, Ex. E, p. 21/28 (pdf. p. 538). TSC was also obligated to “ensure that quality materials are being incorporated into the project, ensure that quality workmanship is

utilized on the project, ensure that the contractor is progressing in accordance with the proposed schedule, and ensure compliance with applicable state laws regarding environmental issues.” *Id.* Pursuant to TSC’s “Project Management” responsibilities listed in Attachment “A”, TSC was obligated to provide a “Project Engineer” to be “responsible for the day-to-day operation and administration of the project.” *Id.*

Under the heading “Contract Management & Administration,” Attachment “A” obligated TSC to provide “office engineering, scheduling and administration staff to adequately manage the project.” *Id.* at p. 22/28 (p. 539). TSC’s contract management duties on the Project included but were not limited to; contractor pay request verification and approvals (Item 6), construction change order generation (Item 8), Project schedule analysis and recommendations (Item 10), and coordination and tracking of contractor submittals (Item 11). *Id.* Attachment “A” further provided detailed “Inspection and Testing Services” required of TSC. *Id.* at p. 23/28 (p. 540). Among other things, these services obligated TSC to “interface and coordinate with the Contractor’s QC personnel on a daily basis.” *Id.*

C. TSC Identified as RCE

TSC is correct that SCDOT’s 2007 Standard Specifications for Highway Construction (the “Specifications”) applied to the Project construction. MSJ, p. 5. TSC is also correct that Section 105.1 of the Specifications provided that the RCE or “Resident Construction Engineer” had authority, among other things, to decide all questions that may arise regarding the quality and acceptability of materials furnished, the work performed, and the rate of progress of the work. MSJ, Ex. B, § 105.1 (pdf. 476). These three concerns (materials, workmanship, and progress) were some of the same duties that Horry County bestowed upon TSC in Attachment “A” to the

Engineering Contract. *See* MSJ, Ex. E. Section 105.1 also granted the RCE the ability to suspend the work wholly or in part.

TSC's MSJ fails to identify exactly who served as RCE on the Project. Moreover, Horry County did not name the RCE in the Construction Contract. Nor do the Specifications reference an identifiable person or entity as the Resident Construction Engineer. In practice, however, during construction, TSC's Mr. Marty Long assumed the role of RCE and identified himself as such to FCI. **Exhibit A** – Affidavit of Louis Hutcherson (hereinafter "Hutcherson Aff."), ¶ 3. For example, following each Project Weekly Update Meeting, TSC would issue minutes to FCI signed by "Marty L. Long, PE, Resident Construction Engineer." **Exhibit B** – Affidavit of Linda Brumfield (hereinafter "Brumfield Aff."), Ex. 2, p. 5 and Ex. 6, p. 4. Similarly, in emails sent to SCDOT, Mr. Long referred to himself as the RCE. In a July 21, 2017, email to Mr. Steve Nanney of SCDOT, for example, Mr. Long explains that he chose not to reject one of FCI's concrete trucks because he did not want to delay the pour. Brumfield Aff., Ex. 8, p. 1. In that email, Mr. Long writes, "The Contractor and the Supplier decided to proceed at their own risk to place the load into the structure and the RCE (Me) was consulted and additional cylinders were taken." *Id.* (emphasis added).

Notably, during Project construction, SCDOT even admonished TSC's Mr. Long for, at times, failing to exercise the powers of the RCE. For instance, in a December 1, 2015, email, Mr. Long notified FCI that "The SCDOT has instructed TranSystems to have Flatiron stop all work..." Brumfield Aff., Ex. 7, p. 1. Yet, when Mr. Long sent a copy of this email to SCDOT's District Bridge Engineer, SCDOT responded that, "the stop work call should have been made by the RCE. This type of scenario is what TranSystems has been hired for...project inspection and

management.” *Id.* Accordingly, during document discovery, TSC produced a Project Organization Chart that identified Mr. Long of TranSystems as the RCE. Brumfield Aff., Ex. 5.

In a conclusory statement on page six of its MSJ, TSC proclaims that, “it is undisputed the SCDOT reviewed all of TSC’s evaluations of Plaintiff’s Project work, and SCDOT made all final decisions regarding Plaintiff’s Project work. Only SCDOT had this authority.” TSC provides no citations, documents or affidavits supporting this statement. Consequently, it is insufficient to bolster a dispositive motion. Moreover, FCI emphatically disputes the allegation. Even if the statement that “only SCDOT had this authority” did reflect TSC’s legal relationship with SCDOT (which FCI disputes), the statement does not reflect the actual exercise of authority by TSC over FCI on the Project. Again, as set forth above, TSC was presented as and acted as the RCE. TSC was the daily presence and authority in the field controlling the quality of materials, workmanship and timeliness of the construction, among other things.

D. TSC Interactions with FCI

During construction, TSC assumed the role of RCE, exerted authority over FCI, and performed its contract management and administration duties in a manner that significantly impacted the costs and time necessary for FCI to complete the work. *See* Hutcherson Aff. For example, TSC rejected compliant work which led to Project delays. *Id.* ¶ 10. It also delayed review of critical submittals preventing commencement of FCI’s drilled shaft activities. *Id.* ¶ 15. Similarly, TSC refused to inspect rebar or to point out supposed errors in construction thereby preventing FCI from proceeding with work. *Id.* ¶ 16. TSC also rejected work that FCI contends complied with the Project Specifications. *Id.* ¶¶ 9-12.

TSC’s MSJ does not deny that TSC committed these acts and omissions. MSJ, p. 7 (referencing Plaintiff’s Answers to TSC’s Interrogatory 9, 10, 11 at MSJ, Ex. G). Rather, TSC

merely contends that “if Plaintiff is entitled to any relief based on these allegations, it may seek this relief under Plaintiff’s Contract with Horry County...” MSJ, p. 7. FCI certainly contends that TSC’s actions violated the applicable standard of care. However, for the purposes of evaluating TSC’s MSJ, the relevant facts are that TSC oversaw FCI’s day-to-day construction operations with the power to stop FCI’s work, to cause FCI to spend time and money to rework areas, and to delay FCI’s ability to commence various construction activities. *See* Hutcherson Aff., ¶¶ 5-10, Again, TSC’s MSJ does not deny these facts.

LEGAL ARGUMENT

TSC’s MSJ ignores binding South Carolina Supreme Court precedent and otherwise misstates the law governing FCI’s right to pursue TSC for negligent performance of engineering duties. TSC also presents irrelevant arguments regarding FCI’s separate claims against Horry County and SCDOT as if more than one entity cannot be liable on a construction project. Again, the South Carolina Supreme Court has recognized that a contract claim against an owner does not preclude a tort claim against an engineer on the same project. *See Tommy L. Griffin*, 320 S.C. 49, 51-52, 463 S.E.2d 85, 87.

TSC interacted with FCI on nearly every aspect of the work on a daily basis during Project construction and wielded the power of economic life or death over the Contractor. In short, a special relationship existed between TSC and FCI that gave rise to a duty on TSC’s part to behave in accordance with the applicable standard of care. As set forth in the Affidavit of Kenneth O’Connell, P.E. filed with FCI’s Amended Complaint, TSC violated that standard of care resulting in liability to FCI. Am. Compl. Ex. 7. The Court, therefore, should deny TSC’s MSJ concerning FCI’s negligence count.

TSC's arguments concerning FCI's other causes of action are equally unavailing. For example, TSC's Engineering Contract contains no provision precluding a third-party beneficiary. Moreover, TSC relies upon inapplicable or distorted authority and presents only an isolated, conclusory paragraph of an affidavit in its effort to summarily dismiss FCI's third-party beneficiary claim. This is insufficient to meet TSC's burden. TSC similarly relies upon a single conclusory paragraph to claim a qualified immunity from liability for tortious interference. MSJ, p. 20. Thus, TSC claims, without support, that it has an agency relationship with Horry County that insulates it from any claim that it tortiously interfered with FCI's Construction Contract. Yet, TSC has not met its burden to prove such a privilege. Further, TSC's activity constitutes a breach of the SCUTPA because TSC engaged in a recurring practice of improper management and overzealous inspection causing significant damage to a major infrastructure contractor which certainly negatively impacts the public. TSC's argument that its activity is exempt from liability under the SCUTPA contradicts applicable case law.

A. South Carolina Law Permits FCI's Negligence Claim Against TSC

Almost three decades ago, the South Carolina Supreme Court conclusively established that engineers who negligently design and/or supervise construction may be held liable for economic loss to contractors who suffer as a result of that negligence. *Tommy L. Griffin Plumbing & Heating Co., v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 463 S.E.2d 85 (1995). In coming to this conclusion, the Court recognized that, "[t]raditionally, almost all states uniformly held that design professionals were not liable in tort to [contractors] for purely economic loss." *Id.* at 52, 463 S.E.2d at 87. However, the Court then sided with the growing number of states that allow such actions when a "special relationship" exists between the engineer and the contractor. *Id.* The Court in

Tommy L. Griffin footnoted cases from approximately 17 other jurisdictions embracing this exception to the “economic loss rule.” *Id.* at 53, 463 S.E.2d at 87, n.1.

FCI’s relationship with TSC fits squarely within the parameters of the holding in *Tommy L. Griffin*. TSC can find no refuge in its cited cases from other jurisdictions that do not share South Carolina’s view. *See* MSJ, pp. 10-17. Nor does TSC’s argument claiming that a duty of care to FCI creates an unallowable conflict of interest carry any logical or legal weight. *See* MSJ, pp. 12-14. Similarly, the fact that FCI also had claims against Horry County and SCDOT is irrelevant under the law. *See* MSJ, p. 14. The contractor in *Tommy L. Griffin* had claims against the owner as well. In sum, FCI’s cause of action against TSC for negligence complies with well-established South Carolina law, and TSC’s MSJ does nothing to change that fact.

1. FCI and TSC Had a “Special Relationship” as Defined by South Carolina Law

In *Tommy L. Griffin*, a construction contractor who performed work for the County of Charleston brought a tort action against the engineer who designed and supervised the project for the County. *Id.* 51, 463 S.E.2d at 86. Notably, the contractor’s claim focused on the engineer’s negligent supervision of the work. For example, the contractor alleged that the engineer “closed the job for nearly a month due to false allegations of OSHA violations, made demands of [the contractor] that were not in the contract...[and] erroneously interpreted the contract...” *Id.* at 51-52, 463 S.E.2d at 86-87.

In allowing the contractor’s tort claim, the Court in *Tommy L. Griffin* determined that, “when...there is a special relationship between the alleged tortfeasor and the injured party not arising in contract, the breach of that duty of care will support a tort action.” *Id.* 55, 463 S.E.2d at 88 (citing *S.C. State Ports Auth. V. Booz-Allen & Hamilton, Inc.*, 289 S.C. 373, 346 S.E.2d 324 (1986)). The Court observed that the engineer designed the project, but more relevant to the

contractor's allegations was the fact that the engineer "supervised the project." *Id.* at 56, 463 S.E.2d at 89. The Court specifically noted that the engineer "had the right, among other rights, to inspect the construction and to halt construction." *Id.* Under these facts, the Court in *Tommy L. Griffin* held that, the engineer "owed a duty to the contractor not to negligently design or negligently supervise the project." *Id.* (emphasis added). In other words, the Court decided that an engineer who has the right to inspect a contractor's work and to stop that work owes the contractor a duty not to negligently supervise the project in question.

The record is ripe with instances of TSC's exercise of rights giving rise to a special relationship and attendant duty from TSC to FCI. In the instant case, TSC's Engineering Contract with Horry County tasked the Engineer with thoroughly inspecting FCI's work. Indeed, Attachment "A" includes several pages of detailed "Inspection and Testing Services" for which TSC was responsible. Similarly, TSC had the ability to stop FCI's work whenever TSC decided to do so. Not only was this power inherent in TSC's obligation under its Engineering Contract with Horry County to "ensure that quality materials are being incorporated into the project, ensure that quality workmanship is utilized on the project," etc., but TSC exercised the right during the day-to-day construction operations. MSJ, Ex. E, p. 21/28 (pdf. p. 538). For instance, in his July 21, 2017, email to SCDOT, Mr. Marty Long of TSC noted that he chose not to reject a concrete truck to avoid delaying the job. Brumfield Aff., Ex. 9, p. 1. Hence, Mr. Long tacitly acknowledges that had he chosen otherwise, he could have rejected FCI's work and stopped progress. SCDOT even confirmed that TSC possessed this right in their response to Mr. Long's December 1, 2015, email. Brumfield Aff., Ex. 6, p. 1. There, SCDOT complained that Mr. Long should have "made the call to stop work" because TSC had been hired for "project inspection and management." *Id.*

As set forth in the attached Affidavit of FCI's Project Manager, Mr. Louis Hutcherson, TSC oversaw all aspects of FCI's performance obligations including, but not limited to, inspecting FCI's work and determining whether FCI could proceed with construction or must stand down. Hutcherson Aff., ¶ 5-6. TSC also exercised a host of other construction administration powers governing submittals, payments, scheduling, and processing FCI's requests for information. *Id.* ¶ 7. Unfortunately, TSC repeatedly wielded its powers on the Project improperly by erroneously interpreting the Project Specifications, wrongfully rejecting FCI's work, and otherwise causing FCI delay and additional costs. *Id.* ¶ 10.

Under these facts, the applicable South Carolina Supreme Court precedent as espoused in *Tommy L. Griffin* mandates that FCI be allowed to present its claim against TSC for negligence. TSC's assertions to the contrary have no legal or factual support. At the very least, TSC's documents and emails produced during discovery along with FCI's recounting of Project events establish genuine issues of material fact which preclude entry of summary judgment in this matter.

2. TSC's Efforts to Distinguish *Tommy L. Griffin* are Unavailing.

On page 14 of its MSJ, TSC attempts to distinguish this case from *Tommy L. Griffin* by asserting that "TSC prepared no plans, and Plaintiff had no right to rely on any determinations by TSC, because TSC had no final decision-making authority." Based on this statement, TSC asserts "Accordingly, there is no special relationship between Plaintiff and TSC sufficient to give rise to any duty owed by TSC to Plaintiff..." Yet, TSC misreads the applicable precedent, distorts the facts, and ignores the realities of its contract administration role.

a. TSC's questionable denial of its design duties is irrelevant.

Mr. Strub's announcement that TSC did not perform certain of its obligations under the Engineering Contract is irrelevant to FCI's negligence claim. MSJ, Ex. F, para. 7 (pdf. p. 548).

The “Engineer Certification for Project Plans and Specifications” that TSC and Horry County executed assigns to TSC “full responsibility for all project plan and specification reviews including the approval of all information, dimensions, quantities, details and designs involved in the preparation and production of the project plans and specifications...” MSJ, Ex. E, p. 16/28 (pdf. p. 533). In the Certification, TSC goes on to certify not only that it will produce plans and specifications, but that it will check the plans and specifications “in their entirety for completeness, correctness, accuracy and consistency” and thoroughly review them to ensure that they comply with applicable requirements. *Id.* TSC makes other certifications as well including that it will perform its work “in accordance with the special provisions and specifications, and...so as to meet or exceed reasonable standard of care of the profession...” *Id.*

As set forth in Section II. C. of the Engineering Contract, TSC and Horry County would not have executed the Certification unless “agreed by the parties as applicable.” MSJ, Ex. E, p. 03/28 (pdf. p. 520). Despite previously executing that Certification on behalf of TSC, Mr. Strub now states that “TranSystems never prepared, signed, or sealed any design plans for the Project.” See MSJ Ex. F, para. 7 (pdf. p. 548). Importantly, TSC presents no evidence that the Certification was withdrawn or that the Engineering Contract was amended to delete it. Rather, Mr. Strub simply confesses that TSC did not comply with some of the terms. He says nothing about TSC’s responsibility to review the plans and specifications for completeness, correctness, accuracy, and consistency. Presumably, TSC was still contractually obligated to perform those duties which certainly places some share of design responsibility upon TSC.

Ultimately, however, TSC’s failure to comply with the executed Certification is superfluous to FCI’s entitlement to pursue TSC for negligence. In *Tommy L. Griffin*, the contractor sued the engineer for failures in contract administration (closing the job due to false allegations,

making demands not based in the contract, erroneously interpreting the contract, etc.). The Court makes no mention of any design issues. 320 S.C. at 51-52, 463 S.E.2d at 86-87. Thus, the Court alighted upon the fact that the engineer had supervised the construction, had the right to inspect the work and could halt construction. *Id.* at 55-56, 463 S.E.2d at 89. Based upon these facts, the Court ruled that the engineer owed a duty to the contractor not to either negligently design or negligently supervise the work. *Id.* In short, the Court's ruling was disjunctive. An engineer who has inspection rights and can halt construction has a duty to the contractor not to negligently supervise the work. Design responsibility is not critical to the analysis. TSC undeniably had the right to inspect FCI's work as well as the power to stop the FCI's progress. TSC's Engineering Contract makes clear that TSC also had design responsibility. Even if Mr. Strub's Affidavit clouds the extent of that responsibility, those facts are not essential to the determination that TSC owed FCI a duty not to negligently supervise the construction.

b. SCDOT's authority is immaterial to TSC's special relationship with FCI.

On page 14 of its MSJ, TSC asserts that "Plaintiff had no right to rely on any determinations of TSC, because TSC had no final decision-making authority. Plaintiff could rely only on the decisions of the SCDOT Resident Construction Engineer." According to TSC, SCDOT's authority over TSC somehow neutralizes TSC's duty to FCI not to negligently perform TSC's construction supervision duties. Yet, TSC offers no citation for this novel proposition. Moreover, the facts (every inference from which must be made in FCI's favor) disprove TSC's assertions.

First, TSC's claim conflicts with the terms of the Engineering Contract. Attachment "A," "Project Management," provides that TSC "will be responsible for the day-to-day operation and administration of the project." MSJ, Ex. E, p. 21/28 (pdf. p. 538). The provision requires that TSC report to SCDOT, but it says nothing about when and under what circumstances such reporting

will occur. Nor does Attachment “A” contemplate SCDOT having final authority over every inspection and project administration issue. On the contrary, TSC “will be responsible for ensuring an appropriate level of inspection for all phases and aspects of the project.” *Id.* SCDOT will only make final decisions “when necessary.” *Id.* However, the Engineering Contract provides no guidance on what conditions make SCDOT’s intervention necessary. To suggest that TSC conducted the inspections and provided day-to-day operation and administration of the Project, but FCI could not rely on anything that TSC said or did is ludicrous and suggests a fundamental misunderstanding of complex construction projects. If FCI could not rely on TSC’s determinations, then no reason existed for TSC to be on the Project.

Second, TSC’s statement conflicts with the facts. TSC held itself out to FCI as the RCE under Specification 105 with authority to make decisions including the decision to stop work. Hutcherson Aff., ¶ 3. Marty Long of TSC signed every Project Weekly Update Meeting Minutes as “Resident Construction Engineer.” Brumfield Aff., Ex. 2, p. 5 and Ex. 6, p. 4. He also represented himself to SCDOT as the RCE in emails such as the one on July 21, 2017, in which he referred to “the RCE (Me)...” Brumfield Aff., Ex. 8, p. 1. Similarly, SCDOT clearly considered TSC to have the ability to stop FCI’s work. Again, in response to TSC’s December 1, 2015, email, SCDOT confirmed that TSC should have made the call to stop FCI’s work, not SCDOT. Brumfield Aff., Ex. 7, p. 1. That is what TSC had been hired for. In practice, TSC constantly inspected FCI’s work, accepted submittals, and stopped construction when it chose to do so. *See* Hutcherson Aff.

Third, the Certification included in TSC’s Engineering Contract certified that TSC would perform all of its work “to meet or exceed reasonable standard of care of the profession.” MSJ, Ex. E, p. 16/28 (pdf. p. 533). TSC references South Carolina’s Rules of Professional Conduct for

Engineers on page twelve of its MSJ. These obligations “shall be binding upon every person holding a certificate of registration as a Professional Engineer or Surveyor” including TSC, regardless of whether it is ultimately subordinate to SCDOT or not. S.C. Code Ann. Regs. § 49-300(A). Thus, even if SCDOT had the final authority concerning each and every inspection and construction administration activity (which FCI contests), TSC still owed FCI a duty to perform in accordance with the standard of care for professional engineers. TSC, for example, could not reject work that actually complied with the Specifications thereby delaying construction progress, but then evade responsibility for such improper actions by asserting that SCDOT had final authority on whether the work was in compliance.

c. TSC’s references to cases from other jurisdictions are misplaced.

On pp. 10-17 of its MSJ, TSC presents a somewhat disjointed recitation of caselaw from courts in Idaho, Vermont, Maryland, and Indiana with the aim of blurring the precedential effect of the *Tommy L. Griffin* decision. Not only is this exercise fruitless in the face of clear South Carolina Supreme Court precedent, but TSC’s chosen cases shed little light on the special relationship between a construction contractor and the project engineer. The court need not and should not be swayed by TSC’s distraction.

The Court in *Tommy L. Griffin* understood that various jurisdictions assume different positions on the issue of whether parties not in contractual privity can sue one another in tort for economic loss. 320 S.C. at 53, 463 S.E.2d at 87, n.1. The Court then chose to side with those jurisdictions that allow such a cause of action, and it drew a clear line holding an engineer who can inspect and halt a contractor’s work liable to the contractor for economic loss arising from negligent supervision. *Id.* Some of the cases cited by TSC also recognize this split in perspectives by the courts of various states. For example, on p.15 of the MSJ, TSC cites *Balfour Beatty*

Infrastructure, Inc. v. Rummel Klepper & Kahl, LLP, 451 Md. 600, 155 A.3d 445 (Md. 2017). There, the Maryland court observed that “jurisdictions are split over whether to apply the economic loss doctrine in the construction context.” 451 Md. at 621, 155 A.3d at 457.

TSC entices the court to consider these foreign cases by insisting that “South Carolina courts have not explicitly stated a test to evaluate whether there is a special relationship sufficient to create a tort duty in these circumstances.” MSJ, p. 10. Yet, even a cursory reading of *Tommy L. Griffin* disproves TSG’s statement. Again, the South Carolina Supreme Court has plainly stated that an engineer who has the power to inspect work and halt construction progress has a special relationship with the contractor giving rise to a duty on the engineer’s part not to supervise the work in a negligent manner. 320 S.C. at 55-56, 463 S.E.2d at 89.

Not only are TSC’s foreign cases irrelevant in the face of binding South Carolina precedent, but they present vastly dissimilar fact patterns wholly unrelated to the assessment of the special relationship between a construction contractor and the supervising engineer. In TSC’s Idaho case, for example, the court evaluated the relationship between a soils engineer hired by a developer and a homeowner who later purchased the affected property. See MSJ, p.10 (citing *Blahd v. Richard B. Smith, Inc.*, 141 Idaho 296, 108 P.3d 996 (2005) (*abrogation recognized by BrunoBuilt, Inc. v. Briggs Eng'g, Inc.*, 525 P.3d 1122, 1128-29, n. 5 (Idaho 2023))). Similarly, in TSC’s Vermont case, the court looks at the relationship between a condominium association and the construction contractor. See MSJ, p. 11 (citing *Long Trail House Condo Ass’n v. Engelberth Const., Inc.*, 192 Vt. 322, 59 A.3d 752). Finally, in TSC’s Indiana case, the court assessed the relationship between an owner and the subcontractor of the engineer with whom the owner had contractual privity. See MSJ, p.16 (citing *Indianapolis-Marion Cty. Pub. Library v. Charlier Clark & Linard, P.C.*, 929 N.E.2d 722 (Ind. 2010)). None of these cases provide any useful insight into the special relationship

that the South Carolina Supreme Court recognized between a construction contractor and the supervising engineer.

d. TSC's citations to South Carolina cases are inapposite.

On pp.8-9 of the MSJ, TSC cites to a few South Carolina decisions concerning general concepts related to the economic loss doctrine. As with TSC's reference to cases from other jurisdictions, these citations are of little use to the Court in light of the clear direction provided by the *Tommy L. Griffin* decision. Again, the courts in those decisions analyze relationships completely different from the instant case. For example, in *McCarthy v. Keowee Falls Investment Group, L.L.C.*, No. 2011CP236376, 2013 WL 9921457 (S.C.Com.Pl. 2013), the court analyzed the relationship between a landowner and an engineer that performed work on a completely separate piece of property. Similarly, in *Colleton Preparatory Academy, Inc. v. Hoover Universal, Inc.*, 379 S.C. 181 (2008) (*overruled by Sapp v. Ford Motor Company*, 386 S.C. 143, 687 S.E.2d 47 (2009)), the court evaluated the relationship between a school and the manufacturer of fire-treated roof trusses used at the school. This is a products liability case just like the other citation included by TSC, *Sapp v. Ford Motor Company*, 386 S.C. 143, 687 S.E.2d 47 (2009), which overruled *Colleton Preparator Academy*. As such, these cases provide no useful insight into the existence of a "special relationship" between TSC and FCI.

3. TSC Misapprehends the Law on Conflicts of Interest.

TSC spends several pages of its MSJ discussing TSC's professional responsibilities culminating in the unlikely conclusion that this court should "refuse to recognize any duty tort (sic) owed by TSC to Plaintiff, because doing so would create an improper and impermissible conflict of interest." MSJ, pp.12- 14. TSC bases this revelation on its feeling that "an engineer cannot simultaneously owe a duty to a client of utmost good faith and diligence in performing

inspections, while simultaneously owing some duty imposed by law to not be ‘too diligent’ or ‘too zealous’ in performing inspections.” MSJ, p.14.

TSC simply misses the point. The engineer in *Tommy L. Griffin* had the same professional responsibility obligations as TSC. Indeed, TSC’s MSJ refers to the S.C. Code of Regs to which all engineers practicing in South Carolina are bound. Yet, the Supreme Court in *Tommy L. Griffin* did hold that the engineer owed the contractor a duty not to negligently supervise the project. 320 S.C. at 55-57, 463 S.E.2d at 89. TSC makes no effort to explain this disparity between its own conclusory remarks about a conflict of interest and the South Carolina Supreme Court’s ruling.

In reality, TSC’s “conflict of interest” argument is misplaced and reveals a fundamental misunderstanding of the nature of the duty owed to FCI by TSC. That duty is “not to negligently design or supervise the project.” *Id.* at 57, 463 S.E.2d at 89. The duty is completely in compliance with TSC’s other professional responsibilities. Moreover, pressing FCI to perform work that is not required by the Specifications, rejecting compliant work, and unnecessarily delaying the Project is hardly “doing ‘too good’ a job for...Horry County” as TSC suggests on p.14 of the MSJ. The Court should discard TSC’s argument in this regard.

B. In the Alternative, FCI is a Third-Party Beneficiary of the Engineering Contract

Under South Carolina law, it is well settled that a nonparty may enforce contractual terms that intentionally provide it direct benefits. *Beverly v. Grand Strand Reg’l Med. Ctr., LLC*, 429 S.C. 502, 507, 839 S.E.2d 468, 470 (Ct. App. 2020), *aff’d*, 435 S.C. 594, 869 S.E.2d 812 (2022). The key determination to be made is whether the parties to the Engineering Contract (Horry County and TSC) intended FCI to be a third-party beneficiary of their agreement. To date, the parties have only conducted limited discovery and more document production and depositions are needed to adequately determine the intent of the parties to the Engineering Contract. As described

above, TSC had authority to control the Project, to ensure that the work of FCI was progressing in accordance with the proposed Project schedule, and to facilitate change orders and other requests between FCI and Horry County, all of which were done for the direct benefit of FCI.

1. The Engineering Contract Does Not Preclude Third-Party Beneficiaries

The Engineering Contract has no provisions limiting liability to any third parties or excluding the creation of third-party beneficiary rights. Provisions which expressly disavow any intent to create rights in favor of a third party are prevalent in standard contract forms. 5 Bruner & O'Connor Construction Law, § 17:30 Theories of design professional liability—Liability to third-party beneficiaries, n. 2. Yet, TSC and Horry County did not elect to use such standard contract language or limiting clauses. Further, such exclusionary clauses are not always enough to prevent the creation of third-party beneficiary rights where the contract as a whole demonstrates a contrary intent. *Beverly*, 429 S.C. at 507-09, 839 S.E.2d at 470-72. Despite the foregoing, TSC claims that “the plain, unambiguous language of the Project Contracts” demonstrate a lack of intent to benefit FCI. MSJ, p. 18. Yet, TSC cites no provision of the contract to support its claim.

TSC then asserts that it has provided “affirmative evidence” of its position which consists of a single paragraph of an affidavit from TSC Senior Vice President Peter Strub. MSJ, p. 18 (citing MSJ, Ex. F). The Strub Affidavit is dated April 3, 2023, which is years after formation of the Engineering Contract and completion of the Construction Contract. Moreover, the Strub Affidavit includes no supporting documentation. *Id.* TSC needs more than a self-serving affidavit drafted years after a dispute arises to carry its burden in a dispositive motion related to the intentions of the parties at the time of contracting. *Laser Supply & Servs., Inc. v. Orchard Park Assocs.*, 382 S.C. 326, 334, 676 S.E.2d 139, 143 (Ct. App. 2009) (“Interpretation of a contract is governed by the objective manifestation of the parties’ assent at the time the contract was made, rather than the

subjective, after-the-fact meaning one party assigns to it.”) (*see also Watson v. Underwood*, 407 S.C. 443, 455, 756 S.E.2d 155, 162 (Ct. App. 2014) (rejecting use of deposition testimony after a dispute arose to support an interpretation of an unambiguous contract)).

2. Whether FCI was Named at the Time the Engineering Contract was Executed is Immaterial to the Intent of the Parties

TSC’s claim that FCI cannot be a third-party beneficiary of the Engineering Contract because FCI was not yet specifically identified as the Contractor when the Engineering Contract was executed is unavailing. MSJ, p. 19. The specific identification of an intended third-party beneficiary is not necessary to create a third-party’s right to enforce the subject contract. Here, the court must discern whether the contracting parties intended to make the Project’s contractor a beneficiary regardless of who ultimately became the contractor. Under South Carolina law, a contract between two parties for the benefit of a third can be enforced by the third party, even if the third party is not named in the contract. *Svenningsen v. Knight*, 286 S.C. 299, 303, 333 S.E.2d 78, 81 (Ct. App. 1985) (see also *Jennings v. First of Georgia Underwriters Co.*, 283 S.C. 455, 457, 322 S.E.2d 694, 695 (Ct. App. 1984) (explaining contracts between two persons for the benefit of a third can be enforced by the third person even though she is not named therein). Based upon the Engineering Contract, TSC was obligated to inspect, monitor, respond to questions, and report on activities of the contractor regardless of which construction firm ultimately worked on the Project. MSJ, Ex. E, p. 21/28 (pdf. p. 538). The Project contractor was intended to benefit from TSC’s obligations in this regard. Thus, while the specific contractor was not known at the time of contracting, FCI as the Project’s ultimate Contractor was and is still an intended direct beneficiary of the Engineering Contract.

3. Summary Judgment is Premature Because More Discovery is Needed

Summary judgment is “a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery.” *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003). Where a contract is ambiguous, the intention of the parties is controlling and is a question of fact. *S.C. Dep’t of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302-303 (2001). Although FCI contends that the Engineering Contract may be read to unambiguously extend rights to FCI, to the extent that the Court perceives any ambiguity on this point, then determining whether FCI is a third-party beneficiary is a factual inquiry relating to the intent of TSC and Horry County in forming the Engineering Contract. TSC points to no provision excluding creation of a third-party beneficiary and has substantial obligations that are directly to FCI’s benefit. The parties have only conducted limited discovery which is incomplete and no depositions have been taken by either side. Additional depositions of TSC and Horry County would reveal the parties’ intent at the time of contracting which is the relevant determination on this issue. *Beverly v. Grand Strand Reg’l Med. Ctr., LLC*, 429 S.C. 502, 507-08, 839 S.E.2d 468, 470-71 (Ct. App. 2020). At the very least, a genuine issue of material fact exists precluding summary judgment on the issue of whether FCI is a third-party beneficiary of the Engineering Contract, therefore, TSC’s MSJ should be denied.

C. TSC Provides No Evidence to Overcome a Tortious Interference Claim and Cannot Meet Its Burden to Claim Any Privilege from Immunity

TSC has put forth no facts to demonstrate any agency relationship, nor evidence of its exercise of agency authority for any of the relevant activities alleged by FCI. This Court should not preemptively dismiss FCI’s count for tortious interference with contract before FCI has an opportunity to present its case on TSC’s intentional procurement of breach of the Construction Contract.

1. TSC Does Not Benefit from Qualified Immunity from Liability for Tortious Interference Because it has Not Established that it is an Agent of SCDOT

Agency “is the fiduciary relationship that arises when one person (a ‘principal’) manifests assent to another person (an ‘agent’) that the agent shall act on the principal’s behalf and subject to the principal’s control. *Froneberger v. Smith*, 406 S.C. 37, 49, 748 S.E.2d 625, 631 (Ct. App. 2013) (quoting Restatement (Third) of Agency § 1.01 (2006)). Generally, “[a]gency is a question of fact.” *Ritter & Assocs., Inc. v. Buchanan Volkswagen, Inc.*, 405 S.C. 643, 650, 748 S.E.2d 801, 804 (Ct. App. 2013) (citing *Gathers v. Harris Teeter Supermarket*, 282 S.C. 220, 226, 317 S.E.2d 748, 752 (Ct.App.1984)). “A true agency relationship may be established by evidence of actual or apparent authority.” *R & G Const., Inc. v. Lowcountry Reg’l Transp. Auth.*, 343 S.C. 424, 432, 540 S.E.2d 113, 117 (Ct. App. 2000). Agency may not be established “solely by the declarations and conduct of an alleged agent.” *Cowburn v. Leventis*, 366 S.C. 20, 619 S.E.2d 437 (Ct. App. 2005)). Apparent authority “must be established based upon manifestations by the principal, not the agent.” *Gibson v. Ameris Bank*, 420 S.C. 536, 543, 804 S.E.2d 276, 280 (Ct. App. 2017). The key relationship for determining apparent agency is not that between the principal and the agent, but that between the principal and the third party. 343 S.C. at 432-33.

The sum of TSC’s argument against FCI’s tortious interference claim is contained in a single paragraph which states 1) Horry County delegated all decision making authority to SCDOT’s RCE, 2) TSC’s actions are within the scope of TSC’s Engineering Contract with Horry County, and 3) therefore, TSC was acting as Horry County’s agent such that TSC is immune from liability for tortious interference with FCI Construction Contract. MSJ, p. 20. This argument relies entirely on a singular, conclusory claim by TSC, the alleged agent, and provides no factual evidence that an agency relationship actually existed or that an apparent agency relationship was created. Notably, TSC has no contract with SCDOT. Moreover, TSC provides no evidence that

SCDOT, the alleged principal, gave TSC actual or apparent authority to act as its agent. Therefore, whether TSC performed consistent with its contract with Horry County has no bearing on whether TSC was acting within alleged agency authority. As such, TSC cannot rely on any agency privilege to shield it from liability for tortious interference.

In an effort to support its position, TSC relies on cases that either present unrelatable factual scenarios or apply law foreign to South Carolina. First, TSC relies upon *Dutch Fork Dev. Grp. II, LLC v. SEL Props., LLC*, 406 S.C. 596, 753 S.E.2d 840 (2012), which held an employee of a corporation could not be held to have tortiously interfered with its employer corporation's contracts. That case bears no factual similarities to the case at hand. TSC is not a Horry County employee. TSC then relies upon *CGB Occupational Therapy, Inc. v. RHA Health Servcs. Inc.*, 357 F.3d 375 (3d Cir. 2004), which is a decision from a federal court applying Pennsylvania law to a dispute in which the allegedly tortious actions were privileged because the contract in question had express and unambiguous language granting the alleged tortfeasor agency authority to perform the allegedly tortious actions. No such immunizing contract language exists here, and TSC has provided no evidence that its actions were in furtherance of any alleged responsibilities as an agent of Horry County. Hence, at the very least, a genuine issue of material fact exists concerning whether TSC's contract with Horry County gave rise to an agent-principal relationship. Summary judgment on this cause of action is inappropriate as a result.

2. Preemptive Dismissal or Stay is Not Required

TSC asserts that because there has not yet been a determination of breach of the Construction Contract, FCI cannot assert an action for tortious interference. It, therefore, suggests that the Court must preemptively dismiss or stay FCI's claim. TSC, however, misapprehends the law. It is true that where there is no breach there cannot be recovery for tortious interference. *First*

Union Mortg. Corp. v. Thomas, 317 S.C. 63, 73, 451 S.E.2d 907, 913 (Ct. App. 1994). However, this does not mean that until a breach has been proven, a court is required to summarily dismiss a claim for tortious interference. Rather, the law simply requires that the plaintiff ultimately carry its burden to demonstrate each element of the offense, including intentional procurement of breach of contract by the alleged tortfeasor. TSC has done nothing to demonstrate that FCI cannot ultimately carry this burden. Thus, summary judgment is inappropriate just because FCI has not yet proven that TSC intentionally procured Horry County's breach of its contract with FCI.

On MSJ p. 20, in footnote 10, TSC cites to *Eldeco, Inc. v. Charleston Co. Sch. Dist.*, 372 S.C. 470, 642 S.E.2d 726 (2007). Despite TSC's argument, *Eldeco* does not stand for the proposition that courts should summarily dismiss claims of breach which have not yet been proven, rather it permits dismissal of a tortious interference claim where breach *cannot* be proven. The court in *Eldeco* did not preemptively dismiss the claim without permitting the plaintiff to prove its case, but instead found that the plaintiff was not capable of proving its case because there was no contractual provision providing for the obligations that the plaintiff alleged had been breached. *Id.* Here, FCI's damages for tortious interference arise directly from breaches of the Construction Contract, and FCI should not preemptively be denied its right to prove its case.

D. TSC is Liable Under the SCUTPA

TSC's characterization of its actions as "at worst...a breach of TSC's duties to Horry County under the TSC Contract," minimizes TSC's obligations and ignores the impact of its repeated breaches. MSJ, p. 20. As described above, TSC's errors and omissions comprise more than a single, simple breach of contract. Rather, they constitute a repeated pattern of professionally negligent activities causing unwarranted delay and damages to FCI and the instant public infrastructure Project. Further, no regulatory body approved or specifically regulates the actions

undertaken by TSC which constitute a breach of its obligations, therefore, TSC is not exempt from liability under the SCUTPA.

1. FCI's SCUTPA Count Should Survive Summary Judgment

The South Carolina Unfair Trade Practice Act ("SCUTPA") prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." S.C. Code Ann. § 39-5-20(a). To recover under the SCUTPA, "the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected [the] public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 638, 743 S.E.2d 808, 816 (2013) (quoting *Wright v. Craft*, 372 S.C. 1, 23, 640 S.E.2d 486, 489 (Ct. App. 2006)).

An act is "'unfair' when it is offensive to public policy or when it is immoral, unethical, or oppressive." *Id.* (internal citations omitted). An act is "'deceptive' when it has a tendency to deceive." *Id.* The "impact on the public interest may be shown if the acts or practices have the potential for repetition." *Singleton v. Stokes Motors, Inc.*, 358 S.C. 369, 379, 595 S.E.2d 461, 466 (2004). The potential for repetition can be demonstrated "(1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures created a potential for repetition of the unfair and deceptive acts." *Id.* (quoting *Crory v. Djebelli*, 329 S.C. 385, 387, 496 S.E.2d 21, 23 (1998)). TSC bears the burden of proving that any exemption applies to it as "the person claiming the exemption." S.C. Code. Ann. § 39-5-40.

TSC not only breached its professional and contractual obligations but it engaged in unfair practices that caused FCI significant delay and damages. Notably, TSC denies that it did anything

wrong on the Project. Instead, it argues that “If Plaintiff is entitled to any relief...it may seek this relief under Plaintiff’s Construction Contract with Horry County.” MSJ, p.7. TSC also suggests that it is being sued for “doing ‘too good’ of a job for its client..” MSJ, p. 14. These assertions demonstrate that TSC is wholly unapologetic for and unconcerned about its improper conduct. Hence, it is likely to continue such errors and omissions on other public infra-structure projects if not deterred.

The attached Affidavit of Mr. Louis Hutcherson raises significant issues concerning TSC’s repeated violations of TSC’s duty to comply with the professional standard of care on a major public infra-structure project. Hutcherson Aff., ¶ 11. These transgressions include, but are not limited to, failure to process submittals, misinterpretation of applicable Specifications, wrongful rejection of compliant work, and unwarranted delay of construction activities. Hutcherson Aff., ¶¶ 10, 15, 17. During the course of the Project, TSC engaged in a pattern of wrongful acts and omissions which was repeated over and over causing significant delay and damages to FCI. While it is true that a single breach of contract between and among commercial entities does not constitute a violation of the SCUTPA, a recurring practice of overzealous inspection causing unnecessary damages to contractors which is likely to be repeated in the future does violate the Act. Moreover, TSC’s wholesale denial of any responsibility whatsoever suggests an intention to repeat these practices on other public projects in the future. Certainly sufficient facts have been asserted by FCI to survive TSC’s MSJ on this point.

2. TSC Cannot Meet its Burden to Demonstrate Exemption from SCUTPA Liability

TSC claims that it is exempt from SCUTPA liability so long as it is conducting “the practice of engineering and the provision of CEIT Services.” MSJ, p. 21. The exemption from liability to which TSC refers states that the SCUTPA shall not apply to “[a]ctions or transactions permitted

under laws administered by any regulatory body or officer acting under statutory authority of this State or the United States or actions or transactions permitted by any other South Carolina State law.” S.C. Code. Ann. § 39-5-40. The S.C. Supreme Court summarized:

The purpose of the exemption is to insure that a business is not subjected to a lawsuit under the [UTPA] when it does something required by law, or does something that would otherwise be a violation of the [UTPA], but which is allowed under other statutes or regulations. It is intended to avoid conflict between laws, not to exclude from the [UTPA]'s coverage every activity that is authorized or regulated by another statute or agency.

Ward v. Dick Dyer & Assoc., Inc., 304 S.C. 152, 156, 403 S.E.2d 310, 312 (1991).

TSC does not qualify for any exemption under this provision. The court in *Ward* listed a series of cases in which parties were acting in an industry that was regulated by some governmental agency, but the scope of that regulation did not include the wrongful activities alleged. *Id.* at 156-57. For example, unfair trade practices among car dealers was not regulated by the Highway Advertising Control Act, such that the dealer was not exempt from the SCUTPA, even if the activity of putting up advertising was regulated. *Bobcook Outdoor Media, Inc. v. Summey Outdoor Advertising, Inc.*, 294 S.C. 169, 363 S.E.2d 390 (Ct.App. 1987), *overruled on other grounds by O’Neal v. Bowles*, 314 S.C. 525, 527, 421 S.E.2d 555, 556 (1993). On the other hand, an insurance company’s decision to exclude coverage for a procedure was exempt because the exclusion was specifically approved by the South Carolina Commission of Insurance.” *Trident Neuro-Imaging Laboratory v. Blue Cross and Blue Shield of South Carolina, Inc.*, 568 F.Supp. 1474, 1483 (D.S.C. 1983).

TSC points to no specific regulatory measure that governs the engineering, supervision, and inspection activities it was performing at the Project. TSC certainly does not provide evidence of any decision by a regulatory body that specifically approved TSC’s actions and/or inactions. In short, TSC has not and cannot carry its burden to demonstrate that it is exempt from the SCUTPA.

Finally, to the extent that discovery is not yet complete (e.g., TSC's RCE has not yet been deposited), summary dismissal of FCI's Fourth Cause of Action against TSC is premature. On the contrary, at this stage, the court should view every fact and inference in FCI's favor as the non-movant and deny TSC's MSJ.

Conclusion

For the foregoing reasons, FCI respectfully requests that the Court deny TSC's Motion for Summary Judgment in all respects.

Respectfully submitted,

s/Mason A. Goldsmith, Jr.

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McLean, Virginia 22102
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creid@watttieder.com

Attorneys for Flatiron Constructors, Inc.

July 28, 2023
Greenville, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Flatiron Constructors, Inc.,

Plaintiff,

v.

TranSystems Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS

Case No. 2022-CP-26-06116

**AFFIDAVIT OF LOUIS HUTCHERSON
IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

Personally appeared before me, Louis Hutcherson, who after being first duly sworn and deposed and said the following:

1. I am over eighteen years of age, am fully competent and have personal knowledge to testify to the matters stated in this Affidavit.

2. I was employed by Flatiron Constructors, Inc. ("FCI") and worked on the extension to the Carolina Bays Parkway and attendant bridge work (the "Project"), from on or about April 2014 to June 2016. During that time, I fulfilled the role(s) of Project Engineer and, from approximately March 2015, Project Manager for FCI.

3. During my involvement on the Project, I had significant interaction with personnel and inspectors employed by TranSystems Corporation ("TSC"). TSC served as the owner's on-site representative to manage the Project, oversee and inspect FCI's work, and generally administer the construction contract between FCI and the Project owner. Martin Long of TSC held himself out as South Carolina Department of Transportation's ("SCDOT") Resident Construction Engineer ("RCE") on the Project. As both Project Engineer and Project Manager for FCI, I liaised with TSC on a daily basis, particularly Martin Long.

4. During the Project, TSC was FCI's point-of-contact on the Project through which most Project communications and documentation between FCI and the owner/SCDOT was funneled. FCI was required to and did engage with TSC daily to perform FCI's work and satisfy its obligations under the construction contract.

5. TSC oversaw all aspects of FCI's performance of its obligations and the work called for in the construction contract.

6. TSC's field oversight of FCI's work and the work of its subcontractors and suppliers included, without limitation: (i) inspecting materials furnished; (ii) inspecting work performed or installed; (iii) approving or rejecting materials and/or work per TSC's interpretation of the contract requirements, Project specifications and/or industry standards; (iv) coordinating, scheduling, and conducting inspections of installed work; and (v) determining and providing direction as to whether FCI and/or its subcontractors could proceed with the work, must stand down and/or perform rework.

7. In addition, TSC's administration of the construction contract included, without limitation: (i) receipt, coordination and processing of FCI's submittals; (ii) receipt, coordination and processing of FCI's Requests for Information ("RFI(s)"); (iii) receipt, coordination and processing of FCI's payment requests; (iv) receipt, coordination and processing of FCI's requests for inspection or re-inspection; (v) receipt, coordination and processing of FCI's requests for variances, deviations or substitutions; (vi) receipt and coordination concerning schedule updates; and (vii) receipt, coordination and processing of the majority of FCI's Project-related communications and correspondence.

8. TSC wielded substantial influence and power over FCI and impacted the progression and completion of FCI's work on the Project. Throughout the course of the

Project, TSC was the entity that unilaterally determined whether and when to transmit to the owner/SCDOT FCI's submittals and requests for relief, clarification, etc., whether formal submittals or RFIs, or even routine field requests typically handled contemporaneously by owner's representatives or inspectors such as TSC. This authority put TSC in the distinct position to impact – either positively or negatively – FCI's performance of its work on the Project, FCI's cost of performance, and the speed or pace with which the work was completed.

9. As RCE, TSC held itself out as having authority to decide, among other things, questions concerning the quality and acceptability of materials furnished or work performed by FCI and/or its subcontractors, the rate of progress of the work, and the interpretation of the Plans and Specifications. TSC, by and through Mr. Long and others, exercised its right to perform these tasks during the Project, at times to FCI's detriment in terms of added costs and time.

10. TSC possessed the right and/or was permitted to oversee, inspect and reject FCI's work on the Project. As such, when TSC rejected FCI's work based upon an erroneous interpretation of the Project specifications – which occurred on multiple occasions – FCI was left in many cases with little recourse. TSC often made unilateral decisions in the field (without first consulting the owner or SCDOT) that delayed, hindered or otherwise negatively impacted FCI's work.

11. TSC repeatedly exercised its right to reject or stop FCI's work. FCI took issue with TSC's exercise of its authority to independently reject or stop FCI's work when TSC's actions ran afoul of the Project specifications and/or applicable industry standards.

12. Further controlling the work, when FCI asked for guidance or clarification in the field concerning the Project specifications, or standards being implemented by TSC for acceptance of portions of the work, TSC was authorized and/or permitted to decide whether to resolve issues in the field timely to enable the work to proceed or whether to delay work and elevate issues for the owner's or SCDOT's input. This gave TSC immense control over the pace of the work and FCI's ability to complete the Project on time or within FCI's budget.

13. The extent of TSC's authority and control over FCI on the Project is evident when considering the extensive delays and difficulties FCI endured, along with additional costly unnecessary work that FCI was required to perform, at the direction and/or because of TSC.

14. For example, in June 2015, FCI sent TSC information regarding FCI's use of a crane operator-in-training that was working directly under the supervision of an NCCCO Certified Crane Operator employed by FCI. TSC demanded significant additional information exceeding the Occupational Safety and Health Administration ("OSHA") requirements claiming – incorrectly – that Mr. Modlin was working improperly. FCI complied with TSC's meritless demands as best it could. Toward that end, FCI was forced to expend valuable time and resources to overcome TSC's insufficient understanding of the applicable safety requirements and related specifications. Due to the control TSC possessed on the Project, FCI was forced to give time and effort even to clearly meritless demands made by TSC.

15. Illustrative of TSC's control over Project communications and submittals, FCI's completion of the Project was severely delayed by TSC's failure timely to present a critical submittal to the owner/SCDOT. More specifically, FCI submitted its Amended

Drilled Shaft Installation Plan to Mr. Long on July 2, 2014. As the owner's representative and/or SCDOT's RCE, it was Mr. Long's responsibility to review the submittal and if TSC deemed it appropriate to do so, pass it along for final approval by the owner and/or SCDOT. On numerous occasions during the Project, TSC required FCI to revise submittals before it would elevate the submittal for final approval. In this case, however, Mr. Long did not even open the resubmittal, let alone submit it to SCDOT for approval, for 44 days. The Project specifications required SCDOT to return an initial submittal within 21 days, and any revised submittal within 7 days. Here, however, SCDOT did not even receive FCI's Drilled Shaft Installation Plan resubmission within the contractually required review period, because Mr. Long sat on it and did not process it for approval. Without the approval of this submittal, FCI was unable to progress critical portions of the work.

16. TSC caused or contributed to other Project delays in the course of performing its inspection services. Simply put, TSC had the power to disrupt, hinder and thwart FCI's work in the field. FCI and its subcontractors could not perform, progress or complete work without TSC's inspection and approval. At times, TSC inspectors refused to conduct inspections, which caused FCI's work to stall. At other times, TSC inspectors halted inspections before they were complete due to perceived deficiencies in the work. TSC often refused to clearly identify the perceived issues with the work, thereby requiring FCI to conduct time-consuming investigations and unnecessary rework to obtain TSC's sign-off to move the Project forward.

17. TSC was authorized and/or permitted to order FCI to remove and replace materials and completed work on the Project. TSC inspectors often directed FCI to perform rework or rejected contract compliant work without consulting with the Project owner or

SCDOT. When disputes in the field arose, FCI was forced to negotiate with TSC's Mr. Long, the RCE. TSC controlled all aspects of FCI's work.

18. TSC also managed regular construction progress meetings, often determining the agenda and routinely issuing meeting minutes dictating the course of the Project, identification of issues to be addressed by FCI, and priorities for completion of the work.

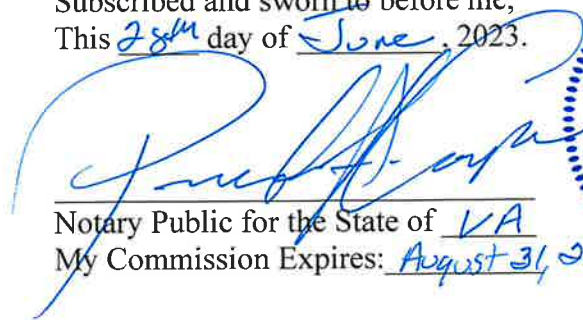
19. As RCE, TSC regularly influenced the owner's/SCDOT's view of issues and disputes significantly impacting the time and cost associated with FCI's performance on the Project.

20. TSC exercised authority and control over every aspect of FCI's performance on the Project. TSC's acts and omissions committed in connection with exerting such authority caused FCI's work to be more difficult, delayed FCI's completion of the Project and caused FCI to incur substantial extra cost and expense.

FURTHER AFFIANT SAYETH NOT.



Subscribed and sworn to before me,
This 28th day of June, 2023.



Notary Public for the State of VA
My Commission Expires: August 31, 2026



EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Flatiron Constructors, Inc.,

Plaintiff,

v.

TranSystems Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS

Case No. 2022-CP-26-06116

**AFFIDAVIT OF LINDA BRUMFIELD
IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

Personally appeared before me, Linda Brumfield, who after being first duly sworn and deposed and said the following:

1. I am over eighteen years of age, am fully competent and have personal knowledge to testify to the matters stated in this Affidavit.

2. I am employed by Flatiron Constructors, Inc. ("FCI") as a Vice President, Divisional Finance. I am familiar with FCI's procedures for making and maintaining business records, including the records attached hereto. It is the regular course of the business of FCI for an employee or representative of FCI with knowledge of an act, event or condition to create or input such information and documents into the electronically maintained business records of FCI at or reasonably soon after the event occurs, and it is also the ordinary and regular practice for FCI to maintain such records.

3. The documents listed below and attached hereto are true and correct copies of correspondence sent or received by FCI in connection with the construction project at issue in the above-captioned litigation, certain of which were already produced to TSC in connection with that certain litigation, which is the predecessor to the above-captioned action, *Flatiron Constructors, Inc. v. TranSystems Corporation*, C.A. No. 2018-CP-26-

02633 (branded with the prefix “FIC”); as to their terms, the attached documents speak for themselves:

- **Exhibit 1**, Email chain between FCI and TSC from July 2, 2014 to August 14, 2014 (FIC000181252-181252_0002);
- **Exhibit 2**, Biweekly Update Meeting Minutes dated September 23, 2015;
- **Exhibit 3**, Notice of Potential Claim from FCI to TSC dated October 18, 2016;
- **Exhibit 4**, Letter from M. Long, RCE (SCDOT) to FCI dated December 11, 2019.

4. As part of discovery in the predecessor litigation to the above-captioned action (i.e., *Flatiron Constructors, Inc. v. TranSystems Corporation*, C.A. No. 2018-CP-26-02633), TSC produced documents to FCI. True and accurate copies of those documents, which were branded by TSC using prefix “TSC”, are listed below and attached hereto; as to their terms, the attached documents speak for themselves:

- **Exhibit 5**, Biweekly Update Meeting Minutes dated December 3, 2014 (TSC00217765-68);
- **Exhibit 6**, Project Organization Chart (TSC00187751);
- **Exhibit 7**, Email from J. Thompson (SCDOT) to Mr. Long (TSC) dated December 2, 2015 (TSC00056796-98);
- **Exhibit 8**, Email chain between FCI and TSC from January 28, 2015 to February 16, 2015 (TSC00248241-42).

5. On or about December 6, 2021, FCI issued to South Carolina Department of Transportation a Freedom of Information Act (“FOIA”) request for documents pertaining to

the construction project at issue in the above-captioned litigation. Certain of these documents were produced by FCI to TSC in connection with the predecessor litigation to the above-captioned action (i.e., *Flatiron Constructors, Inc. v. TranSystems Corporation*, C.A. No. 2018-CP-26-02633), and, as such, were branded with the prefix "FIC". Listed below and attached hereto are true and accurate copies of certain of the documents produced by SCDOT in response to FCI's FOIA request, which, as to their terms, speak for themselves:

- **Exhibit 9**, Email from M. Long (TSC) to S. Nanney (SCDOT) dated July 21, 2017 (FIC000156280-156280_0002).

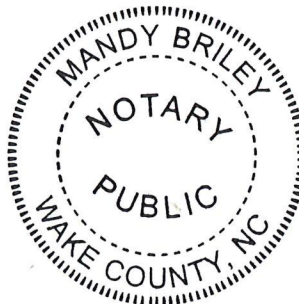
6. All of the records attached hereto are exact duplicates as they are kept in FCI's files.

FURTHER AFFIANT SAYETH NOT.



Subscribed and sworn to before me,
This 7th day of July, 2023.

Mandy Briley
Notary Public for the State of NC
My Commission Expires: Dec. 15th 2024



Date: Thu, 14 Aug 2014 11:51:16 PM (UTC)
Sent: Thu, 14 Aug 2014 11:51:20 PM (UTC)
Subject: RE: T00065 - Drilled Shaft Installation Plan - Amendment 7: Alternate Drilled Shaft Construction Sequence
From: mllong@transystems.com
To: DKaptur@flatironcorp.com;
CC: TWarren@flatironcorp.com; LHutcherso@flatironcorp.com; SWhite@flatironcorp.com; tsanborn@flatironcorp.com; rpeterson@flatironcorp.com;

Dustin

I checked my 70 plus emails from that day and do not appear to have it or appear to have acknowledged it. Although I see Rachael sent it, I normally thank her for the transmittal and do a reply to all that I forwarded the transmittal to the DOT and I don't have either of those. Please resubmit as Amendment 5 which is the next one in line since we skipped it and I will process as soon as possible. Justin, Brandon and Lou always check with me if they do not get a "Submitted to DOT" reply from me in a day or two of their submittal which is very helpful to all.

Thanks
Marty

From: Kaptur, Dustin [mailto:DKaptur@flatironcorp.com]
Sent: Thursday, August 14, 2014 11:43 AM
To: CR-Marty Long
Cc: Warren, Tom; Hutcherson, Lou; White, Steven; Sanborn, Todd; Peterson, Rachael
Subject: RE: T00065 - Drilled Shaft Installation Plan - Amendment 7: Alternate Drilled Shaft Construction Sequence

Marty,

Can you please provide me with a status update on Amendment 7 that was submitted 7/2/2014 (44 days ago).

Regards,

Dustin Kaptur
Engineer
Heavy Civil Division

Flatiron Constructors, Inc.
215 Southport Dr, Suite 1400
Morrisville, NC 27560
219 246 9037 CELL
919 460 5708 FAX
www.flatironcorp.com

From: Peterson, Rachael
Sent: Wednesday, July 02, 2014 2:28 PM
To: mllong@transystems.com
Cc: Kaptur, Dustin; Warren, Tom; Hutcherson, Lou; White, Steven; Sanborn, Todd
Subject: T00065 - Drilled Shaft Installation Plan - Amendment 7: Alternate Drilled Shaft Construction Sequence

Marty,

EXHIBIT 1

Please find attached Flatiron's Transmittal and the above referenced document for review and approval.

Contact Dustin Kaptur at Flatiron with any questions or concerns.

Thanks,
Rachael Peterson
Office Manager
Carolina Bays Parkway

Flatiron Construction Corp.
7449 Butler Road/PO Box 30060
Myrtle Beach, SC 29588
(225) 650-0839 Cell
rpeterson@flatironcorp.com

Build the Best. Be the Best.

ELECTRONICALLY FILED - 2023 Jul 28 2:14 PM - Horry - COMMON PLEAS - CASE#2022CP2606116



Carolina Bays Parkway (SC 31) Extension SC 544 to SC 707
Horry County, SC
Biweekly Update Meeting
September 23, 2015
Minutes

1. Safety Briefing (Flatiron)

Charles Kelley gave the safety briefing. He asked if you did not have to use Enterprise Road to please don't. There is a lot going on and the fewer vehicles the better. Flatiron stated that there is a large number of the public that is not obeying the detour and trying to cut through the project. Martin Long asked Flatiron to provide any suggestions that would elevate the problem. Lou Hutcherson said he would submit something.

2. Project Safety Discussion (All)

- a. Provide good "housekeeping" around work area
- b. Required PPE (Minimum)
 - i. Hardhat, vest, steel toed shoes as needed, safety glasses as needed.

Doug Kennedy reported the scaffolding on Bent 2 and Bent 12 railing at the landing appeared to not have been tied down.

3. Environmental Compliance and ROW (M&H)

- a. Project Seeding (7 – day)

Michael Cook reported ECO is getting behind in the seeding. They need to improve production and stay on site until seeding is caught up and stay within the 7-day seeding schedule. Martin stated that the SCDOT and DHEC are expecting the 7 day to be strictly adhered to and enforced and that the entire project will be shut-down until all items on the weekly report are complete.
- b. Pit Seeding (Is it necessary?)

Ronni Goodson stated that he was trying to seed as he went but the pit stayed very active. Martin stated that the pit drains in and not out but he would check with Travis Patrick to see what the SCDOT's expectations are with the pit.
- c. Comments

Michael Cook asked Ronni Goodson to keep water trucks running and keep the dust down.

4. Utility Coordination (Michael Cook)

- a. Grand Strand Sewer & Water Authority – Matt Minor

Grand Strand Water & Sewer Authority is currently installing their new 24" Transmission water line and 6" water line on the north side of Enterprise drive west of the proposed S.C. Route 31. This section minus the tie-in is scheduled to be completed by the end of the day. Rod Altman, GSW&SA, is doing this work and would like to complete the water lines on the north side first then move to the south side of

Enterprise and install the new 8" sewer force main. Ronni Goodson stated the remaining clearing on the north side will be completed Monday, September 28, 2015 and the remaining clearing on the south side will be completed Tuesday, September 29, 2015. This will allow GSW&SA to complete the work mentioned above per their schedule.

Ronni and Flatiron are concerned with the length of the GSWSA scheduled work and asked if fill could be placed on the existing 24" transmission water line on the north side of Enterprise. Matt Minor stated he is not comfortable with fill and equipment being placed on this line, but is okay with fill being placed and equipment working over the existing 8" sewer line on the south side of Enterprise. As previously stated in earlier progress meetings, the existing 24" water line on the north side of Enterprise will have to be accessed every 250 LF and filled with flowable fill in order to stay in place so this will have to be considered as well before any fill is placed on this line in addition to any other concerns. Lou Hutcherson and Ronni Goodson asked if fill dirt could be placed over the waterline, as it was their understanding that fill could not be placed until the new line was active. Matt stated that fill could be placed anywhere except directly over the water line so that they could have access to cut, cap and grout. Martin stated that he was not aware that there was an issue with Flatiron's schedule due to the importing of fill dirt and said he would like to meet with Lou Hutcherson and Michael Cook afterward to discuss.

Matt Minor asked about the schedule for the proposed Moss Creek Road and Lee's Road. Ronni stated they would be ready at the earliest in November 2015 but it could possibly be early 2016. Matt stated that if they were ready in November 2015 he could move the crew from Enterprise over to complete the work on this road but if it would be 2016 he would send the crew to another job then move them back to these roads when they are ready.

- b. Horry Electric Cooperative – No representation
Michael Cook reported HEC will have to re-install their lines at Peachtree Road and Hwy. 707 when construction is complete. They asked to be notified when this can be done.
- c. Horry Telephone Cooperative – No representation
Michael Cook reported HTC has relocated their new service lines within the 707 R/W on the east side of 707. These lines share a joint trench with GSW&SA and are now active from the existing Moss Creek Road to Leonard Road. The work on Leisure Road near Hwy. 544 and on Enterprise Road is complete. HTC has one line going across the proposed Lee's Road at the existing Moss Creek Road that Frankie Moore thinks was installed too shallow and will most likely have to be lowered. Frankie previously told Michael that if this line is in the way it can easily be lowered as needed. Michael reiterated the importance of contacting him and HTC directly before any work is done near 707, Lee's Road, Moss Creek Road, Meadows Road, or Blue Stem Road because the new HTC service will not show up on a one-call utility locate but will have to be located by HTC.
- d. Santee Cooper Transmission – No Representation
Michael Cook reported STC has completed all of their work within the CBP project.

e. Time Warner Cable – No Representation

Michael Cook reported he had met with Vance Langston, TWC, on site prior to the meeting to discuss a conflict with the telephone service on the RT side of Hunter's Horn Lane. Vance had agreed it is in conflict with the new ditch construction and will have to be relocated. There is still some clearing that must be done before the line can be moved. Vance had stated the work could be completed in approximately one week once the clearing is complete. Ronni stated he does not know when the clearing will be complete in this area but will let Michael know. Michael stated TWC has a fiber optic cable that runs the width of the project at 707 on the west side near end bent 1 and must be located prior to any construction in this area. Flatiron and Ronni are aware this line is here per a prior locate.

Lou stated he was not at the last meeting and requested clarification on sequence of work and if there is any reason Ronni cannot start immediately? Matt said with the high compression line and compaction they are not comfortable with work being done at this time.

f. Utility Companies and Ronni Goodson left the meeting.

5. Submittal Review

a. SIP Form Shop Drawings for 707 and Enterprise Bridge (CECS)

Martin stated that he saw an email today that they were sent to Jamie Kendall

b. WB 15 Redesign (CECS)

c. Flatslab formwork for Wetland Bridges (SCDOT)

d. ICWW Mass Concrete Plan with cooling tubes for Bents 14-17 (Re-submitted to TS today)

e. Deck Concrete Operation Plan and Pour Procedure (Awaiting Pre-pour meeting)

f. Shop Drawings for Strip Seal Expansion Joints (Awaiting Enterprise Road Revised Drawings)

Brandon Haux asked if he should separate the ICWW joints from Enterprise to speed things up. Martin said he thinks that would be a good idea.

g. Span A and B Deck Screed (Additional Information Requested)

h. Amendment 16 and 17 to DFIP (Enterprise Shafts) – (SCDOT)

i. Working Drawings for deck formwork.

j. Martin asked if the formwork for the front face of the back wall has been submitted yet, because he did not remember seeing it. Justin Ramer said he would check into that.

Martin asked if there were any active submittals that he missed, including any sub submittals. None was mentioned.

k. Pending

i. Material Certification for Structural Steel Paint (Tampa Tank)

ii. Nuts, bolts and washers: (Mill, Manufacturer, and Distributer Certified Test Reports)
Around October

iii. ICWW Deck Expansion Joint Certs and Test data
Cert for compression seal needed before pour.

iv. Geotextile for Drainage Filtration (Behind EB1 – See Special Provisions)

v. Bearing Pad Certification for Wetland Bridges

- vi. Product data for deck chairs and deck rebar spacers
- vii. Shop Drawings for Bent 29 Pond Outfall Structure
- viii. Shop Drawings for Structural Drainage System
- ix. 700.16 for Armor Plates on ICWW

The Welding procedure is needed. Brandon will send Michael and Martin an email 14 days prior to any welding being done and will complete a 700.16.

- x. Other Enterprise Road Submittals??

6. Schedule

- a. 3-Week Look Ahead (Flatiron, update weekly)

The 3-Week Look Ahead schedule was reviewed by each respective engineer.

- b. CPM Update 18 (Under TS Review)

- c. Enterprise Road and Bridge CPM??

Lou Hutcherson said he was still working on it. Martin stated at the after meeting that it would be needed to send to the SCDOT and GSWSA to get their position on placing fill over the 24" water line.

- d. Items Impeding Progress? (Discussion)

- i. 707 Construction Material preventing Ramp 6 completion. (Relocated)

Martin reminded everyone that he needs accurate daily, weekly and project schedules in order to schedule inspectors. He stated that filling in dozens off activities as place holders makes it very difficult to schedule staff. Martin stated that he is having a number of inspectors going on vacation and going for training in the very near future. He stated "Please help me, help you by providing accurate schedules so we can provide the required testing and inspection."

7. RFI'S

- a. RFI 00064 – Request to use Dobie Block to replace 5" BB for Bent 14 (Approved with Conditions)
- b. RFI 00066 – Bent 14 Footing Rebar J1606 Conflict (Awaiting District Approval)

8. Administrative

- a. Change Orders/Extra Work

- i. Outfall 13 pipe and box estimate (Soil sample failed)

Ronni Goodson was no longer at the meeting so no one knew when this work would be initiated or completed. Martin stated that it was his understanding that Ronni would do this work as soon as it was dry enough.

9. General Discussion

- a. Status of PCCP Plant? Martin asked if the concrete paving will begin in November. Lou said it may be up and running by November but did not comment if the paving would begin in November.

Doug Kennedy discussed the fact that the field engineers need to verify field operations prior to the inspectors checking. A number of examples of rebar not being installed correctly that required the inspectors to notify everyone. Martin asked if the sign-off for rebar was still being done. Martin stated that it was agreed that the subcontractors would sign-off and Flatiron would sign-off prior to asking TranSystems to inspect. Flatiron

agreed they could do better with this and said if there's a conflict with the rebar they will notify TranSystems. Martin requested that Flatiron notify their subcontractors of this policy. The rebar needs to be tied per plan or Martin needs to be notified.

10. Future Meetings

- a. Update meetings on every other Wednesday's at 2:00 PM (Future meeting?)

The next meeting will be at 2:00 PM, October 7 2015 at the Butler Road complex.

- b. Deck Pre-pour Meeting – Set Date

The above summation is an interpretation of the items discussed and the decisions reached at the above referenced meeting. Any changes to these minutes should be forwarded to the writer within five days of issuance; otherwise the minutes will stand as written.

Minutes submitted by:
TranSystems Corporation

A handwritten signature in blue ink, appearing to read 'Martin L. Long'.

Martin L. Long, PE
Resident Construction Engineer

Attachments:

- Look Ahead Schedule (September 21, 2015 – October 17, 2015)

*Build the Best. **Be the Best.***



Flatiron Construction Corp.
7449 Butler Road
P O Box 30060
Myrtle Beach, SC 29588
www.flatironcorp.com

October 18, 2016

Doc Control No: S00129

TRAN SYSTEMS
200 Prather Park Drive
Myrtle Beach, SC 29588

Attention: Mr. Martin Long, P.E.

Reference: Carolina Bays Parkway (SC 31)
SCDOT Contract No. 15495
S.C. File No. 26.036775A

Subject: **Notice of Potential Claim**

Dear Mr. Long:

As you know, Flatiron announced project management changes in June, 2016 and promised to collaborate with you and your team to diligently pursue the completion of the project. Prior to that point, the project had been delayed beyond the 29 month completion duration originally estimated for the project for a number of reasons. Since that time we have made our best effort to address continuing delays with you and your team. This notice constitutes a continuation of those on-going efforts.

For reasons unknown to Flatiron, the work being performed by our company on the referenced project has been subject to specifications, submittal review procedures, owner directed changes, and inspection and testing requirements in excess of those stipulated by the Contract. While we recognize and fully accept the unilateral right of the Owner to add work, modify work, or change the specifications, the Contract also obligates the Owner to adjust the Contract price and time to reflect these changes. The Contract states:

Section 104.2.5

Payment for work occasioned by changes or alterations will be made in accordance with the provisions set forth in Subsection 109.4. If the RCE determines that the altered or added work is of sufficient magnitude as to require additional time in which to complete the project, then such time adjustment is made in accordance with the provisions of Subsection 108.6.

EXHIBIT
3

The added requirements referenced above have been a topic of conversation on multiple occasions including project meetings and emails.

It is significant to note that since starting work on the project we have objected to, but have also fully complied with the enhanced specifications, inspection and testing requirements. While there has been some adjustment, the standards for the aforementioned issues being mandated on this project are materially different than that specified in the Contract Documents. As a result of the changes and added requirements and as required by and in accordance with Standard Specification 105.16, we have included SCDOT Form 100.04 CONTRACTOR NOTICE OF CLAIM.

Flatiron has experienced disruptions, delays and increased costs delays during construction of the Carolina Bays Parkway (SC-31), including but not limited to Owner controlled and 3rd party causes. The following are examples of some of the issues for which have provided notice and continue to hamper progress, and in part constitute the basis of our Notice of Potential Claim:

- Extraordinary Destructive sampling and testing requirements
- Delayed approval of submittals and shop drawings
- Steel Erection Plan approval requirements causing delays
- Prolonged drilled shaft log review and acceptance process
- Foundation delay associated with sensor data
- Minor items of work requiring unnecessary submittals
- Utility delays and disruptions

While the project has received a betterment, Flatiron has been delayed, has incurred extra costs and is entitled to an equitable adjustment to the Contract based on the changed specifications and added requirements mandated by the RCE. We will continue to work towards a cooperative solution to expedite the completion of the schedule.

If you have any questions regarding this matter feel free to give me a call.

Sincerely,

Flatiron Constructors, Inc.

Forrest Fischer
Project Manager

cc: Job File
Ted Kirk
Mary Kay Monville
Dan Lieberman

Attachments: NOPC 003 Form 100_04

CONTRACTOR NOTICE OF CLAIM

Unique ID:

003

Date:

10/18/16

Status:

File No:

26.036775A

Project No:

Contractor:

Flatiron Construction, Inc.

NOTICE OF CLAIM FOR ADJUSTMENT DUE TO:**NATURE OF THE EVENT:**

Numerous past and on-going impacts which have increased the cost to complete the project and caused the project schedule to extend past the original 29-month duration anticipated.

CAUSE OF THE EVENT:

Specifications, submittal review procedures, inspection, Owner directed changes, and testing requirements in excess of those stipulated by the contract have been imposed.

IMPACT OF THE EVENT:

Flatiron has experienced disruptions, delays and increased costs. These items will be discussed in more specificity via serial letters to follow.

In the event that this issue is not resolved by Supplemental Agreement or Force Account Order, the Contractor shall submit to the Department at the appropriate time a fully detailed request ("Claim") for additional time or compensation.

Copy of this notice was delivered to the RESIDENT CONSTRUCTION ENGINEER on 10/18/16.

Submitted By:

Contractor Rep:

Signature:

Date: 10/18/16

Received By:

Resident Engineer:

Signature:

Date:



South Carolina
Department of Transportation

December 11, 2019

John Couture
Flatiron Construction Corp.
860 Aviation Parkway
Suite 100
Morrisville, NC 27560

RE: File No. 26036775A – Project No. Horry- Horry County

Dear Mr. Couture:

The final inspection for the above referenced project was conducted on December 09, 2019. The following representatives were present for this inspection:

- Jason Thompson – Horry County
- Clay Richtor –SCDOT
- Steve Nanney – SCDOT
- Travis Patrick - SCDOT
- Derrick Tindal - SCDOT
- Kyle M. Hardwick – SCDOT
- Martin Long – TranSystems
- John Couture - Flatiron Corp.
- Russ Szlasa Flatiron Corp.
- Roberto Hernandez – Flatiron Corp.

Please find the enclosed list of items that require corrective measures within Forty-five days. Substantial work completion was *conditionally* reached on November 07, 2019. Failure to complete all punch list items on or before **January 23, 2020** will result in liquidated damages for all calendar days from conditional substantial work completion date through the final punch list completion date.

Please provide me with notification of your work schedule to meet the above deadline. If you have any questions or require additional information after reviewing the provided information, you may call me at 864-915-0741

Sincerely,

Martin Long
Resident Construction Engineer



District Five Special Projects
3829 Business Street
Myrtle Beach, SC 29579
843-236-9658

EXHIBIT

4

936

www.scdot.org
An Equal Opportunity
Affirmative Action Employer
855-GO-SCDOT (855-467-2368)

ELECTRONICALLY FILED - 2023 Jul 28 2:14 PM - HORRY - COMMON PLEAS - CASE#2022CP2606116

cc: Steve Nanney, Bridge Construction Engineer
 Clay Richter, Road Construction Engineer DOC
 David Johnson, District Five Construction Engineer
 Travis Patrick, Assistant District Construction Engineer
 Derrick Tindal, Resident Construction Engineer Special Projects

K:\DISTRICT-OFFICE\SHARED\DISTRICT CONSTRUCTION\D5 SPEC PROJ\Projects\26.036775A

File No. 26036775A – FINAL INSPECTION PUNCH LIST

1. Remove or cut and cap remaining pipe piles in the wetlands.
2. Provide letter from subcontractor who removed underwater pipe piles near ICWW Bent 16.
3. Install signs on Type T End Treatments and Crash Attenuators (SD 651-120-00)
4. Install and/or repair all CA fence and fully install all gates.
5. Remove NB 31 sign and post at Ramp 4A.
6. Repair ICWW Bent 20 Conduit Expansion Joint.
7. Repair ICWW Structural Drainage System.
8. Install Permanent Type III Barricades at the end of Butler Road.
9. Repair ICWW Navigational Lighting System.
10. Install all ROW monuments and provide ROW Plat.
11. Install Ramp 3B Delineators.
12. Permanent seed any areas that have less than 70% cover
13. Remove any trash, sandbags and construction debris associated with the project.
14. Remove erosion control as areas are stabilized.
15. Remove temporary cover plates placed on OH12 and OH 13 once striping is completed by others.
16. Remove all permanent construction signs after all other work is complete in each area.

Completion of the above items is required by **January 23, 2020.**





Carolina Bays Parkway (SC 31) Extension SC 544 to SC 707
Horry County, SC
Biweekly Update Meeting
December 3, 2014
Minutes

1. Safety Briefing (Flatiron)

Safety Briefing was presented by Tom Warren. Tom Warren stated that Flatiron had their first recordable accident.

2. Project Safety Discussion (All)

- a. Provide good "housekeeping" around work area
- b. Required PPE (Minimum)
 - i. Hardhat, vest, steel toed shoes, safety glasses as needed

Tom Warren stated that guardrail was damaged on Enterprise and asked who needed to have it fix. Jason Thompson and Travis Patrick said that it was Flatiron's responsibility and that the SCDOT will provide them with an accident report to be filed against Flatiron's insurance. RE Goodson also had an accident where one of their service trucks rear ended another vehicle. Mr. Lou Hutcherson stated that Mr. Kelly had that information and would provide it to Travis Patrick so he could get a copy of the accident report.

3. Environmental Compliance and ROW

- a. NOI Modification for south trestle and Butler Road area ditches (Approved)
- b. M&H Comments?
Michael Cook asked if the cut trees that had fallen into the wetlands were going to be removed soon and Todd Sanborn said they would be done over the weekend. There were no other environmental concerns discussed.

4. Utility Coordination (TranSystems)

- a. Grand Strand Sewer & Water Authority / Pending work for casing at 1553+00?
GSWSA will be working the weekend of December 13th installing the casing at 1553+00. Work will probably only be on that Saturday.
- b. Horry Electric Cooperative – No representation
- c. Horry Telephone Cooperative
HTC will be back on Enterprise to complete their work and it should be done by mid-February.
- d. Santee Cooper Transmission – Work in late Jan or Early Feb
No Representation
- e. Time Warner Cable – No representation
- f. Utility Companies were excused

EXHIBIT

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5. Submittal Review

a. Subcontractor Requests (Approved)

- i. Florida Steel
- ii. Willis Steel
- iii. Ellington Cross
- iv. Cape Romain

Martin Long asked if the DOT was "ok" with Florida Steel billing for material on hand if it was inspected and verified by the DOT's third-party inspector. Jason Thompson said yes as long as all information required in the Black Book was provided.

b. Mass Concrete Plan Amendment 1 (Placed on hold by SCDOT)

c. Mass Concrete Plan Rev 4 (Flatiron)

Jason Thompson asked why Flatiron did not notify TranSystems or the DOT on the temperature readings for the mass pour for bent 2. Brandon Houx stated that he "missed" that portion of the MCP and specifications and thought he was to provide the information to only their Specialty Engineer. Brandon Houx asked Jason Thompson what the DOT was expecting for the acceptance of the bent cap. Brandon stated that the MCP listed an inspection by the contractor and SCDOT of the mass pour for cracks and was that still sufficient. Jason said that would be the first step but a qualified impartial third-party review may also be required.

d. Earthquake Drain Submittal 3 (Sent to CECS)

Travis Patrick said he would check on the status of the submittal.

e. Pile Installation Plans - Wetland Bridges (Additional Information Requested)

f. Steel Fabricator Shop Drawings (Rejected waiting resubmittal)

g. Permanent seeding plan (TranSystems)

h. DOR analysis for Bent 7 (Awaiting Flatiron's revised core procedure)

i. Bent 15 foundation falsework (Additional information requested)

Martin Long asked Jason Thompson and Travis Patrick what the DOT's expectation was for reviewing the bottom of the elevated footings for bent 14-17. Jason said if you can see it then his expectation is that it be inspected. Martin asked Flatiron to update their foundation plan to incorporate Jason's expectations.

j. PDA for bent 1 (SCDOT)

Jason Thompson said he would check with Natalia.

k. Pending

- i. Bent 1 formwork working drawings

In progress and should be submitted soon.

- ii. Certs for Turbidity Barrier

Martin Long stated that certifications are required to be submitted to the OMR for the floating turbidity barriers.

6. Schedule

a. 3-Week Look Ahead (Flatiron, update weekly) – Presented by Todd Sanborn

b. CPM Update 8 (Review comments provided)

Tom Warren asked if it was TranSystems who made the comment on the logic tie between the deck grooving and the finish coarse paving. Martin Long stated that it was his comment and that he was not requesting a change to the CPM at this time but was requesting acknowledgement that on this project the asphalt finish course could be placed without the deck grooving being completed, as the majority of

the asphalt paving is not adjacent to the bridge. Mr. Long stated that once the logic tie was removed it moved the project completion date up considerably.

- c. 707 CPM Baseline will possibly be available next week.
- d. Items Impeding Progress (Discussion)
No items mentioned.

7. RFI'S

- a. RFI 00030 – Request to use lap hoops (Awaiting additional mechanical coupler information from Flatiron)
Travis Patrick asked if the question had been answered regarding the allowance for non-American made couplers. Flatiron stated that it appeared that Mr. Kyle Berry seemed "OK" with the submittal of non-American made couplers, at the last meeting.
- b. RFI 00031 – Enterprise and 707 Pile Layout (SCDOT)
- c. RFI 00032 – Gabion Basket detail (Detail provided)
- d. RFI 00033 – Bridge Scupper Substitution (Additional Information Requested)
- e. RFI 00034 – Request for clarification on detail from RFI 00032 (CECS)

8. Administrative

- a. Change Orders/Extra Work
 - i. Cost estimate for removal of house off Hunter's Horn (Awaiting daycare on Bluestem demo estimate)
 - ii. Cost estimate for daycare on 707 and Bluestem (Flatiron/Goodson)
 - 1. Demolish, remove, dispose of structure, grade lot and perform asbestos survey
Mr. Long asked when this would be submitted. Mr. Warren stated that Mr. Goodson has provided the estimate for demolition and that Flatiron is still waiting on an estimate for the asbestos study.
 - iii. Turbidity curtain estimate (Flatiron)
 - iv. CO 4 for boarding up the daycare and wetland silt fence was approved
- b. Butler Road Lease Agreement (Complete)

9. General Discussion

- a. Possible DS mix design changes due to CSL anomalies?
Tom Warren stated that this was in progress. S&W is designing a pea gravel mix for approval by the OMR.
- b. Weekend work – Please notify by Thursday lunch time
TranSystems will try and accommodate weekend work scheduled after Thursday lunch time but cannot guarantee inspectors if given late notice.

10. Future Meetings

- a. Update meetings on Wednesday's at 2:00 PM (Future meeting?)
Meeting confirmed for Wednesday December 17, 2014.

The above summation is an interpretation of the items discussed and the decisions reached at the above referenced meeting. Any changes to these minutes should be forwarded to the writer within 5 days of issuance; otherwise the minutes will stand as written.

Minutes submitted by:
TranSystems Corporation



Martin L. Long, PE
Resident Construction Engineer

Attachments:

- Three Week Look Ahead (December 1-December 26)
- RFI Log (12/3/14)
- Sign In Sheet (December 3, 2014)

CAROLINA BAYS PROJECT (HWY 31 EXTENSION) SCDOT/TRANSYSTEMS ORGANIZATIONAL CHART

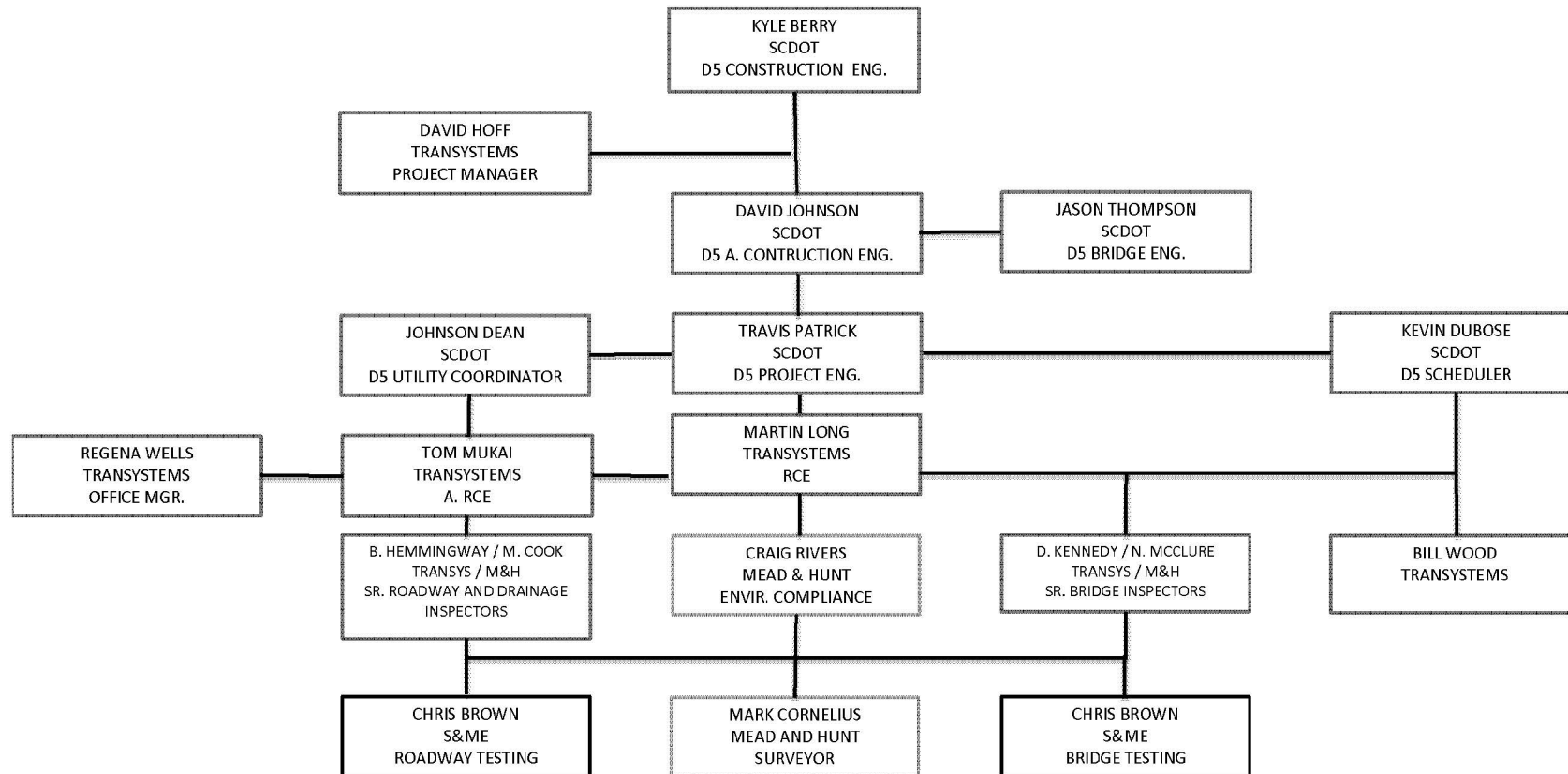


EXHIBIT
6

From: CR-Marty Long </o=TranSystems Corporation/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=mllong>
To: CR-Doug Kennedy
Sent: 12/2/2015 12:16:25 PM
Subject: FW: 26.036775A CBP - RE: 707 Abutment 1 Wall Pour 1 Form Blowout

From: Thompson, Jason D [mailto:ThompsonJD@scdot.org]
Sent: Wednesday, December 02, 2015 7:08 AM
To: CR-Marty Long
Cc: Patrick, Travis M
Subject: Re: 26.036775A CBP - RE: 707 Abutment 1 Wall Pour 1 Form Blowout

Marty,

Your email is correct, but the stop work call should have been made by the RCE. This type of scenario is what TranSystems has been hired for...project inspection and management.

Jason D. Thompson
District Bridge Engineer
South Carolina Department of Transportation
 PO Drawer 1911 | Florence, SC | 29503
 Office: (843) 661-4710 EXT. 220 Fax: (843) 661-4704



On Dec 1, 2015, at 3:33 PM, Long, Martin L - TranSystems <MLLong@transystems.com> wrote:

Lou

The SCDOT has instructed TranSystems to have Flatiron stop all work on the 707 end bent 1 concrete removal, until Flatiron provides your plan forward and an existing condition analysis is performed for the SCDOT's review.

Please call with any questions.

Marty

From: Hutcherson, Lou [mailto:LHutcherso@flatironcorp.com]
Sent: Wednesday, November 25, 2015 3:44 PM
To: CR-Marty Long
Cc: CR-Doug Kennedy; CR-Nick L. Pieronek
Subject: RE: 707 Abutment 1 Wall Pour 1 Form Blowout

Mr. Long –

A reminder, the initial e-mail report below is preliminary and any and all possible variables that could have directly caused or contributed to the failure are still being investigated and considered. Upon the investigation conclusion and determination of the failure cause, a final report will be forwarded to you.

Pending the final report, should you have any questions, please contact me at your convenience.

K/r,

EXHIBIT

7

Lou Hutcherson

Project Manager
Carolina Bays Parkway (SC 31)

FLATIRON

7449 Butler Rd.
Myrtle Beach, SC 29588
732.754.3358 CELL
LHutcherso@flatironcorp.com
www.flatironcorp.com

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From: mllong@transystems.com [mailto:mllong@transystems.com]

Sent: Wednesday, November 25, 2015 2:22 PM

To: Hutcherson, Lou

Subject: RE: 707 Abutment 1 Wall Pour 1 Form Blowout

Thanks

From: Hutcherson, Lou [mailto:LHutcherso@flatironcorp.com]

Sent: Wednesday, November 25, 2015 2:17 PM

To: CR-Marty Long

Cc: CR-Doug Kennedy; CR-Nick L. Pieronek

Subject: FW: 707 Abutment 1 Wall Pour 1 Form Blowout

Mr. Long –

F.Y.I. – Flatiron's SC-707 Bent 1 form failure report below.

Should you have any questions, please contact me at your convenience.

K/r,

Lou Hutcherson

Project Manager
Carolina Bays Parkway (SC 31)

FLATIRON

7449 Butler Rd.
Myrtle Beach, SC 29588
732.754.3358 CELL
LHutcherso@flatironcorp.com
www.flatironcorp.com

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From: Houx, Brandon

Sent: Wednesday, November 25, 2015 2:09 PM

To: Hutcherson, Lou

Cc: Cruz, Anthony; Sanborn, Todd; Starling, Eric; Ramer, Justin; Modlin, Jeff; Kelley, Charles

Subject: 707 Abutment 1 Wall Pour 1 Form Blowout

Here is a brief description of what occurred today at the wall pour at 707 Abutment 1.

The wall pour started at approximately 10:15am. The wall varies in height from 13'-11" to 14'-9". At

approximately 12:20pm the concrete was poured to a height of 11'-0" and the front face of the form failed resulting in a blowout. The pour rate for this wall is 5'-4" per hour based on approximately 70* concrete. The workers were within reason of the pour rate that I had given them for this pour.

However, the actual concrete temperature upon delivery was 55* which should have changed the pour rate to approximately 3'-9" per hour. This put the actual concrete height approximately 3'-6" above the designed limit at the time of failure; the pour rate was exceeded by 1'-9" per hour. It was also noticed that all the concrete appeared still be plastic and the actual temperature of the concrete after the form failure was 67*.

The concrete that spilled out of the form is currently being cleaned up. The concrete that is remaining inside the form will be chipped out once the forms can be safely removed. The rebar that was installed for the wall pour will be replaced with new rebar. Extreme care will be taken around the rebar dowels that were previously cast with the foot as to not damage them.

Brandon Houx
Field Engineer
Carolina Bays Parkway Extension
Flatiron
7449 Butler Road
Myrtle Beach, SC 29588
850.758.1028 CELL
www.flatironcorp.com
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From: CR-Marty Long </O=TRANSSYSTEMS CORPORATION/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=MLLONG>
To: CR-Doug Kennedy
Sent: 2/16/2015 8:48:59 PM
Subject: FW: T00193 - Bents 14 - 17 Hoop Rebar Couplers - Revision 1

Can you believe this guy!!

From: Hutcherson, Lou [mailto:LHutcherso@flatironcorp.com]
Sent: Monday, February 16, 2015 2:54 PM
To: CR-Marty Long
Cc: Warren, Tom; Peterson, Rachael
Subject: RE: T00193 - Bents 14 - 17 Hoop Rebar Couplers - Revision 1

Mr. Long –

I believe your “rejection” and continued demands and requirements for the Lenton Type-S Mechanical Couplers submittal are not justified.

Please be reminded, though you “asked” for “the same [coupler] information” in May 2014, it was determined and agreed at that time it was and is not required, and subsequently therefore it has not been an issue – until now.

On May 8, 2014 Flatiron representatives met with you to discuss, review, clarify, and confirm mechanical coupler Contractor QC Requirements, Certifications, Submittals, Testing Verification, Confirmations, etc. At that time it was, and it still is Flatiron's position that the Specifications require the Contractor to “**provide**” or “**supply**” four (4) and ONLY four (4) items: (1) Designated Mechanical Coupler QC Manager [703.2.4.2]; (2) Product Data [703.2.4.3 Sentence 1]; (3) Manufacturer's Installation Instructions [703.2.4.3 Sentence 4]; and (4) Upon installation of a “Lot” of couplers, a statement from the designated Coupler QCM that the “Lot” of couplers were manufactured, shipped, stored, and installed per Specifications [703.2.4.5, Item 2 Sentence 3].

Per the Specifications, ALL other items you are requiring to be “**provided**” and “**supplied**” are specified ONLY to be “**ensured**” - by the Mechanical Coupler Quality Control Manager. Every paragraph in Specification Sub-Section 703.2.4.4 entitled **Manufacturer's Quality Control Testing Facility** begins “**Ensure**,” NOT “**Provide**” or “**Submit**.” Specification Sub-Section 703.2.4.2 entitled “Quality Control Manager” states: “. . . The QCM is responsible for the quality of the mechanical coupler splicing, including the inspection of materials and workmanship and for submitting, receiving, and approving all correspondence, required submittals, and reports to and from the RCE. . . .” That's why the issue has been dormant since May, 2014; it was determined a non-issue at that time. That is why the two types of mechanical couplers currently being utilized on the Project were previously “approved.” That is why you and your inspectors have properly allowed installation of all mechanical couplers to-date. And, that is why there were NO QMT mechanical coupler issues with the products and respective documentation - because there aren't any (Evidently the Mechanical Coupler QCM Certification Lot Certification Statements were and are satisfactory)

As evidenced by proper and satisfactory mechanical couplers approval, installation, and documentation, to-date, I believe Flatiron has been, and continues to be compliant with Jason Thompson's e-mail dated May 5, 2014, subject: Requirements For Use of Mechanical Couplers.

Should you have any questions, or if I can possibly be any additional assistance, please contact me at your convenience.

K/r,

Lou Hutcherson
Assistant Project Manager

EXHIBIT
8

Carolina Bays Parkway (SC 31)

FLATIRON

7449 Butler Rd.

Myrtle Beach, SC 29588

732.754.3358 CELL

LHutcherso@flatironcorp.com

www.flatironcorp.com

Build the Best. Be the Best

From: mllong@transystems.com [<mailto:mllong@transystems.com>]

Sent: Monday, February 16, 2015 12:50 PM

To: Hutcherson, Lou

Cc: Peterson, Rachael

Subject: RE: T00193 - Bents 14 - 17 Hoop Rebar Couplers - Revision 1

Lou

This submittal is rejected. I've been asking for the same information since May of last year and since November specific to this submittal. Please see the attached emails and provide all of the requested information before I forward to the SCDOT.

Thanks

Marty

From: Peterson, Rachael [<mailto:rpeterson@flatironcorp.com>]

Sent: Wednesday, January 28, 2015 12:39 PM

To: CR-Marty Long

Cc: Warren, Tom; Hutcherson, Lou; Ramer, Justin; Sanborn, Todd

Subject: T00193 - Bents 14 - 17 Hoop Rebar Couplers - Revision 1

Marty,

Please find attached Flatiron's Transmittal and the referenced documentation for review and approval.

Contact Lou Hutcherson @ Flatiron with any questions or concerns.

Thanks,

Rachael Peterson

Office Manager

Carolina Bays Parkway

Flatiron Construction Corp.

7449 Butler Road/PO Box 30060

Myrtle Beach, SC 29588

(225) 650-0839 Cell

rpeterson@flatironcorp.com

Build the Best. Be the Best.

Date: Fri, 21 Jul 2017 8:12:45 PM (UTC)
Sent: Fri, 21 Jul 2017 8:12:04 PM (UTC)
Subject: RE: 26.036775A CBP - ICWW Bent 19 Cap Pour 1
From: Long, Martin L - TranSystems <MLLong@transystems.com>
To: Patrick, Travis M <PatrickTM@scdot.org>;
CC: Nanney, Steve <NanneySA@scdot.org>; Johnson, David L <JohnsonDAV@scdot.org>; Poston, Jamie E <PostonJE@scdot.org>; djkenedy@transystems.com;

*** This is an EXTERNAL email. Please do not click on a link or open any attachments unless you are confident it is from a trusted source. ***

Travis

It was scheduled to start at 4 AM but they decided to wait for the 2nd truck before they started pumping to check temperature and then it was rejected so they waited on the third truck and since it was under 80 degrees (79 deg) they decided to start the pour at around 5:05. They should have canceled the pour at that point in my opinion. The concrete order for 100 cy was submitted at 10 min interval which would have put it at about 2 hours with pump priming and testing but the smaller cap pours usually take about 2.5 to 3 hours.

From: Patrick, Travis M [mailto:PatrickTM@scdot.org]
Sent: Friday, July 21, 2017 3:58 PM
To: CR-Marty Long <mllong@transystems.com>
Cc: Nanney, Steve <NanneySA@scdot.org>; Johnson, David L <JohnsonDAV@scdot.org>; Poston, Jamie E <PostonJE@scdot.org>; CR-Doug Kennedy <djkenedy@transystems.com>
Subject: Re: 26.036775A CBP - ICWW Bent 19 Cap Pour 1

Marty,

What time of day did this pour start, and what was the initial expected duration?

Travis M. Patrick, PE
 Asst. District Construction Engineer
 On Jul 21, 2017, at 3:34 PM, Long, Martin L - TranSystems <MLLong@transystems.com> wrote:

*** This is an EXTERNAL email. Please do not click on a link or open any attachments unless you are confident it is from a trusted source. ***

Steve

Please see the chart below in regards to the referenced pour. Truck 4 was out of specification for slump (440 lbs of ice was added) but the Supplier stated that they had three trucks on the road with 600 lbs of ice added and he was afraid that those would have issues with slump also. The Contractor and Supplier decided to proceed at their own risk to place the load into the structure and the RCE (Me) was consulted and additional cylinders were taken. In hindsight, the truck probably could have been rejected but with the extreme day time temperature and an unknown slump of the three trucks in route, the RCE did not want to delay the pour and possibly cause a cold joint. In addition if Truck 4 was rejected it would have caused another truck to exceed 80 degrees at the end and would have further reduced the already out of specification pour rate of 22 cy/hr, which is below the required 25 cy/hr. The same reasoning was utilized for trucks 7 through 11 and at that point it would not be possible to get a truck within specification due to the rising ambient temperatures.

As you can see a total of 5 trucks exceeded temperature by a couple of degrees and three trucks exceeded maximum

slump. Additional cylinders were taken for each high slump truck but as a note all 10 trucks were below the 0.400 maximum w/c ratio.

I recommend that the 2nd half of the cap not be placed until the we know that the cylinders taken for each of the high slump trucks will reach 4000 PSI.

Please let me know if additional information is needed.

Marty

Truck	Temp F	Slump (in)	Comment
1	78	5	
2	82.5	NA	Rejected
3	79	Visual Acceptance	440 lbs ice
4	76	7.75	520 lbs ice / Cylinders Taken
5	77	Visual Acceptance	600 lbs ice
6	79	Visual Acceptance	600 lbs ice
7	82	5	600 lbs ice
8	79.5	8.25	600 lbs ice / Cylinders Taken
9	82	Visual Acceptance	600 lbs ice
10	82	Visual Acceptance	600 lbs ice
11	81	8.5	600 lbs ice / Cylinders Taken

Martin L. Long
Senior Engineer

<image15b2ef.PNG>

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
	)	C.A. NO. 2022-CP-26-06116
	)	
Flatiron Constructors, Inc.,	)	
	)	REPLY BRIEF IN SUPPORT OF
Plaintiff,	)	DEFENDANT’S MOTION FOR
	)	SUMMARY JUDGMENT
v.	)	
	)	
TranSystems Corporation,	)	
	)	
Defendant.	)	

Defendant TranSystems Corporation (hereafter “TSC”) submits this Reply Brief in Support of TSC’s Motion for Summary Judgment on each cause of action alleged by Plaintiff Flatiron Constructors, Inc. (“Plaintiff”).

SUMMARY OF REPLY

In its Brief in Opposition, Plaintiff undertakes great effort to attempt to create an issue of fact, but it ultimately fails. TSC is entitled to summary judgment for a simple reason – the plain language of the contracts at issue (including the documents incorporated therein) demonstrate that TSC never owed any tort duty to Plaintiff, and Plaintiff has failed to identify any duty owed by TSC to Plaintiff, or the breach of any duty. Plaintiff has had four months since the filing of TSC’s Motion to identify specific duties or cases supporting its position, and it has failed to do so.

The saying has become a Southern aphorism because it is true -- a hit dog will holler. While Plaintiff objects to citations being argumentative or unclear in TSC’s Brief, Plaintiff’s Opposition Brief is clearly incorrect in two extremely important respects: (1) Plaintiff vastly overstates the breadth of our Supreme Court’s holding in *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 463 S.E.2d 85 (1995) (“*Tommy L. Griffin I*”), incorrectly contending that the case creates some sort of blanket tort duty owed by engineers to

parties outside privity, whereas the case actually directly states that, in analyzing professional liability claims “[w]hether such a duty [in tort] exists will depend on the facts and circumstances of each case,” *Id.* at 55-6, 463 S.E.2d 85, 89; and (2) Plaintiff misstates the burden of proof for this Motion, by citing a case evaluating a summary judgment granted to a party that bore the burden of proof on the matter for which it sought summary judgment. *C.f. Beneficial Fin. I, Inc. v. Windham*, 431 S.C. 256, 847 S.E.2d 793 (Ct. App. 2020) (holding that defendant seeking summary judgment on its counterclaim bore burden of proof for on its counterclaim). This distinction is clear, because the case quoted by the *Beneficial* court says, in a block quotation used in *Beneficial*:

A party seeking summary judgment has the burden of clearly establishing by the record properly before the [c]ourt the absence of a triable issue of fact. All inferences from facts in the record must be viewed in the light most favorable to the party opposing the motion for summary judgment. A party who fails to show the absence of a genuine issue of material fact is not entitled to summary judgment *even though his adversary does not come forward with opposing materials.*

Id. at 267, 847 S.E.2d 799, quoting *Standard Fire Ins. Co. v. Marine Contracting and Towing Co.*, 301 S.C. 418, 422, 392 S.E.2d 460, 462 (1990) (emphasis in *Beneficial* citation). There is a huge difference between a burden of proof, and the burden to establish the absence of an issue of fact; and Plaintiff improperly conflates the two. Our Rules of Civil Procedure and related cases state how a moving party can meet its initial responsibility to show the absence of an issue of fact. “Under Rule 56(c)[, SCRPC], the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact.” *Baughman v. Am. Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). “With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility may be discharged by showing – that is, pointing out to the trial court – that there is an absence of evidence supporting the nonmoving party’s case. The moving party need not support its motion with affidavits or other

similar materials **negating** the opponent’s claim.” *Id.*, citing and quoting *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) (internal citations and quotations omitted) (emphasis in original). TSC has met that burden by pointing out the absence of evidence that TSC had final decision-making authority as to the Construction Contract, because that authority expressly lay with the RCE for SCDOT. Because TSC has met its initial burden of pointing out the absence of an issue of fact, Plaintiff must, “under Rule 56(e), [SCRCP,] ‘do more than simply show that there is some metaphysical doubt as to the material facts’ but ‘must come forward with specific facts showing that there is a **genuine issue for trial**.’” *Id.*, quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986) (emphasis in original).

As Plaintiff greatly overstates the holding of *Tommy L. Griffin I*, it apparently completely ignores the existence of *Tommy L. Griffin II*, which held that the engineer, “as the moving party [in the motion for summary judgment], who in the posture of this case does not have the burden of proof, was not required to present affidavits to negate [the plaintiff’s] claims.” *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 351 S.C. 459, 471, 570 S.E.2d 197, 203 (Ct. App. 2002) (“*Tommy L. Griffin II*”). As stated in *Tommy L. Griffin II*, “a plaintiff in a professional malpractice action is required to introduce expert testimony to establish the defendant’s standard of care.” *Id.* at 472, 570 S.E.2d at 203. Five years into this case, the sole expert testimony Plaintiff has offered in this case is an affidavit from Kenneth O’Connell from 2018, which does not allege that TSC performed any design services, and which includes opinions related only to review of Drilled Foundation Installation Plans.¹ This is significant, because

¹ Tellingly, in his affidavit, which is in the record in this case, O’Connell implicitly acknowledges that neither TSC nor Martin Long were the RCE, because he states that TSC should have submitted plans to SCDOT’s BDGE, BCE, and RCE, rather than making comments. (O’Connell Affidavit, filed August 16, 2018, and in the record, ¶ 12.)

without expert testimony to identify an error in plans and specifications, Plaintiff's desperate allegations that TSC was the design engineer still do not create any issue of fact as to TSC's liability. Plaintiff cannot dispute the fact that TSC is not the engineer of record which sealed the Project plans.

Plaintiff asserts highly implausible and unreasonable inferences to attempt to create an issue of fact – namely alleging that Marty Long of TSC somehow acted as the RCE for SCDOT, even though the Standard Specifications incorporated into Plaintiff's Construction Contract identify the RCE as a SCDOT official, and when there are numerous documents within Plaintiff's document production which identify the RCE as Travis Patrick, an employee of SCDOT. To defeat a motion for summary judgment, “it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

Further, Rule 56(e), SCRCPP, makes it clear that “when a motion for summary judgment is made and supported as provided as provided in this rule, an adverse party may not rest upon the mere allegations or denial of his pleading, but his response, by affidavits or otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” To-date, other than the one O'Connell affidavit, Plaintiff has offered no admissible testimony identifying any specific admissible contentions regarding breach of professional duty by TSC. Accordingly, that affidavit is the only evidence the Court can consider of alleged breaches of duty in opposition to TSC's Motion.

RESPONSE TO ERRONEOUS FACTUAL CONTENTIONS OF PLAINTIFF

Plaintiff incorrectly argues that the analysis of potential duties owed by TSC to Plaintiff begins and ends with the interaction of TSC and Plaintiff. Plaintiff's contract with Horry County

for construction of the Carolina Bays Parkway (the “Construction Contract”) actually and clearly defines the relationship; so, in an effort to defeat TSC’s Motion, Plaintiff contends that the Court should ignore that document. The Construction Contract expressly incorporates by reference the Standard Specifications for Highway Construction, 2007 Edition, issued by the South Carolina Department of Transportation (the “2007 Standard Specs”), meaning that Plaintiff accepted these 2007 Standard Specs as governing its work. Based on the affidavits filed by Plaintiff’s managerial employees, it appears clear that Plaintiff did not analyze or understand its obligations under the 2007 Standard Specs, and that such lack of prudent analysis likely resulted in problems with construction.

1. There Is No Genuine Issue of Material Fact as to Whether Martin Long of TSC Served as RCE for SCDOT—He Did Not.

Although Plaintiff argued in sworn statements issued by two managerial employees that it was unclear as to whether Marty Long of TSC was acting as RCE as defined by Section 105.1 of the 2007 Standard Specs, the 2007 Standard Specs themselves clearly state that the RCE is an “SCDOT Official.” (2007 Standard Specification, Section 101.2).² The Role of the RCE of SCDOT is explicit in the 2007 Standard Specs:

Unless otherwise specified elsewhere in these specifications, the RCE will decide all questions that may arise regarding the quality and acceptability of materials furnished, the work performed, the rate of progress on the work; the interpretation of the Plans and Specifications; acceptable fulfilment of the Contract by the Contractor; disputes and mutual rights between Contractors; and compensation for the work. The RCE will determine the amount and quantity of the several kinds of work performed and materials furnished, which are to be paid for under the Contract.

² Relevant portions of the 2007 Standard Specifications are provided as Exhibit 1, hereto.

The RCE has the authority to suspend the work, wholly or in part, or to withhold further payments to the Contractor for failure to correct unsafe conditions for its workers or the general public; for failure to carry out provisions of the Contract; for failure to carry out orders of the RCE; for periods as the RCE deems necessary due to unsuitable weather; for conditions considered unsuitable for prosecution of the work; or for any other conditions or reason that the RCE deems to be in the public interest. No additional compensation is paid to the Contractor because of such suspensions of work.

The RCE is not authorized to increase the obligation of the Department [of Transportation] under the Contract except as provided herein.

(2007 Standard Specifications, Section 105.1.) Plaintiff argues that TSC could not identify the RCE for SCDOT, which is untrue. TSC did not identify the RCE by name, because it was not relevant to the Motion. What is true is that there is no genuine issue of fact as to who acted as RCE for SCDOT – Travis M. Patrick, P.E., served as RCE for SCDOT for the Project. To be generous, the sworn testimony of Lou Hutcherson in his Affidavit attached as Exhibit A to Plaintiff’s Brief is implausible and incredible, stating that “Martin Long of TSC held himself out as [SCDOT’s] Resident Construction Engineer.” (Ex. A to Pl’s Brief in Opp., ¶ 4.) During the period which Hutcherson testified he was “Project Engineer” for Plaintiff, as demonstrated by Flatiron’s own document production,³ Hutcherson wrote an email to Long to state that Flatiron

³ If Plaintiff argues that the documents offered from Plaintiff’s own production somehow are not sufficiently authenticated, TSC makes reference to Exhibit A to Plaintiff’s Brief in Opposition to TSC’s Motion for Summary Judgment, wherein Linda Brumfield offers sworn testimony that “[i]t is the regular course and business of FCI for an employee or representative of FCI with knowledge of an act, event or condition to create or input such information and documents into the electronically maintained business records of FCI at or reasonably soon after the event occurs, and it is the ordinary and regular practice for FCI to maintain such records.” (Ex A to Pl’s Brief in Opp, ¶ 3.) Further, the emails drafted by Hutcherson are admissible as the prior statement of a witness, under Rule 801(d)(1), SCRE, and as the admission of a party opponent under Rule 801(d)(2), SCRE. Patrick’s emails and correspondence are public records, admissible under Rule 803(8), SCRE. Finally, the documents prove notice to Hutcherson and Flatiron and are admissible because they do not fit the definition of hearsay.

ceased all SC-707 Bent 1 concrete removal. Hutcherson copied Patrick on the email, and he received a response stating:

Lou,

We know the vertical steel in the existing foundation has been damaged, and we have concerns that the use of the trackhoe mounted hoe-ram may have damaged the concrete in the existing foundation. Since the foundation is a continue piece, prior to proceeding with any further work, we need to have an evaluation performed on the condition of the foundation. To properly evaluate it, the rest of the concrete must be removed. You need to resubmit your proposed removal procedure for review showing how you will remove the rest of the concrete without causing further damage to the underlying foundation.

Travis M. Patrick, P.E.
Resident Construction Engineer
District 5 Special Projects
South Carolina Department of Transportation

(FIC000170769, attached hereto as Exhibit 2.) (Emphasis added.) It seems implausible that Hutcherson would not remember who SCDOT's RCE was, after that person ordered him to remove all concrete from Bent 1. Similarly, as demonstrated by Plaintiff's own document production, in November 2015, which appears to be incomplete, includes emails and letters between Patrick and Hutcherson, with Long copied, wherein Patrick identifies himself as RCE, and Hutcherson agrees to have certain work approved by the RCE. Hutcherson never asks for the identity of the RCE, because it is clear he knows who serves as RCE.⁴ (FIC000170384-5; FIC00002499-500, attached hereto as Exhibit 3.) In the flowchart, identified as Exhibit 6 to the Hutcherson Affidavit, Patrick

⁴ Further undermining Hutcherson's vague assertions, Travis Patrick was selected as 2016 Resident Construction Engineer of the Year, based on his work in Horry County, during the period that Hutcherson was working on the project at issue. (See SCDOT's "The Connector," a self-authenticating periodical under Rule 902(6), SCRE, which also serves as a public record of a state agency under Rule 803(8), SCRE, Spring, 2016, p. 17, attached hereto as Exhibit 4.)

is identified on the line above Martin Long, consistent with the 2007 Standard Specifications, which state, in outlining “Authority and Duties of the RCE’s Representatives:

Authorized representatives of the RCE may inspect all work done and all materials furnished. Such inspection may extend to all or part of the work and to the preparation, fabrication, or manufacture of the material to be used. However, such inspection does not relieve the Contractor of any responsibility or obligation to perform the work strictly in accordance with the requirements of the Contract. **The RCE’s representative has the authority to reject defective material and to suspend any work that is being improperly performed subject to the final decision of the RCE.** The RCE’s representative is not authorized to alter or waive the provisions of the Contract, to approve or accept any portion of the work, or to issue instructions contrary to the Plans and Specifications. In no case will the RCE’s representative act as superintendent or perform other duties for the Contractor or interfere with the management of the work by the Contractor’s superintendent. **Do not construe advice given by the RCE’s representative as in any way binding on the RCE or the Department or as releasing the Contractor from the fulfillment of the terms of the Contract.**

(2007 Standard Specs, Section 105.9.) (Emphasis added.) Even from the documents and testimony offered by Plaintiff in a feeble attempt to create an issue of fact as to who held the position of SCDOT’s RCE, it is clear that Long was a Representative of RCE, whose initial decisions and inspections are subject to the final decision of the RCE. Hutcherson’s affidavit describes tasks consistent with “Representatives of the RCE,” not the RCE. In Paragraph 15 of his Affidavit, Hutcherson acknowledges that Long was to review Plaintiff’s submissions and “pass it along for **final approval by the owner and/or SCDOT.**” (Ex B to Pl’s Brief in Opp., ¶ 15.) This is consistent with the definition of Representative of the RCE, which Representative carries no ultimate authority.

2. Plaintiff Has Offered No Evidence to Demonstrate that TSC Designed Any Portion of the Project at Issue, Nor Has It Offered Any Evidence of Alleged Negligent Design by TSC, Causing Damage to Plaintiff.

Plaintiff argues, without evidence, that TSC designed plans and specifications, based on language in a contract to which Plaintiff was not a party. TSC provided sworn testimony that it did not sign or seal any plans, and Plaintiff has failed to identify any such plans or to identify any witness to provide any admissible testimony to show TSC ever did so. Plaintiff must identify admissible evidence creating an issue of fact, and, because it asserts claims for professional negligence, it must also identify expert testimony identifying a breach of duty in design, if design occurred, which caused damage to Plaintiff. Plaintiff is in possession of all design drawings as the Project Contractor, and it has failed to produce any drawings which are signed, sealed or prepared by TSC, even though it has an obligation to provide evidence to contradict TSC's identification of a lack of a genuine issue of material fact.

3. Plaintiff Disingenuously Implies There is an Issue of Fact as to SCDOT's Sole Authority to Reject Work.

As noted in TSC's summary of reply, Plaintiff has misstated the burden of proof for this Motion. At page 12 of Plaintiff's Brief in Opposition, Plaintiff accuses TSC of making a conclusory statement, unsupported by affidavits, even though *Tommy L. Griffin II* says, in analyzing burdens of proof under Rule 56, SCRCP: "the moving party [in a motion for summary judgment], who in the posture of this case does not have the burden of proof, [is] not required to present affidavits to negate [the plaintiff's] claims." *Tommy L. Griffin II*, 351 S.C. at 471, 570 S.E.2d at 203. Even if TSC were required to present evidence to support the statement, which it is not, Sections 105.1 and 105.9 of the 2007 Standard Specs make it clear that the RCE for SCDOT

has authority to make final decisions, while representatives of the RCE only have power to act, “subject to the final decision of the RCE.” 2007 Standard Specs, Section 105.9.

LEGAL REPLY ARGUMENT

1. Plaintiff Has Vastly Overstated the Holding of *Tommy L. Griffin I.*

First, it remains undisputed that Plaintiff presents no claims in this case other than ones for purely economic losses; so, this Court must evaluate the source of the duty Plaintiff claims TSC owed to determine whether the economic loss rule bars recovery. In *Tommy L. Griffin I*, South Carolina’s Supreme Court states that “the question of whether [a] plaintiff may maintain an action in tort for purely economic loss turns on the determination of the duty [that] plaintiff claims the defendant owed.” *Tommy L. Griffin I*, 320 S.C. 49, 54, 463 S.E.2d 85, 88 (1995). The Court noted that “a growing number of states have refused to apply the ‘economic loss’ rule to actions against design professionals where there is a ‘special relationship’ between the design professional and the contractor.” *Id.* at 53, 463 S.E.2d at 87. The Court then compared the law of design professionals to that affecting professional liability for lawyers and accountants, noting that “[those groups of] professionals, however, owe a duty to the client and **sometimes to third parties** which arises separate and distinct from the contract for services.” *Id.* at 55, 463 S.E.2d at 89 *citing* *Congregation of the Passion, Holy Cross Province v. Touche, Ross & Co.*, 636 N.E.2d 503 (Ill. 1994).⁵ Lawyers, for example, owe duties to only a limited number of groups of non-clients, but it is not a blanket duty to all non-clients.

It is no small irony that, after leading its Brief in Opposition with priggish arguments regarding the clarity and accuracy of TSC’s citations of law, Plaintiff fails to report one of the

⁵ Although Plaintiff argues that this Court should disregard opinions for other states, the Supreme Court of South Carolina used an Illinois Supreme Court opinion to support its finding that professionals (accountants in that case) sometimes owe duties to non-client third parties.

central holdings of the case on which it principally relies. In *Tommy L. Griffin I*, the Court notes that lawyers and accountants have long been held liable to clients for malpractice, and that they sometimes owe duties to clients and third parties which arise separately and distinctly from contracts for services. Drawing an analogy to that circumstance, the Court notes “we see no reason to insulate design professionals from liability when the relationship between the design professional and the plaintiff is such that the design professional owes a professional duty to the plaintiff **separate and distinct from any contractual duties between the parties or with third parties.**” *Id.* (emphasis added). Our Supreme Court then states, and Plaintiff conveniently excludes from its Brief, “[w]hether such a duty exists will depend on the facts and circumstances of each case.” *Id.* (emphasis added).

Whether there is a duty of care is a matter of law, not a factual determination. “The court must determine, as a matter of law, whether the law recognizes a particular duty.” *Steinke v. S.C. Dep’t of Labor, Licensing and Regulation*, 336 S.C. 373, 387, 520 S.E.2d 142, 149 (1999).

Based on the express holding of *Tommy L. Griffin I*, the determination of duty owed by that engineer to a non-client contractor in that case is limited to the facts of that case. There is no South Carolina case analyzing tort duties owed by an engineer providing CEIT services as one of the RCE’s Representatives.⁶ For this reason, TSC provided examples of analyses of other states. That said, it is clear that TSC’s relationship with Plaintiff is very different than the relationship of engineer and contractor in *Tommy L. Griffin*. In that case, the engineer “was the design engineer and supervised the project for the County.” *Tommy L. Griffin I*, 320 S.C. 49, 51, 463 S.E.2d 85, 86 (1995). In the present case, TSC acted as a Representative of the RCE, with no final decision-

⁶ As noted on p. 1 of TSC’s Brief in Support, CEIT services is construction, engineering, inspection and testing services.

making authority, and Plaintiff was expressly told in writing: “Do not construe advice given by the RCE’s representative as in any way binding on the RCE or the Department or as releasing the Contractor from fulfillment of the terms of the Contract.” 2007 Standard Specs, Section 105.9. Plaintiff has offered no evidence from any person stating that Plaintiff was ever told or that Plaintiff even ever thought that Marty Long was “RCE for SCDOT” as defined by Sections 101.2 and 105.1 of the Standard Specs; so, Plaintiff has not created any **genuine** issue of material fact. In this case, TSC’s role was to provide “Construction Engineering and Inspection Services,” which is a fundamentally different factual situation that held by the engineer in *Tommy L. Griffin*. In *Tommy L. Griffin*, the Engineer served as Project Engineer, with final authority for decisions on safety and operations. In the present case, any decisions made by TSC were preliminary, subject to final review, approval or rejection of SCDOT through the RCE. The RCE’s role, for purposes of project supervision, was very similar to that of the engineer in *Tommy L. Griffin*. Plaintiff has identified no cases in South Carolina where an engineer providing Construction Engineering and Inspection services for an owner was deemed to owe a duty of care to a general contractor outside privity, and this Court must determine as a matter of law whether such a duty exists.

This is where South Carolina law becomes critical to the analysis. As noted in TSC’s Brief in Support, S.C. Code Ann. Regs. §49-300(B) states that “[t]he Rules of Professional Conduct [for Engineers and Land Surveyors] delineate specific obligations engineers and surveyors **must meet**.” *Id.* (Emphasis added.) The Engineer “shall hold paramount the safety, health, and welfare of the public in the performance of their professional duties.” S.C. Code Ann. Regs. §49-301. Further, “[t]he Engineer ... **shall avoid conflicts of interest**.” S.C. Code Ann. Regs. § 49-304 (emphasis added). Plaintiff argues for the Court to recognize a duty that these regulations appear

to deem improper, whereby an engineer would owe a duty to a non-client not to do too thorough a job evaluating construction for the benefit of the engineer's client and the general public.

As noted above, “[t]he court must determine, as a matter of law, whether the law recognizes a particular duty. If there is no duty, then the defendant in a negligence action is entitled to judgment as a matter of law.” *Simmons v. Tuomey Reg. Med. Ctr.*, 341 S.C. 32, 39, 533 S.E.2d 312, 316 (2000). “The determination of the existence of a duty is solely the responsibility of the court.” *Miller v. City of Camden*, 329 S.C. 310, 320, 494 S.E.2d 813, 818 (1997). Further, our Supreme Court has held:

Whether the law regarding a particular duty is an issue of law to be decided by the Court. An affirmative legal duty exists only if created by statute, contract, relationship, status, or some other special circumstance.

Hendricks v. Clemson University, 353 S.C. 449, 456, 578 S.E.2d 711 (2003). Plaintiff has identified no statute, contract, relationship, status or special circumstance creating a duty. It argues that the status of TSC creates a duty, but that argument is directly contradicted by the 2007 Standard Specs, which are incorporated into the Construction Contract, as well as the TSC Contract, which creates no duty owed by TSC to Plaintiff. Finally, South Carolina regulations in the Rules of Professional Conduct for Engineers, which were adopted pursuant to statutory authority, demonstrate that this Court should not find a duty to exist which would create an impermissible conflict of interest for TSC. Accordingly, the Court should find no duty owed by TSC to Plaintiff. Specifically, there is no evidence that TSC had final supervisory authority over Plaintiff, and the 2007 Standard Specs actually prove that it did not. In *Tommy L. Griffin I*, the Engineer assumed certain duties, including that of project design, whereby, under South Carolina law it assumed duties to the public regarding safety and to the contractor regarding constructability of the plans and specifications. Further, that Engineer had final decision-making authority over

the General Contractor, agreed to by its client, Charleston County, in the form of a contract. In this case, TSC did not.

2. Plaintiff Has Failed to Identify Any Evidence Indicating Either Party to the TSC Contract Intended Plaintiff to Be a Third-Party Beneficiary of the TSC Contract.

Once again, Plaintiff's arguments against summary judgment on its third-party beneficiary claims are built upon a fundamental misunderstanding of South Carolina law. Plaintiff brought the claim, and Plaintiff bears the burden of proof. To satisfy Rule 56, SCRPC, TSC has stated, in the affidavit of Peter Strub, who was the person who signed the TSC Contract for TSC, that TSC never considered or intended Plaintiff to be a third-party beneficiary of the TSC Contract. Although TSC did not have a burden to provide evidence, it did so with Strub's affidavit. Plaintiff has failed to offer any evidence of intent of either Horry County or TSC to confer third-party beneficiary status on Plaintiff. The case has been pending for 5 years, and there is no reasonable argument that Plaintiff needs further discovery on the issue. Rule 56(e) requires Plaintiff to provide evidence of intent as to third-party beneficiary status to defeat TSC's Motion, and Plaintiff has failed to do so.

Plaintiff's legal arguments on this issue are not credible. Plaintiff argues that, because the TSC Contract does not expressly say "Plaintiff is not a third-party beneficiary," there must be an issue of fact. By law, the TSC Contract must be read as a whole, and Plaintiff has identified no provision of the TSC Contract which it contends confers a third-party benefit on Plaintiff. Accordingly, Plaintiff has failed to provide evidence to defeat TSC's motion. The cases that Plaintiff attempts to argue as refuting TSC's position actually bolster it. Evidence of intent is only necessary in an ambiguous contract, and Plaintiff has identified no ambiguity as to intent regarding third-party beneficiaries. "A third-party beneficiary is a party that **the contracting parties intend to directly benefit.**" *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485,

488 (2005). The purpose of the TSC Contract was to benefit Horry County and its citizens, not Flatiron. Plaintiff has provided no evidence at all that either Horry County or TSC intended the TSC Contract to directly benefit Plaintiff; therefore, TSC is entitled to summary judgment on Plaintiff's cause of action for breach of contract by third-party beneficiary.

4. The TSC Contract Demonstrates TSC's Agency Status with Horry County, as Well As SCDOT, for the Project at Issue.

TSC's Scope of Services, which is Attachment A to the TSC Contract, demonstrates that TSC acted as an agent for both Horry County and SCDOT in providing Construction Engineering and Inspection Services, stating:

The SCDOT and Horry County desire to hire a ConsultantPl to perform Construction Engineering and Inspection (CEI) Services for the above-described project to include but not be limited to, construction management, assurance and acceptance inspection, sampling, testing, and construction survey verifications to determine compliance with the contract requirements.

(TSC Contract, filed as Exhibit E to TSC's Brief in Support, p. 21/28.) Interestingly, this document also differentiates between TSC and SCDOT's Resident Engineer because it states:

As part of the project, SCDOT will require the Consultant to furnish a fully functional office for use by SCDOT and Consultant. The location of the project office shall be approved by SCDOT. All installation fees and monthly bill shall be the responsibility of the Consultant. The Consultant and SCDOT shall agree upon minimum dimensions of the project office prior to signing rental agreements. At a minimum, the project office shall have one ½ bath, one Private Office for the Project Engineer, **private office for SCDOT Resident Engineer**, and workspace for support staff, including a plan table...

(TSC Contract, p. 26/28 (emphasis added)).⁷

⁷ Marty Long filled the role of Project Engineer, as defined in the TSC Contract, and Travis Patrick, as noted above, was Resident Engineer for SCDOT.

Review of the TSC Contract and the Standard Specifications demonstrates that Horry County delegated all decision-making authority to SCDOT's Resident Construction Engineer, and that TSC acted as a representative of the RCE. (2007 Standard Specs, §105.3(2-3), 105.9; *see also* TSC Contract, Scope of Services, pp. 21 - 27.) Plaintiff erroneously argues: (1) that there is no evidence of the Principal's manifestation of any agency, when it is clear from the TSC Contract and the 2007 Standard Specs (as well as the emails that Plaintiff placed in the record); and (2) that because agency is normally an issue of fact, summary judgment is inappropriate. Summary judgment is appropriate, because Plaintiff has failed to meet its burden to oppose the Motion under Rule 56(e) – it has offered no evidence showing a lack of agency relationship. The TSC Contract gave TSC authority to inspect Plaintiff's work, and the 2007 Standard Specs gave Plaintiff notice of that authority. This provides the immunity which defeats the claim for tortious interference.

4. Even in the Brief in Opposition, Plaintiff Premises Claims Against TSC on Breach of the TSC Contract. This Is Fatal to Plaintiff's UTPA Claim.

All of Plaintiff's claims against TSC are premised upon TSC's alleged breach of duties related to its CEIT Services under the TSC Contract. "A mere breach of contract, without more, does not constitute a violation of the unfair trade practices act, even if done so intentionally. Otherwise, every intentional breach of a contract within a commercial setting would constitute an unfair trade practice and thereby subject the breaching party to treble damages." *D.R. Horton, Inc. v. Wescott Land Co., LLC*, 398 S.C. 528, 549, 730 S.E.2d 340, 351 (Ct. App. 2012), *vacated in part as to other causes of action, but affirmed as to this holding* by 410 S.C. 319 (2014). In that case, the Court of Appeals found that claims of unjustified delays with improper justification did not create sufficient evidence to defeat a motion for summary judgment as to UTPA claims. *Id.* In its Brief in Opposition, Plaintiff argues that the alleged unfair trade practices of TSC were breaches of the professional standard of care. This is not unfair or misleading activity; it is a claim

for professional negligence. Plaintiff has offered no legal support for the proposition that S.C. law allows it to recover treble damages and attorneys' fees for a negligence claim, and allegations of negligence are insufficient to allow for recovery for UTPA violations. Again, Plaintiff appears not to understand its obligation at this point in the proceedings to produce admissible evidence of unfair or misleading actions in the conduct of business.

Plaintiff incorrectly argues that there is no specific regulatory measure authorizing the activities performed by TSC. S.C. Code Ann. §40-22-20(25) defines the "practice of engineering" to include "the review of construction for the purpose of monitoring compliance with drawings and specifications." S.C. Code Ann. § 40-22-2 states that "[i]n order to safeguard life, health, and property and to promote the public welfare, the practice of engineering ... in this State is subject to regulation." S.C. Code Ann. Regs §49-301(A) requires that an "Engineer shall at all times recognize that their primary obligation is to protect the safety, health, property and welfare of the public and shall conduct their practice to fulfill this obligation." Again, Plaintiff alleged that TSC's provision of CEI Services was excessive, but engineering regulations issued by statutory authority authorize and require TSC to conduct its practice in recognition that TSC's primary obligation is to protect safety, health, property and welfare of the public." TSC applied its professional judgment in fulfillment of this obligation. This is authorized and required by state regulatory authority; therefore, TSC is immune from UTPA liability.

CONCLUSION

Plaintiff's Brief in Opposition fails to create any genuine issue of material fact, but it does use innuendo and implication in an effort to confuse the Court. The facts are clear – there is no privity between TSC and Plaintiff, and there is no special relationship giving rise to tort duties. Plaintiff has identified no contract or statute which creates duties, and this Court should, as a matter

of law, find that no duties exist. Plaintiff has had 5 years to create issues of fact, and TSC has incurred hundreds of thousands of dollars in expenses in defense of a claim that has once been placed on a trial roster. There is no reasonable argument that the motion is premature, and it is clear that Plaintiff has failed to identify evidence to refute TSC's assertion of the absence of an issue of material fact. TSC is entitled to judgment as a matter of law.

As to Plaintiff's objections to citations, the undersigned addresses the arguments, which he deems meritless, in Exhibit 5, filed herewith.

WILKES ATKINSON & JOYNER, LLC

August 2, 2023

s/ C. Daniel Atkinson
Michael B.T. Wilkes, Esq. (S.C. Bar 6107)
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- And -

C. Daniel Atkinson (S.C. Bar 72721)
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Spartanburg, SC 29306
Phone: (864) 591-1113

*Attorneys for Defendant
TranSystems Corporation*

EXHIBIT 1

**Reply Brief in Support
Of Defendant's
Motion for Summary Judgment**

C.A. No. 2022-CP-26-06116

101.1

101.2

DIVISION 100
GENERAL PROVISIONS
SECTION 101
DEFINITIONS AND TERMS

101.1 General

- 1 The titles or headings of the sections and subsections of these Standard Specifications are in bold type and are intended for convenience of reference and do not have any bearing on the interpretation. The number to the left of each paragraph is also for convenience of reference and does not have any bearing on the interpretation.
- 2 Cited publications, including the Office of Materials and Research (OMR) Standard Method of Tests, SCDOT Supplemental Specifications, SCDOT Supplemental Technical Specifications, and specification from other organizations or associations refer to the most recent issue or edition of the publication accepted or adopted by the Department, including interim publications, in effect at the time of advertisement of the proposal unless otherwise specified.
- 3 Action required of the Bidder or Contractor in these specifications is written as a command in the active voice, imperative mood to communicate the Bidder's or Contractor's responsibilities in a direct manner. The subject "the Bidder" or "the Contractor" is understood. Omission of words or phrases such as "the Contractor shall," "unless otherwise specified," or "unless otherwise directed" is intentional. Interpret the specifications as if they were included.
- 4 Sentences that define the Department's responsibility are written in the indicative mood, in either active or passive voice.

101.2 Abbreviations and Acronyms

- 1 Wherever the abbreviations and acronyms in the following tables are used in these specifications, the Supplemental Specifications, the Supplemental Technical Specification, the Special Provisions, or on the Plans, take them to represent the respective expressions in the following tables.

ORGANIZATIONS or PUBLICATIONS	
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
ADA	Americans with Disabilities Act
AED	Associated Equipment Distributors
AGC	Associated General Contractors of America

(table continued on the next page)

101.2

101.2

(table continued from the previous page)

ORGANIZATIONS or PUBLICATIONS	
AISC	American Institute of Steel Construction
AMRL	AASHTO Materials Reference Laboratory
ANLA	American Nursery & Landscape Association
ANSI	American National Standards Institute
API	American Petroleum Institute
ASME	American Society of Mechanical Engineers
ASNS	<i>American Standard for Nursery Stock</i>
ASNT	American Society for Nondestructive Testing
ASTM	American Society for Testing and Materials
AWPA	American Wood Preserver Association
AWS	American Welding Society
CFR	<i>Code of Federal Regulations</i>
CRSI	Concrete Reinforcing Steel Institute
DBE	Disadvantaged Business Enterprise
ECTC	Erosion Control Technology Council
EPA	(U.S.) Environmental Protection Agency
FHWA	Federal Highway Administration
GSI	Geosynthetic Institute
ISEA	International Safety Equipment Association
ISO	International Organization for Standardization
MUTCD	<i>Manual of Uniform Traffic Control Devices</i>
NCHRP	National Cooperative Highway Research Program
NCMA	National Concrete Masonry Association
NEC	<i>National Electrical Code</i>
NESC	<i>National Electrical Safety Code</i>
NIST	National Institute of Standards and Technology

(table continued on the next page)

101.2

101.2

(table continued from the previous page)

ORGANIZATIONS or PUBLICATIONS	
NPDES	National Pollutant Discharge Elimination System(General Permit)
NRMCA	National Ready Mixed Concrete Association
NTPEP	National Transportation Product Evaluation Program
OSHA	Occupational Safety and Health Administration
PCI	Prestressed Concrete Institute
PUPS	Palmetto Utility Protection Service
SAE	Society of Automotive Engineers
SCDA	South Carolina Department of Agriculture
SCDHEC	South Carolina Department of Health and Environmental Control
SCDNR	South Carolina Department of Natural Resources
SCDOI	South Carolina Department of Insurance
SCDOT	South Carolina Department of Transportation
SPIB	Southern Pine Inspection Bureau
SSPC	Steel Structures Painting Council
UL	Underwriters Laboratories
USACE	United States Army Corps of Engineers
USCG	United States Coast Guard
USDA	United States Department of Agriculture
USDOT	United State Department of Transportation

SCDOT OFFICIALS and OFFICES	
AME	Asphalt Materials Engineer
BCE	Bridge Construction Engineer
BDE	Bridge Design Engineer
BDGE	Bridge Design Geotechnical Engineer
DCE	District Construction Engineer
DEA	District Engineering Administrator

(table continued on the next page)

101.2

101.3.1

(table continued from the previous page)

SCDOT OFFICIALS and OFFICES	
DOC	Director of Construction
GME	Geotechnical Materials Engineer
MRE	Materials and Research Engineer
OMR	Office of Materials and Research
RCE	Resident Construction Engineer
RME	Resident Maintenance Engineer
SHE	State Highway Engineer
SME	Structural Materials Engineer

PAY UNITS	
ACRE	Acre
BALE	Bale
CF	Cubic Foot
CY	Cubic Yard
CYHM	Cubic Yard Half-Mile
EA	Each
LB	Pound
LF	Linear Foot
LS	Lump Sum
MI	Mile
MSY	One-Thousand Square Yards
SF	Square Foot
STA	Station (100 feet)
SY	Square Yard
TON	Ton (2000 pounds avoirdupois)

101.3 Terms and Definitions**101.3.1 General**

- ¹ Wherever in these specifications or in other contract documents the following terms and definitions are used, interpret the intent and meaning as set

105.1

105.2

SECTION 105

CONTROL OF WORK

105.1 Authority of the RCE

- 1 Unless otherwise specified elsewhere in these specifications, the RCE will decide all questions that may arise regarding the quality and acceptability of materials furnished, the work performed, the rate of progress of the work; the interpretation of the Plans and Specifications; acceptable fulfillment of the Contract by the Contractor; disputes and mutual rights between Contractors; and compensation for the work. The RCE will determine the amount and quantity of the several kinds of work performed and materials furnished, which are to be paid for under the Contract.
- 2 The RCE has the authority to suspend the work, wholly or in part, or to withhold further payments to the Contractor for failure to correct unsafe conditions for its workers or the general public; for failure to carry out provisions of the Contract; for failure to carry out orders of the RCE; for periods as the RCE deems necessary due to unsuitable weather; for conditions considered unsuitable for the prosecution of the work; or for any other conditions or reason the RCE deems to be in the public interest. No additional compensation is paid to the Contractor because of such suspensions of work.
- 3 The RCE is not authorized to increase the obligation of the Department under the Contract except as herein provided.

105.2 The Design Plans, Shop Plans, and Working Drawings

- 1 The Design Plans (the Plans) are furnished by the Department and consist of drawings that show details necessary to provide a comprehensive idea of the construction work contemplated. Road Plans will normally show the roadway alignment, profile, grades, and typical cross-sections. In general, Structure Plans will show the general details and dimensions of the structure work contemplated. In cases where dimensions are not shown, the Structure Plans show general features and details necessary to provide a comprehensive idea of the structure. The drawings for bridges will show sufficient information to enable the Contractor to determine the work contemplated, but the RCE reserves the right to have the Plans supplemented with Construction Plans, Erection Plans, or Working Drawings by the Contractor.
- 2 The information contained upon the Plans regarding the results obtained from test piles or borings is a record of the conditions revealed by fieldwork and shows conditions that were encountered at the place where the test piles were driven or the borings made, as nearly as those conditions could be interpreted by the inspector observing the operations. The Contractor is not bound to accept or rely on this data. Interpret them in the light of experience, and make such additional borings and investigations, including test piles, as desired in order to determine or obtain satisfaction concerning the conditions affecting lengths of piles or entering into the construction of foundations.

105.8.3**105.10**

equipment, tools, supplies, and incidental work, including computations, necessary to satisfactorily complete the work.

- 10 The payment includes all direct and indirect costs and expenses required to complete the work.

- 11 Pay items under this subsection include the following:

Item No.	Pay Item	Unit
105081X	Construction Stakes, Lines, And Grades (For Bridge Only)	EA

105.9 Authority and Duties of the RCE's Representatives

- 1 Authorized representatives of the RCE may inspect all work done and all materials furnished. Such inspection may extend to all or part of the work and to the preparation, fabrication, or manufacture of the material to be used. However, such inspection does not relieve the Contractor of any responsibility or obligation to perform the work strictly in accordance with the requirements of the Contract. The RCE's representative has the authority to reject defective material and to suspend any work that is being improperly performed subject to the final decision of the RCE. The RCE's representative is not authorized to alter or waive the provisions of the Contract, to approve or accept any portion of the work, or to issue instructions contrary to the Plans and the Specifications. In no case will the RCE's representative act as superintendent or perform other duties for the Contractor or interfere with the management of the work by the Contractor's superintendent. Do not construe advice given by the RCE's representative as in any way binding on the RCE or the Department or as releasing the Contractor from the fulfillment of the terms of the Contract.

105.10 Inspection of the Work

- 1 Furnish the RCE with every reasonable facility for ascertaining whether or not the work as performed and materials used are in accordance with the requirements and intent of the Contract. At any time before final acceptance of the work, remove or uncover such portions of the finished work as directed by the RCE. After examination by the RCE, restore said portions of the work to the standard required by the Specifications. Should the work thus exposed and examined prove acceptable, the uncovering or removing and the replacing of the covering or making good of the parts removed will be paid for as Extra Work; but should the work so exposed and examined prove unacceptable, the uncovering or removing and replacing of the covering or making good the parts removed will be at the Contractor's expense. Any work done or materials used without the knowledge or inspection by the RCE or the RCE's representative may be ordered removed and replaced at the Contractor's expense. Failure to reject any defective work or material does not in any way prevent later rejection when such defect is discovered, nor does it obligate the Department to final acceptance.

EXHIBIT 2

**Reply Brief in Support
Of Defendant's
Motion for Summary Judgment**

C.A. No. 2022-CP-26-06116

Date: Tue, 1 Dec 2015 9:32:00 PM (UTC)
Sent: Tue, 1 Dec 2015 9:32:26 PM (UTC)
Subject: RE: 26.036775A CBP - RE: 707 Abutment 1 Wall Pour 1 Form Blowout
From: Patrick, Travis M
To: 'Hutcherson, Lou' <LHutcherso@flatironcorp.com>; Long, Martin L - TranSystems <MLLong@transystems.com>;
 djkenedy@transystems.com; dlpieronek@transystems.com; Thompson, Jason D <ThompsonJD@scdot.org>; Sanborn, Todd <tsanborn@flatironcorp.com>; Mattison, Bill R <MattisonBR@scdot.org>;
CC:
Attachments: IMG_0136.jpg

Lou,

We know the vertical steel in the existing foundation has been damaged, and we have concerns that the use of the trackhoe mounted hoe-ram may have damaged the concrete in the existing foundation. Since the foundation is a continuous piece, prior to proceeding with any further work, we need to have an evaluation performed of the condition of the foundation. To properly evaluate it, the rest of the concrete must be removed. You need to submit your proposed removal procedure for review showing how you will remove the rest of the concrete without causing further damage to the underlying foundation.

Travis M. Patrick, PE

Resident Construction Engineer
District 5 Special Projects
South Carolina Department of Transportation
 3829 Business Street
 Myrtle Beach, SC 29579
 Office: 843-236-9658

From: Hutcherson, Lou [mailto:LHutcherso@flatironcorp.com]
Sent: Tuesday, December 01, 2015 3:58 PM
To: Long, Martin L - TranSystems
Cc: djkenedy@transystems.com; dlpieronek@transystems.com; Patrick, Travis M; Thompson, Jason D; Sanborn, Todd
Subject: RE: 26.036775A CBP - RE: 707 Abutment 1 Wall Pour 1 Form Blowout

Mr. Long –

Pursuant to direction in the e-mail below, Flatiron has ceased all SC-707 Bent 1 concrete removal. To clarify and confirm, Flatiron will continue SC-707 Bent 1 abutment construction of and on non-impacted areas and elements.

Should you have any questions, or if I can possibly be any assistance, please contact me at your convenience.

Best Regards,

Lou Hutcherson
 Project Manager
 Carolina Bays Parkway (SC 31)
FLATIRON
 7449 Butler Rd.
 Myrtle Beach, SC 29588
 732.754.3358 **CELL**
 LHutcherso@flatironcorp.com
 www.flatironcorp.com
Build the Best. Be the Best

EXHIBIT 3

**Reply Brief in Support
Of Defendant's
Motion for Summary Judgment**

C.A. No. 2022-CP-26-06116

Date: Mon, 2 Nov 2015 9:55:43 PM (UTC)
Subject: File # 26.036775A - SC-31 - ICWW Foundations
From: Patrick, Travis M <PatrickTM@scdot.org>
To: Lou Hutcherson (LHutcherso@flatironcorp.com) <LHutcherso@flatironcorp.com>;
CC: CR-Marty Long <mllong@transystems.com>; Craig Rivers (craig.rivers@meadhunt.com) <craig.rivers@meadhunt.com>; Thompson, Jason D <ThompsonJD@scdot.org>; Mattison, Bill R <MattisonBR@scdot.org>;
Attachments: 26.036775A - ICWW Foundation Letter.pdf

Lou,

Please see the attached letter regarding the foundations in the ICWW and respond as soon as possible. If you have any questions, please contact me on my cell at 843-340-4623.

Travis M. Patrick, PE

Resident Construction Engineer

District 5 Special Projects

South Carolina Department of Transportation

3829 Business Street

Myrtle Beach, SC 29579

Office: 843-236-9658

November 2, 2015

Lou Hutcherson
Project Manager
Flatiron Constructors, Inc.
7449 Butler Road
Myrtle Beach, SC 29588

RE: SC File No. 26.036775A – Carolina Bays Parkway – Phase III – SC-31 –
ICWW Bridge Foundations and In-Water Work Restrictions

Mr. Hutcherson:

As you are aware, the contract for this project has a restriction on in-water work from January 1 through April 30 of each year during the spawning season for Atlantic Sturgeon. This restricts any work from taking place below the water's surface.

We are two months away from the beginning of this season, and one of the items on your critical path that must be completed are the foundations for Bents 14, 15, 16, and 17 that tie the six drilled shafts together into one pier. Two of these bents, 15 and 16, are out in the water of the ICWW. These foundations are also mass concrete pours that require special insulation and monitoring requirements.

The project plans have a pay item for a Cofferdam Type 4 (30,001-40,000 CF) for each of these two bents to allow you to dry out the foundation location and form and pour the foundation concrete without exposure to the brackish tidal water of the ICWW. To date, we have not received any working drawings for review for a cofferdam, and have been told by your staff that you do not intend to use a cofferdam. If use of a cofferdam is intended, there is very little time left to get the working drawings submitted and approved and install the cofferdams before the In-Water Work Restriction begins.

Because of the current water levels of the ICWW, and the potential for high water levels in the future, we do not understand how you intend to construct Bents 15 and 16. You must comply with both the In-Water Work Restriction and ensure that tidal water does not come into contact with the fresh concrete per section 702.4.2.7 of the 2007 Standard Specifications. You must also comply with all of the mass concrete requirements from section 702.4.2.5 of the 2007 Standard Specifications and your approved mass concrete plan. We also must be able to inspect the work both during the forming stage and after the forms have been removed from the completed foundation.



Date: Thu, 17 Dec 2015 3:43:27 PM (UTC)
Sent: Thu, 17 Dec 2015 3:41:46 PM (UTC)
Subject: FW: File # 26.036775A - SC-31 - ICWW Foundations
From: LHutcherso@flatironcorp.com
To: PatrickTM@scdot.org;
CC: mllong@transystems.com; ThompsonJD@scdot.org; MattisonBR@scdot.org; craig.rivers@meadhunt.com; Jeff.Burkett@meadhunt.com; Michael.Cook@meadhunt.com;

Travis –

To clarify and confirm a few ambiguous items in my previous response to you:

1. Per predicted tide charts, the top elevation of the mats placed on the steel falsework for ICWW Bents 15 and 16 Foundations should be above top of water at all times and all subsequent work should be above the water's surface. NOTE: Post 1,000 year rain event ICWW water levels have finally receded to near normal levels – there has been a significant and noticeable difference just this week.
2. Flatiron will only plan, schedule, and perform ICWW Bents 15 & 16 Foundations work when there is no water level conflict occurring, scheduled to occur, or predicted to occur.
3. Flatiron will only plan, schedule, and perform ICWW Bents 15 & 16 Foundations work when there is no water level conflict occurring, scheduled to occur, or predicted to occur that will prevent or limit proper and satisfactory inspection of all construction Foundation phases, activities, and elements.
4. All planned, scheduled, and performed ICWW Bents 15 and 16 Foundations work will be coordinated with and approved by the RCE.
5. Secondary containment for all ICWW Bents 15 and 16 concrete placements will be resolved and subsequently approved by the RCE prior to any placements.

And, as you are aware, any and all in-place Bents 15 and 16 Foundations falsework and soffit forms will remain in place until the no in-water work moratorium expires April 30, 2016. In a follow-up correspondence, based on the documented satisfactory and successful ICWW Bent 14 Foundation construction, upon completion of the ICWW Bents 15 and 16 foundations, Flatiron will respectfully requests to proceed with respective columns and caps construction.

Should you have any questions, or if I can possibly be additional assistance, please contact me at your convenience.

Kind Regards,

Lou Hutcherson
 Project Manager
 Carolina Bays Parkway (SC 31)
FLATIRON
 7449 Butler Rd.
 Myrtle Beach, SC 29588
 732.754.3358 **CELL**
 LHutcherso@flatironcorp.com
 www.flatironcorp.com
Build the Best. Be the Best

From: Hutcherson, Lou
Sent: Monday, December 14, 2015 1:32 PM
To: 'Patrick, Travis M'

Cc: Long, Martin L - TranSystems; Craig Rivers (craig.rivers@meadhunt.com); Thompson, Jason D; Mattison, Bill R
Subject: RE: File # 26.036775A - SC-31 - ICWW Foundations

Travis --

Please see attached Flatiron's response to the issues and concerns expressed in your letter dated November 2, 2015.

Should you have any questions, please contact me at your convenience.

Best Regards

Lou Hutcherson

Project Manager

Carolina Bays Parkway (SC 31)

FLATIRON

7449 Butler Rd.

Myrtle Beach, SC 29588

732.754.3358 **CELL**

LHutcherso@flatironcorp.com

www.flatironcorp.com

Build the Best. Be the Best

From: Patrick, Travis M [mailto:PatrickTM@scdot.org]

Sent: Monday, November 02, 2015 4:56 PM

To: Hutcherson, Lou

Cc: Long, Martin L - TranSystems; Craig Rivers (craig.rivers@meadhunt.com); Thompson, Jason D; Mattison, Bill R

Subject: File # 26.036775A - SC-31 - ICWW Foundations

Lou,

Please see the attached letter regarding the foundations in the ICWW and respond as soon as possible. If you have any questions, please contact me on my cell at 843-340-4623.

Travis M. Patrick, PE

Resident Construction Engineer

District 5 Special Projects

South Carolina Department of Transportation

3829 Business Street

Myrtle Beach, SC 29579

Office: 843-236-9658

EXHIBIT 4

**Reply Brief in Support
Of Defendant's
Motion for Summary Judgment**

C.A. No. 2022-CP-26-06116

THE CONNECTOR

VOLUME XXVI NO. 1

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

SPRING 2016

Christy Hall confirmed as Secretary of Transportation

By Pete Poore

By a vote of 37-0 on Jan. 18, 2016, the South Carolina Senate gave final approval to Governor Nikki Haley's appointment of SCDOT veteran **Christy Hall** as Secretary of Transportation. The Governor appointed Hall to the job on Oct. 21, 2015. The approval meant that no longer did the Secretary have the words "Acting" or "Interim" at the front of her title as she did on three occasions.

Officially, the title was new, but Hall was not new to the job. Governor Haley called upon her in January 2014 to serve as "Acting Secretary" and again in June 2015. Both appointments were the result of resignations by previous secretaries.

The Abbeville native relied on her experience as a Deputy Secretary in two different Divisions, as a DEA in District 2 and other management and front line positions both at HQ and in the field earned during her 20+ year career at SCDOT.

When Acting Secretary Hall stepped up in 2014, she took the reins just in time for two winter storms that slammed into the state in February. The second storm was so devastating it brought down thousands of trees that not only blocked roads, but brought down power lines all across the state. The Federal Emergency Management Agency (FEMA) came to South Carolina to assist SCDOT and other agencies. Little did anyone know at that time that FEMA would come back to South Carolina in

the fall of 2015 on a much larger scale.

That's when the historic rain-fall deluged South Carolina on the first weekend in October of 2015. Three months of rain fell in just three days. The result was an unprecedented 1,000 year flood that took lives, destroyed property, wiped out 541 roads and bridges, while leaving many more temporarily closed until the floodwaters receded.

Then-Acting Secretary Hall led the SCDOT team before, during and after the flood in preparing and putting a strategy in place to deal with a calamity that had never been seen before.

The strategy put together by Hall and her senior staff paid off. South Carolina was braced for road and bridge damage expected to add up in the billion dollar range. The SCDOT team pulled together as one unit and held the cost down to \$137 million. The majority of the 541 roads and bridges were expected to be closed well into 2016. But within 60 days, just over 90% of those devastated facilities were back in service once more.

Shortly after Secretary Hall was named to the job, she devised a list of four management initiatives, all aimed at making SCDOT a more stable, open and accountable agency and to improve delivery of projects. In short, Hall wants the agency to get better at doing what it promised, and completing projects when it promised to do so.

Hall's initiatives are living, breathing efforts that can be monitored. This link to the



ROB THOMPSON/THE CONNECTOR

South Carolina Secretary of Transportation Christy Hall

SCDOT web site: <http://www.scdot.org/inside/mmDashboard.aspx> provides an introduction to a "Monthly Management

Dashboard" for a short summary of agency accomplishments and specific measurements for the four initiatives:

See HALL page 10

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ELECTRONICALLY FILED - 2023 AUG 02 1 22 PM HOFERY & COMPANY PLEAS - CASE#2022CP2606156

Branham, Robbins join Commission

Two new members have joined the Transportation Commission replacing Commissioners whose terms have expired.

David Eugene “Gene” Branham now represents the 5th Congressional District.

Branham, of Kershaw County, was sworn in on March 10 to replace Commissioner W. B. Cook.

Branham has been employed with Lynches River Electric Coop for 44 years. He served 20 years on the Kershaw County Transportation Committee. Branham has been a citizen of Kershaw County for more than 43 years.

Branham and his wife, Gail H. Branham, have three adult children, David, Patricia and Adam.



Branham



Robbins

The new SCDOT Commissioner from the 1st Congressional District is **Robert D. Robbins**. He replaces Jim Rozier whose term expired.

Robbins is an attorney from Summerville and is a past chair and member of both the Tri-County Regional Chamber of Commerce and the Greater Sumerville/Dorchester County Chamber Board of Directors.

Robbins and his wife, Mary Bryce Robbins, have a son, Bryce, and daughter, Lena.

Wooten elected Commission Chairman; Hardee, Vice Chairman

By Bob Kudelka

The SCDOT Commission on Thursday, Jan. 21, 2016, unanimously elected Mike Wooten of the 7th Congressional District as the new Chairman of the SCDOT Commission.

The Commission also unanimously elected John N. Hardee of the 2nd Congressional District as the new Vice Chairman of the SCDOT Commission.

Wooten, of Murrells Inlet, is the Founding Partner and the Principal Engineer of DDC Engineers, Inc., a Myrtle Beach based consulting engineering firm specializing in land planning, landscape architecture, environmental planning, land surveying and civil engineering.

Prior to founding DDC Engineers, Inc., in 1986, Wooten was employed by Santee Cooper where he was responsible for the upkeep of 42 miles of dams. He also served as the liaison with the U.S. Army Corps of Engineers and South Carolina Congress-

sional Delegation for the state owned utility. He has a Bachelor of Science in Civil Engineering from The Citadel in 1977.

Hardee, representing the 2nd Congressional District, is Director of Public Affairs for Lamar Outdoor Advertising. Hardee previously served a term as SCDOT Commission Vice Chairman from 2002 to 2004.

Over a six-year period, Hardee helped secure \$1.2 million in funding for enhancements in the Loris community. A portion of U.S. 701 is named in his honor. Hardee has been a member of the Board of Directors of the Central Midlands Council of Governments since 2004. He is chairman of the Midlands Authority for Conventions, Sports & Tourism and was a member of the Richland County Transportation Committee prior to becoming an SCDOT Commissioner again. For his efforts in securing funding for the Airport Connector, the road was named in his honor, the “John N. Hardee Expressway.”

South Carolina Department of Transportation Commission



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THE CONNECTOR

Winner of awards from S.C. Division, Public Relations Society of America; Carolinas Association of Business Communicators; S.C. Press Association and AASHTO.

Editor: Stan Shealy

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Editorial Board: Pete Poore, Bob Kudelka, Bonnie Cramer, Tasha Crumpton, Cody Crouch, Zoe Cook, Kim Corley and Drew Stewart.

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Christy Hall is the South Carolina Secretary of Transportation.



South Carolina Press Association Associate Member

SCDOT is #1 in asphalt reclamation in U.S., Canada



PHOTOGRAPHS BY ROB THOMPSON/THE CONNECTOR

LEFT: Christy Hall accepts an award from the Asphalt Recycling and Reclaiming Association (ARRA) on April 21, 2016, during the April SCDOT Commission meeting. Shown from left: SCDOT Director of Maintenance Jim Fedra, S.C. Secretary of Transportation Christy Hall, Miller Group General Manager Kimbel Stokes, ARRA President Ryan Essex, SCDOT Acting Deputy Secretary for Engineering Leland Colvin, and Stan Bland of the Portland Cement Association.

ABOVE: ARRA President Ryan Essex makes comments before presenting the award. Essex said that SCDOT does more asphalt reclamation than any other state or province in the United States or Canada.



Engineering publication names Hall a top 25 newsmaker of 2015



By Pete Poore

Christy A. Hall has been named by "Engineering News-Record" (ENR) as one of the publication's Top 25 Newsmakers of 2015. Secretary Hall is credited with leading the massive effort in South

Carolina to restore the state's highways and bridges following the historic 1,000-year October flood.

ENR announced its annual list of Top 25 Newsmakers in January 2016. Upon learning of the honor, Hall said, "I'd like to thank ENR for recognizing the hard work and

dedications of the SCDOT Team in managing an unprecedented natural disaster in our state."

Secretary Hall was invited to attend ENR's recognition ceremonies in New York in early April. She was honored along with the other members of the Top 25 list.

I-85/I-385 Gateway groundbreaking ceremony

By Bob Kudelka

SCDOT's largest project since the Arthur Ravenel Jr. Bridge ceremoniously began on a chilly morning in February with a groundbreaking led by state and local leaders.

The I-85/I-385 Gateway Project in Greenville was described as both a watershed moment for the region and an impact project for the state.

"It's an absolutely phenomenal day here in Greenville," said Secretary of Transportation **Christy A. Hall**. "The Governor and members of the General Assembly are very supportive of this project."

The I-85/I-385 Gateway is designed to improve safety and increase traffic capacity for an estimated 200,000 vehicles that use this interchange each day. By 2035, that number is estimated to rise to 350,000 vehicles per day.

Hall knows the region well, having spent 10 years there earlier in her career, including doing design and construction work on past I-385 improvements.

"So I know what the traffic is like up here; in the morning rush hour, evening rush hour, Friday after lunch on Woodruff Road, holidays... This project is absolutely intended to correct all those issues we deal with day to day in this particular region of this state," Hall said.

State Representative Wendy K. Nanney, of House District 22, said there was a lot of excitement for the project and advised the public to visit www.85385gateway.com for more details.

"It's going to be fantastic," said Nanney, who is also Chairman of the Greenville County Legislative Delegation. "We thank the DOT for their hard work and the effort and energy that's already been put into this project."

GPATS Chairman Butch Kirven said, "A project of this magnitude...no matter how you look at it, it takes teamwork, old-fashioned communications, hard work and understanding among all the partners."

SCDOT partners on the project include: the Federal Highway Administration (FHWA); the contractor, Flatiron-Zachry Joint Venture; Civil Engineers Consulting Services as the Lead Engineer for Contractor; HDR/ICA, (the Design Review Consultant); and Infrastructure Consulting and Engineering, (the Construction Engineering and Inspection Consultant).

"FHWA is very fortunate to have such a good relationship with SCDOT, which benefits the Federal Highway Administration, SCDOT, other partners, stakeholders and, ultimately, the traveling public," said Emily Lawton, FHWA South Carolina Division Administrator.



SCDOT's team is led by District 3 Engineer Administrator **Stephanie Jackson-Amell**; District Construction Engineer **David Hebert** and Resident Construction Engineer **Jack Valetti**.

Also speaking at the event was Max Metcalf, former vice chairman of the S.C. Transportation Infrastructure Bank Board (SCTIB). Rev. T.E. Simmons of Reedy Fork Baptist Church delivered the invocation and benediction.

- The construction of 11 new bridges, including two flyovers that will replace the existing tight loop ramps that tie I-85 from and to I-385.

- Reconstructing and enhancing the traffic signal system on the Woodruff Road Corridor.

- Constructing additional turn lanes at the Woodruff Road intersections with Market Point Drive and Garlington Road.

The project's scope includes creating a

By The Numbers

The I-85/I-385 Gateway Project

- 4.7 miles of interstate rehabilitation
- 7.2 miles of widening for northbound and southbound lanes
- 350,000 square feet of new bridges
- 260,000 square feet of MSE walls (Mechanically Stabilized Earth)
- 95,000 cubic yards of concrete
- 9.5 million pounds of structural steel
- 5.7 million pounds of rebar
- 50,000 linear feet of drainage pipe

Cost

\$231 Million

new interchange within the general footprint of the current interchange, staging construction of the new lanes, ramps, and bridges; and by widening I-385 through the project limits.

The completion of the project is estimated for summer 2019.



Commission Vice Chairman John N. Hardee led the pledge of allegiance. Director of Communications **Pete Poore** was emcee.

Funding sources for this project include Act 98, signed into law by Governor Haley in 2013 after passage by the Legislature; FHWA; the SCTIB; and GPATS.

Highlights of the Gateway project also include:

- The extension of the 4th auxiliary lane on I-85 Northbound & Southbound between I-385 and Pelham Road.

- The widening of I-385 to six lanes from Butler Road to Roper Mountain Road.



SCDOT flooding story goes international

By Bob Kudelka

Finland and South Carolina each have a population of about 5 million, but it's hard to find other similarities between the country and state that are 4,683 miles apart.

That doesn't mean the Finnish people aren't interested in the Palmetto State, however.

In February, a correspondent from the Finnish Broadcasting Company, Yle, visited Headquarters in Columbia for a story on SCDOT's response to the 1,000-year flood in October 2015.

Pirkko Pontinen, who is from Helsinki but works out of Washington, D.C., and cameraman Bryan Rager had been in town covering the Republican Primary. They decided to stay an extra day to visit SCDOT and then stop by Bluff Road for footage of one of the remaining recovery projects.

"We always tell about the disasters, and when it's over we never mention what happens afterward," Pontinen said. "This is a good chance to cover South Carolina and what it is doing."

Pontinen interviewed Chief Engineer for Operations **Andy Leaphart** about SCDOT's response to the flood and its impact financially.

"As a small country, we are about the size of South Carolina so people like to know about the culture and understand what a huge country the United States is," Pontinen said.

Finland, who shares a 1,300-kilometer border with Russia, has constant budget battles concerning its own roads and bridges, Pontinen said.

"We have a heavy winter... so roads and bridges don't really compare well with South Carolina," she said. "The whole structure has to be different. Here you don't have the ice cold one meter down. So when the



ABOVE: Bryan Rager, videographer, and reporter Pirkko Pontinen were in town to cover the Republican Primary, but stopped by SCDOT to ask about the disastrous flooding in October.

spring and summer comes you see what has happened during the winter."

Pontinen said her broadcasting company is funded through its government, with each family paying a yearly tax based on their income. She said like the BBC, the news company is not censored by its government.

Yle has four television channels, six radio channels, and over 20 regional radio stations and regional news from eight districts. Its mission is to "support democracy and everyone's opportunity to participate by providing a wide variety of information, opinions and debates as well as opportunities to interact."



PHOTOGRAPHS BY ROB THOMPSON/THE CONNECTOR

The crew interviews Chief Engineer for Operations Andy Leaphart on Feb. 2, about SCDOT's response to the flood and its financial impact on South Carolina.

2016 State of SCDOT

By Pete Poore

Secretary of Transportation **Christy A. Hall** presented the "State of SCDOT" report for 2016 to the Senate Transportation Committee on Feb. 3, 2016.

The annual review provided the current status of South Carolina's transportation network. Secretary Hall's overall assessment was summed up in these four points:

- Most South Carolinians are riding on poor pavement.
- Most bridges are in good condition, but high-risk areas exist that need to be addressed.
- Day-to-day maintenance is graded a "D."
- Congestion is increasing and will impact S.C.'s economic competitiveness.

Secretary Hall also presented her vision of the agency in an effort to make SCDOT more effective as well as initiatives to improve the agency's transparency and accountability.

The entire presentation of the 2016 State of SCDOT can be found on the SCDOT web site or at the link shown at right:

<http://www.scdot.org/inside/pdfs/StateofSCDOT2016.pdf>



David Bland
IT Services



John Boylston
Preconstruction



Thomas Dorn
District 2



Sarah Gaffney
District 6



Rickette Gennie
FHWA



Claude Ipock
Construction

Leadership Education and Development

New SCDOT program to find, train LEADers

By Pete Poore

Secretary of Transportation **Christy Hall** places great value on recruiting, training and retaining SCDOT employees. The goal is for SCDOT to provide career opportunities, not just jobs.

However, the agency had not had a leadership program for a number of years. In 2015, the Human Resources Office was directed to develop a program that would groom future leaders and would get underway in 2016.

The newly launched Leadership Education and Development (LEAD) SCDOT program has been designed to provide leadership training to employees who wish to compete for senior positions as they become vacant in the future.

LEAD SCDOT is a year-long program. Sessions are scheduled two days per month. The core of the program is a series of presentations by senior managers who discuss the structure and mission of the office or division each one represents, and how these offices or divisions play a role in the overall mission of SCDOT.

Additional sessions are conducted on leadership, hands-on activities with maintenance crews and bridge inspections teams. Class members also team up to work on a class project that addresses an issue that impacts SCDOT as a whole.

The first class members were nominated, screened and selected in 2015. LEAD SCDOT's first class got underway in January 2016.

Members in the first class are: **David Bland** of IT Services, **John Boylston** of Preconstruction, **Thomas Dorn** of District 2, **Sarah Gaffney** of District 6, **Rickette Gennie** of FHWA, **Claude Ipock** of Director of Construction Office, **Jim Johannemann** of Director of Maintenance Office, **Cedric Keitt** of Rights of Way, **James Mattox** of Preconstruction, **William McGoldrick** of Environmental, **Keith Melvin** of Director of Maintenance Office, **Chad Rawls** of Planning, **Cathy Rice** of LPA, **Jeff Terry** of District 7, **J. Allen Thompson** of District 1, **Tony Thompson** of District 3, **Mark Westbury** of Rights of Way and **Jacqueline Williams** of Finance and Administration.



Jim Johannemann
Maintenance



Cedric Keitt
Rights of Way



James Mattox
Preconstruction



William McGoldrick
Environmental



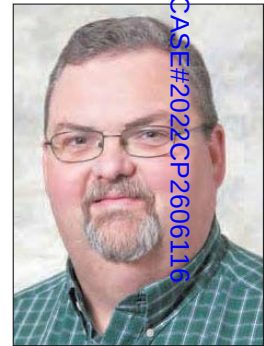
Keith Melvin
Maintenance



Chad Rawls
Planning



Cathy Rice
Local Program Administration



Jeff Terry
District 7



J. Allen Thompson
District 1



Tony Thompson
District 3



Mark Westbury
Rights of Way



Jacqueline Williams
Finance and Administration

2016 Maintenance Conference: *Engineers share information to increase productivity*



Marlboro Resident Maintenance Engineer Robby Bean explains the salt brine production process and showcases different setups maintenance forces across the state use in their own production of salt brine.

By Bob Kudelka

The 2016 Maintenance Conference drew more than 700 employees who attended one of three days of training March 8-10 in Columbia.

Attendees heard from SCDOT

leadership and learned the latest about a variety of subjects including how to make homemade salt brine, brush and limb management and chainsaw safety.

"This conference provides training that is beneficial to our maintenance personnel," said As-



PHOTOGRAPHS BY CODY CROUCH/THE CONNECTOR

SCDOT Maintenance foremen from across the state spend a day asking questions and gathering information on maintenance-related topics during the 2016 SCDOT Maintenance Conference at The Zone in Williams-Brice Stadium on March 8-10. Topics covered include salt brine production, job site hazards and staying safe, casting and installation of bridge deck panels, brush and limb management and chainsaw safety.

sistant State Maintenance Engineer **Walter Reed**, who oversaw the conference on behalf of the

Office of Maintenance. "They see processes and activities they may have not thought of. It also gives them a chance to network with other foremen and other employees in the state and see how other counties and districts are doing things."

Plus, Reed said, "This is a good way to show them we appreciate them and provide training at the same time."

Speakers at the conference included Secretary of Transportation **Christy Hall**, Acting Secretary for Engineering **Leland Colvin**, Chief Engineer for Operations **Andy Leaphart** and Director of Maintenance **Jim Fedra**.

Employees who led training sessions included Marlboro RME **Robby Bean** on Salt Brine Production, Kershaw Maintenance Foremen **Dewey Bass** and **Chris Team** on Casting and Installation of Bridge Deck Panels, Aiken RME **Joe Winfield** and Bamberg

RME **Bobby Crider** on Brush and Limb Management – Contract and In-House.

District 3 ADME **Brandon Wilson** and Spartanburg ADME **Jamie Gambrell** on Equipment Operator Training, District 4 Vegetation Manager **Ken Caldwell** on Chainsaw Safety, District 5 ADME **Lorena Pate** and District 6 ADME **Keith Richards** on Training for Hazard Assessment Forms, Dorchester ARME **Steve Michalski** and Charleston ARME **Joel Smith** on Maintenance and ITMS.

Chris McCurry of the Director of Maintenance Office on DOM – HMMS Updates and Issues and **Charlie Brown** of Human Resources on Headroom and Hiring.

Reed would like to thank the following for helping make the 2016 Maintenance Conference a success: **Michelle Walker**, **Tina Kennedy**, **Meagan Hare**, **Phyllis Hughes** and **Lawton Player**.



SHEP

State Highway
Emergency Program

*Incident responders
get hands-on training*

By Rob Thompson

SCDOT incident responders with the state's SHEP program got hands-on experience during special trainings across the state. The training was given to teach them how to clear vehicles quickly and safely from the roadway after they have been in an accident. The training was done by Danny Thompson and John Weaver from Parsons Corporation. SHEP responders in Columbia met on March 10. Greenville received training on Feb. 17, and SHEP responders in Charleston received training on March 8. There was an extra make-up session in Greenville on April 20.



PHOTOGRAPHS BY ROB THOMPSON/THE CONNECTOR

SCDOT Incident Responders in Columbia examine a vehicle before they use a chain and their truck to flip the vehicle back on its wheels during the March 10 training session in Columbia.



John Weaver of Parsons Corporation shows SCDOT Incident Responders the best place to attach a chain to turn over a flipped vehicle.



Once the chain is attached properly to the flipped vehicle and the SCDOT SHEP truck, responders slowly flip the vehicle back onto its wheels.



ABOVE and RIGHT: Danny Thompson of Parsons Corporation gives SCDOT Incident Responders instructions on how to push a disabled vehicle out of the roadway depending on the steering capabilities and other conditions after a vehicle is damaged in a crash.



SHEP, Brian O’Cain celebrate 20 years of helping SC motorists



PHOTOGRAPHS BY ROB THOMPSON/THE CONNECTOR

SHEP Incident Responder Brian O’Cain has been with the highway assistance program since its inception in 1996. O’Cain says helping people is his favorite part of the job.

By Kim Corley

This year, the State Highway Emergency Program (SHEP) celebrates its 20th anniversary. Since 1996, SHEP has served thousands of motorists across the state. Those iconic blue trucks are one of the most visible programs administered by SCDOT.

Brian O’Cain has been with the SHEP program since the beginning. His first job with SCDOT was as a summer intern with the Richland Construction Office. For the past seventeen years, he has been a SHEP supervisor.

Being a SHEP responder seemed to be a natural fit. His father was a mechanic and he says that’s something that’s really helped him over the years.

A typical day begins bright and early for O’Cain and his crew. He arrives early to check out the trucks and meet with responders before heading out to cover the morning rush hour traffic.

Technology is one of the biggest changes for the SHEP program throughout the years. The introduction of the 511 Program and traffic cameras has dramatically decreased response time for responders. O’Cain added that SCDOT camera services often report disabled vehicles to responders.

During a ride along, O’Cain spots a vehicle on the side of I-20. A couple and their dog are stuck with a flat tire. Kelly McDonalds and her husband were on their way to Fort Bragg all the way from San Diego, Ca.

She was surprised South Carolina offered the SHEP Program. “This is great. We didn’t expect this at all,” she said. O’Cain makes quick work of putting on the spare and directed them to the closest tire shop.

He says that helping people and interacting with the public is his favorite part of being a responder. He’s glad to see how SHEP’s reputation has grown. “As the program has grown over the years, more local people are aware,” he said. People often tell him they are “Glad to see their tax money at work,” he added.

As one can imagine, O’Cain has seen a lot in the last two decades. For the most part, he sees flat tires and minor collisions. An afternoon in July 2006 made a lasting impression when a Columbia pilot turned a stretch of I-26 near Chapin into a runway. A mechanical problem with the single engine plane forced the pilot to make an emergency landing. Along with other emergency responders, O’Cain helped control slowed traffic until the plane was cleared to take off.

In his spare time, O’Cain enjoys a very unique hobby. “I’ve been a beekeeper for about four years,” he said. O’Cain describes himself as an avid outdoorsman who enjoys hunting and fishing. He began researching and reading about bees, then joined the South Carolina Mid-State Beekeepers Association. He gives the honey he harvests to family and friends.

O’Cain is a Columbia native where he lives with his wife, two dogs, three chickens and a few thousand bees in Rosewood.



On Monday, April 25, the SHEP 20th anniversary news conference was held at the Traffic Management Center (TMC) on Shop Road. Speakers included Secretary Christy A. Hall, DPS Director Leroy Smith and Highway Patrol Colonel Michael Oliver. Above, Hall, SHEP operators and some Traffic Engineering personnel pose by a SHEP truck after the news conference.

The table below shows the number of motorists/incidents SCDOT SHEP Program has assisted in the past four fiscal years.

AREAS	FY 2012	FY2013	FY2014	FY2015
Columbia	7,584	7,847	8,350	8,488
Upstate (G’Ville/Spert.)	5,295	5,105	5,397	5,999
Rock Hill	2422	1,699	1,529	2,009
Charleston	10,115	9,745	9,059	8,111
Myrtle Beach	2869	3,132	4,952	5,209
Florence	3326	3,238	3,182	2,002
Cherokee	973	757	968	1,003
TOTAL RESPONSES	33,687	31,524	33,427	33,221

Coincidence?

When the SHEP program first started, the logo included a photo of a German Shepherd. On March 1, the couple O’Cain helped had a German Shepherd named Mac.





O’Cain changes a tire for a couple from California on March 1. Incident responders help keep disabled vehicles from causing traffic congestion along urban interstates in South Carolina.



ROB THOMPSON/THE CONNECTOR

Secretary of Transportation Christy Hall thanks the members of the South Carolina Senate upon her confirmation.

HALL
from page 1

http://www.scdot.org/inside/pdfs/Secretarys_Monthly_Management_Report.pdf
Secretary Hall's "Dashboard" is updated each month at the SCDOT Commission meetings.

After a whirlwind 10 months as SCDOT's leader, Secretary Hall had this to say upon her confirmation. "I am honored to serve the Great State of South Carolina and I greatly appreciate Governor Haley providing me this opportunity to lead the dedicated men and women of the S.C. Department of Transportation."

Severe February weather keeps SCDOT crews busy

Winter weather did not cause as much damage as it could have on two occasions in the state during the month of February. However, Maintenance crews were heavily involved during the week leading up to Feb. 12-14 in preparing for a mix of snow and ice that had been forecast for South Carolina. Crews prepared equipment and supplies and pretreated the interstates, anticipating winter storm conditions. However, the center of the front went further north causing only minimal accumulations on the state's roads. Later in the month on Feb.

24 and 25, a storm front that spawned tornados and caused significant damage and loss of life came from the Midwest to the East coast. Once again, our state was spared the brunt of the storm. But Maintenance crews around the state were called out to respond. More than 650 reports of fallen trees and tree limbs were made beginning on the afternoon of Wednesday, Feb. 24. Crews worked through the night and into Thursday, Feb. 25, clearing roads and repairing some traffic signals that were damaged or destroyed.

COMMISSION HONORS EMPLOYEES KILLED ON THE JOB



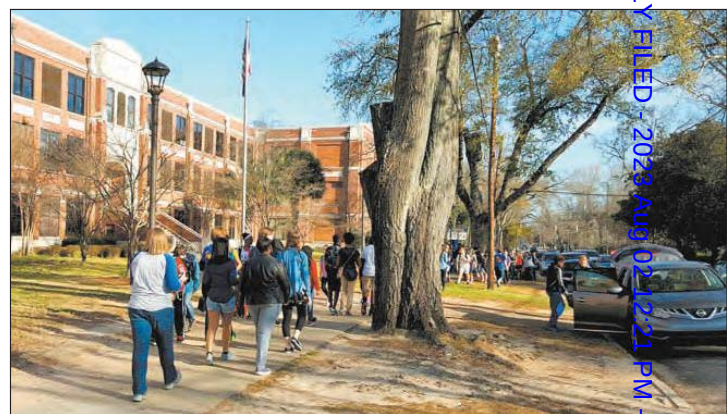
PHOTOGRAPHS BY ROB THOMPSON/THE CONNECTOR

The SCDOT Commission presented a resolution in memory of SCDOT employee Timothy Gibson who died in October while working during the flood. The resolution was presented to coworkers on Feb. 18, during the SCDOT Commission Meeting. From left, Commission Chairman Mike Wooten, Richland Maintenance Engineer Tony Magwood, Assistant Richland Maintenance Engineer Sandra Riley, District 1 Engineering Administrator Bryan Jones and South Carolina Secretary of Transportation Christy Hall.

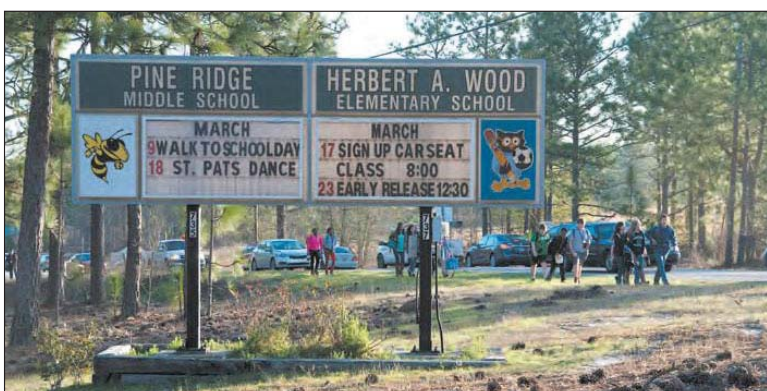


The SCDOT Commission read a resolution in honor of Henry Clay "Ray" Norris Jr. on March 24. Norris, a trades specialist III at Darlington Maintenance, died on the job on Oct. 20, 2015. From left, Roy Parnell and Treasure Scarborough accepted the framed resolutions which include a state flag from the South Carolina Statehouse from S.C. Secretary of Transportation Christy Hall and SCDOT Commission Chairman Mike Wooten.

Safe Routes to School promotes annual Walk to School Day



ROB THOMPSON/THE CONNECTOR
LEFT and ABOVE: Teachers and students from Hand Middle School students walk and bike from Sims Park to their school on March 9 as part of the annual 'Walk to School Day.'



PHOTOGRAPHS BY CODY CROUCH/THE CONNECTOR

ABOVE and RIGHT: Students at Pine Ridge Middle School participate in 'Walk to School Day' on March 9.



SCDOT Safe Routes to School honored as 'outstanding program'

The Southeast Chapter of the Association for Commuter Transportation (SEACT) recognized the South Carolina Safe Routes to School (SRTS) program as the Outstanding Transportation Demand Management Program for 2015. The award was presented at the Feb. 18 SCDOT Commission meeting.

The SCDOT SRTS program was selected from nominated projects and programs in eight states including South Carolina, North Carolina, Georgia, Tennessee, Florida, Alabama, Mississippi, Kentucky, and also Puerto Rico, beating out traditional commuter programs and projects.



PHOTOGRAPHS BY ROB THOMPSON/THE CONNECTOR
SCDOT's program was nominated by the engineering firm AECOM, a SEACT organization member. From left are: Doris Ford of AECOM, S.C. Secretary of Transportation Christy Hall, Patti Sistrunk of AECOM, S.C. Safe Routes to School Coordinator Rodney Oldham, Emily Swearingen of AECOM, Jennifer Senn of AECOM and Tony Chapman of AECOM.



Jerry Gosnell's second chance

Liver transplant an ordeal, but gives recipient inspiration to help others

By Kim Corley

Jerry Gosnell is the Resident Maintenance Foreman for the Hampton County Maintenance Office in District 7. He has been with SCDOT for 22 1/2 years. He is a native of Hampton County where he lives with his wife, Karen. His daughter, Kayla, is a senior at Clemson University studying accounting. She plans to pursue her master's degree after graduation.

Two years ago, a life-threatening illness tested the limits of his body and spirit.

On July 23, 2015, Jerry Gosnell finally got the call he and his family had been anxiously awaiting for 15 months. He was finally to receive a new liver.

The previous summer, Gosnell went to the ER for pain in his side. A CT scan of his abdomen revealed devastating news. He was diagnosed with gallstones and cirrhosis. He and his wife knew immediately that he would need a liver transplant because 14 years earlier, Gosnell's mother also needed a new liver.

She was the first in the family to be diagnosed with a genetic disorder called Alpha 1 Antitrypsin Deficiency. It is an inherited condition that may cause lung and liver disease. Tragically, his mother died while on the waiting list. Gosnell and his daughter went through genetic testing after her diagnosis. Doctors told them they were both carriers, but not likely to develop the active disease.

After receiving the call, Gosnell and his family had just 4 hours to get to the Medical University of South Carolina (MUSC) in Charleston for the transplant operation. They waited 19 excruciating hours before he was taken into the pre-op area. "I told my wife and daughter I loved them and was wheeled into the OR. That is the last thing I did for 23 days," he said.

Doctor's initially estimated Gosnell would remain in the hospital a week after the surgery. Unfortunately, there were complications. The first transplant did not go as expected; the organ cracked as blood flow was restored. This occasionally happens but doctors thought it could still function properly. He was taken to the ICU to recover. Less than 12 hours later he was hemorrhaging profusely and going into hypovolemic shock. His kidneys shut down and he became septic.

After two weeks, a second liver became available in Myrtle Beach. Gosnell was at the top of the transplant list because of the severity of his condition.

"After seven surgeries, two livers, di-



ROB THOMPSON/THE CONNECTOR

Jerry Gosnell is living proof that your health, often taken for granted, is the most important thing you have. After his liver transplant he is using his second chance to help others and promote organ donations.

alysis and lots of time and energy from everyone...I am alive and I am so thankful," he said.

That was only the beginning of Gosnell's journey. He was in a medically induced coma and on a ventilator for 23 days. He spent approximately 27 days in ICU, during which he lost 85 pounds.

His devoted wife, Karen, never left his side.

He was then transferred to Vibra Hospital of Charleston where he received extensive physical, speech and occupational therapies. Overcoming the muscle atrophy was his next hurdle. This was a long, slow process. When he first woke up, he couldn't move at all. With the help of his therapist, Alyssa Hydar, he stayed positive and diligent. After only a month at Vibra Hospital, he was able to take five steps.

His last transfer was to Colleton Medical Center where he continued with his therapy. Doctors told him he would stay for at least six weeks. Gosnell took that as

a challenge. He told the therapist he would be discharged by Halloween. He was able to go home on Oct. 23, 2015, after only arriving three weeks prior.

That same day, he returned to MUSC for a follow-up appointment with his surgeon. He was thrilled when the surgeon cleared him to drive.

He continued to grow stronger after he got home. "I threw the walker in the trash," he said and laughed. Karen, who is also a registered nurse, helped him with his physical therapy at home. "She told me I was her worst patient," he joked.

Through a lot of hard work and determination, Gosnell returned to work full-time on Dec. 1, 2015.

Doctors are impressed with his progress. He will have to take immunosuppressant (anti-rejection) medications for the rest of his life. He also takes anti-viral and anti-fungal medications, both are common for transplant patients. The drugs make him sensitive to the sun, so he wears sun-

screen daily.

Gosnell is also pleased with his progress. "I didn't realize how bad I felt while I was sick," he said.

The support from friends, family and coworkers was overwhelming for Gosnell. The Hampton County Office took up a collection for him and sent it to his wife. Resident Maintenance Engineer **Jack Priester** and his wife, JoAnn, visited often and took Karen and Kayla to dinner to take their minds off things. SCDOT coworker **Julie Collins** also visited as often as she could.

MUSC gave Gosnell the opportunity to write letters to both donors' families. He hopes they will respond because he would like to know more about their loved one.

Gosnell is taking full advantage of his second chance. "I'm a miracle. God has plans for me," he said.

This experience inspired him to help others. Every Sunday, he spends time with a mentally challenged man in his community.

Mike Barbee to lead SCDOT Rights of Way

Mike Barbee has been selected to serve as Director of Rights of Way at the South Carolina Department of Transportation. After working with the North Carolina Department of Transportation and in the private sector, Barbee began working with SCDOT in 2003 and has managed many large-scale projects such as the I-73 Project, Backgate Interchange, Fantasy Harbour Bridge and Robert Edge Parkway.

Barbee previously served as Regional Production Engineer responsible for management and oversight of programs and projects in the Pee Dee and Grand Strand regions, including Horry and Florence County's locally funded sales tax programs. Barbee is a registered Professional Engineer in both North Carolina and South Carolina and received his bachelor's degree in Civil Engineering from North Carolina State University in 1992. He resides in Columbia



Mike Barbee
Rights of Way Director

with his wife and three daughters, ages 16, 13 and 10.

Clay Richter is new Assistant Roadway Construction Engineer

Clay Richter has been selected to fill the position of Assistant Roadway Construction Engineer. He began his career at SCDOT in 2003 as an Engineer I in Beaufort County. He served as an Assistant Construction Engineer in Anderson County, and as Resident Construction Engineer in Abbeville and Anderson counties. Richter is originally from

Simpsonville and graduated from Hillcrest High School in 1999. He is a 2003 Civil Engineering graduate from Clemson University and is a registered professional engineer in South Carolina. He and his wife, Ruth, have a daughter, Katherine, and a son, Will. They are members of Covenant Baptist Church in Anderson. Richter enjoys coaching his son's tee ball team and Clemson



Clay Richter
Assistant Roadway Construction Engineer

athletics.

Ben McKinney is new Design-Build Manager

Ben McKinney has been selected to fill the position of Design-Build Design Manager. He will lead a six-person design team within Preconstruction's Design-Build Section with the primary responsibility of managing the design elements and technical activities for design-build and other innovative projects/programs throughout the state. McKinney is originally from Hodges, S.C., and graduated from Greenwood High School

in 1981. He is a 1990 graduate from Clemson University and holds a Bachelor of Science in Civil Engineering. He has 26 years of experience and has been employed by SCDOT for the past 8 1/2 years where he has served as a Design Manager in RPG 1. He is also a registered Professional Engineer in the state of South Carolina. McKinney and his wife, Lisa, have two daughters, Katy and Ashley, and a son, Jake. In his spare time, McKinney



Ben McKinney
Design-Build Manager

enjoys Clemson sports and tinkering with mechanical devices.

Heather Robbins leads Environmental Services

Heather Robbins has been selected to serve as Director of Environmental Services. She began her career with SCDOT in 2010 as the NEPA Division Manager and has more than 15 years of experience in the environmental field. Robbins is originally from Grand Rapids, Mich., and graduated from Caledonia High School in 1993. She received a bachelor's degree in Geography with a minor in Business Administration from Central Michigan University and a master's degree in Geography from the University of South Carolina. She has been a registered planner with the American Institute of Certified Planners since 2009 and recently became a Certified Public Manager in 2014. Robbins and her husband,



Heather Robbins
Director of Environmental Services

Jeremiah, have a daughter, Avery and twin sons, Abram and Beckham. They are members of NewSpring Church. In her spare time, she enjoys camping and spending time with family.

David Rogers is new Assistant Roadway Construction Engineer

David Rogers has been selected to fill the position of Assistant Roadway Construction Engineer. Rogers began his career at SCDOT in 2003 as the Resident Construction Engineer in Richland County. He also served as the Assistant Design-Build and Special project Engineer representing the Director of Construction office. Rogers is originally from Hampton, S.C., and graduated from Wade Hampton High School in 1993. Rogers has a bachelor's degree in Civil Engineering from Clemson University and is a registered Professional Engineer in South Carolina. He and his wife, Katie, have two daughters, Annie and Sarah Katherine. They attend St. Joseph's



David Rogers
Assistant Roadway Construction Engineer

Catholic Church in Columbia. In his spare time, Rogers enjoys hunting, fishing, camping, college football, gold and playing the guitar.

PROMOTIONS

Cameron Albert, promoted to program coordinator II in Call Center on Mar. 17.

Cesar Aldrete, promoted to trades specialist III at Aiken Maintenance on Mar. 17.

Aspen Alford, promoted to trades specialist III at District 5 Bridge Inspection on Feb. 2.

Danny Allison, promoted to trades specialist III at Spartanburg Maintenance on Feb. 2.

Lawrence Armstrong, promoted to trades specialist V at District 3 Maintenance Operations on Feb. 17.

Michael Bagley, promoted to engineer/associate engineer III at Lexington Maintenance on Feb. 17.

Randy Bailey, promoted to trades specialist III at Spartanburg Maintenance on Jan. 2.

Michael Barbee, promoted to Director of Rights of Way on Feb. 17.

Richard Barfield, promoted to trades specialist V at Greenwood Maintenance on Feb. 17.

Joseph Bennett, promoted to engineer/associate engineer II in RPG 4 – Upstate on Dec. 17.

Kenneth Bethea, promoted to chief geodetic technician at Dillon Construction on Feb. 17.

Dustin Bolding, promoted to trades specialist II at Oconee Maintenance on Jan. 2.

Quincy Brodus, promoted to trades specialist III at Bamberg Maintenance on Feb. 2.

Loretta Brown, promoted to right of way agent I at Rights of Way – Greenville on Dec. 17.

Michael Brunson, promoted to mechanic III at Lexington Maintenance on Dec. 2.

James Burns, promoted to engineer/associate engineer II at Oconee Maintenance on Feb. 17.

Nathaniel Burriss, promoted to trades specialist V at District 6 Traffic Signals on Dec. 2.

Kenneth Butler, promoted to IT consultant I in IT Services on Dec. 17.

Elliott Calder, promoted to associate geodetic technician at Horry Construction on Dec. 2.

Steven Canaday, promoted to chief geodetic technician at Berkeley Maintenance on Dec. 17.

Kenneth Carter, promoted to trades specialist III at Bamberg Maintenance on Dec. 2.

Trenten Chambers, promoted

to trades specialist III at Saluda Maintenance on Mar. 2.

Jason Chambers, promoted to trades specialist II at Oconee Maintenance on Jan. 2.

Raymond Cheek, promoted to chief geodetic technician at District 4 Office on Mar. 17.

James Christmas, promoted to mechanic III at Richland Maintenance on Mar. 2.

Kody Clack, promoted to trades specialist III at Chester Maintenance on Jan. 17.

Marcus Clore, promoted to engineer/associate engineer III at District 5 Office on Mar. 17.

Carroll Collins, promoted to engineer/associate engineer I at Greenville Maintenance on Dec. 2.

Robert Collins, promoted to trades specialist III at Aiken Maintenance on Mar. 2.

Vernell Cooper, promoted to administrative assistant at Fairfield Maintenance on Dec. 17.

Christopher Couch, promoted to chief geodetic technician at Greenville Construction on Dec. 17.

Robbie Craigo, promoted to trades specialist III at Greenville Maintenance on Feb. 17.

Steven Davis, promoted to trades specialist V at Oconee Maintenance on Mar. 2.

Micheal Dukes, promoted to trades specialist III at Williamsburg Maintenance on Feb. 2.

Rebecca Dunn, promoted to trades specialist IV at Kershaw Maintenance on Dec. 17.

Brandon Durham, promoted to trades specialist III at Greenville Maintenance on Mar. 2.

Joseph Dwinnell, promoted to trades specialist IV at Anderson Maintenance on Feb. 17.

Robert Galbreath, promoted to trades specialist III at Pickens Maintenance on Feb. 2.

Edward Gariboldi, promoted to trades specialist IV at District 3 Traffic Signals on Feb. 17.

Scott Gaston, promoted to mechanic III at Fairfield Maintenance on Dec. 17.

Timothy Gemensky, promoted to engineer/associate engineer IV in Traffic Engineering on Dec. 2.

Chantago Gilchrist, promoted to trades specialist III at Dillon Maintenance on Feb. 17.

Daniel Godwin, promoted to associate geodetic technician at

Horry Construction on Mar. 2.

Jeremy Goodwin, promoted to engineer/associate engineer I in RPG 3 – Midlands on Dec. 2.

Ana Gordon, promoted to engineer/associate engineer II in RPG 2 – Pee Dee on Feb. 17.

James Gosnell, promoted to trades specialist IV at Greenville Maintenance on Dec. 2.

Sonya Grant, promoted to trades specialist III at Colleton Maintenance on Mar. 17.

James Gray, promoted to trades specialist III at Edgefield Maintenance on Feb. 17.

Jesse Gregory, promoted to trades specialist IV at Union Maintenance on Jan. 17.

Jesse Hames, promoted to engineer/associate engineer II at District 4 Special Projects on Mar. 17.

Whitney Hayes, promoted to trades specialist II at Oconee Maintenance on Jan. 2.

Allen Heyward, promoted to trades specialist IV at Lexington Maintenance on Mar. 17.

Derrick Holmes, promoted to trades specialist III at District 6 Bridge Inspection on Feb. 2.

James Holtzclaw, promoted to engineer/associate engineer III in RPG 1 – Lowcountry on Jan. 17.

James Howington, promoted to trades specialist III at York Maintenance on Dec. 2.

Donald Hughes, promoted to incident responder II at SHEP – Upstate I-85 on Feb. 2.

Matthew Hunter, promoted to trades specialist III at Chester Maintenance on Jan. 17.

Jeremy Jackson, promoted to chief geodetic technician at Marion Construction on Mar. 2.

Roy Jeffcoat, promoted to IT services specialist III in IT Services on Feb. 17.

Kimberly Johnson, promoted to associate geodetic technician at Materials and Research on Jan. 17.

Cedric Keitt, promoted to engineer/associate engineer III in Rights of Way on Dec. 2.

James Kirkland, promoted to trades specialist III at Spartanburg Maintenance on Feb. 2.

Laura Kline, promoted to engineer/associate engineer III at Materials and Research on Dec. 17.

Jeremy Knight, promoted to engineer/associate engineer III at Newberry Maintenance on Jan. 17.

Justin Lance, promoted to

trades specialist III at Pickens Maintenance on Mar. 2.

Jimmy Leonard, promoted to trades specialist V at Horry 1 Maintenance on Feb. 17.

Jordan Lisenby, promoted to trades specialist III at Chesterfield Maintenance on Feb. 17.

Steven Littlejohn, promoted to FTS manager II in Traffic Engineering on Mar. 17.

Aaron Looper, promoted to trades specialist III at Greenville Maintenance on Dec. 17.

James Lusk, promoted to engineer/associate engineer III in RPG 4 – Upstate on Dec. 2.

David Marlowe, promoted to trades specialist III at Horry 1 Maintenance on Dec. 2.

Laquantra Mayberry, promoted to engineer/associate engineer II at Spartanburg Maintenance on Feb. 17.

David McAlister, promoted to trades specialist IV at Greenville Maintenance on Feb. 2.

Ryan McAlister, promoted to trades specialist III at Greenville Maintenance on Dec. 2.

Joseph McCurry, promoted to senior geodetic technician at Abbeville Construction on Feb. 17.

Levi McLeod, promoted to engineer/associate engineer III in Preconstruction Support on Feb. 17.

Stanley Meece, promoted to trades specialist III at Pickens Maintenance on Dec. 2.

Brad Merritt, promoted to trades specialist IV at Anderson Maintenance on Feb. 17.

Kenneth Mills, promoted to trades specialist III at Edgefield Maintenance on Feb. 17.

Dallas Mullinax, promoted to trades specialist V at District 3 Maintenance Operations on Mar. 17.

Gregory Nedrow, promoted to trades specialist IV at Horry 1 Maintenance on Mar. 17.

Steven Nelsin, promoted to senior geodetic technician at Greenville Construction on Dec. 17.

Anthony Owen, promoted to trades specialist V at Greenville Maintenance on Dec. 17.

Eugene Parnell, promoted to engineer/associate engineer III at Dillon Construction on Feb. 2.

Neal Peeler, promoted to trades specialist III at Cherokee Maintenance on Feb. 2.

Terry Poole, promoted to

trades specialist III at Aiken Maintenance on Dec. 2.

Charles Potts, promoted to supply manager I at Supply Depot on Mar. 17.

Joseph Powell, promoted to associate geodetic technician at Spartanburg Maintenance on Dec. 17.

William Rabon, promoted to trades specialist IV at Horry 1 Maintenance on Dec. 2.

Jon Reese, promoted to IT consultant I in IT Services on Jan. 17.

Christopher Reynolds, promoted to trades specialist III at Berkeley Maintenance on Mar. 17.

Robert Richter, promoted to engineer/associate engineer II in RPG 4 – Upstate on Jan. 17.

Anna Riddle, promoted to administrative coordinator I in Capital Improvements on Jan. 17.

Sandra Riley, promoted to engineer/associate engineer III at Sumter Maintenance on Dec. 17.

Ronald Riley, promoted to trades specialist IV at Beaufort Maintenance on Feb. 17.

Leroy Rivers, promoted to trades specialist III at Berkeley Maintenance on Mar. 17.

Heather Robbins, promoted to Director of Environmental Services on Jan. 17.

Thomas Rochester, promoted to trades specialist III at Spartanburg Maintenance on Feb. 17.

David Rogers, promoted to engineer/associate engineer IV in Office of Director of Construction on Mar. 2.

Richard Roof, promoted to engineer/associate engineer II in RPG 2 – Pee Dee on Jan. 17.

Randall Russell, promoted to engineer/associate engineer III at Greenville Maintenance on Dec. 2.

Timothy Scott, promoted to supply specialist III in Equipment Service Depot on Jan. 17.

Jesse Sessions, promoted to trades specialist V at District 1 Traffic Signals on Jan. 2.

James Simpson, promoted to trades specialist III at Anderson Maintenance on Mar. 2.

Tracy Smith, promoted to trades specialist IV at Spartanburg Maintenance on Jan. 2.

**PROMOTIONS
continue on next page**

PROMOTIONS - continued

Kelly Stapleton, promoted to engineer/associate engineer III in RPG 4 – Upstate on Dec. 2.

Gary Thackston, promoted to associate geodetic technician at Greenville Construction on Mar. 2.

Chinmay Thakore, promoted to associate geodetic technician at Greenville Construction on Feb. 2.

Stephen Tosco, promoted to engineer/associate engineer II in RPG 3 – Midlands on Dec. 2.

Charles Turner, promoted to trades specialist III at Greenville Maintenance on Feb. 17.

Philip Unrue, promoted to associate geodetic technician at Abbeville Construction on Feb. 2.

Jack Valetti, promoted to engineer/associate engineer III at District 3 Office on Jan. 17.

Wilbert Walker, promoted to trades specialist III at Dorchester Maintenance on Dec. 17.

Allen Ward, promoted to engineer/associate engineer III at Materials and Research on Mar. 17.

Larry Whisenhunt, promoted to trades specialist III at Bamberg Maintenance on Feb. 2.

John Williams, promoted to trades specialist III at Bamberg Maintenance on Dec. 2.

Jimmy Williamson, promoted to trades specialist IV at Lexington Maintenance on Dec. 17.

Howard Williamson, pro-

moted to engineer/associate engineer II in RPG 2 – Pee Dee on Dec. 2.

Phillip Willingham, promoted to trades specialist II at District 2 Office on Dec. 17.

James Willson, promoted to engineer/associate engineer II at Sumter Construction on Feb. 2.

Sam Wilson, promoted to trades specialist IV at District 6 Bridge Inspection on Feb. 17.

Craig Winn, promoted to engineer/associate engineer III in RPG 1 – Lowcountry on Dec. 2.

Emily Woods, promoted to engineer/associate engineer III in Office of Director of Maintenance on Mar. 17.

RETIREMENTS

Barbara Anderson, retired from Spartanburg Maintenance on Dec. 31.

Lorraine Bouknight Gayton, retired from Lexington Maintenance on Jan. 1.

Jimmy Brock, retired from Union Maintenance on Mar. 1.

Herbert Brown, retired from Colleton Maintenance on Feb. 26.

William Brown, retired from Newberry Maintenance on Dec. 2.

John Caskey, retired from Horry 1 Maintenance on Jan. 29.

Christopher Copeland, retired from District 4 Special Projects on Jan. 1.

William Cross, retired from Darlington Maintenance on Dec. 31.

Neal Dunlap, retired from Greenville Surveys on Dec. 1.

Kelvin Edwards, retired from IT Services on Mar. 4.

Charles Elliott, retired from Anderson Maintenance on Dec. 31.

Lanny Ensley, retired from Greenville Maintenance on Dec. 31.

Terry Faulk, retired from Lexington Maintenance on Jan. 28.

Larry Flowers, retired from Williamsburg Maintenance on Feb. 1.

David Fulmer, retired from

RPG 3 – Midlands on Mar. 21.

Patricia Gaither, retired from Fairfield Maintenance on Jan. 3.

Johnny Garris, retired from Materials and Research on Feb. 15.

Irwin Gibbons, retired from Clarendon Maintenance on Mar. 31.

Tommie Gordon, retired from Spartanburg Construction on Feb. 11.

Christopher Green, retired from SHEP – Upstate I-85 on Mar. 1.

David Gunter, retired from Lexington Maintenance on Mar. 25.

Joe Hawkins, retired from Greenwood Maintenance on Feb. 29.

Clarence Hicklin, retired from Chester Maintenance on Dec. 31.

Judy Hite, retired from Rights of Way on Dec. 30.

Charles Jackson, retired from Dorchester Surveys on Mar. 1.

John Johnson, retired from Greenville Maintenance on Mar. 17.

Donna Keaton, retired from Anderson Maintenance on Mar. 1.

Jeffery Kelling, retired from Sumter Construction on Feb. 1.

Michael Koon, retired from Materials and Research on Mar.

31.

Darrell Lawter, retired from Union Maintenance on Dec. 18.

Donald McElveen, retired from Road Data Services on Mar. 30.

Larry Orr, retired from Hampton Maintenance on Mar. 31.

Willie Pontoon, retired from Lexington Maintenance on Jan. 1.

Nancy Redmond, retired from Human Resources on Jan. 1.

Joseph Reid, retired from Berkeley Maintenance on Jan. 6.

Frank Shealy, retired from Saluda Construction on Feb. 1.

William Skinner, retired from SHEP – Upstate I-85 on Jan. 23.

Michael Sprott, retired from Materials and Research on Feb. 29.

Lewis Sweat, retired from Supply Depot on Jan. 31.

Sammie Taylor, retired from Saluda Maintenance on Feb. 12.

Jake Taylor, retired from Allendale Maintenance on Feb. 26.

Leroy Thomas, retired from Calhoun Maintenance on Dec. 9.

Levon Washington, retired from Dillon Maintenance on Jan. 6.

Joel Watts, retired from Lexington Maintenance on Mar. 31.

Terry Youngblood, retired from Union Maintenance on Jan. 1.

DEATHS



David Castro, a retiree from IT Services, died Jan. 24.



Gregory Todd Lyons, trades specialist III with Bamberg Maintenance, died March 27.



Ada Gardner, trades specialist III with Richland Maintenance, died Feb. 26.



William Niver, retired former Darlington Resident Construction Engineer, died March 19.

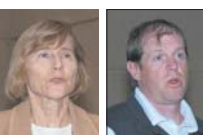
Jessie Weaver, trades specialist III with Edgefield Maintenance, died Feb. 17.

Do you have a good story for The Connector?

Let us know so we can share the information with our employees and interested citizens.

Email us at: PooreJP@scdot.org

2016 South Carolina Highway Engineers Conference: *Sharing what we learned from recent flooding*

David
BeatyPhilip
BetheaJohn
BoylstonGlen
BramlittBeacham
BrookerJoe
BrunoChris
ColemanLeland
ColvinWilliam
DavisBradley
DowsKenny
EargleKristofer
EdelbergLee
FloydRobbie
FoxworthKevin
GanttSarah
GaffneyLadd
GibsonChristy
HallBrett
HarrelsonVan
HensonClaude
IpockStephanie
IveyDavid
KinardBrian
KlaukAndy
LeaphartBrad
LeeLinda
McDonaldKevin
McGlumphyHope
MizzellJennifer
OgleDipak
PatelJoy
RileyHeather
RobbinsBill
RoperWayne
SarasuaGreg
SchuchJeff
SmithTodd
SteagallBarrett
StoneEmily
ThomasJay
ThompsonMark
WardJackie
WilliamsMike
WootenDaniel
YoungRandall
Young

By Bob Kudelka

The 2016 South Carolina Highway Engineers Conference brought together SCDOT employees with partners in the private sector, local government and federal government.

So it seemed fitting that a theme of this year's conference was an event with those groups five months earlier under much different circumstances – responding to the historic, 1,000-year flood in October 2015.

"We wanted to spend time thanking people and telling our story," said conference chairman **Jamie Kendall**, SCDOT Preconstruction Support Engineer. "From there, that led to several other sessions."

Nearly 700 people, including 393 SCDOT employees, attended the March 22-23 conference at the Columbia Metropolitan Convention Center.

Topics included subjects on preconstruction, construction, environmental and maintenance. There were behind the scenes accounts of major projects such as Carolina Crossroads, the I-85/I-385 Gateway Project and "Paving the way for Volvo," which highlighted the Swedish car maker's eventual landing in the Lowcountry.

There were also sessions on employee safety and accident prevention; applying proven methods to reduce collisions; the I-26 median safety project; encroachment permitting process; an update on ACT 98; usage of cement treated materials; maintenance of outfall ditches; storm water management; geotechnical design alternatives on U.S. 17; avoiding rights of way delays; OSHA confined space regulations and contract procurement.

"We've gotten a lot of positive feedback," Kendall said after the conference ended. "There were a lot of different presenters from other DOTs, different state agencies, professors from the universities...We tried to get a wide variety of speakers so there was something for everyone."

Professional engineers gain continuing education credits through the training sessions, but more importantly they are afforded the opportunity to network with people from other areas, both inside and outside of DOT.

One mainstay of the annual conference has been an update from the Secretary of Transportation. This year, recently confirmed Secretary **Christy Hall** delivered wide ranging remarks on efforts to increase funding, the agency's mission and her goals.

Hall, who had spent part of the week providing information to Legislators concerning funding, said she is "ringing the alarm bell the loudest" concerning the needs of the primary system.

The primary system is a core network that connects communities and is where about half the traffic exists. However, 80 percent of the system is in a "state of disrepair."

"It's becoming our current generation of orphan roads," Hall said. "State funds tend to go toward neighborhood streets; federal funds toward the interstates."

The secondary system needs repair as well, and interstates should be "turning the curve" based on past funding decisions. Bridges also need to be addressed, with about 300 structurally deficient bridges on the interstate and primary systems, she said.

Hall also addressed the misperception that the agency spends too much on new roads. In fact, she said less than 1 percent of DOT's budget

goes toward new roads identified locally through COGs and MPOs.

A third of our monies go to widening projects, signal timing projects, intersection improvements and other capacity operation improvements.

More than half our dollars go to maintenance, Hall said.

"We're fixing it first," she said.

Hall said one of her goals is to increase stability to an agency that has had three Secretaries in the past three years. She has created a program to mold future leaders and improve continuity. She also aims to increase accountability and transparency, already reforming FOIA guidelines to improve access of information to the public.

In closing, Hall thanked the "DOT team" and all our partners for their work on recovering from the October floods.

"The results achieved were phenomenal," she said. "The results have been noticed by other states, other countries...We all worked together to achieve a goal."

Kendall, who as chairman was assisted by Letting Preparation Engineer **Mark Anthony**, said he wanted to thank "all the speakers and those who put together presentations to share their stories with us."

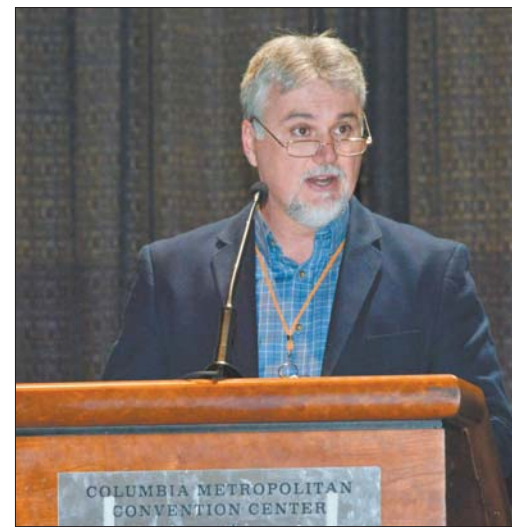
"I'm thankful that so many people turned out and enjoyed it," Kendall said.

Kendall also thanked Acting Deputy Secretary for Engineering **Leland Colvin**, Chief Engineer for Operations **Andy Leaphart**, Acting Chief Engineer for Project Delivery **Randall Young**, Agency Events Coordinator **Tina Kennedy**, as well as Shaun Gaines and the staff from Clemson University's Transportation Technology Transfer Service.

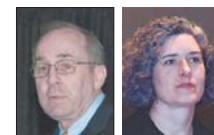
Speakers and presenters included:

Leland Colvin, **Christy Hall**, **Hope Mizzell** (SCDNR), **Andy Leaphart**, **Tony Magwood**, **Ladd Gibson**, **Todd Steagall**, **Stephanie Ivey** (University of Memphis), **Keith Honeycutt** (NC DOT), **Mark Ward** (NCDOT), **Jay Thompson**, **Heather Robbins**, **Greg Schuch** (HDR, Inc.), **Barrett Stone** (HDR, Inc.), **David Beaty** (HDR, Inc.), **Jennifer Ogle** (Clemson University), **Claude Ipock**, **Bryan Jones**, **Linda McDonald**, **Wayne Sarasua** (Clemson University), **Joe Bruno** (ESP), **Chris Coleman**, **Philip Bethea**, **Robbie Foxworth**, **Bill Roper** (Roper Laser Co.), **Sarah Gaffney**, **Brett Harrelson**, **Dipak Patel**, **Lee Floyd**, **Glen Bramlitt**, **Stephanie Jackson-Amell**, **Kevin McGlumphy** (Associated Asphalt Co.), **Ray Vaughan**, **J.P. Johns** (Woolpert, Inc.), **Emily Thomas** (SCDPS), **Gil Owens** (SCHP), **Mike Barbee**, **Joy Riley**, **Beacham Brooker**, **Jackie Williams**, **Jeremy Harmon**, **Bill Ventry** (VE Group), **John Ledbetter** (VE Group), **Hugh Hadsock**, **Daryl Hardwick**, **Chris Johnston**, **Jim Feda**, **Van Henson** (SCLLR), **Kenny Eargle**, **Henry Cross**, **Brad Lee** (Trinity Industries, Inc.), **Jeff Smith** (Work Area Protection Corp.), **Brian Klauk**, **David Kinard** (HDR, Inc.), **Rocque Kneece** (CECS, Inc.), **Kristofer Edelberg** (Flatiron Construction), **Tina Kennedy**, **Randall Young**, **John Boylston**, **Jae Mattox**, **Daniel Young** (Department of Commerce), **Brian Keys**, **Emily Lawton** (FHWA), **Kevin Gantt**, **Ron Patton**, and SCDOT Commission Chairman **Mike Wooten**.

See **ENGINEERING AWARDS** on next page.



PHOTOGRAPHS BY BOB THOMPSON AND CODY CROUCH/THE CONNECTOR
SCDOT Preconstruction Support Engineer **Jamie Kendall**, above, served as this year's conference chairman. He was assisted by Letting Preparation Engineer **Mark Anthony**.

J.P.
JohnsBryan
JonesRocque
KneeceEmily
LawtonTony
MagwoodJae
Mattox

2016 Engineering Recognition Awards



2016 DISTRICT RESIDENT CONSTRUCTION ENGINEERS OF THE YEAR
DISTRICT WINNERS: Seated, from left: District 1- Paul Miller of Richland Construction A, District 2 - Matthew Shealy of Newberry Construction, District 3 - Kimberly Bishop of Greenville Construction B, District 4 - John Huskins of York Construction, District 5 - Travis Patrick of Horry Construction, District 6 - Behling Guess of Dorchester Construction and District 7 - Bobby Usry of Aiken Construction.



2016 RESIDENT CONSTRUCTION ENGINEER OF THE YEAR
Travis Patrick
Horry Construction



2016 DISTRICT RESIDENT MAINTENANCE ENGINEERS OF THE YEAR
DISTRICT WINNERS: Seated, from left: District 1- Tony Magwood of Richland Maintenance, District 2 - Fritz Wewers of Anderson Construction, District 3 - Steven Henderson of Pickens Maintenance, District 4 - Jamie Johnston of Fairfield Maintenance, District 5 - Robby Bean of Marlboro Maintenance, District 6 - Roger Bowers of Charleston Maintenance and District 7 - Lyle Davis of Calhoun Maintenance.



2016 RESIDENT MAINTENANCE ENGINEER OF THE YEAR
Tony Magwood
Richland Maintenance



2016 SAFETY UNITS OF THE YEAR
Seated, from left: Small Unit of the Year - Bamberg Maintenance - RME Bobby Crider; Medium Unit of the Year - Newberry Maintenance - RME Jeremy Knight; and Large Unit of the Year - Orangeburg Maintenance - RME David Brandyburg.



2016 EXCELLENT CONSTRUCTION QMT INSPECTION
Seated, from left: Abbeville Construction - RCE Adam Rich and Spartanburg Construction - RCE Patrick McKenzie.

EXHIBIT 5

**Reply Brief in Support
Of Defendant's
Motion for Summary Judgment**

C.A. No. 2022-CP-26-06116

EXHIBIT 5**RESPONSE AS TO CITATIONS**

The undersigned has undertaken the lawyer's oath, and has sworn to show respect for the Courts and judicial officers, and to show integrity and civility to opposing parties and counsel. Having practiced in this state under that oath for nearly two decades, the undersigned takes this obligation seriously, and strenuously objects to the implications in Plaintiff's Brief in Opposition. The undersigned expects all counsel in this case, including out of state counsel, to abide by these requirements. It is surprising that a party that misstated the burden of proof for this motion and that overstated the breadth of *Tommy L. Griffin I* would open its argument attacking the credibility of citations by TSC.

TSC's counsel addresses each reference in order:

1. Alleged Argumentative Language:

a. Role as RCE Authorized Representative

The undersigned added "[to include firm providing CEIT services]" to a Specification stating that Plaintiff was required to "cooperate with the RCE, the RCE's authorized representatives and inspectors, and other Contractors in every way possible." 2007 Standard Specs, Section 105.5(2). This is not misleading, and it is clear, even from Plaintiff's arguments that TSC was an authorized representative and inspector. Plaintiff contends this reference is misleading, because it alleges that the citation suggests that TSC was separate from the RCE – as noted in the facts, and as Plaintiff has failed to contradict (and for which Plaintiff has offered arguments that are not credible and are easily disproven by Plaintiff's own files), TSC was separate from the RCE. Frankly, this argument is made in bad faith.

b. “[Potential]” Contract Duties

Again, Plaintiff goes to great length to identify bad faith when none exists. Plaintiff objects to an addition of “[potential]” to a citation to contract duties. The sole purpose of the addition of “potential” in this instance is that contract duties are created as mutual obligations, and a party does not have contract duties absent performance of all duties by a counterparty. Frankly, the presence or absence of the word bears no significance to the case or argument, as is clear from reading the sentence in context. TSC has not argued that “potential” contract duties reduce or affect the breadth of exceptions to the economic loss rule, and there is no reasonable reading of TSC’s Brief that would provide such an inference. Paraphrased, the sentence, as cited, with or without the parenthetical, reads that “courts evaluate whether the alleged tortfeasor acted in a way that violated a legal duty aside from those in contracts or alleged contracts.”

c. Indiana Case Citation

The undersigned’s modification was intended to address the difference between the *Indianapolis Public Library Case*, and the case which that court cited, *Walters v. Kellam and Foley*, 360 N.E.2d 199 (Ind. Ct. App., 2d Dist. 1977). The *Walters* case was a claim by an employee of an independent contractor, therefore the language was “employees of.” The *Public Library* case, which the undersigned cited, dealt with claims asserted by an entity, and not a person, hence the differentiation. There is no functional difference between duties owed to people outside of privity (employees of independent contractors) or entities outside of privity (independent contracts), and for this reason, the undersigned added the “or” within brackets to note the change. Further, the consideration of duty for tort is the same for employees or entities.

As to the Law Review citation, the undersigned notes that Plaintiff’s objection is not credible. First, the article cited, entitled “Recovery of Economic Loss in Tort For Construction

Projects: A Critical Analysis,” a copy of which is provided as Exhibit 5, is an approximately 88-page, national survey of the economic loss doctrine, not an article regarding South Carolina. In fact, the article contains approximately 10 sentences discussing *Carolina Winds*, none of which are cited in TSC’s Brief. It beggars belief that Plaintiff argues that TSC owed the Court a duty to disclose the overruling of a case which TSC has not cited in support of its arguments. The quoted paragraph contained no reference to South Carolina law, and the cases supporting Barrett’s argument were from Washington, Virginia, and Missouri. Plaintiff’s argument both mis-states the undersigned’s intention, which was to file a secondary source explaining why there should be limits on tort duty in South Carolina, and misrepresents that the citation in any way referenced South Carolina law. In a portion of its brief dedicated to leveling serious, but unsupported allegations against the undersigned, this contention is, at best, spurious, and, at worst, malicious. The undersigned has worked with the attorney filing Plaintiff’s brief on numerous cases, and sincerely believes him to be an honorable, competent attorney; however, the accusations made in the brief are serious and unsupported on review of the documents.

s/C. Daniel Atkinson
C. Daniel Atkinson (S.C. Bar 72721)
datkinson@wajlawfirm.com
127 Dunbar Street, Suite 200
Spartanburg, SC 29306
Phone: (864) 591-1113

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
	)	C.A. NO. 2022-CP-26-06116
	)	
Flatiron Constructors, Inc.,	)	
	)	NOTICE OF CHANGE IN LAW
Plaintiff,	)	FOR DEFENDANT'S MOTION FOR
	)	SUMMARY JUDGMENT
v.	)	
	)	
TranSystems Corporation,	)	
	)	
Defendant.	)	

Defendant TranSystems Corporation (hereafter “TSC”) submits this notice to the Court, regarding a recent change in applicable law governing TSC’s Motion for Summary Judgment. At the hearing on Defendant’s Motion for Summary Judgment, which occurred on August 7, 2023, counsel for Plaintiff argued that, under Rule 56, SCRCP, Plaintiff need produce only a “scintilla” of evidence to defeat TSC’s Motion for Summary Judgment. Since that argument, the Supreme Court of South Carolina has clarified the evidentiary standard for a Motion for Summary Judgment. On August 23, 2023, the Supreme Court file an Order in *The Kitchen Planners, LLC v. Friedman*, Appellate Case No. 2020-001669, which is filed as Exhibit A hereto. In that case, the Supreme Court stated “the court of appeals incorrectly applied the wrong standard of decision for a motion for summary judgment when the motion is based on the insufficiency of evidence.”

Id. at 2. The Supreme Court further stated:

We now clarify that the “mere scintilla” standard does not apply under Rule 56(c). Rather, the proper standard is the “genuine issue of material fact” standard set forth in the text of the Rule. As we stated in *Town of Hollywood v. Floyd*, “it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” 403 S.C. at 477, 744 S.E.2d at 166. To the extent what we said in *Hancock* [*v. Mid-South Management Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009),] is inconsistent with our decision today, *Hancock* is overruled.

Id. at 6 – 7.

Based on this new Supreme Court opinion in *The Kitchen Planners*, it is now clear that Plaintiff must produce sufficient evidence to create a “**genuine** issue of **material** fact” to defeat TSC’s Motion for Summary Judgment. *Id.* (emphasis added).

WILKES ATKINSON & JOYNER, LLC

August 30, 2023

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

The Kitchen Planners, LLC, Petitioner,

v.

Samuel E. Friedman and Jane Breyer Friedman and
Branch Banking and Trust, Respondents.

Appellate Case No. 2020-001669

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Richland County
Robert E. Hood, Circuit Court Judge

Opinion No. 28173
Submitted April 17, 2023 – Filed August 23, 2023

AFFIRMED AS MODIFIED

Christopher P. Kenney, of Columbia, Petitioner.¹

Charles A. Krawczyk, of Finkel Law Firm LLC, of
Columbia for Respondents.

¹ Petitioner's brief was prepared and filed by the late Jean Perrin Derrick of Lexington prior to her unfortunate death in January, just as this Court was initially preparing to consider this case.

JUSTICE FEW: The Kitchen Planners, LLC, filed a petition for a writ of certiorari asking this Court to review the court of appeals' decision in *Kitchen Planners, LLC v. Friedman*, 432 S.C. 267, 851 S.E.2d 724 (Ct. App. 2020). In that decision, the court of appeals affirmed the circuit court's order granting summary judgment to the Friedmans and dissolving Kitchen Planners' mechanic's lien. We granted Kitchen Planners' petition in part and now affirm as modified. As we will explain, the court of appeals incorrectly applied the wrong standard of decision for a motion for summary judgment when the motion is based on insufficiency of the evidence. Reviewing the circuit court's order using the correct standard of decision, however, we nevertheless find the court of appeals reached the correct result in affirming the summary judgment.²

The court of appeals' opinion contains an exhaustive recitation of the facts. 432 S.C. at 271-74, 851 S.E.2d at 726-28. Of importance, the Friedmans contracted with Kitchen Planners to procure cabinets manufactured by Crystal Cabinets and install the cabinets in the Friedmans' home. When Kitchen Planners delivered the cabinets, the Friedmans refused to accept them and refused to pay the final one-third of the contract price. Kitchen Planners attempted to perfect its mechanic's lien³ by serving on the Friedmans "a statement of a just and true account of the amount due" as required by section 29-5-90 of the South Carolina Code (2007). Kitchen Planners then filed this action to enforce the lien.

The Friedmans filed a motion for summary judgment contending Kitchen Planners failed to perfect its lien because it did not serve the section 29-5-90 "statement"

² We find "oral argument would not aid the court in resolving the issues" before us and thus consider this case without oral argument pursuant to Rule 215, SCACR.

³ A mechanic's lien arises automatically from the performance of work or the provision of materials. *See* S.C. Code Ann. § 29-5-10(a) (2007) ("A person to whom a debt is due for labor performed or furnished or for materials furnished . . . in the erection, alteration, or repair of a building or structure upon real estate . . . shall have a lien upon the building or structure . . . to secure the payment of the debt due to him."); S.C. Code Ann. § 29-5-20(A) (2007) ("Every laborer, mechanic, subcontractor, or person furnishing material for the improvement of real estate when the improvement has been authorized by the owner has a lien thereon . . . to the value of the labor or material so furnished . . .").

within ninety days as required by the section. *See id.* ("Such a lien shall be dissolved unless the person desiring to avail himself thereof, within ninety days after he ceases to labor on or furnish labor or materials for such building or structure, serves upon the owner . . . a statement of a just and true account of the amount due . . ."). The circuit court agreed and granted the motion for summary judgment.⁴

Rule 56(c) of the South Carolina Rules of Civil Procedure provides that the moving party is entitled to summary judgment "if the [evidence before the court] show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." To survive the Friedmans' motion, Kitchen Planners was required by Rule 56(c) to present evidence that it perfected its lien by serving the section 29-5-90 statement on the Friedmans "within ninety days after [Kitchen Planners] cease[d] to labor on or furnish labor or materials for such building or structure." § 29-5-90. Sufficient evidence that Kitchen Planners timely served the statement would have established a "genuine issue [of] material fact" as to whether it perfected the lien. Whether Kitchen Planners presented sufficient evidence to create a genuine issue of material fact that it met the ninety-day deadline for serving the section 29-5-90 statement is the sole issue before the Court.

The following dates are important. The cabinets were delivered to the Friedmans' home on May 20, 2015. Kitchen Planners' sole member—Patricia Comose—accompanied an installer to the Friedmans' home on May 21 for the purpose of installing the cabinets. The cabinets were not installed. On June 18, a Crystal Cabinets representative informed Comose the Friedmans did not want Comose involved any further. According to Comose, "In mid-June 2015 I was taken off the job." On August 18, the Crystal Cabinets representative emailed Comose telling her Crystal Cabinets had also been removed from the job. "We've been fired," the email stated, "Everything is done." On September 29, Comose wrote a check for \$550.61 to pay for parts of the cabinets she ordered on an unknown previous date. Kitchen Planners served the section 29-5-90 statement on the Friedmans on November 17, 2015. Ninety days before November 17 is August 19.

⁴ The court of appeals addressed issues other than timeliness. However, none of those issues were necessary for the court of appeals to address to affirm the order granting summary judgment. In light of our holding the circuit court properly granted the Friedmans' motion for summary judgment on the ground Kitchen Planners did not serve the section 29-5-90 statement within ninety days, and thus did not perfect its lien, we also need not address any other issues.

In the section of its opinion entitled "Standard of Review," the court of appeals stated, "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." 432 S.C. at 275, 851 S.E.2d at 729 (alteration in original) (quoting *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009)). As we explain below, Comose's statement she wrote a check on September 29 to pay for parts of the Friedmans' cabinets is a scintilla of evidence the November 17 service of the section 29-5-90 statement was "within ninety days after [Kitchen Planners] cease[d] to labor on or furnish labor or materials." Applying the so-called "mere scintilla" standard, therefore, the court of appeals should have reversed the order granting summary judgment. As we now clarify, however, the "mere scintilla" standard is not the correct standard for decision under Rule 56(c).

Rule 56(c) became effective in 1985. Rule 86(a), SCRCP.⁵ In most cases applying Rule 56(c), this Court and our court of appeals have applied the "genuine issue of material fact" standard set forth in the Rule, requiring the party opposing the motion show a "reasonable inference" to be drawn from the evidence, and we have rejected the "mere scintilla" standard. *See, e.g., Vaughan v. Town of Lyman*, 370 S.C. 436, 448, 635 S.E.2d 631, 638 (2006) (reversing an award of summary judgment and stating "the evidence is susceptible to more than one reasonable inference, and therefore should be submitted to the jury"); *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 219 n.4, 578 S.E.2d 329, 334 n.4 (2003) ("The standard for summary judgment 'mirrors the standard for a directed verdict under Rule 50(a)' [SCRCP]."⁶ (quoting *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991))); *Baughman*, 306 S.C. at 115, 410 S.E.2d at 545 (holding a party opposing summary judgment "must . . . 'do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with 'specific facts showing that there is a *genuine issue for trial*.'" (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S. Ct. 1348, 1356, 89

⁵ *See also* Rule 44, *Rules of Practice for the Circuit Courts of South Carolina*, 1962 S.C. Code Ann., Vol. 15 (Supp. 1975) (adopted 1969; repealed 1985) (stating the "genuine issue [of] material fact" standard for summary judgment motions based on insufficiency of the evidence).

⁶ The standard for directed verdict under Rule 50(a) requires the evidence support a "reasonable inference" in favor of the non-moving party. *Mullinax v. J.M. Brown Amusement Co.*, 333 S.C. 89, 92, 508 S.E.2d 848, 849 (1998).

L. Ed. 2d 538, 552 (1986));⁷ *Shelton v. LS & K, Inc.*, 374 S.C. 294, 297, 648 S.E.2d 307, 308 (Ct. App. 2007) ("The existence of a mere scintilla of evidence in support of the nonmoving party's position is not sufficient to overcome a motion for summary judgment." (citing *Bravis v. Dunbar*, 316 S.C. 263, 265, 449 S.E.2d 495, 496 (Ct. App. 1994))); *Dickert v. Metro. Life Ins. Co.*, 306 S.C. 311, 313, 411 S.E.2d 672, 673 (Ct. App. 1991), *rev'd in part on other grounds*, 311 S.C. 218, 428 S.E.2d 700 (1993) (stating "the existence of a mere scintilla of evidence in support of the nonmoving party's position is not sufficient to overcome a motion for summary judgment" (citing *Anderson*, 477 U.S. at 252, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214)).⁸ *But see Anders v. S.C. Farm Bureau Mut. Ins. Co.*, 307 S.C. 371, 375, 415 S.E.2d 406, 408 (Ct. App. 1992) ("At the summary judgment stage of the proceeding, it was only necessary for the Defendant to submit a scintilla of evidence warranting a determination by the jury." (citing nothing)).

In 2009 in *Hancock*, however, this Court made the statement quoted by the court of appeals in this case, "that in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." 381 S.C. at 330, 673 S.E.2d at 803. In other cases even after *Hancock*, we continued to impose the "genuine issue of material fact" and "reasonable inference" standard that appears inconsistent

⁷ The *Baughman* Court also cited *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202, 213 (1986). 306 S.C. at 115, 410 S.E.2d at 545. In *Anderson* and *Matsushita*, the Supreme Court of the United States rejected the "mere scintilla" standard for Rule 56, Fed. R. Civ. P., *Anderson*, 477 U.S. at 252, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214, and held "the issue of fact must be 'genuine,'" meaning "the nonmoving party must come forward with 'specific facts showing that there is a *genuine issue for trial*,'" *Matsushita*, 475 U.S. at 586-87, 106 S. Ct. at 1356, 89 L. Ed. 2d at 552 (quoting Rule 56, Fed. R. Civ. P.).

⁸ In *Dickert*, the court of appeals found "the circuit court correctly decided this issue" and "direct[ed] the circuit court's order to be printed, with minor deletions, as the opinion of this Court." 306 S.C. at 313, 411 S.E.2d at 673. We find it significant that the circuit judge whose order became the opinion of the court of appeals was retired Chief Justice C. Bruce Littlejohn, sitting by designation as a special circuit judge. Chief Justice Littlejohn served as Chief Justice of this Court in January 1985 when the Court submitted the new Rules of Civil Procedure—including Rule 56(c)—to the General Assembly. Bruce Littlejohn, *LITTLEJOHN'S HALF CENTURY AT THE BENCH AND BAR* (1936-1986) 168 (1987).

with the "mere scintilla" standard *Hancock* purported to set. *See Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013) (stating as to the summary judgment standard "it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine"); *see also Callawassie Island Members Club, Inc. v. Martin*, 437 S.C. 148, 157, 877 S.E.2d 341, 345 (2022) (stating as to a motion for summary judgment, "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." (quoting *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002))); *Bluestein v. Town of Sullivan's Island*, 429 S.C. 458, 462, 839 S.E.2d 879, 881 (2020) (same); *Bell v. Progressive Direct Ins. Co.*, 407 S.C. 565, 576, 757 S.E.2d 399, 404 (2014) (reciting the "mere scintilla" standard from *Hancock*, but stating, "Nevertheless, 'when the evidence is susceptible of only one reasonable interpretation, summary judgment may be granted.'" (quoting *Brooks v. Northwood Little League, Inc.*, 327 S.C. 400, 403, 489 S.E.2d 647, 648 (Ct. App. 1997))).

We acknowledge there may be disagreement as to whether the "mere scintilla" standard is inconsistent with the Rule 56(c) "genuine issue [of] material fact" standard. *See Taylor v. Atl. Coast Line R. Co.*, 78 S.C. 552, 556, 59 S.E. 641, 643 (1907) ("A *scintilla* of evidence is any material evidence that if true would tend to establish the issue in the mind of a reasonable juror."). The position that the two standards are the same would explain this Court's recitation of both at various times since 1985. In the minds of many, however, the standards are inconsistent. *See Anderson*, 477 U.S. at 252, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214 (rejecting the mere scintilla standard for Rule 56, Fed. R. Civ. P., and stating, "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff"); *see also Bethea v. Floyd*, 177 S.C. 521, 529, 181 S.E. 721, 724 (1935) ("Saying that there 'may be a *scintilla* of evidence' to go to the jury . . . is certainly a very weak contention. 'Scintilla' means. . . 'a gleam,' 'a glimmer,' 'a spark,' 'the least particle,' 'the smallest trace.'" (quoting 56 Corpus Juris 863-64 (1932))); *Rogers v. Norfolk S. Corp.*, 356 S.C. 85, 95, 588 S.E.2d 87, 92 (2003) (Burnett, J., dissenting) ("A scintilla is defined as 'a trace' of evidence." (quoting *Scintilla*, BLACK'S LAW DICTIONARY (7th ed. 1999))).

We now clarify that the "mere scintilla" standard does not apply under Rule 56(c). Rather, the proper standard is the "genuine issue of material fact" standard set forth in the text of the Rule. As we stated in *Town of Hollywood v. Floyd*, "it is not sufficient for a party to create an inference that is not reasonable or an issue of fact

that is not genuine." 403 S.C. at 477, 744 S.E.2d at 166. To the extent what we said in *Hancock* is inconsistent with our decision today, *Hancock* is overruled.

Turning back to the evidence Kitchen Planners presented in this case, and analyzing that evidence using the proper standard for decision, we find Kitchen Planners failed to show the existence of a genuine issue of material fact. Kitchen Planners served the section 29-5-90 statement on November 17. The only event within ninety days before November 17 is the September 29 check Comose wrote to pay for cabinet parts she previously ordered. Ordering parts for the cabinets may very well qualify as "to labor on or furnish labor or materials for" under section 29-5-90, and if that event occurred within ninety days of serving the section 29-5-90 statement, the statement would have been timely and the lien perfected. Writing a check to pay for parts previously ordered, however, does not qualify as "to labor on or furnish labor or materials for." While the writing of the check on September 29 is some evidence—a scintilla—of when she ordered the parts, it does not provide a meaningful factual basis on which a factfinder could determine if the parts were ordered within or before the ninety-day time frame. Comose specifically testified she did not remember why she wrote the check on September 29, and she did not know the date the parts were ordered. The writing of the check on September 29 does not create a reasonable inference that she ordered the parts within ninety days of the service of the section 29-5-90 statement. Thus, the factfinder would be required to speculate to determine whether Kitchen Planners perfected its lien in a timely manner. Under this circumstance, Kitchen Planners failed to establish a genuine issue of material fact, and the Friedmans were entitled to summary judgment as a matter of law.

AFFIRMED AS MODIFIED.

BEATTY, C.J., KITTREDGE, JAMES, JJ., and Acting Justice Kaye G. Hearn, concur.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	C.A. NO. 2022-CP-26-06116
	)	
Flatiron Constructors, Inc.,	)	
	)	PLAINTIFF'S RESPONSE TO
Plaintiff,	)	DEFENDANT'S NOTICE TO CHANGE
	)	IN LAW
v.	)	
	)	
TranSystems Corporation,	)	
	)	
Defendant.	)	
	)	

Plaintiff Flatiron Constructors, Inc. ("FCI") hereby submits this response to Defendant TranSystems Corporation's ("TSC") "Notice of Change in Law for Defendant's Motion for Summary Judgment," regarding the South Carolina Supreme Court's recent decision in *The Kitchen Planners, LLC v. Friedman*, No, 2020-001669, 2023 WL 5420401 (S.C. Aug. 23, 2023).

The South Carolina Supreme Court's holding in *Kitchen Planners* only applies after TSC meets its initial burden as the moving party in this matter to demonstrate a lack of evidence for FCI's claims. *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 351 S.V. 459, 471, 570 S.E.2d 197, 203 (Ct. App. 2002). FCI contends that TSC has not met its initial burden, but even if it has, the decision in *Kitchen Planners* should not alter the Court's determination that genuine issues of material fact exist sufficient to deny TSC's Motion for Summary Judgment ("TSC's Motion"). As set forth in the Plaintiff's Opposition to Defendant's Motion for Summary Judgment ("FCI's Opposition"), FCI presents much more than a scintilla of evidence to overcome TSC's Motion.

Kitchen Planners stands for the proposition that to overcome summary judgment, the non-moving party must create a reasonable inference that there exists a genuine issue of material fact for trial. *Kitchen Planners*, 2023 WL 5420401, at *3. The Court in *Kitchen Planners* clarified that

a non-moving party must put forth more evidence than merely “‘a gleam,’ ‘a glimmer,’ ‘a spark,’ ‘the least particle.’ [or] ‘the smallest trace.’” *Id.* (citations omitted). Based on the substantial evidence presented to the Court, FCI has met its burden by demonstrating that TSC wielded the power of economic life or death over FCI giving rise to a duty by TSC to act in accordance with the applicable standard of care.

Central to FCI’s professional negligence claim is TSC’s “special relationship” with FCI on the Project. As determined by the South Carolina Supreme Court, that special relationship gives rise to a duty on TSC’s part towards FCI. *Tommy L. Griffin*, 320 S.C. 49, 463 S.E.2d 85(1995). FCI’s Opposition presents hard, irrefutable evidence that TSC held itself out as, acted as, and had the powers of the Project’s Resident Construction Engineer (“RCE”). TSC concedes that the RCE wielded the types of powers over FCI that would give rise to a “special relationship,” but cries out that it is “implausible and incredible...that ‘Martin Long of TSC held himself out as [SCDOT’s] Resident Construction Engineer.’” TSC Reply Brief in Support of Defendant’s Motion for Summary Judgment (“TSC’s Reply”), p. 6. Yet, TSC presents no cogent explanation for the overwhelming evidence FCI presents that, as pertains to FCI, TSC acted as RCE. As set forth in its Opposition, FCI provided:

- minutes of Project Weekly Update Meetings upon which TSC’s Mr. Martin Long signed as the “Resident Construction Engineer,” (FCI Opp., Ex. B - Brumfield Affidavit, Ex. 2, 5);
- correspondence on SCDOT letterhead to FCI signed by Mr. Martin Long as “Resident Construction Engineer” (FCI Opp., Ex. B – Brumfield Affidavit, Ex. 4);
- an organizational chart issued by TSC to FCI identifying Mr. Martin Long as “RCE” (FCI Opp., Ex. B – Brumfield Affidavit, Ex. 6);
- an email from SCDOT to TSC referring to TSC as the “RCE” (FCI Opp., Ex. B – Brumfield Affidavit, Ex. 7);

- an email signed by Mr. Martin Long in which he identifies himself as the RCE (FCI Opposition, Ex. B – Brumfield Affidavit, Ex. 9);

- the Affidavit of Lou Hutcherson, an FCI Project Manager, that “Martin Long of TSC held himself out as South Carolina Department of Transportation’s ...Resident Construction Engineer (“RCE”) on the Project.” (FCI Opp., Ex. A, Para. 3).

In short, FCI has presented much more than a “glimmer” or the “least particle” of evidence that a special relationship existed between TSC and FCI sufficient to give rise to TSC’s duty. Rather, FCI has conclusively demonstrated that such a relationship existed. At the very least, FCI has demonstrated that a genuine issue of material fact exists regarding the relationship such that TSC’s Motion must be denied. The decision in *Kitchen Planners* does not change this inescapable conclusion.

Respectfully submitted,

s/Mason A. Goldsmith, Jr.

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Attorneys for Flatiron Constructors, Inc.

September 5, 2023
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	C.A. NO. 2022-CP-26-06116
	)	
Flatiron Constructors, Inc.,	)	
	)	MEMORANDUM IN SUPPORT OF
Plaintiff,	)	PLAINTIFF'S MOTION FOR
	)	RECONSIDERATION
v.	)	
	)	
TranSystems Corporation,	)	
	)	
Defendant.	)	
	)	

Pursuant to SCRCP 59(e)¹, Plaintiff Flatiron Constructors, Inc. (“FCI”) respectfully submits this Memorandum in Support of its Motion for Reconsideration of the Court’s Order entered on November 22, 2023, granting TranSystems Corporation’s (“TSC”) Motion for Summary Judgment (“TSC’s MSJ”) on FCI’s causes of action for negligence and for breach of contract (“Form 4 Order”). As set forth herein and as presented at the hearing on August 7, 2023 (“Hearing”), substantial evidence exists of a “special relationship” between TSC and FCI such that TSC’s breach of its professional duties to FCI is actionable under South Carolina law. *Tommy L. Griffin Plg. & Htg. Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C.49, 463 S.E.2d 85 (1995) (finding that an engineer wielding the power to inspect work and halt construction progress owes a professional duty to the contractor performing the work). There is also ample evidence and logic to support the argument that FCI was an intended third-party beneficiary of the Engineering

¹ Rule 59(e) is an appropriate means of seeking reconsideration of presented issues and ensuring full consideration of those issues, or when an argument is raised but not ruled upon. *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 21-22, 602 S.E.2d 772, 778-79 (2004). Moreover, “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. *Id.* at 25, 780. FCI also moves pursuant to Rule 60 on the basis that new evidence has emerged since the hearing on TSC’s MSJ.

Contract between TSC and SCDOT and therefore has standing to sue TSC for breach of contract. *Svenningsen v. Knight*, 286 S.C. 299, 333 S.E.2d 78 (Ct. App. 1985) (explaining that contracts between two persons for the benefit of a third can be enforced by the third person even though she is not named therein).

Summary judgment on FCI's claims for negligence and breach of contract are premature in light of the early stages of discovery in this matter. In fact, documents produced and Interrogatory Responses provided by TSC months after the Hearing undermine TSC's arguments, which serve as the apparent basis for the Court's finding that "TranSystems had no special relationship with Plaintiff and owed no duty of care to Plaintiff." Ex. A - Form 4 Order. Based upon the existing record, the need for completion of discovery, and the likelihood that such discovery will uncover additional relevant evidence, FCI requests that the Court withdraw the Form 4 Order and suspend any ruling on summary judgment until discovery is completed.

I. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

This case involves construction of the Carolina Bays Parkway in Horry County, South Carolina ("Project"). Horry County contracted with FCI to construct the Project. Horry County also contracted with TSC to provide engineering, inspections, and other contract administration and supervision services related to the construction. *See* TSC's MSJ, Ex. E ("Engineering Contract"). As part of an Intergovernmental Agreement among Horry County, South Carolina Department of Transportation ("SCDOT") and the South Carolina Transportation Infrastructure Bank, SCDOT provided Project oversight and administration services for the Project. *See* TSC's MSJ, Ex. D.

A. This is a Complex Dispute, and Despite Diligent Efforts, the Parties are in the Early Stages of Discovery

FCI initially filed this action against TSC on April 26, 2018, including counts for professional negligence, breach of contract, tortious interference with contract, and violation of South Carolina's Unfair Trade Practice Act ("SCUTPA"). The Parties then jointly moved to stay the action until September 30, 2020. Upon expiration of the stay, FCI moved to compel TSC to respond to discovery, including FCI's First Request for Production of Documents, which had been propounded to TSC on October 19, 2020. On April 9, 2021, the Court granted FCI's Motion to Compel TSC to produce requested documents. TSC then began, but did not complete, producing documents to FCI on June 30, 2021.

Due to the complexity of this action, FCI and TSC jointly moved for a complex case designation on October 4, 2021. When the court denied the joint motion, the Parties filed a consent order pursuant to Rule 40(j) removing the case from the docket. During the time that the case was removed from the docket, FCI and TSC continued to discuss needed discovery. On February 17, 2022, TSC notified FCI that TSC had discovered a group of approximately 25,000 documents that had not yet been produced to FCI. *See* Ex. B – Email, dated February 17, 2023. At that time, TSC informed FCI that it was "reviewing this new group of documents and [would] supplement [its] responses accordingly, probably within the next month..." *Id.* On September 27, 2022, FCI reinstated the instant case, and the Court assigned a new case number. As of the reinstatement, TSC had not yet produced the 25,000 documents referenced in its February 17, 2022, email.

B. TSC Produced Additional Documents After the Hearing

TSC's MSJ was filed on April 4, 2023. Briefing was not completed until August 2, 2023, when TSC filed its Reply to FCI's Opposition. The Court set the Hearing for August 7, 2023. As noted in FCI's Opposition and as argued by FCI at the Hearing, as of the Hearing date, "document

productions are incomplete, and no depositions have been taken by either side.” *See* Brief in Support of Defendant’s Motion for Summary Judgment (“FCI’s Opp.”), p. 7. Also, at the Hearing, FCI referenced TSC’s February 17, 2022, email acknowledging that TSC still had not produced approximately 25,000 documents responsive to FCI’s First Request for Production of Documents. Therefore, FCI asked the Court to refrain from ruling on TSC’s MSJ until FCI could complete needed discovery.

On August 31, 2023, following the Hearing, FCI served its Second Request for Production of Documents and its First Set of Interrogatories on TSC. As of that date, TSC still had not produced the additional documents referenced in its February 17, 2022, email to FCI. On October 4, 2023, TSC moved for an extension of time to respond to FCI’s August 31 discovery requests. Subsequently, FCI agreed with TSC to an extension until November 3, 2023. On October 6, 2023 (approximately two months after the Hearing), TSC produced 12,953 documents consisting of 61,964 pages to FCI.

C. TSC Acknowledged the Scale and Complexity of Ongoing Discovery in this Litigation, Including the Need for Extensive Depositions

On October 18, 2023, the Parties filed a Joint Motion to Establish Complex Case Designation and Time for Trial. *See* Ex. C (hereinafter “Joint Motion”). In the Joint Motion, the Parties informed the Court that “[a]lthough the parties have diligently exchanged discovery over the life of this dispute, there remain certain documents for both Plaintiff and Defendant to produce.” Ex. C, ¶ 3(g). As of October 18, 2023, the Parties had exchanged more than one million documents containing at least twice as many pages and large native files. Ex. C, ¶ 3(a). A significant number of additional documents were also received from SCDOT in July of 2023, following FCI’s settlement of Project disputes with SCDOT and Horry County. Ex. C, ¶ 3(a). The Parties notified the Court that, due to the five-year lifespan of the Project, they each anticipated

calling approximately a dozen witnesses and that “[t]he number of depositions to be taken will match or eclipse the estimated number of witnesses.” To date, no depositions have been taken, awaiting completion of the document productions. Thus, the Parties “[sought] a complex case designation to ensure adequate time to conduct discovery and depositions and to properly prepare for trial.” Ex. C, ¶ 3(i).

On November 3, 2023 (nearly three months after the Hearing), TSC provided Answers to FCI’s First Set of Interrogatories and Second Set of Requests for Production. *See* Ex. D – TranSystems’ Answers to Flatiron Constructors, Inc.’s First Set of Interrogatories (1-27) (hereinafter “Interrogatory Responses”); *see also* Ex. E – TranSystems’ Answers to Flatiron Constructors, Inc.’s Second Set of Requests for Production (21-47) (hereinafter “Discovery Responses”). In these responses, TSC references the early stages of discovery in this matter. *See, e.g.*, Ex. D, No. 1 (“TranSystems notes that this case is at an early stage of discovery...”). More importantly, the October 6, 2023, document production and TSC’s post-hearing discovery responses include relevant information concerning the nature of TSC’s relationship with FCI in the context of the South Carolina Supreme Court’s decision in *Tommy L. Griffin Plg & Htg Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 463 S.E. 2d 85 (1995). This discovery also demonstrates the likelihood that further discovery will uncover additional evidence relevant to the issue of TSC’s special relationship with FCI. *See Baughman v. Am. Tel & Telegraph Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991).

II. ARGUMENT

A motion pursuant to SCRCP 59(e) is appropriate to seek the Court’s reconsideration of an order granting summary judgment and to help ensure that the Court has fully considered and ruled upon proffered arguments or issues. *See Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004); *see also Coward Hund Const. Co., Inc. v. Ball Corp.*, 336 S.C. 1, 518 S.E. 2d

56 (1999). Here, to the extent the Court’s considerations are discernible from its Form 4 Order, FCI respectfully requests that the Court reconsider its ruling and withdraw its Order as premature pending completion of discovery. Once relevant discovery is completed, TSC certainly would be entitled to renew its Motion, and the Court could then consider the issues with the benefit of a complete record.

As noted by the South Carolina Supreme Court, summary judgment “is based on depositions, interrogatories, affidavits and other evidentiary material provided by the parties.” *Woodson v. DLI Properties, LLC*, 406 S.C. 517, 527, 753 S.E.2d 428, 433 (2014). Here, FCI has not had a full and fair opportunity to complete discovery, present all relevant facts to the Court, and ensure a proper record on appeal.

FCI deferentially submits that it would be beneficial to the judicial process and in keeping with prevailing law to allow FCI to complete discovery, allow TSC to refile its MSJ thereafter, and then have the Court issue a ruling based upon a more robust record. Allowing FCI to complete discovery would, at least, provide any subsequent appellate court the opportunity to consider depositions, interrogatories, and a complete set of relevant documents.

A. The Existence of a Special Relationship is a Factual Determination Based Upon All the Facts and Circumstances

In granting TSC’s MSJ, the Court found that “TranSystems has established it had no special relationship with Plaintiff and owed no duty of care to Plaintiff” Ex. A – Form 4 Order. If such a special relationship, in fact, exists, then TSC does have a duty of care to FCI. *Tommy L. Griffin*, 320 S.C. at 54-56; 463 S.E.2d at 88-89. Moreover, as both TSC and FCI have argued, “whether such a duty exists will depend on the facts and circumstances of each case.” *Id.*; *see also*, TSC’s MSJ, p. 10 (“South Carolina’s courts have recognized that ‘whether such a [special-relationship-based] duty exists will depend on the facts and circumstances of each case.’”). The

South Carolina Supreme Court has since confirmed that whether circumstances give rise to a special relationship spawning a duty of care “is a factual issue.” *Cullum Mech. Const., Inc. v. South Carolina Baptist Hosp.*, 344 S.C. 426, 544 S.E.2d 838 (2001). The Court in *Cullum Mechanical* further declared that, “[s]ummary judgment is not appropriate . . . when further inquiry into the facts of the case is desirable to clarify the application of the law.” *Id.* at 432, 544 S.E. at 841-42 (citing *Brockbank v. Best Capital Corp.*, 341 S.C. 383, 365 S.E.2d 24 (1988)).

B. The RCE has Significant Supervisory Power, Giving Rise to a Special Relationship

In *Tommy L. Griffin*, the court found that because the engineer exercised supervision over the project and “had the right, among other rights, to inspect the construction and to halt construction” there existed a special relationship giving rise to a professional duty. *Tommy L. Griffin*, 320 S.C. at 56, 463 S.E.2d at 89. The RCE role on construction projects in South Carolina is a top supervisory position over contractors, as the RCE has the power to decide “all questions that may arise regarding the quality and acceptability of materials furnished, the work performed, the rate of progress of the work; the interpretation of the Plans and Specifications; acceptable fulfillment of the Contract by the Contractor; disputes and mutual rights between Contractors; and compensation for the work.” TSC’s MSJ, Ex. B - SCDOT’s 2007 Standard Specifications for Highway Construction (hereinafter “Standard Specifications”) § 105.1. In fact, the supervisory power of the RCE is so broad that the RCE has the authority to suspend the work of a contractor or withhold payment from the contractor if the contractor merely fails to carry out the orders of the RCE. *Id.* (stating that the RCE “has the authority to suspend the work, wholly or in part, or to withhold further payments to the Contractor...for failure to carry out orders of the RCE.”). As such, entities with RCE authority have a “special relationship” with contractors giving rise to a professional duty. Indeed, TSC concedes that “[t]he RCE’s role, for the purposes of project

supervision, was very similar to that of the engineer in *Tommy L. Griffin*.” Reply Brief in Support of Defendant’s Motion for Summary Judgment (hereinafter “TSC Reply”), p. 12.

C. The Facts and Circumstances, Including Those Showing Mr. Long’s RCE Status, Must Be Viewed in FCI’s Favor

When considering the facts and circumstances surrounding TSC’s relationship with FCI and whether such circumstances give rise to a duty by TSC, the Court must view all such information and any related inferences in the light most favorable to FCI. *Cullum Mechanical*, 344 S.C. at 432, 544 S.E.2d at 841; *see also Baughman v. American Tel and Telegraph Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991); *Abdelgheny v. Moody*, 432 S.C. 346, 349, 852 S.E.2d 225, 227 (S.C. App. 2020). In its Opposition to TSC’s MSJ, FCI presented the Affidavit of Lou Hutcherson, FCI’s Project Manager. FCI Opp., Ex. A – Affidavit of Lou Hutcherson. Among other testimony, Mr. Hutcherson testified that “Martin Long of TSC held himself out as South Carolina Department of Transportation’s (“SCDOT”) Resident Construction Engineer (“RCE”).” FCI Opp. Ex. A, ¶ 3. Mr. Hutcherson also testified that TSC oversaw FCI’s construction activities (¶ 6), coordinated and processed pay applications (¶ 7), inspected and rejected FCI’s work (¶ 10), and stopped FCI’s work on occasion (¶ 11). Notably, TSC did not provide an affidavit from Mr. Long or anyone else from TSC refuting Mr. Hutcherson’s testimony.

FCI also presented multiple documents identifying TSC’s Mr. Martin Long as the Project RCE. See FCI Opp. Ex. B – Affidavit of Linda Brumfield (hereinafter “Brumfield Aff.”). These documents included, but were not limited to: Bi-weekly Meeting Minutes signed by Mr. Long as Resident Construction Engineer (Brumfield Aff., Ex. 2); a letter on SCDOT letterhead signed by Mr. Long as Resident Construction Engineer (Brumfield Aff., Ex. 4); a TSC organizational chart identifying Mr. Long as RCE (Brumfield Aff., Ex. 6); an SCDOT email identifying Mr. Long as the RCE (Brumfield Aff., Ex. 7); and an email from Mr. Long identifying himself as the RCE

(Brumfield Aff., Ex. 9). All of this evidence must be viewed in the light most favorable to FCI. *Id.* Moreover, the Court must deny TSC's MSJ if FCI is able to provide evidence creating a reasonable inference that a "special relationship" existed between TSC and FCI. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023).

D. RCE Status Establishes Special Relationship

Much of the briefing and argument surrounding TSC's MSJ related to whether TSC's Mr. Long assumed the position and/or exercised the powers of the Resident Construction Engineer or RCE on the Project. *See, e.g.*, FCI Opp. pp. 10-13, 15-17, 19-20; TSC Reply, pp. 4, 5-12. FCI presented testimony and documents demonstrating that Mr. Long held himself out as the RCE and assumed RCE powers sufficient to establish a special relationship giving rise to a duty per the ruling in *Tommy L. Griffin*. In sum, FCI contends that even if the RCE is normally an SCDOT employee or described as such in the Specifications, that was not the case on this Project. In practice and throughout the Project, TSC was allowed to assume and/or share the role of RCE for the purposes of supervising FCI's work and TSC held itself out as the RCE without protest from SCDOT. In short, "TSC *was* the RCE in relation to FCI." FCI Opp. p. 4 (emphasis in original).

In contrast, TSC asserted, among other arguments, that Mr. Long did not assume such duties or responsibilities and that only SCDOT acted as RCE. Again, TSC did not provide an affidavit from Mr. Long. FCI's Mr. Hutcherson testified to Mr. Long's RCE authority as discussed above. *See* § II.C. However, regarding Mr. Hutcherson's testimony, TSC argued that, "[t]o be generous, the sworn testimony of Lou Hutcherson in his Affidavit attached as Exhibit A to Plaintiff's Brief is implausible and incredible, stating that "Martin Long of TSC held himself out as [SCDOT's] Resident Construction Engineer." TSC Reply p. 6 (emphasis added). Again, TSC concedes that, "[t]he RCE's role, for the purposes of project supervision, was very similar to that of the engineer in *Tommy L. Griffin*." TSC Reply, p. 12. In other words, if the facts and

circumstances taken in the light most favorable to FCI create a reasonable inference that TSC acted as or shared the role of RCE, then a “special relationship” existed between TSC and FCI and the Court should not have granted TSC’s MSJ regarding FCI’s negligence claim. *Kitchen Planners*, 440 S.C. at 463, 892 S.E.2d at 301 (2023).

In *Tommy L. Griffin*, the Court looked at the facts concerning what the engineer in that case actually did on the job. 320 S.C. at 56, 463 S.E.2d at 89. Because the engineer “supervised construction” and could inspect and halt construction, the Court considered a “special relationship” with the contractor to exist. *Id.* TSC’s MSJ suggests that FCI’s Contract with Horry County indicating that the RCE is an SCDOT employee is a dispositive factor in determining the identity of the RCE and, thus, whether a special relationship existed between TSC and FCI. TSC Reply, pp. 5-8. However, the *Tommy L. Griffin* and *Cullum Mechanical* decisions urge the Court to consider **all** the facts and circumstances, not just contract language. Indeed, the court in *Cullum Mechanical* forbids summary judgment when further inquiry into the facts will help clarify the application of the law. *Cullum Mechanical*, 344 S.C. at 432, 544 S.E.2d at 841. Thus, the extent to which SCDOT allowed TSC’s Mr. Long to present himself as the RCE and to wield the power of the RCE is a relevant inquiry into whether TSC had a special relationship with FCI or, at least, shared SCDOT’s power over FCI.

E. TSC’s RCE Duties and Activities Conferred Upon FCI Third-Party Beneficiary Status

A plain reading of the Engineering Contract makes clear that TSC was obligated to inspect, monitor, respond to questions, and report on FCI’s construction activities. Surely each of these tasks was intended to enhance the quality of the work, to facilitate the progress of the job, and to minimize the risk of re-work, needless stoppages, and the like. The benefits that would flow to

FCI from TSC's proper performance under the Engineering Contract are apparent, and, at a minimum, material questions of fact exist as to FCI's third-party beneficiary status.

F. The Court has not been Presented with All Facts Relevant to the Motion for Summary Judgment, and FCI Should have an Opportunity to Complete Discovery Before the Court Summarily Dismisses these Counts

The South Carolina Supreme Court has held that summary judgment is a "drastic remedy" and "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Baughman*, 306 S.C. at 113, 410 S.E.2d at 543. According to the Supreme Court, "this means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Id.* In *Baughman*, despite three years of discovery, the Court reversed entry of partial summary judgment to afford the plaintiff in that case "an adequate opportunity to complete discovery." *Id.* at 114, 410 S.E.2d at 543. Based upon the ruling in *Baughman*, FCI respectfully submits that the Court should reconsider its decision granting TSC's MSJ and should afford FCI an opportunity to complete document production, conduct relevant depositions, and augment expert opinions based upon the adduced facts.

As in the *Baughman* case: (1) it is likely that further discovery will uncover additional evidence relevant to the central issue, namely, TSC's special relationship with FCI; (2) FCI has not been dilatory in seeking discovery on this critical issue; and (3) any perceived delay in completing discovery is tempered by the complexity of this case. *Id.* at 112-13, 410 S.E.2d at 543. Thus, summary judgment in this matter was premature. *Id.*

1. Further Discovery is Likely to Uncover Additional Evidence Relevant to the Motion for Summary Judgment

During the Hearing, FCI made arguments and presented evidence supporting the proposition that TSC acted as or at least shared the duties and authority of the RCE on the Project.

See Section II. B. *supra*. FCI also specifically requested at the Hearing that the Court refrain from ruling on TSC's MSJ until FCI had an opportunity to complete discovery. Since the Hearing, TSC's discovery responses and document productions reveal that additional discovery (e.g., depositions) likely will reveal evidence supporting FCI's arguments that TSC's Mr. Long acted as the SCDOT's RCE and/or assumed other duties that establish a special relationship between TSC and FCI as defined in *Tommy L. Griffin*. This discovery further suggests that TSC likely had contractual obligations that it simply ignored.

a. TSC's Response to Interrogatory No. 18 Admits Mr. Long Held Himself Out as the RCE

In support of its MSJ, TSC completely discards Mr. Hutcherson's testimony that "**Martin Long of TSC held himself out as [SCDOT's] Resident Construction Engineer.**" TSC Reply p. 6 (emphasis added). Indeed, TSC dismisses Mr. Hutcherson's sworn statement entirely. *Id.* ("[t]o be generous, the sworn testimony of Lou Hutcherson...is implausible and incredible..."). (emphasis added). Yet, TSC admits in its recently provided November 3, 2023 Answers to FCI's First Set of Interrogatories that, "**Marty Long used the title Resident Construction Engineer...**"² Ex. D – Interrogatory Responses, No. 18. Thus, Mr. Hutcherson was correct. Mr. Long *did* hold himself out as the RCE on the Project. There was nothing "implausible" or "incredible" about Mr. Hutcherson's testimony. Mr. Hutcherson's other assertions are equally veracious. At the very least, FCI should be afforded the opportunity to depose Mr. Long and to plumb the true depths of his exercise of power and authority under "the title of Resident Construction Engineer." Such a deposition is very likely to uncover additional evidence relevant to the existence of a "special relationship" between TSC and FCI.

² TSC's Interrogatory Answer goes on to disclaim that although Mr. Long, in fact, held himself out as the RCE, "he never had authority as SCDOT's RCE."

b. TSC's October 6, 2023, Document Production Contains Several Documents Relevant to the "Special Relationship" Determination

As represented by the Parties in their recent Joint Motion, "to date, more than one million documents have been produced, containing at least twice as many pages and large native files." Ex. C, ¶ 3(a). Moreover, additional documents remain to be produced. *Id.*, ¶ 3(h). Reviewing and comprehending the relevance of all of these documents is a time-consuming and complex task. The document review and analysis is further complicated because the document productions have occurred in waves throughout this protracted litigation. Consequently, tracking precisely when particular documents were produced, what remains to be produced, identifying duplicates, and finding particular documents related to the five-year long Project is challenging. Furthermore, even locating the relevant documents in FCI's own files requires great effort and diligence. Nonetheless, FCI has established that several documents produced by TSC on October 6, 2023, after the Hearing on TSC's MSJ, are relevant to the central issue of TSC's RCE status and whether TSC and FCI had a "special relationship" as defined in *Tommy L. Griffin*.

(i) Marty Long's Pre-construction Email, dated January 08, 2013, Introducing Himself as RCE

Very early in the Project, before construction even began, Mr. Long sent an email "on behalf of Horry County and SCDOT" inviting FCI, SCDOT, and other entities to a partnering and pre-construction conference. Ex. F – Mr. Long Introduction Email, dated January 08, 2014. Multiple Horry County and SCDOT personnel were sent this email in which Mr. Long identified himself as "RCE." *Id.* Notably, he did not identify himself as the "RCE Representative," which TSC asserts was his actual role. TSC Reply, p. 8 ("...it is clear that Long was a Representative of RCE..."). Rather, in one of the very first communications on the Project, Mr. Long clearly identified himself as the RCE to FCI, SCDOT, and Horry County personnel and invited them to the initial, pre-construction partnering session. A deposition of Mr. Long exploring the basis for

his assumption of the title, the powers actually granted to him, and any limitations on that power would likely lead to additional, relevant evidence on this point.

(ii) Sample Identification Card Indicates Mr. Long is the SCDOT RCE

When testing concrete mix compliance at the Project, inspectors were required to complete a concrete “Sample Identification Card.” *See, e.g.*, Ex. G – Concrete Sample Identification Card (this exhibit is one of many examples in which Mr. Long was referred to as the SCDOT RCE on Sample Identification Cards). Among other information, these cards identify the date the sample was taken, who took the sample, and the characteristics of the concrete. The cards also identify Mr. Long as “SCDOT RCE.” Again, at the very least, FCI should be granted the opportunity to depose Mr. Long concerning his assumption of authority as SCDOT RCE. This inquiry is very likely to cast additional light on the nature of TSC’s and FCI’s relationship.

(iii) An SCDOT Memorandum, dated February 09, 2016, is Addressed to Mr. Long as the RCE

As set forth in the attached Ex. H – SCDOT Memo, dated February 09, 2016, on February 9, 2016, SCDOT District Construction Engineer, D. L. Johnson, wrote a memorandum concerning a material waiver on the Project. He addressed his memorandum to Mr. Long as “Resident Construction Engineer.” Ex. H. The memorandum also was addressed to Mr. Travis Patrick. Notably, despite TSC’s contention in support of its MSJ (*see, e.g.*, TSC Reply, p. 4), the memorandum identifies Mr. Patrick as the “District Five Special Projects Engineer,” not as the RCE. This repeated conflation of Mr. Long as RCE and Mr. Patrick allegedly as RCE is fertile ground for discerning the true nature of TSC’s authority and actions on the Project, which defines TSC’s relationship to FCI. Notably, the SCDOT itself refers to Mr. Long as the Resident Construction Engineer and does not refer to Mr. Long as the “Representative of RCE.”

- (iv) Marty Long Refers to Himself as RCE in an Email to SCDOT, dated July 18, 2016

On July 18, 2016, Mr. Long sent an email to the SCDOT concerning information on a Project Quarterly Report. Ex. I – Email, dated July 18, 2016. Of significance in this and many other similar instances, Mr. Long refers to himself as “RCE Carolina Bays.” *Id.* Even when addressing the SCDOT, he does not simply refer to himself as the RCE Representative or as TranSystems, etc. Rather, Mr. Long calls himself the RCE. This is more evidence that additional discovery regarding Mr. Long’s real role on the Project when dealing with SCDOT and FCI will likely be revealing concerning whether a special relationship existed in accordance with the decision in *Tommy L. Griffin*.

- (v) Marty Long States that he is the “RCE for the SCDOT” in an Email to the United States Coast Guard

As set forth in the attached Ex. J – Mr. Long email to the United States Coast Guard, on July 12, 2017, FCI sent an email to the U.S. Coast Guard notifying them of FCI’s intention to halt temporarily marine traffic for bridge construction. FCI cc’d Mr. Long on that email. *Id.* In the same email chain, Mr. Long then sent an email directly to the U.S. Coast Guard, introducing himself and inquiring about the impact of overhead work on marine traffic. *Id.* In introducing himself, Mr. Long wrote; **“Hello. My name is Martin Long and I am the RCE for the SCDOT over the Carolina Bays Parkway project.”** *Id.* (emphasis added). Notably, Mr. Travis Patrick of SCDOT was copied on the email. *Id.* Thus, the SCDOT knew and presumably approved of Mr. Long representing himself as RCE and acting as the RCE for the SCDOT. Additional discovery concerning this point will likely lead to even more relevant evidence.

c. Continued Discovery is Warranted to Investigate the Scope of TSC's Obligations Under its Contract with Horry County

As indicated in FCI's Opposition to TSC's MSJ, the Court in *Tommy L. Griffin* did not base its opinion on the engineer's design effort. FCI Opp. pp. 18-19; 320 S.C. 49, 463 S.E.2d 85. Rather, the Court established a disjunctive assessment. 320 S.C. at 56, 463 S.E.2d at 89. ("Under these facts, Engineer owed a duty to the contractor not to negligently design **or** negligently supervise the project.") (emphasis added). Thus, whether TSC had design responsibility on the Project is not crucial to determining whether it had a special relationship with FCI giving rise to a duty of care.

(i) TSC's Response to Request for Production No. 46 Suggests TSC Was Not Relieved of Any Design Obligations

Even if the Court determined that design responsibility was a requirement for establishing a special relationship, FCI should be afforded an opportunity to conduct additional discovery on this point. *Baughman*, 306 S.C. at 112-13, 306 S.C. at 533-34; *Cullum Mechanical*, 344 S.C. at 432, 544 S.E.2d at 841. TSC executed an "Engineer Certification for Project Plans and Specifications" ("Engineer Certification") that assigns to TSC "full responsibility for all project plan and specification reviews including the approval of all information, dimensions, quantities, details and designs involved in the preparation and production of the project plans and specifications." TSC's MSJ, Ex. E p. 16/28 (pdf. p. 533). TSC also certified not only that it will produce plans and specifications, but that it will check the plans and specifications "in their entirety for completeness, correctness, accuracy and consistency" and "thoroughly review them to ensure that they comply with applicable requirements." *Id.*

In the Affidavit of Mr. Peter Strub, TSC admitted that it "never prepared, signed, or sealed any design plans for the Project." TSC MSJ, Ex. F, ¶ 7. Clearly, TSC did not comply with the Engineer's Certification. In its Request for Production ("RFP") No. 46, FCI asked TSC to provide

“all correspondence to, from or among, TranSystems, Horry County, and/or SCDOT that led to TranSystems’ alleged release from its performance obligations under the [Engineer’s Certification].” Ex. E, No. 46. On November 3, 2023, TSC responded to RFP No. 46 objecting to FCI’s phrasing and stating that “Mr. Strub never testified that there was a release from obligations – he testified that [TSC] never prepared, signed or sealed any design plans for the Project.” *Id.*

The Engineer’s Certification was incorporated into and formed a part of TSC’s Engineering Contract with Horry County. TSC MSJ, Ex. E p. 3/28, Section II. C. (“A ‘Certification Agreement’ is attached hereto and specifically made a part hereof.”). Based upon the current evidence before the Court, TSC executed the Engineer’s Certification certifying that it had “absolute authority to accept responsibility for the project plans and specifications involved in the project,” that it would “produce project plans and specifications,” and that it would check all plans and specifications for completeness, correctness, accuracy and consistency.” *Id.* Yet, TSC admittedly did not fully comply with the Engineer’s Certification. Moreover, in Response to RFP No. 46, TSC acknowledges that it has no written evidence of relief from its obligations under the Engineer’s Certification. *See* Ex. E, No. 46

(ii) Additional Discovery Likely will Lead to More Evidence Relevant to TSC’s Design Responsibilities and Its Relationship with FCI

At least two bases exist for continued discovery on this point. Both of them are likely to lead to relevant evidence concerning TSC’s design responsibilities and its relationship with FCI. First, if TSC had design-related responsibilities as indicated in the Engineer’s Certification, was not relieved of those responsibilities, yet did not fulfill them, then TSC’s apparent failure to fulfill its Contract is relevant to whether the Court should recognize a design-related obligation on TSC’s part. Second, what TSC actually did with regard to design is currently a mystery. The Engineer’s Certification lists a host of obligations. TSC only denies performing a portion of those obligations

(preparing, signing, and sealing any design plans). FCI should be afforded an opportunity to explore the full extent of TSC's design-related activities. For example, if TSC did not actually prepare the plans, but it certified the completeness, correctness, accuracy and consistency of the plans, then TSC was an integral part of the overall design effort. Moreover, as noted above, RCE's have power to decide "all questions that may arise regarding . . . the interpretation of the Plans and Specifications" TSC MSJ, Ex. B – Standard Specifications. Further discovery on this point is likely to reveal relevant evidence of TSC's design responsibility, which likely will inform the existence of a special relationship under *Tommy L. Griffin*.

2. FCI Was Not Dilatory in Seeking Discovery

As TSC and FCI agreed in their Joint Motion filed a little over one month ago, "the parties have diligently exchanged discovery over the life of this dispute" Ex. C, ¶ 3(g). The case was stayed for two years following the initial filing. Subsequently, the Parties joined to remove the case from the docket in 2021, and then the lawsuit was reinitiated on September 27, 2022. These actions were driven by the complexity of the case and FCI's contemporaneous contractual claims against Horry County and SCDOT. In the interests of economy and in an effort to narrow issues, the Parties focused attention on FCI's contractual disputes with Horry County and SCDOT for a period from late 2022 into the Spring of 2023. Those disputes were settled in June 2023, with SCDOT providing its Project file to FCI in July 2023. One of the effects of the foregoing history and the complexity of the case is that TSC started producing its documents to FCI on June 30, 2021, and was still producing documents on October 6, 2023, and most recently, on November 3, 2023.

Until document production is completed, neither Party can efficiently and effectively take necessary depositions in this matter. For example, as indicated in the discovery received to date, Mr. Long held himself out as RCE as early as the initial pre-construction partnering meeting in

January of 2014 (Section II. E. 1. b. i. *supra*) and was still referring to himself as the “RCE for the SCDOT” in July of 2017. To effectively depose Mr. Long, FCI needs to receive and review all of the documents reflecting his exercised authority and activities during this timeframe and on through to Project completion in 2019. Such a deposition could not reasonably be conducted at any point prior to the Hearing in August of 2023 or even prior to completion of TSC’s document production, which was ongoing as of this Fall and included significant productions after the Hearing.

Under the circumstances, FCI has not been dilatory in seeking discovery on the issue of TSC’s special relationship with FCI or the host of other relevant issues in this matter. FCI was still receiving substantive document productions as of October 6, 2023, and was still evaluating the substantial number of documents previously produced by TSC and SCDOT as well as those retrieved from its own files as of the Hearing date. In accordance with the South Carolina Supreme Court precedent set forth in *Baughman*, the Court should reconsider its Form 4 Order and withdraw any ruling on TSC’s MSJ pending completion of discovery.

3. Any Delay in Discovery was not Caused by FCI but is Due to the Complexity of the Case

To the extent the Court feels that the Parties have in any way delayed discovery in this matter, that conclusion must be tempered by the complexity of this case. *Baughman* 306 S.C. at 113-14, 410 S.E.2d at 543-44. As determined by the South Carolina Supreme Court in *Tommy L. Griffin* and *Cullum Mechanical*, whether TSC had a special relationship with FCI giving rise to a duty of care must be discerned based upon the facts and circumstances. 320 S.C. at 55-56, 463 S.E. 2d at 89. This is a factual issue. *Cullum Mechanical*, 344 S.C. at 433, 544 S.E.2d at 842. As set forth in the Parties’ Joint Motion, “this dispute...involves scores of construction events on a complex, public infrastructure project performed over the course of at least five years (2014

through substantial completion in 2019).” Ex. C, ¶ 3(a). Consequently, a thorough consideration of the facts and circumstances potentially giving rise to a duty by TSC requires that FCI be afforded an adequate opportunity to complete discovery of such wide-ranging facts including, but not limited to, receipt of all relevant TSC documents and the deposition of Mr. Long who TSC now admits “used the title Resident Construction Engineer.” Ex. D – Interrogatory Responses, No. 18. As TSC argued in support of its MSJ, “[t]he RCE’s role, for purposes of project supervision, was very similar to that of the engineer in *Tommy L. Griffin*.” TSC Reply, p. 12. Hence, completion of document production and the deposition of Mr. Long are critical to a fully informed ruling on TSC’s MSJ, as documents produced by TSC after the hearing and admissions made by TSC after the hearing go directly to the issues being considered in TSC’s MSJ.

III. CONCLUSION

FCI respectfully requests that the Court reconsider its Form 4 Order granting TSC’s MSJ. The seminal issue turns on a complete understanding of the facts and circumstances defining the relationship between TSC and FCI and whether that relationship gives rise to a duty of care by TSC as defined by the South Carolina Supreme Court in *Tommy L. Griffin* and *Cullum Mechanical*. Similarly, such discovery is likely to reveal relevant evidence regarding FCI’s third-party beneficiary status to TSC’s Engineering Contract. The Parties agree that this is a complex case and that despite diligent efforts, the Parties are only in the early stages of discovery. Summary judgment should not be considered until FCI has a full and fair opportunity to complete needed discovery. *Baughman*, 306 S.C. at 112, 410 S.E.2d at 543. Hence, FCI requests that the Court withdraw its Order and allow TSC to refile its MSJ following the completion of discovery in this matter.

SIGNATURE BLOCK ON NEXT PAGE

s/Mason A. Goldsmith, Jr.

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Attorneys for Plaintiff Flatiron Constructors, Inc.

December 1, 2023
Greenville, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2606116

Flatiron Constructors Inc
PLAINTIFF(S)

TranSystems Corporation
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendant TranSystems Corp.'s Motion for Summary Judgment is GRANTED IN PART AND DENIED IN PART. I find summary judgment is appropriate as to Plaintiff Flatiron Construction's causes of action for negligence, and for breach of contract. I find TranSystems has established it had no special relationship with Plaintiff and owed no duty of care to Plaintiff, and that Plaintiff was not an intended third party beneficiary of the contract between Defendant and Horry County. Defendant's attorney is to draft a proposed order consistent with its Memo in Support of Summary Judgment and email it to all attorneys of record before e-filing it for my review. I find there are genuine issues of material fact for a jury pertaining to Plaintiff's causes of action for tortious interference with contract and UTPA. Summary judgment is therefore denied as to those causes of actions.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/21/2023 .

Carter B Reid for Flatiron Constructors Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: Flatiron Constructors Inc VS TranSystems Corporation

Case Number: 2022CP2606116

Type: Order/Electronic Form 4

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Electronically signed on 2023-11-21 15:10:45 page 3 of 3

EXHIBIT B

127 Dunbar St. | Ste 200 | Spartanburg, SC 29306
200 Meeting St. | Ste 205 | Charleston, SC 29401

mwilkes@wajlawfirm.com
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From: Carter Reid <creid@watttieder.com>
Sent: Thursday, February 17, 2022 12:55 PM
To: Michael Wilkes <mwilkes@wilkeslaw.com>
Cc: Dan Atkinson <datkinson@wilkeslaw.com>; Alex Joyner <ajoyner@wilkeslaw.com>; Ellen Cheek <echeek@wilkeslaw.com>; Ashley Henderson <ahenderson@wilkeslaw.com>; Leslie Osman <losman@watttieder.com>; Dominick Weinkam <dweinkam@watttieder.com>; Hanna Blake <hblake@watttieder.com>
Subject: RE: Flatiron v. TranSystems: RPD Issues

Mike,

I am in mediation. I will need to look into the issues you have raised. I will call you early next week to discuss them. Please let me know your availability. Thanks.

Carter

Carter B. Reid | Senior Partner



1765 Greensboro Station Place, Suite 1000 | McLean, VA 22102

p: 703.749.1028 | **e:** creid@watttieder.com

From: Michael Wilkes <mwilkes@wilkeslaw.com>
Sent: Thursday, February 17, 2022 11:47 AM
To: Carter Reid <creid@watttieder.com>
Cc: Dan Atkinson <datkinson@wilkeslaw.com>; Alex Joyner <ajoyner@wilkeslaw.com>; Ellen Cheek <echeek@wilkeslaw.com>; Ashley Henderson <ahenderson@wilkeslaw.com>; Leslie Osman <losman@watttieder.com>; Dominick Weinkam <dweinkam@watttieder.com>
Subject: Flatiron v. TranSystems: RPD Issues

****CAUTION! EXTERNAL EMAIL; when opening attachments and links be extremely careful****

Carter,

I am writing regarding various RPD issues:

[1] **TCR Production:** We have just discovered that there exists another group of about 25,000 documents that CDS uploaded into Relativity from TSC but did not provide to us to review. This is a CDS error—long story of our digital times.... Of course, we are confirming we have “everything.” We are reviewing this new group of documents and will supplement our responses accordingly, probably within the next month [we are preparing for several trials during the next four months which have been delayed by Covid...].

[2] **FCI Production:** Attached are our 5.28.21 RPD to FCI, and FCI’s 8.16.21 Response. I understand that FCI has produced 1,098,992 pages of documents so far; however, FCI has not served supplemental written responses to TSC’s discovery requests. At some point, FCI’s should serve specific supplemental responses to each request, which we can discuss later as necessary. Note that we have served supplemental responses with TSC’s recent productions.

Today, my question is simple: Has FCI produced not only its documents, but any documents it received from SCDOT or any other source? Our RPD 6 requests: “All documents obtained by Flatiron via subpoena, FOIA request, or any other open source request related to the Project.” If FCI has produced documents responsive to RPD 6, please identify the bates range of the FCI documents and the bates range of documents responsive to RPD 6. If FCI has not produced any documents responsive to RPD 6, please advise why not.

Please call me in our Spartanburg office today or Charleston tomorrow, if you wish to discuss these issues.

Mike
2.17.22

Michael B.T. Wilkes

864.591.2355 Spartanburg
843.737.6229 Charleston
864.580.1599 Mobile

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Disclaimer:

The information contained in this communication from creid@watttieder.com is confidential and may be legally privileged. It is intended solely for use by mwilkes@wilkeslaw.com and others authorized to receive it. If you are not mwilkes@wilkeslaw.com you are hereby notified that any disclosure, copying, distribution or taking action in reliance of the contents of this information is strictly prohibited and may be unlawful. Please consider the environment before printing this email.

EXHIBIT C

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Flatiron Constructors, Inc.,

Plaintiff,

v.

TranSystems Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS

Case No. 2022-CP-26-06116

**JOINT MOTION TO ESTABLISH
COMPLEX CASE DESIGNATION AND
TIME FOR TRIAL**

1. We, the undersigned counsel for all parties who have appeared in this action, hereby move for an order designating this case as complex and asking that the trial of the case take place on or after July 30, 2024. We understand that if this motion is granted, continuances will not be granted after the date established herein except under exceptional circumstances.

2. At present, we feel that it is too early in the case to achieve settlement. Defendant filed a Motion for Summary Judgment, which is under advisement. A hearing was held on August 7, 2023. Prior to the hearing, the court issued an order committing the Parties to participate in mediation within 90 days of the Court's ruling on Defendant's dispositive motion. We realize that if this case should be settled after being called for trial, we will be performing a disservice to other counsel who have cases following this case on the active trial roster, and we will endeavor to settle this case, if at all, before the noted trial date.

3. We submit the following information for use of the court in support of this motion:

(a) Nature of the case

This case involves claims related to the construction of the Carolina Bays Highway Project (the "Project") in Horry County. Horry County contracted the South Carolina Department of Transportation ("SCDOT") to administer the Project as part of an Intergovernmental Agreement

(the “IGA”) among Horry County, SCDOT, and the South Carolina Transportation Infrastructure Bank (“SCTIB”). On December 6, 2013, SCDOT, on behalf of Horry County, awarded the Project to Plaintiff Flatiron Constructors, Inc. (“FCI”) in the amount of \$97,868,087. Horry County also directly contracted with Defendant TranSystems Corporation (“TSC”) (the “TSC Contract”) to provide Construction, Engineering, and Inspection Services (“CEI Services”) for the Project. The Parties disagree about the interpretation and legal effect of TSC’s Contract, including the certification.

FCI alleges, and TSC denies, FCI incurred damages in completing the Construction Contract because TSC breached the standard of care in the performance of its CEI Services. TSC denies these allegations and argues that no such standard of care applies to it, that its efforts were consistent with its contractual obligations, and that any relief should be sought elsewhere.

To date, more than one million documents have been produced, containing at least twice as many pages and large native files. Despite the extensive files already produced in this matter, more document production remains to be performed. For example, TSC just produced approximately 25,000 additional documents to FCI. Similarly, TSC has asked that FCI produce the files that FCI received from SCDOT following the recent settlement of FCI’s claim filed against SCDOT and Horry County on the Project. This production contains tens of thousands of documents. Similarly, FCI anticipates potential third-party document productions from other subconsultants. The scale of this production is commensurate with the complexity of this dispute which involves scores of construction events on a complex, public infrastructure project performed over the course of at least five years (2014 through substantial completion in 2019).

The claims brought by FCI require detailed expert analysis of extensive Project documents provided by SCDOT, Horry County, FCI, TSC, and subconsultants. Expert testimony is required

to address FCI's allegations of violations of the professional standard of care concerning TSC's multiple construction administration duties, to present critical path scheduling analyses of whether and how any proven violations impacted the Project schedule, and to demonstrate the complex calculations associated with proving any resultant direct and/or indirect damages such as loss of productivity, extended general conditions, and other impacts. The experts that TSC and FCI will retain must conduct a detailed investigation of the continuing document productions and deposition testimony concerning how TSC performed its construction engineering and inspection services and whether it met the applicable standard of care in South Carolina if TSC owed FCI a duty of care. These analyses must cover the entire five-year lifespan of this \$100 million Project.

(b) The number of witnesses for the plaintiff

Both FCI and TSC will rely upon the testimony of an exceptionally large number of fact witnesses and experts due to the nature of FCI's claims, the time period over which the Project Work was conducted, and the number of different people and entities involved in the construction and construction administration (e.g., FCI, TSC, SCDOT, Horry County, subcontractors and subconsultants).

Plaintiff anticipates that it will call at least a dozen fact witnesses to testify. These witnesses include current and former employees of SCDOT, Horry County, FCI, TSC, and select subcontractors and subconsultants who will testify regarding FCI's claims. The Project reached substantial completion in 2019, meaning these fact witnesses now reside in multiple jurisdictions, and many no longer work for the Parties.

FCI also anticipates presenting experts in the standard of care, alleged violations of that standard, construction critical path method scheduling, and construction damages calculations. These experts must analyze nearly two million pages of documents including, but not limited to,

daily work logs, submittals, RFIs, change orders, notes, meeting minutes, computerized record-keeping systems, project schedules, cost reports, correspondence, contract and subcontract documents as well as extensive email communications between and among dozens of individuals.

(c) The number of witnesses for defendant

TSC anticipates that it will call 12-15 fact witnesses to testify. TSC will also present multiple expert witnesses on engineering duties and scheduling issues.

(d) Anticipated time needed to try the case

The trial is anticipated to take approximately three weeks, depending upon the resolution of pretrial motions. Notably, TSC has requested a jury trial for the case.

(e) Motions pending

On April 04, 2023, TSC filed a motion for summary judgment. The Parties have fully briefed the motion, and a hearing was held on August 7, 2023. The Motion is under advisement with Judge Curtis. There are no other pending motions.

(f) Additional motions anticipated before trial

The Parties anticipate numerous motions related to discovery as well as motions in limine and any other motions that may be necessary to appropriately sculpt this complex construction matter into a case suitable for trial by a jury.

(g) Discovery pending

Although the parties have diligently exchanged discovery over the life of this dispute, there remain certain documents for both Plaintiff and Defendant to produce. Due to administration prerequisites and a recent settlement of claims against the SCDOT and Horry County, FCI just received the full Project file from SCDOT on July 20, 2023. FCI is in the process of preparing the SCDOT file for production to TSC along with any remaining documents received that have yet to

be produced. The SCDOT Project file alone is 53 GB and contains approximately 50,000 documents. On October 6, 2023, TSC produced a collection of approximately 25,000 documents and has pending responses to interrogatories and requests for production.

(h) Additional discovery contemplated

As written discovery and document productions continue, the Parties have yet to take depositions in this matter. The number of depositions to be taken will match or eclipse the estimated number of witnesses. FCI and TSC will attempt to work together to maximize efficiency and cost-effectiveness in this process. In addition, certain third-party subpoenas may be necessary. For example, third-party subconsultants were also at work on the Project who observed practices and work areas. These may be important to the case. Completion of document production will allow for a more accurate assessment of whether such additional discovery is needed.

(i) Other information which might prove helpful to the court

Although this matter bears a 2022 case number, discovery has not proceeded normally due to the prolonged effort to resolve certain issues with SCDOT and Horry County. During this effort, the Parties to this action acknowledged the benefits of refraining from extensive litigation expense pending the possibility of reducing the costs and complexity of the instant matter. The SCDOT/Horry County matter only concluded in July of 2023, which led to the production of the SCDOT's Project file to FCI. As indicated, FCI is now in the process of providing that file to TSC. From FCI's perspective, the settlement with SCDOT/Horry County did not significantly simplify the case against TSC.

The Parties seek a complex case designation to ensure adequate time to conduct discovery and depositions and to properly prepare for trial. The consideration of discovery, evidentiary, and other potential motions will be greatly enhanced by the participation of an assigned judge through

a complex case designation. The Parties anticipate significant discovery issues due to the sheer volume of documents and potential fact witnesses involved. As a result of the five-year Project duration, the passage of time since Project completion, and the nature of design and construction work, the fact witnesses in this matter now reside in multiple jurisdictions, and many now work for other employers such that a date certain for trial is necessary to allow for dependable, long-lead-time witness scheduling and coordination. Similarly, significant expert witness testimony is necessary, frequently leading to *Council*-type challenges and prolonged deposition efforts. Finally, the demands of streamlining and managing a complex construction matter into a suitable case for presentation to a jury over the course of approximately three weeks will require a judge fully familiar with the complicated legal and factual issues at play in this matter. For these reasons, the Parties join in respectfully requesting this case be given a complex case designation.

Respectfully submitted this 18th day of October, 2023

s/Mason A. Goldsmith, Jr.

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Attorneys for Plaintiff Flatiron Constructors, Inc.

We Consent and Join in the Motion for an Order designating the matter as complex:

s/C. Daniel Atkinson

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Attorneys for Defendant TranSystems Corporation

EXHIBIT D

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	C.A. No.: 2018-CP-26-02633
	)	
Flatiron Constructors, Inc.,	)	
	)	TRANSYSTEMS' ANSWERS TO FLATIRON
Plaintiff,	)	CONSTRUCTORS, INC.'S
	)	FIRST SET OF INTERROGATORIES
vs.	)	(1-27)
	)	
TranSystems Corporation,	)	
	)	
Defendant.	)	
_____	)	

TranSystems Corporation ("TSC") hereby responds to Flatiron Constructors, Inc.'s First Set of Interrogatories ("Flatiron's Interrogatories") as follows:

General Objections

1. The following answers are made subject to and without waiver of any objections to the admissibility of these answers or any part thereof at trial or otherwise.
2. TSC objects to Flatiron's Interrogatories to the extent they seek information protected by the attorney-client privilege or the work-product doctrine.
3. The following answers are based upon information presently available to TSC after good faith investigation and in light of the present state of discovery. Said answers are made without prejudice to TSC's right to rely upon subsequently discovered facts and documents. TSC reserves the right to supplement these answers upon its further investigation and acquisition of information or documents that it does not possess, recall or presently have in its possession.

ANSWERS TO INTERROGATORIES

1. Identify all persons having knowledge of the facts or circumstances of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements; and summarize the knowledge of each such person

and indicate whether a written or recorded statement has been taken from each person and, if so, indicate who has possession of the written or recorded statement.

ANSWER: TranSystems notes that this case is at an early stage of discovery; therefore, TranSystems expressly reserves the right to supplement this response as it obtains additional information. Given the nature and scope of this claim, TranSystems will likely be required to supplement its response hereto:

1.0 Plaintiff Flatiron Constructors, Inc.

TranSystems incorporates herein by reference all witnesses identified by Flatiron in Flatiron's Answers to TranSystems Interrogatories, as well as any witnesses identified in supplemental responses thereto.

2.0 Defendant TranSystems Corporation –witnesses associated with TranSystems can be contacted via TranSystems' undersigned counsel.

2.1 Martin Long, P.E.

Long served as Project Manager for TranSystems for the Carolina Bays project. He is expected to testify regarding his interactions with Flatiron and his work with the SCDOT and Horry County for the Carolina Bays Project.

Long has not given written or recorded statements.

2.2 Peter Strub, P.E.

Strub is an executive with TranSystems, who negotiated and executed the TranSystems contract. He is expected to testify regarding TranSystems' contract and procedures for the company.

Strub has given an affidavit in this case, which has been provided to Flatiron.

2.3 Doug Kennedy

Kennedy was a senior bridge inspector for TranSystems for the Carolina Bays Project. He is expected to testify regarding his inspections for the Carolina Bays Project as well as his interaction with Flatiron.

TranSystems is unaware of any written or recorded statements from Kennedy.

2.4 Regina Wells

Wells was office administrator for TranSystems for the Carolina Bays Project. She is expected to testify regarding her handling and logging of submittals for the Project, as well as her interaction with Flatiron.

Wells has not given any written or recorded statements.

2.5 Chance Cargile

Cargile was a bridge inspector for TranSystems during girder installation and deck pours. He is expected to testify regarding his inspections, as well as his interactions with Flatiron.

Cargile has not given any written or recorded statements.

2.6 Allen Freeland

Freeland was a Senior Inspector for TranSystems. He is expected to testify regarding his bridge inspections on behalf of TranSystems.

Freeland has not given any written or recorded statements.

2.7 Jim Blackmore

Blackmore was a Foundation Inspector who oversaw inspection of drill shafts. He is expected to testify regarding his inspections, as well as his interactions with Flatiron.

Blackmore has not given any written or recorded statements.

3.0 SCDOT

3.1 Travis Patrick, P.E.

Patrick served as Resident Construction Engineer for SCDOT. He is expected to testify regarding his role in the Project, and his supervision of TranSystems.

TranSystems is unaware of whether Patrick has given any written or recorded statements.

3.2 Steve Nanney, P.E.

Nanney was the Bridge Construction Engineer for SCDOT. He is expected to testify regarding his observations and findings in his professional role.

TranSystems is unaware of whether Nanney has given any written or recorded statements.

3.3 Bill Madison, P.E.

Madison was Bridge Construction Engineer for the first two years of the Project. He is expected to testify regarding his findings and observations.

TranSystems is unaware of whether Madison has given any written or recorded statements.

4.0 Horry County

4.1 Jason Thompson, P.E.

Thompson was originally a bridge engineer for SCDOT; however, he eventually transferred to employment with Horry County. He is expected to testify regarding his work on the Project, and his interaction with Flatiron and TranSystems.

TranSystems is unaware of whether Thompson has given any written or recorded statements.

5.0 S&ME, Inc.

Greg Canavan, P.E.

Canavan is a geotechnical engineer with S&ME, Inc. He is expected to testify regarding his evaluation of the Project, and his interaction with TranSystems and Flatiron.

TranSystems is unaware of whether Canavan has given any written or recorded statements.

2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of TranSystems that relate to Flatiron's claim or TranSystems' defense in the case.

ANSWER: In lieu of a list, TSC has produced copies of all items in its possession responsive to this Interrogatory, in response to Flatiron's previously-served Requests for Production of Documents. As noted in the responses, TSC has not produced items protected by the Attorney-Client Privilege, nor has it identified those items via privilege log.

3. Set forth the names and addresses of all insurance companies that have issued liability insurance, property insurance, professional liability insurance, and other insurance coverage relating to TranSystems' work on the Project and set forth the number or numbers of the policies involved and the amount or amounts of coverage provided in each policy.

ANSWER: TranSystems objects to this Interrogatory as beyond the scope of discovery allowed by Rule 26, SCRCP, because it seeks all insurance policies held by TranSystems. The Rules of Civil Procedure allow only for discovery of insurance agreements "under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment." Rule 26(b)(2), SCRCP. Flatiron's request seeks information of all insurance coverage, much of which, like Workers Compensation or automobile coverage, would never be required to satisfy any potential judgment in this case. Subject to and without waiving this Objection, TranSystems states that TranSystems has certain coverages under a professional liability policy issued by Continental Casualty Company, bearing Policy Number AEH591904307, with limits of liability stated therein. TranSystems is producing a copy of the Policy, bearing Bates labels CNA 1 - 60, with premium information redacted, in response to Plaintiff's Second Requests for Production. TranSystems also possesses certain additional professional liability coverages, and TranSystems will produce copies and supplemental information regarding those policies.

4. If TranSystems has made claims with an insurer regarding the Project or damage arising from or connected to the Project, for each claim, please: State when the claim was made; identify the insurer to which the claim was made; state where the damage occurred; describe the nature of the damage and the alleged cause of the damage and describe the status of the claim.

ANSWER: TranSystems objects to this Interrogatory as seeking information prepared in anticipation of litigation by TranSystems and its insurer, which is exempt from discovery pursuant to Rule 26(b)(3). Subject to this objection, and in compliance with Rule 26(b)(2), SCRCF, TranSystems states that it notified its professional liability carrier of this claim, and it has responded by offering defense to same.

5. List the names and addresses of expert witnesses whom TranSystems proposes to call as witnesses at the trial of the case, state the subject matter on which each expert is expected to testify, and state the facts and opinions to which each expert is expected to testify and a summary of the grounds of each opinion.

ANSWER: TranSystems has not identified specific experts to provide trial testimony; however, it will do so in accordance with any Scheduling Order entered in this case. Further, TranSystems expressly reserves the right to supplement this response in accordance with any Scheduling Order entered by the Court in this case.

6. For each person known to TranSystems or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform Flatiron of the important facts known to or observed by such witness or provide a copy of written or recorded statements taken from such witnesses.

ANSWER: See Answer to Interrogatory 1.

7. Identify your involvement in prior lawsuits relating to allegations of negligent inspection. For each lawsuit, provide the case name, court name, date the complaint was filed, nature of the allegations, and the outcome or current status of the lawsuit.

ANSWER: TranSystems objects to this Interrogatory as overly broad and vague, because “allegations of negligent inspection” is insufficiently defined. Additionally, TranSystems

objects to this Interrogatory, because it is not limited in time or scope. Subject to these objections and the general objections above, TranSystems states that TranSystems has not been involved in any litigation asserted by a third-party non-client, based upon its provision of Construction, Engineering, Inspection and Testing Services. TranSystems is a defendant in one other civil action in South Carolina, but it is not related to inspection or testing services.

8. Identify and describe TranSystems' method of processing submittals and maintaining records of submittals and requests for information (RFI's). Provide a description of the steps involved in processing submittals, documentation generated during the submittal review process, methods used to maintain records of submittals and requests for information, and individuals or parties responsible for overseeing the submittal process and maintaining records of the submittal process.

ANSWER: TranSystems objects to this Interrogatory to the extent it requests company-wide methods of processing submittals for all projects, as the procedure varies project-to-project. This request is overbroad, due to the number and types of different submittals, and the fact that different submittals were forwarded to different supervisors at SCDOT. Subject to this objection, TranSystems states that its method for processing submittals and maintaining records of RFIs for the Project at issue was:

- a. Marty Long would review a submittal to verify it was appropriate for his review. If it was not, he would notify Flatiron who was the appropriate recipient for the submittal.
- b. Upon receipt, Long would add the submittal status for the running agenda item list for submittals for each bi-weekly project progress meeting.

- c. Shortly after receipt, Long would make comments in response to the submittal, as needed, or he would forward the submittal to the next person in the review chain. He would note the change of status of this on the agenda for the upcoming bi-weekly meeting.
- d. If Long had comments that needed a response from Flatiron, he would not take further action, other than status review at progress meetings, until he received a response to the comments.
- e. After forwarding to SCDOT personnel, Long would again change the status on the agenda and await a response from the person from SCDOT with authority for a specific response.
- f. After SCDOT approval, Long would notify Flatiron and note the approval in the upcoming agenda. The submittal would then be removed from subsequent agendas.

Each submittal chain, and each agenda and meeting minutes prepared by Long was uploaded to ProjectWise, and was available for review by all interested parties.

9. Identify all inspectors employed by or affiliated with TranSystems who were involved in the Project, and for each inspector, provide the following information: Full name; employment status (employee, independent contractor, e.g.); dates of employment or affiliation; roles and responsibilities on the Project; and dates the inspector was assigned to the Project and when they were on the Project site.

ANSWER: TranSystems objects to this Interrogatory as overly broad and unduly burdensome. Flatiron is already in possession of a list of the inspectors, as referenced in Exhibit II.16 to Flatiron's Global Claim to the DRB. TranSystems incorporates by reference that Exhibit

as identifying all inspectors. This information is also included SCDOT's FOIA response to Flatiron. TranSystems objects to the Request for employment status and dates, as irrelevant to the claims presented and unduly burdensome to TranSystems. The daily reports, contained within that document, state the dates that the inspectors were on the site and performing inspections.

10. Identify the methods used by TranSystems for assessing requests for inspections on the Project, including a description of the process for accepting, processing, and responding to such requests, a description of documentation generated as part of the request for inspection process, and the individuals responsible for creating or maintaining documentation involved in the request for inspection process so identified.

ANSWER: TranSystems objects to the Interrogatory, because it implies a universal procedure for a wide variety of different circumstances. Subject to this objection, TranSystems states the general procedure followed for inspections was that Flatiron would produce a three-week schedule for construction, with all parties understanding the construction schedule was tentative based on progress, weather and availability of materials. Based on the schedule, Flatiron would schedule production and delivery of concrete for pouring. TranSystems would perform running inspections as available, but final inspections would typically be performed immediately prior to pouring of concrete, within 24 hours of the scheduled concrete pour. Requestors from Flatiron would vary, based on the field engineer responsible for a particular structure. Documentation would include the three-week schedule produced by Flatiron, as well as weekly day-by-day schedules produced by Flatiron, which were updated daily based on progress. Documentation produced by TranSystems would include the pre-pour checklist, to be signed by the assigned inspector for TranSystems. If TranSystems noted deficiencies or issues in the schedules produced

by Flatiron, Marty Long would notify if there were issues of non-compliance, like missing certifications or material tests.

11. Identify any and all deficiencies, defects, errors, omissions, or other issues in Flatiron's work, workmanship, or construction activities on the Project, and for each instance, provide the following information: date when the deficiency, defect, error, omission, or other issue was identified; the name of the inspector who identified the deficiency, defect, error, omission, or other issue; a detailed description of the deficiency, defect, error, omission, or other issue; an explanation of the reason for the deficiency, defect, error, omission, or other issue; and identify the steps taken by TranSystems after the deficiency, defect, error, omission, or other issue was identified.

ANSWER: TranSystems objects to this Interrogatory as overly broad and unduly burdensome, particularly given that TranSystems has presented no claim against Flatiron in this case. All communications and inspections were documented in writing, and were provided to Flatiron contemporaneously. Additionally, TranSystems has produced its project file, which includes all reports of deficiencies. Deficiencies could range in scope from minor compliance or missing paperwork, to work that failed to meet certification requirements for safety. It is impossible for TranSystems to identify every deficiency in a list form; however, TranSystems' files, as well as the reports provided to SCDOT and maintained in SCDOT's computer database will contain every documented deficiency, as well as the steps taken to respond to same.

12. Identify the methods employed by TranSystems to give notice to Flatiron of deficiencies, defects, errors, omissions, or other issues identified during inspections of Flatiron's work on the Project. Include a description of how notice is given, in what timeframe, and the individuals responsible for providing said notice.

ANSWER: TranSystems objects to this Request as overly broad and unduly burdensome, because there were a wide range of responses, based on the nature and extent of deficiency discovered. Subject to this Objection, TranSystems states that the general procedure for responses to deficiencies was as follows:

After the discovery of any deficiency, pursuant to the terms of its contract for services with Horry County, TranSystems notified SCDOT, Horry County, and Flatiron of any inspections revealing problems or concerns, and it provided comments to Flatiron for potential correction. Flatiron had the option to make changes, or to follow the escalation procedure provided in its contract with Horry County for resolution of any disputes. As to minor deficiencies, TranSystems would not notify Horry County or SCDOT, unless or until Flatiron refused to make changes to resolve the minor deficiencies and the dispute became part of the escalation process.

13. Identify all instances in which TranSystems instructed Flatiron to stop work, modify its work, suspend performance, or re-sequence work in relation to the Project, and for each instance, provide: Date of the instruction; nature and purpose of the instruction; grounds or reasons for the instruction; names and titles of individuals involved in giving or receiving the instruction; and written or documented communication conveying the instruction.

ANSWER: TranSystems objects to this Interrogatory as overly broad and unduly burdensome, because it contains no limit in scope as to the request. As the request is drafted, a minor paperwork revision would require the same response as a stop work order. Subject to this objection, TranSystems states that, at SCDOT's direction, it communicated partial project stop work orders on limited occasions, which were documented at the following locations in production:

- A. FIC000584029 – FIC000584033, from November 2016, regarding concrete issues at Bent 15;
- B. FIC000082888 – FIC000082935, from October 2016, involving concrete pours;
- C. FIC000030270, involving a temporary suspension of work in July, 2016;
- D. FIC000031582 – FIC000031589, involving lifting of a temporary suspension of work in August 2016;
- E. FIC000152248, addressing a SCDOT stop work order in December, 2015;
- F. FIC000180746, addressing a stop work order for Drilled Shafts in July, 2014; and
- G. FIC000021679, relating to a hold on mass pours pending approval of a revised Mass Concrete Plan, in December 2014.

14. Identify all instances where TranSystems sought instruction, permission, or approval from SCDOT to approve Flatiron's work, declare the work deficient, stop work, suspend performance, re-sequence work, or affect the ongoing work on the Project, and for each instance, provide: Date the instruction, permission, or approval from SCDOT was sought; description of the work related to the requested instruction, permission, or approval; names and titles of individuals involved in giving or receiving instruction, permission, or approval; and written or documented communication conveying the instruction.

ANSWER: TranSystems objects to this Interrogatory as overly broad and unduly burdensome, because it requests TranSytems to essentially provide a description of the entirety of its work on the project in an Interrogatory Answer. TranSystems has produced its available Project File, and SCDOT has produced its file to Flatiron, which contains all information responsive to this Interrogatory. The burden on Flatiron is equal to that for TranSystems to search SCDOT's file for this information.

15. Identify the methods used by TranSystems for documenting inspections performed on the Project, including a description of the process of inspection, a description of documentation generated as part of the inspection process, and individuals responsible for creating or maintaining documentation involved in the inspection process so identified.

ANSWER: SCDOT provided a form to be completed for every inspection of concrete pours, and all inspection protocols are listed in the 2004 SCDOT Manual for Construction, which has been produced in this case. Individual inspectors would complete the form appropriate for each inspection, and the inspection forms were maintained by being uploaded into Site Manager, the SCDOT database, and ProjectWise, as appropriate.

16. Identify all meetings, discussions, conferences, or communications by TranSystems to provide updates on the Project, whether they occurred regularly (daily, weekly, monthly, e.g.) or otherwise.

ANSWER: TranSystems objects to this Interrogatory as overly broad and unduly burdensome, as it requires TranSystems to describe all work it did on this Project in an Interrogatory response. Subject to this objection, TranSystems states that it conducted bi-weekly project progress meetings, and daily meetings of Marty Long with Lou Hutcherson on every week day, to discuss project progress. TranSystems kept minutes of the bi-weekly meetings, which were uploaded to ProjectWise, and which were sent contemporaneously to Flatiron. Additionally, TranSystems would respond to email or other requests as needed. Those emails would have also been uploaded to ProjectWise.

17. Identify reports, summaries, logs, or other documents created to provide project updates.

ANSWER: TranSystems objects to this Interrogatory as overly broad and unduly burdensome. Further, the Interrogatory does not specify the people or entities to be updated on project status. Subject to this Objection, TranSystems states generally that it created the following categories of reports:

1. Bi-weekly meeting minutes;
2. Certification logs, which lists certification of materials;
3. Material testing log;
4. Rain log, documenting weather;
5. Inspectors Daily Work Reports;
6. Drill Shaft Logs;
7. Concrete Pre-Pour Checklist;
8. Stored Material Payment Report;
9. Change Order Log; and
10. ICWW Concrete and Rebar Installation Log.

All of these categories of reports were uploaded to SCDOT ProjectWise or Site Manager, as appropriate. Upon information and belief, Flatiron has obtained all of these reports via a Freedom of Information Act request to SCDOT. Additionally, Flatiron had to sign many of these reports as they were completed during construction.

18. Identify all persons acting as the Resident Construction Engineer (“RCE”) on the Project.

ANSWER: TranSystems objects to this Interrogatory as vague and insufficiently defined. Subject to this Objection, TranSystems states the following:

Although Marty Long used the title Resident Construction Engineer in his capacity with TranSystems, he never had authority as SCDOT's RCE. That authority is vested solely in an employee of SCDOT, under Section 101.2 of the SCDOT Standard Specifications. Travis Patrick was the primary Resident Construction Engineer for SCDOT for the Project. In 2017, Katherine Scott obtained the SCDOT title of Resident Construction Engineer, when Patrick became District 5 Assistant Construction Engineer. AJ Bostic also had a title of Resident Construction Engineer. Derrick Tindall also became Resident Construction Engineer for District 5.

19. Identify all instances in which TranSystems' inspection was requested, but the inspection was denied, and for each instance, provide: Date the inspection was requested; nature and purpose of the requested inspection; grounds or reasons for denying the inspection; names and titles of individuals involved in giving or receiving the denial; and written or documented communication conveying the request and denial.

ANSWER: There are no known instances where TranSystems was requested to perform an inspection, and such request was denied. Alleging that an inspection was denied would allege that portions of the project were built without an inspection, which such allegation is not supported by the project records. It is possible that a requested inspection was delayed allowing TranSystems inspectors to complete initiated inspections at other areas or awaiting Flatiron's Field Engineer to complete his/her QC as outlined in the project records or perform other inspections requested at the same time. As soon as an inspector was available to perform an inspection, it would be performed.

20. State in detail all facts and identify all documents upon which you rely in support of your Second Defense that "Flatiron's alleged damages were caused by its own negligence" (See TranSystems' Answer to Amended Complaint, ¶ 51, dated November 13, 2020).

ANSWER: SCDOT asserted errors on the part of Flatiron on multiple occasions, and TranSystems cannot respond to this in full until it has had an opportunity to review all documents provided by SCDOT. TranSystems will supplement this response.

21. State in detail all facts and identify all documents upon which you rely in support of your Third Defense that “Flatiron’s alleged damages were caused by the intervening or superseding fault or breach of others and/or Acts of God” (*See* TranSystems’ Answer to Amended Complaint, ¶ 52, dated November 13, 2020).

ANSWER: TranSystems cannot respond to this in full until it has had an opportunity to review all documents provided by SCDOT. TranSystems will supplement this response.

22. State in detail all facts and identify all documents upon which you rely in support of your Fifth Defense that “Flatiron’s claims may be barred by the equitable doctrines or waiver, estoppel, and/or laches . . . based on Flatiron’s claims under its Construction Contract with Horry County” (*See* TranSystems’ Answer to Amended Complaint, ¶ 54, dated November 13, 2020).

ANSWER: TranSystems cannot respond to this in full until it has had an opportunity to review all documents provided by SCDOT. TranSystems will supplement this response.

23. State in detail all facts and identify all documents upon which you rely in support of your Sixth Defense that “TranSystems is entitled to a setoff for any compensation received by Flatiron for the damages alleged in its Amended Complaint.” (*See* TranSystems’ Answer to Amended Complaint, ¶ 55, dated November 13, 2020).

ANSWER: TranSystems cannot respond to this request in full until it has reviewed all documents from SCDOT and Flatiron. TranSystems reserves the right to supplement this response.

24. State in detail all facts and identify all documents upon which you rely in support of your Seventh Defense that “Flatiron’s claims against TranSystems may be barred by the doctrine of accord and satisfaction and/or satisfaction and release” (*See* TranSystems’ Answer to Amended Complaint, ¶ 56, dated November 13, 2020).

ANSWER: TranSystems cannot respond to this request in full until it has reviewed all documents from SCDOT and Flatiron. TranSystems reserves the right to supplement this response.

25. State in detail all facts and identify all documents upon which you rely in support of your Ninth Defense that “Flatiron’s alleged damages were caused by the intervening or superseding fault or breach of others and/or Acts of God” (*See* TranSystems’ Answer to Amended Complaint, ¶ 58, dated November 13, 2020).

ANSWER: Discovery is in an early phase in this case, and TranSystems continues to evaluate evidence, as well as its potential affirmative defenses. Accordingly, TranSystems reserves the right to supplement this response. Subject to this reservation, TranSystems states that significant portions of the delay claimed by Flatiron was a product of weather, which was not within the control of TranSystems. Additionally, in various locations, Flatiron has claimed delays related to weather, which would constitute Acts of God. TranSystems will supplement this response.

26. State in detail all facts and identify all documents upon which Mr. Peter Strub relied upon to claim that “[n]either TranSystems Corporation nor I ever considered or intended Flatiron to be a third-party beneficiary of TranSystems’ contract with Horry County.” (*See* TSC MSJ, ¶ 9, Ex. F – Affidavit of Peter Strub, P.E.).

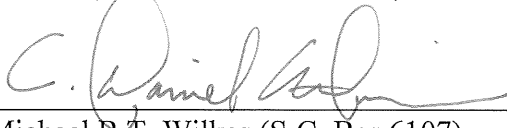
ANSWER: Peter Strub is the person who executed and negotiated TranSystems' contract with Horry County, and he based his sworn testimony on his own personal knowledge held at the time of the Contract's execution, as well as the terms negotiated thereunder. Further, at the time of the execution of the TranSystems Contract, Flatiron was not hired as General Contractor, making it impossible for Flatiron to be an intended third party beneficiary of a contract entered before it agreed to do work on the Carolina Bays project.

27. State in detail all facts and identify all documents upon which Mr. Peter Strub relied to claim that "[a]lthough the TranSystems Contract included a document entitled 'Engineer Certification for Project Plans and Specifications,' signed by [Mr. Peter Strub], TranSystems never prepared, signed, or sealed any design plans for the Project. Accordingly, the Engineering Certification for Plans and Specifications was never performed by TranSystems for the Carolina Bays Project." (See TSC MSJ, ¶ 7, Ex. F – Affidavit of Peter Strub, P.E.).

ANSWER: TranSystems objects to this Interrogatory as posed, because it requests for TranSystems to identify documents to prove that something did not happen, which is impossible. There is no document, because it did not happen.

November 3, 2023

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Attorneys for TranSystems Corporation

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	C.A. No.: 2018-CP-26-02633
	)	
Flatiron Constructors, Inc.,	)	
	)	CERTIFICATE OF SERVICE
Plaintiff,	)	
	)	
vs.	)	
	)	
TranSystems Corporation,	)	
	)	
Defendant.	)	
_____	)	

I hereby certify that I have this date, served a true and correct copy of *TranSystems Corporation's Answers to Flatiron Constructors, Inc.'s First Set of Interrogatories* via Email only to the following counsel of record:

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November 3, 2023

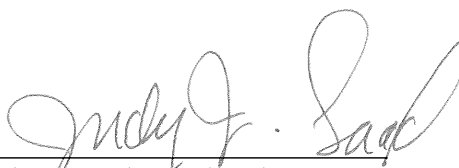

 Judy J. Saad, Paralegal

EXHIBIT E

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	C.A. No.: 2018-CP-26-02633
	)	
Flatiron Constructors, Inc.,	)	
	)	TRANSYSTEMS' ANSWERS TO FLATIRON
Plaintiff,	)	CONSTRUCTORS, INC.'S
	)	SECOND SET OF REQUESTS FOR
vs.	)	PRODUCTION
	)	(21-47)
TranSystems Corporation,	)	
	)	
Defendant.	)	
_____	)	

TranSystems Corporation ("TSC") hereby responds to Flatiron Constructors, Inc.'s Second Set of Requests For Production ("Flatiron's Requests For Production") as follows:

General Objections

1. The following responses are made subject to and without waiver of any objections to the admissibility of these responses or any part thereof at trial or otherwise.

2. TSC objects to Flatiron's Requests For Production to the extent they seek information protected by the attorney-client privilege or the work-product doctrine.

3. The following responses are based upon information presently available to TSC after good faith investigation and in light of the present state of discovery. Said responses are made without prejudice to TSC's right to rely upon subsequently discovered facts and documents. TSC reserves the right to supplement these answers upon its further investigation and acquisition of information or documents that it does not possess, recall or presently have in its possession.

4. TSC objects to Flatiron's Requests for Production as unduly burdensome, to the extent they request identification of specific documents relevant to discrete questions/requests/issues/contentions/disputes. The document productions in this case are extremely voluminous, and TSC cannot be reasonably expected to cull through same for each and

every document relevant to Flatirons' requests in this regard.

RESPONSES TO REQUESTS FOR PRODUCTION

21. In accordance with your prior representations, we request that you produce all documents you indicated would be produced in response to Flatiron Constructors, Inc.'s First Requests for Production to TranSystems Corporation, dated October 19, 2020.

RESPONSE: TranSystems produced all items requested herein on October 6, 2023.

22. All documents identified in your responses to Flatiron's First Set of Interrogatories served concurrently with this Request for Production (hereinafter, each numbered Interrogatory will be referred to individually).

RESPONSE: All documents referenced have either been produced by TranSystems, or were produced to TranSystems by Flatiron.

23. All photographs, plats, sketches, or other prepared documents in possession of TranSystems that relate to Flatiron's claim or TranSystems' defense in this case.

RESPONSE: TranSystems has produced all documents which are not privileged, which are responsive to this Request. Additionally, TranSystems has produced a privilege log. As previously stated, TranSystems states that communications directly with defense counsel are not required to be disclosed on a privilege log, because such disclosure itself would violate privilege.

24. Any and all insurance policies and related documentation concerning insurance coverage that you have obtained in relation to the Project, including, but not limited to, general liability insurance, property insurance, professional liability insurance, and any other form of insurance coverage.

RESPONSE: TranSystems objects to this Request, because it exceeds the scope of discovery of insurance information allowed under Rule 26(b)(2), SCRCp. Subject to this

Objection, TranSystems will produce insurance policies, with premium information redacted, regarding policies that may provide coverage for the claims presented in this case. TranSystems is providing herewith a copy of its professional liability policy, with premiums redacted, bearing Bates labels CNA 1 – 60, and it will provide its excess professional liability policy upon receipt of same, with premium information redacted.

25. All documents relating to claims made by you or on your behalf under any insurance policy identified in response to Interrogatory #3.

RESPONSE: TranSystems objects to production of any insurance claims information, because it is not relevant to the claims, because such information is outside the scope of discovery by Rule 26(b)(2), SCRCp, and because the information is not relevant to the claims presented, nor is it admissible, nor is it narrowly tailored to obtain relevant, admissible information. Additionally, the information sought is barred from discovery by Rule 26(b)(3), SCRCp.

26. All documents relied upon by expert witnesses identified in response to Interrogatory # 5.

RESPONSE: TranSystems will supplement this response when it identifies expert witnesses in accordance with any Scheduling Order issued in this case.

27. Written or recorded statements taken from each person known to TranSystems or counsel to be witnesses concerning the facts of the case as identified in response to Interrogatory #6.

RESPONSE: At present, the only statement in possession of TranSystems is the affidavit of Peter Strub, which has been filed with the Court and of which Plaintiff has copies.

28. All documentation or records relating to submittals and requests for information (RFI's).

RESPONSE: TranSystems objects to this Request because it seeks information available from other sources (i.e., SCDOT) which are more convenient, less burdensome, less expensive, and/or equally available to Flatiron. Any documents within TranSystems' possession have been produced. All responsive information to this Request was uploaded to Site Manager and ProjectWise, which is in possession of SCDOT. Upon information and belief, Flatiron is in possession of this information, as a result of a Freedom of Information Act Request to SCDOT. TranSystems does not have access to this information other than requesting it from SCDOT.

29. All documentation supporting an individual's identification as Resident Construction Engineer in response to Interrogatory # 18.

RESPONSE: TranSystems objects to this Request as unduly burdensome (see, i.e., TranSystem's General Objection #4). Email correspondence identifying Travis Patrick and various other SCDOT officials as RCE is included in TranSystems' production to-date, and Flatiron was copied on much of the correspondence. Such documents are also contained in Flatiron's production. TranSystems identified specific references to Travis Patrick's role in its Reply in Support of TranSystems' Motion for Summary Judgment.

30. All personnel files for Marty Long, Doug Kennedy, and all inspectors who were involved with the Project, to include, without limitation:

- a. Resumes;
- b. Records of training, certifications, licenses, and professional qualifications;
- c. Performance evaluations, reviews, and disciplinary records;
- d. Records of any promotions, demotions, transfers, or changes in job title; and
- e. Records of any complaints, grievances, or internal investigations related to the inspectors' performance or conduct.

RESPONSE: TranSystems objects to this Request as overly broad and unduly burdensome, and outside the scope of discovery allowed by Rule 26, SCRCP. A request for information on “all inspectors involved with the Project” is not intended to obtain relevant evidence, because Flatiron has not identified “every inspector involved with the Project” as having even allegedly committed errors and omissions in this suit. The Request is no way limited in terms of time or scope, and it exceeds the scope of discovery allowed by the S.C. Rules of Civil Procedure. Subject to this objection, TranSystems will produce copies of discoverable documents from Long’s and Kennedy’s file in a supplemental response, with sensitive, personal identifying information redacted.

31. All documentation or reports related to the assignment of inspectors to the Project, including, but not limited to, work schedules, task assignments, and any changes to schedules and assignments.

RESPONSE: TranSystems objects to this Request as overly broad and unduly burdensome. Subject to this objection, TranSystems states that inspection reports prepared by TranSystems would identify assignments and work performed by TranSystems inspectors. These reports were uploaded to SCDOT’s database and, upon information and belief, were provided to Flatiron through SCDOT’s response to Flatiron’s Freedom of Information Act request.

32. All documents relating to notices from TranSystems to Flatiron of deficiencies, defects, errors, omissions, or other issues identified during inspection of Flatiron’s work on the Project.

RESPONSE: TranSystems objects to this Request as overly broad and unduly burdensome, because it is in no way limited in time or scope. All inspection reports and email correspondence would include information sought, with inspection reports being in possession of

SCDOT through its ProjectWise database. In its Answer to Plaintiff's Interrogatory 13, TranSystems identified specific stop work orders during construction. Any remaining notices would be contained in TranSystems correspondence and inspection reports, which are in Flatiron's possession.

33. All documents related to meetings, discussions, conferences, or communications involving TranSystems inspectors' work on the Project, including, but not limited to:

- a. Meeting minutes, agendas, and any documents generated concerning meetings related to the Project;
- b. Reports, presentations, and materials presented or distributed during meetings; and
- c. Any other records relating to meetings such as decisions, action items, or other outcomes.

RESPONSE: TranSystems objects to this Request as overly broad and unduly burdensome. Subject to and without waiving these objections, TranSystems states that all documents responsive to this Request would have been uploaded to ProjectWise, SCDOT's database, and Flatiron can obtain them through Freedom of Information Act request.

34. Any policies, procedures, guidelines, manuals, handbooks, or similar documents that outline the standards, expectations, and requirements for inspectors employed by or affiliated with TranSystems. These documents should include, but are not limited to:

- a. Inspection protocols and methodologies;
- b. Quality control and assurance procedures;
- c. Documentation and reporting standards; and
- d. Regulatory compliance procedures.

RESPONSE: TranSystems objects to this Request as written; the use of the phrases "or similar documents," "affiliated with TranSystems," "and" "but are not limited to" are overly broad

and not limited in any way in time or scope, and thus not reasonably calculated to lead to the discovery of admissible information. The policies and guidelines for work were dictated by the SCDOT Standard Specifications and the 2004 Construction Manual of SCDOT, which are in Flatiron's possession.

35. All training materials, modules, presentations, or documents used for training inspectors employed by or affiliated with TranSystems. This includes materials related to:

- a. General construction knowledge and principles;
- b. Technical skills and competencies required for effective inspections;
- c. Regulatory compliance; and
- d. Continuing education or professional development programs.

RESPONSE: TranSystems objects to this Request as overly broad and unduly burdensome, because the Request is no way limited as to scope or time. This Request seeks information provided to people who never worked on the Project at issue; therefore, the Request exceeds the scope of discovery allowed by Rule 26, SCRCp. TranSystems operates in 50 states, with different standards applied to different agencies. For the Project at issue, TranSystems inspectors were expected to meet the certification requirements contained in the TranSystems Contract, and they were to verify compliance of construction with plans and specifications for the Carolina Bays Project, which were set forth in Flatiron's contract documents. Further requirements were set forth in the SCDOT Standard Specifications and the 2004 SCDOT Manual for Construction.

36. Any and all communications discussing the adequacy, effectiveness, or potential modifications to TranSystems' policies, procedures, and training materials related to its inspectors from 2011 to present.

RESPONSE: TranSystems objects to this Interrogatory as overly broad, unduly burdensome, and beyond the scope of discovery allowed by Rule 26, SCRPC. This Request is not reasonably calculated to obtain information that is discoverable under the South Carolina Rules of Civil Procedure, and, in fact, seeks information explicitly not admissible under Rule 407, SCRE. Subject to these objections, TranSystems states that its inspection policies and procedures for the Carolina Bays Project were maintained, developed and updated by SCDOT, not TranSystems; therefore, any discoverable information responsive to this Request is in the possession of SCDOT.

37. Documents supporting your Second Defense that “Flatiron’s alleged damages were caused by its own negligence” (*See* TranSystems’ Answer to Amended Complaint, ¶ 51, dated November 13, 2020).

RESPONSE: Documentation of Flatiron’s failure to comply with SCDOT’s specifications is contained throughout Flatiron and SCDOT’s project file. TranSystems will supplement this response at the time it identifies expert witnesses.

38. Documents supporting your Third Defense that “Flatiron’s alleged damages were caused by the intervening or superseding fault or breach of others and/or Acts of God” (*See* TranSystems’ Answer to Amended Complaint, ¶ 52, dated November 13, 2020).

RESPONSE: Documents responsive to this Request are contained within the documents produced by Flatiron, TranSystems and SCDOT. TranSystems will supplement this response at the time it identifies expert witnesses.

39. Documents supporting your Fifth Defense that “Flatiron’s claims may be barred by the equitable doctrines or waiver, estoppel, and/or laches . . . based on Flatiron’s claims under its Construction Contract with Horry County” (*See* TranSystems’ Answer to Amended Complaint, ¶ 54, dated November 13, 2020).

RESPONSE: Flatiron has made claims against SCDOT and Horry County, alleging entitlement to payment, as well as delicts by Horry County and/or SCDOT. TranSystems has not yet had an opportunity to review and analyze all documents from those claims; however, TranSystems is informed and believed that documents responsive to this are contained within documents to be produced by Flatiron and/or SCDOT. TranSystems will supplement this response after review of all relevant documents.

40. Documents supporting your Sixth Defense that “TranSystems is entitled to a setoff for any compensation received by Flatiron for the damages alleged in its Amended Complaint.” (See TranSystems’ Answer to Amended Complaint, ¶ 55, dated November 13, 2020).

RESPONSE: TranSystems objects to this Request as premature, because Flatiron has not provided all information regarding settlements with other entities, despite pending Interrogatories and Requests for Production regarding same. TranSystems cannot respond to this Request until Flatiron provides full responses to TranSystems. TranSystems will supplement this response following Flatiron’s full production.

41. Documents supporting your Seventh Defense that “Flatiron’s claims against TranSystems may be barred by the doctrine of accord and satisfaction and/or satisfaction and release” (See TranSystems’ Answer to Amended Complaint, ¶ 56, dated November 13, 2020).

RESPONSE: TranSystems objects to this Request as premature, because Flatiron has not provided all information regarding settlements with other entities, despite pending Interrogatories and Requests for Production regarding same. TranSystems cannot respond to this Request until Flatiron provides full responses to TranSystems. TranSystems will supplement this response following Flatiron’s full production.

42. Documents supporting your Ninth Defense that “Flatiron’s alleged damages were caused by the intervening or superseding fault or breach of others and/or Acts of God” (*See* TranSystems’ Answer to Amended Complaint, ¶ 58, dated November 13, 2020).

RESPONSE: Flatiron has made claims against SCDOT and Horry County, alleging entitlement to payment, as well as delicts by Horry County and/or SCDOT. TranSystems has not yet had an opportunity to review and analyze all documents from those claims; however, TranSystems is informed and believed that documents responsive to this are contained within documents to be produced by Flatiron and/or SCDOT. TranSystems will supplement this response after review of all relevant documents.

43. Documents relied upon by Mr. Peter Strub to support the claim in his affidavit that “the Engineering Certification for Plans and Specifications was never performed by TranSystems for the Carolina Bays Project.” (*See* TSC MSJ, Ex. F – Affidavit of Peter Strub, P.E. ¶ 7).

RESPONSE: TranSystems objects to this Request, because it is based upon a logical fallacy. TranSystems would not generate documents to document an action that did not occur. Subject to this objection, TranSystems states that its project invoices and project file indicate that there are no engineering certifications for Plans and Specifications for TranSystems and that there are no plans prepared or sealed by employees of TranSystems.

44. All correspondence to, from, or among TranSystems, Horry County, South Carolina (“Horry County”), and/or SCDOT regarding the “Engineer Certification for Project Plans and Specifications,” signed by Mr. Peter Strub. (*See* TSC MSJ, Ex. F – Affidavit of Peter Strub, P.E. ¶ 7).

RESPONSE: TranSystems is not aware of any such correspondence, because TranSystems did no work relating to the Engineer Certification for Plans and Specifications.

45. All versions and revisions of the Engineer Certification for Project Plans and Specifications.

RESPONSE: Flatiron is not aware of any versions or revisions other than the version contained in the TranSystems contract.

46. All correspondence to, from, or among, TranSystems, Horry County, and/or SCDOT that led to TranSystems' alleged release from its performance obligations under the "Engineer Certification for Project Plans and Specifications." (*See* TSC MSJ, Ex. F – Affidavit of Peter Strub, P.E. ¶ 7).

RESPONSE: TranSystems objects to this Request as phrased, because it is unreasonably argumentative and misstates Strub's affidavit testimony. Strub never testified that there was a release from obligations – he testified that TranSystems never prepared, signed or sealed any design plans for the Project. Despite Flatiron's actively misleading phrasing of the request, there can be no documents proving work was not done, because no documents were created.

47. Documents relied upon by Mr. Peter Strub to support the claim in his affidavit that "[n]either TranSystems Corporation nor I ever considered or intended Flatiron to be a third-party beneficiary of TranSystems' contract with Horry County." (*See* TSC MSJ, Ex. F – Affidavit of Peter Strub, P.E. ¶ 9).

RESPONSE: Strub relied on his own knowledge and involvement in the negotiation and execution of the TranSystems Contract in formulating his testimony; however, the TranSystems Contract itself demonstrates that it was executed two years prior to Flatiron's retention.

November 3, 2023

WILKES, ATKINSON & JOYNER, LLC



Michael B.T. Wilkes (S.C. Bar 6107)
mwilkes@wajlawfirm.com

J. Alexander Joyner (S.C. Bar 101771)
ajoyner@wajlawfirm.com

320 Broad St., Suite 220
Charleston, SC 29401
Phone: 843.737.6229
Fax: 864.591.1767

- And -

C. Daniel Atkinson (S.C. Bar 72721)
datkinson@wajlawfirm.com

127 Dunbar Street, Suite 200
Spartanburg, SC 29306
Phone: (864) 591-1113

Attorneys for TranSystems Corporation

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	C.A. No.: 2018-CP-26-02633
	)	
Flatiron Constructors, Inc.,	)	
	)	CERTIFICATE OF SERVICE
Plaintiff,	)	
	)	
vs.	)	
	)	
TranSystems Corporation,	)	
	)	
Defendant.	)	
_____	)	

I hereby certify that I have this date, served a true and correct copy of *TranSystems Corporation's Responses to Flatiron Constructors, Inc.'s Second Set of Requests for Production* via Email only to the following counsel of record:

Mason A. Goldsmith, Jr., Esq.
 Elmore Goldsmith Kelley & deHoll, P.A.
 P.O. Box 1887
 Greenville, SC 29602
agoldsmith@elmoregoldsmith.com

Carter B. Reid, Esq.
 Watt, Tieder, Hoffar & Fitzgerald, LLP
 1765 Greensboro Station Place, Suite 1000
 McLean, VA 22102
creid@watttieder.com

November 3, 2023

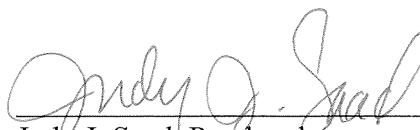

 Judy J. Saad, Paralegal

EXHIBIT F

From: GV-Marty Long </O=TRANSYSTEMS CORPORATION/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=MLLONG>
To: Kim Partenheimer (partenheimer@pbworld.com)
Sent: 1/8/2014 8:27:13 PM
Subject: FW: Partnering/Pre-construction Conference for the Carolina Bays Project (Hwy 31 Extension).
Attachments: Carolina Bays Project Agenda.pdf; imaged21179.JPG; PRECON INVITE LIST.pdf

From: GV-Marty Long
Sent: Wednesday, January 08, 2014 3:24 PM
To: Andy Markunas (markunaa@horrycounty.org); Bert Parsons (albert.parsons@santeecooper.com); Bill Mattison (mattisonbr@scdot.org); Billy Ray Cox (billyray.cox@horryelectric.com); Brent Barker (brent.barker@htcinc.net); Brian Nickerson (nickersonbg@cecsinc.com); Christopher Stout (stoutcm@dhec.sc.gov); Craig Rivers (craig.rivers@meadhunt.com); David Gilreath (gilreath@horrycounty.org); GV-David Hoff; David Johnson (johnsondav@scdot.org); Dennis Townsend (townsenddl@scdot.org); CR-Doug Kennedy; Elizabeth Williams (elizabeth.g.williams@usace.army.mil); Evelyn Smart (evelyn.smart@uscg.mil); Frank Chapman (fhchapman@earthlink.net); Fred Crosby (crosbyf@horrycounty.org); Jason Poston (jposton@gswsa.com); Jason Thompson (thompsonjd@scdot.org); Jay Hawkins (hawkinswj@scdot.org); Jeff Burkett (jeff.burkett@meadhunt.com); CR-Jim Fisher; Johnson Dean (deanjb@scdot.org); Kelvin Waites (waitesk@horrycounty.org); Ken Beans (beansk@horrycounty.org); Kevin DuBose (dubosekw@scdot.org); Kim Partenheimer (partenheimer@pbworld.com); Kyle Berry (berrywk@scdot.org); Leah Quattlebaum (quattleblb@scdot.org); Lisa Bourcier (bourcierl@horrycounty.org); GV-Marty Long; Michael Cook (michael.cook@meanhunt.com); Mike Barbee (barbeemw@scdot.org); GV-Peter Strub; GV-Regena Wells; Robby McDonald (mcdonaldr@pbworld.com); Rocque Kneece (kneecerl@cecsinc.com); Ron Goodson (rgoodson@flatironcorp.com); Russ Touchberry (touchberrr@scdot.org); Sandra Rhodes (rhoess@horrycounty.org); Scott Rutherford (rutherfordds@horrycounty.org); Sonny Collins (ewcollins@schp.org); Steve Dimoro (sdimoro@flatironcorp.com); Steve Gosnell (gosnells@horrycounty.org); Ted Kirk (tkirk@flatironcorp.com); Todd Steagall (steagallrt@scdot.org); HU-Tom Mukai; Tom Warren (twarren@flatironcorp.com); Travis Hughes (travis.g.hughes@usace.army.mil); Travis Patrick (patricktm@scdot.org); Vance Langston (vance.langston@twcable.com); Will Fulton (fultonjw@scdot.org)
Cc: fchapman@RDA-usa.net
Subject: Partnering/Pre-construction Conference for the Carolina Bays Project (Hwy 31 Extension).

Ladies and Gentlemen

On behalf of Horry County and the SCDOT, we would like to invite you to attend and participate in the Partnering/Pre-construction Conference for the Carolina Bays Project (Hwy 31 Extension).

The meeting will be at the following location, date and time:

Date: January 24, 2014

Time: 9:00 AM

Facilitator: Frank Chapman with RDA

Precon: Martin Long with TranSystems

Location: Horry County Government & Justice Center

Multi-Purpose Room B (Second Floor)

1301 Second Avenue, Conway, SC

The agenda for the meeting is attached. Please RSVP by January 17th to Martin Long (mllong@transystems.com) so we can provide enough materials and food for all attendees. Also please provide the names of any additional people from your organization who will be attending so that adequate seating and meal arrangements can be made. (See attached invite list)

If you have any questions, please do not hesitate to contact our office.

Thank you.

Martin Long

RCE

864.915.0741

Frank Chapman

Facilitator

803.261.2044

Martin L. Long

TranSystems
200 Prather Park Dr
Myrtle Beach, SC 29588
Main: 864-234-0866

Fax: 864-527-6873
Cell: 864-915-0741
www.transystems.com

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ELECTRONICALLY FILED - 2023 Dec 01 4:05 PM - HORRY - COMMON PLEAS - CASE#2022CP2606116

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SAMPLE IDENTIFICATION CARD**CONCRETE**

SAMPLE ID: **526-14- 2475** SC FILE: 26.036775A.1 DATE SAMPLED: 10/01/14
 PCN: **036775BR01** DATE TO LAB: 10/02/14
 SAMPLED BY: Galey, Brian (Tiny)
 SCDOT RCE: Long, Martin L. PROJECT DESCRIPTION: **BRIDGE 1 (Over Intracoastal Waterway)**
☒ Job Control ☐ For Information Only (Choose One)

SAMPLE INFORMATION

MATERIAL: ConcCyl. 4000
 DESCRIPTION: Concrete Cylinder, Class 4000
 MANUFACTURER: S&W Ready Mix Concrete Co.
 ADDRESS: 130 Winyah Rd. Conway, SC. 29526
 REPRESENTED QUANTITY: 9 OF 165 CY
 SAMPLED FROM: Truck Mixer
 JOB MIX NO.: 4000 DS
 BREAK SPECIMEN AT: 3 @ 28 days
 TO BE USED IN: Drilled Shaft with Wet & Dry
Excavation - 102" Diameter
 OTHER INFORMATION: **BENT 14-1 DS, SET-1**

BRAND: ☐ Early Break
 Cement: Giant Type: two
 Fine Aggregate: American Coarse Aggregate: Vulcan
 Air Entraining: oz./bag Admixture: oz./100 lbs.
 MIX USED 94: 7.4 : WATER: 36 SLUMP: 8.0 in.
 AIR: 0.0% WATER ADDED: 20 gal. IN 9 CY
 MIXED BY: Galey, Brian (Tiny) Temp: 84 °F
 Entered By: Widdifield, Ellen Date: 10/02/14
 S&ME Sample Results: _____
 Check Sample Results: _____ ID: _____

SAMPLE IDENTIFICATION CARD**CONCRETE**

SAMPLE ID: **526-14- 2476** SC FILE: 26.036775A.1 DATE SAMPLED: 10/01/14
 PCN: **036775BR01** DATE TO LAB: 10/02/14
 SAMPLED BY: Galey, Brian (Tiny)
 SCDOT RCE: Long, Martin L. PROJECT DESCRIPTION: **BRIDGE 1 (Over Intracoastal Waterway)**
☒ Job Control ☐ For Information Only (Choose One)

SAMPLE INFORMATION

MATERIAL: ConcCyl. 4000
 DESCRIPTION: Concrete Cylinder, Class 4000
 MANUFACTURER: S&W Ready Mix Concrete Co.
 ADDRESS: 130 Winyah Rd. Conway, SC. 29526
 REPRESENTED QUANTITY: 63 OF 165 CY
 SAMPLED FROM: Truck Mixer
 JOB MIX NO.: 4000 DS
 BREAK SPECIMEN AT: 3 @ 28 days
 TO BE USED IN: Drilled Shaft with Wet & Dry
Excavation - 102" Diameter
 OTHER INFORMATION: **BENT 14-1 DS, SET-2**

BRAND: ☐ Early Break
 Cement: Giant Type: two
 Fine Aggregate: American Coarse Aggregate: Vulcan
 Air Entraining: oz./bag Admixture: oz./100 lbs.
 MIX USED 94: 7.4 : WATER: 36 SLUMP: 8.0 in.
 AIR: 0.0% WATER ADDED: 20 gal. IN 9 CY
 MIXED BY: Galey, Brian (Tiny) Temp: 86 °F
 Entered By: Widdifield, Ellen Date: 10/02/14
 S&ME Sample Results: _____
 Check Sample Results: _____ ID: _____

SAMPLE IDENTIFICATION CARD**CONCRETE**

SAMPLE ID: **526-14- 2477** SC FILE: 26.036775A.1 DATE SAMPLED: 10/01/14
 PCN: **036775BR01** DATE TO LAB: 10/02/14
 SAMPLED BY: Galey, Brian (Tiny)
 SCDOT RCE: Long, Martin L. PROJECT DESCRIPTION: **BRIDGE 1 (Over Intracoastal Waterway)**
☒ Job Control ☐ For Information Only (Choose One)

SAMPLE INFORMATION

MATERIAL: ConcCyl. 4000
 DESCRIPTION: Concrete Cylinder, Class 4000
 MANUFACTURER: S&W Ready Mix Concrete Co.
 ADDRESS: 130 Winyah Rd. Conway, SC. 29526
 REPRESENTED QUANTITY: 135 OF 165 CY
 SAMPLED FROM: Truck Mixer
 JOB MIX NO.: 4000 DS
 BREAK SPECIMEN AT: 3 @ 28 days
 TO BE USED IN: Drilled Shaft with Wet & Dry
Excavation - 102" Diameter
 OTHER INFORMATION: **BENT 14-1 DS, SET-3**

BRAND: ☐ Early Break
 Cement: Giant Type: two
 Fine Aggregate: American Coarse Aggregate: Vulcan
 Air Entraining: oz./bag Admixture: oz./100 lbs.
 MIX USED 94: 7.4 : WATER: 36 SLUMP: 8.3 in.
 AIR: 0.0% WATER ADDED: 15 gal. IN 9 CY
 MIXED BY: Galey, Brian (Tiny) Temp: 82 °F
 Entered By: Widdifield, Ellen Date: 10/02/14
 S&ME Sample Results: _____
 Check Sample Results: _____ ID: _____

EXHIBIT H

MEMORANDUM

TO: M. L. Long, Resident Construction Engineer
T. M. Patrick, District Five Special Projects Engineer
Merrill Zwanka, Materials and Research Engineer

FROM: D. L. Johnson, District Construction Engineer



Johnson, David L
2016.02.09
09:37:36 -05'00'

DATE: February 9, 2016

RE: File 26.036775A – SC 31 Carolina Bays – Pipe Backfill Material Waiver

Based on upcoming revisions to the pipe specification, prime contractor Flatiron Constructors, Incorporated has requested to utilize additional soil classifications for pipe backfill on the subject project. Under the future revision to the SC-M-714 Pipe Specification, the SCDOT will allow A-2-4 and A-2-5 material as pipe backfill. The new specification will also not require wrapping of the pipe backfill unless determined necessary by RCE. The Director of Construction Office has expressed allowance of these alternate materials upon the request of the contractor and acceptance by the respective District Office. A material waiver for A-2-4, A-2-5, and unwrapped pipe backfill to meet the contract requirements of SC-M-714 is hereby GRANTED on the subject project.

If at any time during construction the RCE or the District feels that the waiver materials are not performing adequately in the field, we can revert back with the current pipe specification that requires A-1 or A-3 (wrapped) materials at no additional cost to the Department. The material waiver and/or change back to the original specification are at no additional cost to the Department. The RCE will create a change order to add these changes to the project contract.

If you have any questions or require additional information after reviewing the provided information, you may call me at 843-629-5222.

DLJ:dlj
ec: Nick Waites, Assistant Construction Engineer
Jason Thompson, District Bridge Engineer
File: D5/Florence/DLJ



EXHIBIT I

From: CR-Marty Long </O=TRANSYSTEMS CORPORATION/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=MLLONG>
To: campbelljp@scdot.org
Sent: 7/18/2016 3:45:19 PM
Subject: 26.036775A CBP - Question on Reporting
Attachments: imageeb84fa.PNG

Hello Juanita! I don't know if you're the person to answer this or not but your email was the only one I found. Does the Prime need to list DBE's on the Quarterly Report when they actually start work on the project or when they submit their subhauler request?

Thanks for your help!!

Marty Long
RCE Carolina Bays
864.915.0741

Martin L. Long



Delivering the Transportation Experience for 50 Years

TranSystems
200 Prather Park Dr
Myrtle Beach, SC 29588

Direct: 843-796-9381
Fax: 843-796-9378
Cell: 864-915-0741
www.transystems.com

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From: Heck, Justin LT <Justin.C.Heck@uscg.mil>
To: CR-Marty Long; Zercher, Jennifer N CIV; Lawrence, Eddie H CIV
CC: PatrickTM@scdot.org; CR-Doug Kennedy
Sent: 7/18/2017 8:59:08 PM
Subject: RE: 60 Day Notice for Work in AICWW (South Carolina)

Good Afternoon Mr. Long,

D7 Bridges is currently reviewing Mr. McGrath's Construction checklist and will be reaching out to him to ensure all necessary details are provided within the checklist. We should hear something by the end of the week.

Once an updated form is received we will be better equipped to make decisions on whether or not the channel will need to be temporarily closed and for the durations of those closures. Thanks for voicing your concerns.

Regards,

Justin Heck
Sector Charleston
Waterways Management Division
P: 843-740-3184
F: 843-740-3189

-----Original Message-----

From: mllong@transystems.com [mailto:mllong@transystems.com]
Sent: Monday, July 17, 2017 11:11 AM
To: Zercher, Jennifer N CIV; Heck, Justin LT
Cc: PatrickTM@scdot.org; djkenedy@transystems.com
Subject: [Non-DoD Source] RE: 60 Day Notice for Work in AICWW (South Carolina)

Mr. Heck

Hello. My name is Martin Long and I am the RCE for the SCDOT over the Carolina Bays Parkway project. I did not notice anything on the Contractor's attached application that noted all of the overhead work that will be done after the girders are set. The Contractor will be installing stay-in-place forms, overhangs, bracing, a drainage system and painting to name a few of the operations that will be performed over the active channel.

Will any of the above type work require any type of channel closure, traffic control and/or notifications?

Thanks for your help and guidance.

Marty Long

RCE

864.915.0741

From: McGrath, Ken [<mailto:KMcGrath@flatironcorp.com>]
 Sent: Wednesday, July 12, 2017 1:44 PM
 To: Zercher, Jennifer N CIV <Jennifer.N.Zercher@uscg.mil>; Heck, Justin LT <Justin.C.Heck@uscg.mil>
 Cc: Lawrence, Eddie H CIV <Eddie.H.Lawrence@uscg.mil>; Fischer, Forrest <ffischer@flatironcorp.com>; MacFawn, Ian <IMacFawn@flatironcorp.com>; Beiter, Jeremiah <JBeiter@flatironcorp.com>; St. Martin, Jessica <jstmartin@flatironcorp.com>; Martel, Ryan <RMartel@flatironcorp.com>; CR-Marty Long <mllong@transystems.com>
 Subject: RE: 60 Day Notice for Work in AICWW (South Carolina)

Mr. Heck,

Attached is our notice to place our barge and tugboat and temporarily block marine traffic to set steel girders for the new AICWW bridge. Schedules times are not set yet but between the dates listed we will be performing the work and will keep you up to date as the work draws closer to actual blockage times needed.

Thanks,

Ken McGrath

Project Engineer
 Flatiron Construction Corp.

860 Aviation Parkway, Suite 100

Morrisville, NC 27560

803 517 5256 CELL

kmcgrath@flatironcorp.com <<mailto:kmcgrath@flatironcorp.com>>

[www.flatironcorp.com](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.flatironcorp.com_&d=DwMGaQ&c=0NKfg44GVknAU-XkWXjNkQ&r=K7nPVFDaWfoogoF_bZN9BWLGCvU5hC_XB_8FxEOjvX0&m=8kyZZbFh-LoXMTA32vMEXSx0WEZd_by-P7_T5bM93Xs&s=HHK6jilucts7O7JVY6KVwXDtS39hZTFvAbvr0pFduWc&e=>) <https://urldefense.proofpoint.com/v2/url?u=http-3A__www.flatironcorp.com_&d=DwMGaQ&c=0NKfg44GVknAU-XkWXjNkQ&r=K7nPVFDaWfoogoF_bZN9BWLGCvU5hC_XB_8FxEOjvX0&m=8kyZZbFh-LoXMTA32vMEXSx0WEZd_by-P7_T5bM93Xs&s=HHK6jilucts7O7JVY6KVwXDtS39hZTFvAbvr0pFduWc&e=>>

LOGO - FLATIRON

Build the Best. Be the Best

From: Zercher, Jennifer N CIV [<mailto:Jennifer.N.Zercher@uscg.mil>]
 Sent: Wednesday, July 12, 2017 10:28 AM
 To: McGrath, Ken <KMcGrath@flatironcorp.com>
 Cc: Lawrence, Eddie H CIV <Eddie.H.Lawrence@uscg.mil>; Heck, Justin LT <Justin.C.Heck@uscg.mil>
 Subject: FW: 60 Day Notice for Work in AICWW (South Carolina)

Good morning Mr. McGrath,

Please fill out the attached Pre-Construction checklist for the project below. LT Justin Heck from Sector Charleston Waterways Division

will be your point of contact for waterways restrictions/closures.

LT Justin Heck
USCG Sector Charleston (Waterways)
(843) 740-3184
Justin.c.heck@uscg.mil

Once we receive the updated information, we will update the Local Notice to Mariners with changes that LT Heck approves.

If you have any questions, please give me or Mr. Eddie Lawrence, (305) 415-6946, a call.

R.
Jennifer Zercher
Bridge Management Specialist
U.S. Coast Guard District 7 Bridge Branch
909 SE 1st Ave Ste 432
Miami FL 33131-3050
PH: 305.415.6740

-----Original Message-----

From: McGrath, Ken [<mailto:KMcGrath@flatironcorp.com>]
Sent: Wednesday, July 12, 2017 9:16 AM
To: Dragon, Barry CIV
Cc: Fischer, Forrest; MacFawn, Ian; Beiter, Jeremiah; St. Martin, Jessica; Martel, Ryan
Subject: [Non-DoD Source] 60 Day Notice for Work in AICWW (South Carolina)

Mr. Dragon,

I am writing to give the USCG the required the 60 day required notice of construction activities that require restriction, either total or partial, to be placed upon navigational interests, commercial or recreational marine traffic in the American Intercostal Waterway (AICWW) in Socastee, SC. This will require partial and full closure of the waterway for the placement of steel girders across the AICWW for the Carolina Bays Parkway construction project for the South Carolina Department of Transportation (SCDOT). The duration of the work period to erect the steel girders over the AICWW will be approximately 12 weeks.

If you have any questions feel free to call me at my cell phone number below.

Thanks,

Ken McGrath

Project Engineer
Flatiron Construction Corp.

860 Aviation Parkway, Suite 100

Morrisville, NC 27560

803 517 5256 CELL

kmcgrath@flatironcorp.com

www.flatironcorp.com <https://urldefense.proofpoint.com/v2/url?u=http-3A__www.flatironcorp.com&d=DwMGaQ&c=0NKfg44GVknAU-XkWXjNkQ&r=K7nPVFDaWfoogoF_bZN9BWLGCvU5hC_XB_8FxEOjvX0&m=8kvZZbFh-LoXMTA32vMEXSx0WEZd_by-P7_T5bM93Xs&s=HGIHBOrcGrXrofD_3Jio6QzsqwYsP0jvSgFkJfjNkY&e=>>
<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.flatironcorp.com_&d=DwMFaQ&c=0NKfg44GVknAU-XkWXjNkQ&r=vxefCZz-bKVK1IE1nUpJTgRNRn1jWq-cxN6WmnrNplY&m=HJ5MC4ZeIPZiM4woa2YN9GQD2q7E7Wo8Fn-8teiJmXQ&s=JchsMJlqxlg7BPBB5m_5Oe0Zi0lp6cZu4xSYmV-78mY&e=>>

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Build the Best. Be the Best

~~~ FLATIRON CONFIDENTIALITY STATEMENT ~~~ The information in this email is confidential and may be legally privileged. It is intended solely for the addressee. Access to this email by anyone else is unauthorized. If you receive this email in error, please reply to notify me immediately. Thank you.



|                              |   |                              |
|------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA      | ) | IN THE COURT OF COMMON PLEAS |
|                              | ) |                              |
| COUNTY OF HORRY              | ) | C.A. NO. 2022-CP-26-06116    |
|                              | ) |                              |
| Flatiron Constructors, Inc., | ) |                              |
|                              | ) | PLAINTIFF'S OPPOSITION TO    |
| Plaintiff,                   | ) | DEFENDANT'S MOTION TO STRIKE |
|                              | ) | PLAINTIFF'S MOTION TO        |
| v.                           | ) | RECONSIDER                   |
|                              | ) |                              |
| TranSystems Corporation,     | ) |                              |
|                              | ) |                              |
| Defendant.                   | ) |                              |
|                              | ) |                              |

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### **OPPOSITION TO MOTION TO STRIKE**

Plaintiff, Flatiron Constructors, Inc. ("FCI"), by and through counsel, respectfully submits its Opposition to Defendant TranSystems Corporation's ("TSC") Motion to Strike ("Motion to Strike") FCI's Motion to Reconsider filed on December 1, 2023 ("Dec. 1 Motion"). FCI filed its Dec. 1 Motion in response to the Court's November 22, 2023 Form 4 Order. As set forth in Attorney Mason ("Andy") Goldsmith's December 7, 2023 email to Judge Curtiss's chambers, FCI filed the Dec. 1 Motion out of an abundance of caution in light of the ten-day filing deadline set forth in SCRCRCP Rule 59(e). Under the circumstances, the filing was appropriate and necessary to avoid any further complications in this already procedurally complex matter.

TSC's Motion to Strike also raises arguments in direct response to the substance of FCI's Dec. 1 Motion, which present the Court with an incomplete record of the facts and unfairly maligns affiants supporting FCI's Opposition to TSC's Motion for Summary Judgment and the Dec. 1 Motion. These misdirected TSC arguments only confirm that genuine issues of material fact exist which should be submitted to the jury. In addition, TSC misapprehends the law regarding the bases for SCRCRCP Rule 59(e) and Rule 60 motions. As a result, the Court should deny TSC's Motion to Strike and should consider FCI's Dec. 1 Motion as part of the record along with any

subsequent Motion for Reconsideration that FCI will file should the Court issue a more formal, final Order granting, in part, TSC's Motion for Summary Judgment.

### **I. THE DEC. 1 MOTION WAS PROCEDURALLY APPROPRIATE**

On November 22, 2023, the Court issued a Form 4 Order granting in part and denying in part, TSC's Motion for Summary Judgment. The Form 4 Order states that "This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp...." Adjacent to the phrase "IT IS ORDERED AND ADJUDGED," the Court checked "Statement of Judgment by the Court." It did not check the box indicating "(formal order to follow)." Contrary to TSC's contention, the Form 4 Order does not expressly state that "the Court will enter a formal order following the Form 4." Mot. to Strike, p. 1. Rather, the Form 4 Order merely states that TSC is to draft a proposed order and e-file it "for [the court's] review."

Under the circumstances, FCI was reasonable to submit the Dec. 1 Motion within ten days of the Form 4 Order. FCI simply could not risk that Rule 59(e)'s ten-day filing requirement would toll until the Court issued a more formal order. First, the Court is under no obligation to issue a detailed Order. SCRCP 52(a) ("Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b)."). Second, the Form 4 Order may imply that a formal order will issue, but it does not definitively assert that fact. Finally, the Form 4 Order places no time constraints on TSC's submittal of a proposed order or the Court's issuance of a final order. TSC did not e-file its Proposed Order until December 7, 2023, fifteen days after the Form 4 Order. In the interim, FCI was left to guess whether the Form 4 Order would be considered "written notice of the entry of the order" for the purposes of Rule 59(e)'s ten-day filing requirement for motions to reconsider.

TSC cites no authority requiring that FCI's Dec. 1 Motion be stricken from the procedural record in this matter. Instead, it launches substantive defenses aimed at FCI's Dec. 1 Motion. For example, on page 2, TSC argues that FCI cannot raise issues that it "could have raised prior to judgment but did not." TSC then presents an email that was not included in its Motion for Summary Judgment. It misconstrues that email to attack FCI's Mr. Lou Hutcherson and Ms. Linda Brumfield, both affiants supporting FCI's Opposition to Summary Judgment. Similarly, TSC cites a concurrence by then-Judge Few to argue that this Court should not reconsider its ruling on summary judgment due to incomplete discovery because FCI had not previously filed a Rule 56(f) affidavit. Mot. to Strike, p. 4.

None of TSC's substantive arguments are valid. Moreover, their assertions do not support a motion to strike. On the contrary, TSC's arguments confirm that genuine issues of material fact exist and that the Court should withdraw its Form 4 Order and reconsider it upon completion of needed discovery in this matter. In the interim, FCI's Dec. 1 Motion and the substantive issues in TSC's Motion to Strike and this Opposition should remain part of the procedural record for reconsideration and any subsequent appeal.

## **II. FCI DOES NOT RAISE NEW ISSUES**

On page 2 of its Motion to Strike, TSC argues that FCI's Dec. 1 Motion is improper because FCI references emails contained in its own files that were not specifically included in FCI's Opposition to TSC's Motion for Summary Judgment. TSC cites *Anderson Memorial Hospital, Inv. v. Hagen*, 313 S.C. 497, 499, 443 S.E.2d 399, 400 (Ct. App. 1994) for the proposition that, "a party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not." This argument, however, is misleading in light of the state of discovery and the complexities of this case.

In *Anderson Memorial Hospital*, the plaintiff brought an action based solely on the doctrine of necessities. *Id.* at 498, S.E.2d at 400. After losing on this legal theory, the plaintiff filed a motion for reconsideration raising, for the first time, the existence of a contract and asserting a breach of contract cause of action. *Id.* The court determined that the breach of contract cause of action, a new “issue,” could have been raised before but was not. Thus, the court determined that the new argument could not be asserted for the first time in a motion for reconsideration. *Id.*

Here, FCI has not raised a new issue in its Dec. 1 Motion. Rather, FCI seeks reconsideration of the Court’s Form 4 Order based upon the same issues raised in its Opposition to TSC’s Motion for Summary Judgment, namely: the existence of a special relationship between TSC and FCI, third-party beneficiary status, and the need for further discovery. FCI admittedly identifies additional, relevant documents supporting its arguments on these issues, but these documents were not reasonably available prior to the August 7, 2023 hearing on TSC’s Motion for Summary Judgment (“Hearing”). Similarly, these documents demonstrate that additional discovery in this matter is necessary.

As FCI argued in its Opposition to Summary Judgment and in the Dec. 1 Motion, at the time of the Hearing, TSC still withheld approximately 25,000 documents and refused to admit that TSC’s Mr. Long held himself out as RCE on the Project. The truth is that as of the Hearing, document production, review, organization and evaluation was on-going such that not all relevant documents were available for presentation to the Court. Moreover, as of the Hearing, TSC was attacking as “implausible” and “incredible,” Mr. Hutcherson’s testimony that “Martin Long of TSC held himself out as [SCDOT’s] Resident Construction Engineer.” TSC Reply, p. 6. Yet, months after the Hearing, TSC produced over 13,000 additional documents and admitted that

“Marty Long used the title Resident Construction Engineer...” *See* Dec. 1 Mot., p. 12 and Ex. D attached thereto. TSC avoids any discussion of these facts in its Motion to Strike.

### **III. THE DOCUMENTS WERE NOT REASONABLY AVAILABLE**

The fact that some of the documents referenced in the Dec. 1 Motion appear in FCI’s productions is irrelevant. Furthermore, TSC’s suggestion that this fact proves the documents were available for inclusion in FCI’s Opposition to Summary Judgment is misleading. As TSC repeatedly has acknowledged, this is a complex case involving millions of documents spanning a five-year-long, public construction project including multiple parties. The Parties’ October 18, 2023, Joint Motion to Establish Complex Case Designation and Time for Trial (“Joint Motion”) confirms that two months after the Hearing, the Parties still had relevant document productions and depositions to complete and that a scheduling order was needed to complete discovery. *See* Dec. 1 Mot., Ex. C. Furthermore, TSC’s Amended Motion for Extension to Respond to FCI’s Interrogatories filed on October 4, 2023, notes that, well after the Hearing, good cause exists for additional time to conduct discovery because the large volume of documents requires “considerable time and effort” to evaluate.

As noted in FCI’s Dec. 1 Motion at p. 13, “tracking precisely when particular documents were produced, what remains to be produced, identifying duplicates, and finding particular documents related to the five-year long Project is challenging.” Since the Hearing, FCI has determined through computer-assisted searches that, from the documents produced thus far, at least, 12,738 documents exist relevant to Mr. Long’s assumption of authority as RCE at the Project. *See* Ex. A, Affidavit of Carter Reid (hereinafter “Reid Aff.”), ¶ 28. FCI could not reasonably have been expected to find, analyze and present all of these documents prior to the hearing. As set forth herein, even the new document identified in TSC’s Motion to Strike is incomplete and taken out

of context. Presumably, this is due to the numerous, multi-tiered document productions and not due to an effort to conceal the complete email exchange<sup>1</sup>. Under the circumstances, FCI respectfully submits that the Court should be focused on the content and relevance of all these documents, not the timing of presentation. Under the circumstances, consideration of these documents is well within the Court's discretion on a motion to reconsider, especially where, as here, the documents reveal the likelihood that additional discovery will yield relevant facts. *See Reid Aff., Ex. A, ¶¶ 30-38.*

#### **IV. MR. HUTCHERSON'S BELIEF REGARDING TSC'S MR. LONG AS RCE**

In an unwarranted effort to besmirch Mr. Hutcherson's credibility, TSC's Motion to Strike misapprehends his Affidavit included in FCI's Opposition to Summary Judgment (*see* Opp. to SJ, Ex. A (hereinafter "Hutcherson Aff.")). Mot. To Strike, pp. 2-3. In support of this attack, TSC presents the Court with an incomplete email exchange, which TSC incorrectly assumes to be in conflict with Mr. Hutcherson's Affidavit. This inaccurate, disjointed presentation only highlights the existence of genuine issues of material fact for the jury and the need for further discovery to fully develop these facts.

##### **A. Mr. Hutcherson Identifies Mr. Long as the RCE**

In its Motion to Strike at p. 2, TSC states, "as noted repeatedly in TSC's submissions, Hutcherson does not testify that he believed that TSC's Marty Long was SCDOT's RCE...." As an initial matter, whether Mr. Hutcherson believed that Marty Long was the RCE is not dispositive

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<sup>1</sup> In footnote 3 to its Motion to Strike, TSC suggests that Mr. Hutcherson and Ms. Brunfield offered affidavits in "bad faith or solely for the purposes of delay." As explained herein, TSC neither fully cites Mr. Hutcherson's Affidavit nor fully presents the email exchange it claims undermines that Affidavit. FCI chooses not to cavalierly accuse TSC of bad faith. Rather, this oversight on TSC's part is likely due to the difficulty in locating and coordinating all of the electronic information produced in this action.



of whether a “special relationship” exists between TSC and FCI giving rise to a duty owed to FCI. *See Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones, & Goulding, Inc.*, 320 S.C. 49, 463 S.E.2d 85 (1995). Rather, the existence of a special relationship turns on the authority assumed by the engineer and the control the engineer has over the contractor. *Id.* Mr. Hutcherson certainly testified that TSC and Mr. Long wielded such authority and control. For example, Mr. Hutcherson testified that Mr. Long inspected FCI’s work (Hutcherson Aff., ¶6(ii)), rejected FCI’s work (Hutcherson Aff., ¶6 (iii), ¶10), interpreted the contract requirements (Hutcherson Aff., ¶6(iii)), and exercised authority and control over every aspect of FCI’s performance on the Project (Hutcherson Aff., ¶20).

Mr. Hutcherson also testified that he, in fact, thought that Mr. Long was the RCE. TSC’s contentions otherwise reveal a shallow reading of Mr. Hutcherson’s Affidavit. For example, in Paragraph 9, Mr. Hutcherson states, “**As RCE, TSC** held itself out as having authority...” (emphasis added). Similarly, in Paragraph 10, Mr. Hutcherson states that TSC was allowed to exercise the rights that TSC claims only reside in the RCE (“TSC possessed the right and/or was permitted to oversee, inspect and reject FCI’s work on the Project.”). Furthermore, TSC “made unilateral decisions in the field (without first consulting the owner or SCDOT)....” In addition, when disputes arose in the field, Mr. Hutcherson testified that “FCI was forced to negotiate with **TSC’s Mr. Long, the RCE.**” Hutcherson Aff. ¶17 (emphasis added). Finally, in Paragraph 19, Mr. Hutcherson testifies that “**as RCE, TSC** regularly influenced the owner’s/SCDOT’s view of issues....” (emphasis added). In the only affidavit presented to the Court on the issue, Mr. Hutcherson clearly testified that Mr. Long was the RCE, held himself out as such, and exercised all of the powers of the RCE to control FCI’s performance.

B. Mr. Hutcherson's Affidavit is Not Inconsistent with TSC's New Email

In its quest to discredit Mr. Hutcherson, TSC presents an incomplete, fractured portion of an email exchange on February 25, 2016. Mot. to Strike, Ex.2. Notably, TSC failed to include this email in its Motion for Summary Judgment or Reply. Its inclusion now further emphasizes the difficult, time-consuming navigation of the millions of documents produced in this matter.

Notably, the February 25, 2016 email is dated nearly three years into the Project after FCI had already suffered significant difficulties and delays at the hands of TSC. Two and half years earlier, on October 29, 2013, Mr. Long contacted FCI at the beginning of the Project and introduced himself as RCE. Ex. B – Email, dated October 29, 2013, p. 2 (Bates Stamped TSC00395298). FCI's Mr. Paul Rudloff memorialized that conversation in an email, saying “Martin, thanks for calling and introducing yourself as the Resident Engineer for our Carolina Bays III project...” *Id.* Thus, from the inception of the Project, Mr. Long identified himself as and acted as the RCE. Indeed, a few months later, in February of 2014, SCDOT gave Mr. Long “contract authority” on the Project. Ex. C – Email, dated February 03, 2014, p. 1 (Bates Stamped FIC000148797) (“Marty, once Brian got your RCE access set up, I went in and gave you and Tom contract authority....”). In short, Mr. Long told FCI he was the RCE, acted like the RCE, and was given authority over the contract like the RCE.

Missing portions of the February 25, 2016, email exchange reveal that as of that date, FCI understood that Mr. Long was the RCE with authority to make decisions on the Project. TSC's Ex. 2 email chain starts at 10:30 a.m. Before that, at 10:08 a.m., Ms. Nix of FCI sought approval of material from Mr. Long, the person she believed to be the RCE. Ex. D – Email Chain (Part 1), p. 2 (Bates Stamped FIC000471613). At 10:35 a.m., Mr. Long tells her that “anywhere it says RCE you can replace it with the word District which would be Jason or Travis.” *Id.* Thus, rather

than deny that he is the RCE, Mr. Long told Ms. Nix that she also needed to copy SCDOT personnel for approvals. Ms. Nix then responded “I did not know that.” Ex. D – Email Chain, dated February 25, 2016 (Part 2), p. 1 (Bates Stamped FIC 000193235). In other words, more than two years into the Project, FCI is now being told that submittals must be sent to SCDOT in addition to sending them to Mr. Long as the RCE. In its condemnation of Mr. Hutcherson, TSC leaves out Ms. Nix’s response revealing an absolute belief that Mr. Long was the RCE on the Project when she sent her February 25, 2016 email. Again, this exchange occurred more than two years into Project performance.

Even Mr. Hutcherson’s 11:04 p.m. email to Mr. Kirk does not demonstrate Mr. Hutcherson’s “knowledge that Long was not RCE” as TSC contends. *See* Mot. to Strike, p. 3. On the contrary, in that email, Mr. Hutcherson writes that Marty Long is “the designated RCE”. *See Id.* Mr. Hutcherson never says that Mr. Long is NOT the RCE. Rather, he expresses his exasperation that even though Mr. Long is the RCE and can and should be making decisions “per the Specifications,” Mr. Long sometimes unnecessarily creates a six-step process to get things done. *Id.* Thus, in a later email (not mentioned in TSC’s Motion to Strike), Mr. Kirk forwards Mr. Hutcherson’s email to others at FCI, telling them to send submittals to both Mr. Long and SCDOT and prepare to “tell them that the process has been broken since the beginning delaying the work....” Ex. F – Email Chain, dated February 25, 2016 (Part 3), p. 1 (Bates Stamped FIC000467318).

When viewed in its entirety, the February 25, 2016 email chain does not undermine Mr. Hutcherson’s Affidavit. It confirms it. Mr. Long of TSC began the Project introducing himself as the RCE. *See* Ex. B. SCDOT gave Mr. Long “contract authority” on the Project. *See* Ex. C. Per Mr. Hutcherson’s Affidavit, Mr. Long wielded that authority as the RCE. Hutcherson

Aff. ¶¶ 8-20. Years later, FCI demonstrated its firm belief that Mr. Long was the RCE with approval authority. *See* Ex. C-F, Email Chain (Parts 1-3). On February 25, 2016, Mr. Long chose to cede authority to SCDOT on a particular submittal. *Id.* Far from revealing knowledge that Mr. Long was not the RCE, Mr. Hutcherson's reaction reveals a concern that the individual who had been acting as and had authority as the RCE was making the process unduly cumbersome. *Id.* This convoluted history of TSC's control over FCI on the Project emphasizes the existence of a genuine issue of material fact concerning the nature of TSC's relationship with FCI, which should be presented to the jury to decide.

#### **V. FCI NEED NOT HAVE SUBMITTED A RULE 56(f) AFFIDAVIT**

On page 4, TSC cites Judge Few's concurring opinion to the decision in *Matter of Estate of Smith*, 419 S.C. 111, 120-21, 796 S.E. 2d 158, 163 (Ct. App. 2016) for the proposition that FCI's failure to file a Rule 56(f) affidavit bars FCI from seeking reconsideration of the Court's failure to delay a decision on summary judgment pending completion of discovery. Respectfully, the analysis set forth in Judge Few's concurrence has no precedential weight. Notably, Judge Lockemy provides a dissenting opinion completely disagreeing with Judge Few. Neither the concurrence nor the dissent established the law in South Carolina.

As set forth in FCI's Dec. 1 Motion, summary judgment is a "drastic remedy" and "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 113, 410 S.E. 2d 537, 543 (1991). Dec. 1 Mot., p. 11. Thus, the Court in *Baughman* determined that filing a Rule 56(f) affidavit was not necessary if the need for further discovery was made known to the court. *Id.* at n.4. There, the Court held, "although Plaintiffs did not file an affidavit invoking this provision, other courts have not mandated strict compliance with the technical requirements of Rule 56(f) where, as here, the

need for further discovery is otherwise made known to the trial court.” *Id.* at 112 n. 4, 410 S.E.2d at 544 n. 4. In both its Opposition to Summary Judgment and its arguments at the Hearing, FCI made known to this Court the need for further discovery. Indeed, TSC has since acknowledged this need in the Joint Motion and TSC’s Motion for additional time to respond to discovery. The rigors and complexities of discovery in this matter require additional time in which to present pertinent facts weighing upon the central issue of TSC’s relationship with FCI. *See Reid Aff.*, Ex. A. For confirmation of this fact, the Court need only review the incomplete, discordant presentation of the February 25, 2016 email in TSC’s Motion to Strike.

FCI deserves the right to complete discovery in this matter to ensure that the Court and then the jury have a complete understanding of the relevant facts. This is necessary to combat inaccurate, incomplete presentations taken out of context. Through additional discovery since the Hearing, FCI has been able to demonstrate the inaccuracy of TSC’s claim that Mr. Long never held himself out as RCE. *See Dec. 1 Mot.*, p. 12 (TSC Int. Resp. 18 admits Mr. Long “used the title Resident Construction Engineer” contrary to its presentation in its Motion for Summary Judgment). FCI also has located evidence that Mr. Long introduced himself to FCI as the Resident Construction Engineer at the beginning of the Project and that SCDOT gave Mr. Long “contract authority” on the Project. *See Ex. C.* A deposition of Messrs. Long and Hutcherson undoubtedly would reveal additional facts bearing upon the critical issue of the parties’ “special relationship.” *See Reid Aff.*, Ex. A, ¶¶ 30-38.

## **VI. CONCLUSION**

For the reasons set forth herein, FCI respectfully requests that the Court deny TSC’s Motion to Strike, that the Court include FCI’s Dec. 1 Motion and this Opposition in the record for

reconsideration, and that the Court allow FCI to file a supplemental Motion for Reconsideration should the Court enter a more formal Order in this matter.

Respectfully submitted this 12th day of December, 2023

/s/Mason A. Goldsmith, Jr.

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# **EXHIBIT A**

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Flatiron Constructors, Inc.,

Plaintiff,

v.

TranSystems Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS

Case No. 2022-CP-26-06116

**SCRCP 56(f) AFFIDAVIT OF CARTER  
REID IN SUPPORT OF PLAINTIFF'S  
MOTION TO RECONSIDER AND  
PLAINTIFF'S OPPOSITION TO  
DEFENDANT'S MOTION TO STRIKE**

1. Personally appeared before me, Carter Reid, who, after being first duly sworn and deposed, said the following:
2. I am over eighteen, fully competent, and have personal knowledge to testify to the matters stated in this Affidavit.
3. I am an attorney at law, admitted *pro hac vice* to practice before the courts of South Carolina on this matter, and I am a partner at Watt, Tieder, Hoffar, & Fitzgerald, L.L.P., counsel for Plaintiff Flatiron Constructors, Inc. ("FCI").
4. I submit this affidavit in support of Plaintiff's Motion to Reconsider and Plaintiff's Opposition to Defendant's Motion to Strike Plaintiff's Motion to Reconsider.

**The Protracted Procedural History of this Dispute Justifies Additional Time for Discovery**

5. This litigation is part of a procedurally complex dispute resolution process in which the Parties have yet to complete discovery. The analysis relevant to TranSystems Corporation's ("TSC") Motion for Summary Judgment ("MSJ") depends upon the facts and circumstances surrounding the Project and TSC's relationship with FCI. Even though the Parties have exchanged almost two million documents, they have not had a full opportunity to review and present all relevant documentary evidence to this Court, gather sworn testimony from the central figure in

TSC's MSJ (Mr. Marty Long), or otherwise complete depositions of individuals with relevant knowledge of the factual circumstances of the dispute. In particular, the Parties have yet to complete discovery relevant to determining whether TSC had a "special relationship" with FCI as defined in the case of *Tommy L. Griffin Plumbing & Heating Co., v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 463 S.E.2d 85 (1995).

6. FCI initially filed this action against TSC on April 26, 2018, including counts for professional negligence, breach of contract, tortious interference with contract, and violation of South Carolina's Unfair Trade Practices Act ("SCUTPA").

7. The Parties jointly moved to stay the initial action which the court granted on December 4, 2018. The stay lasted until September 30, 2020.

8. Upon expiration of the stay, FCI moved to compel TSC to respond to discovery, including FCI's First Request for Production of Documents which had been propounded to TSC on October 19, 2020.

9. On April 9, 2021, the Court granted FCI's Motion to Compel TSC to produce requested documents. TSC then began a partial production of documents to FCI on June 30, 2021. The Parties continued to produce documents to one another periodically but still have not completed document production.

10. Due to the complexity of this action, FCI and TSC jointly moved for a complex case designation on October 4, 2021. When the court denied the joint motion, the Parties filed a consent order pursuant to Rule 40(j), removing the case from the docket. The order was signed on October 8, 2021, and filed by the court on October 11, 2021.

11. FCI and TSC continued to discuss needed discovery while the case was removed from the docket.

### **TSC's 25,000 Documents Are Still Being Produced**

12. On February 17, 2022, TSC notified FCI that TSC had discovered a group of approximately 25,000 documents that had not yet been produced to FCI. Aff. Ex. A – February 17, 2022 email. At that time, TSC informed FCI that it was “reviewing this new group of documents and [would] supplement [its] responses accordingly, probably within the next month . . . .” *Id.*

13. On September 27, 2022, FCI reinstated the instant case, and the Court assigned a new case number. At the time of the reinstatement, TSC still had not produced the 25,000 documents referenced in its February 17, 2022, email.

### **FCI Did Not Have Time to Review the Substantial Production Before the Hearing**

14. TSC's Motion for Summary Judgment (“MSJ”) was filed on April 4, 2023. The briefing was not completed until August 2, 2023, when TSC filed its Reply to FCI's Opposition. The Court set the hearing on TSC's MSJ (the “Hearing”) for August 7, 2023.

15. Marty Long's status as Resident Construction Engineer (“RCE”) on the Project was not challenged by TSC until TSC's MSJ on April 4, 2023. This gave FCI just three months to review the millions of pages of documents produced by that time for relevance to Mr. Long's status as RCE. Notably, in its Reply in support of its MSJ at page 12, TSC acknowledges that “[t]he RCE's role, for the purposes of project supervision, was very similar to that of the engineer in *Tommy L. Griffin*.” Prior to the Hearing, FCI did not have sufficient time to locate, review and analyze all of the documents produced by the Parties related to Mr. Long's role as RCE. Moreover, as of the Hearing, document productions were incomplete such that depositions of key individuals, including Mr. Long, were impractical.

**Discovery was Incomplete and Ongoing at the Time of the Hearing**

16. The stay, removal of the case from the docket, and other procedural aspects of this litigation severely limited the time available to conduct meaningful discovery and to review all the documents produced in this matter by the time of the Hearing. The litigation involves many detailed activities, multiple individuals, and millions of documents spread out over the five or six year lifespan of Project construction. Moreover, even to fully understand a given email chain requires reference to multiple individual emails in that a particular document may not include all relevant emails in the chain.

17. Compounding FCI's document review difficulties was the fact that, as of the Hearing on August 7, 2023, TSC still had not produced the 25,000 documents referenced in its February 17, 2022 email.

18. As noted in FCI's Opposition and as argued by FCI at the Hearing, as of the Hearing date, "document productions are incomplete, and no depositions have been taken by either side." *See* Brief in Support of Defendant's Motion for Summary Judgment ("FCI's Opp."), p. 7.

19. Also at the Hearing, FCI referenced TSC's February 17, 2022, email acknowledging that TSC still had not produced approximately 25,000 documents responsive to FCI's First Request for Production of Documents. Thus, at the Hearing, FCI asked the court to refrain from rendering any judgment until discovery was completed.

20. On August 31, 2023, following the Hearing, FCI served its Second Request for Production of Documents and its First Set of Interrogatories on TSC. As of that date, the 25,000 documents referenced in TSC's February 17, 2022 email still had not been produced.

21. On October 4, 2023, TSC filed motions to extend the time to respond to requests for production and interrogatories. *See* Aff. Ex. B – TSC’s Amended Motion to Extend Response to FCI’s Interrogatories and Requests for Production (“TSC’s Motion for Extension”).

22. TSC’s Motion for Extension acknowledges the scale of production to date – “[t]he parties have produced over 2,000,000 pages of documents.” Further, it emphasizes that production of documents and response to FCI’s interrogatories “will require considerable time and effort.” *Id.*

23. On October 6, 2023, approximately two months after the Hearing, TSC produced approximately 13,000 of the 25,000 documents referenced by TSC in the February 17, 2022 email. (hereinafter “Post-Hearing Production”).

**FCI Exercised Due Diligence in its Review of the Millions of Pages of Documents Produced, and Additional Time is Needed to Complete that Review**

24. Reviewing the millions of pages of documents produced in this matter to find particular documents related to any specific issue is challenging and time-consuming. Moreover, without knowing the content of TSC’s promised production of an additional 25,000 documents, FCI could not reasonably prepare for or schedule depositions prior to the Hearing.

25. TSC’s Post-Hearing Production on October 6 contained evidence of Marty Long’s RCE status. *See* Motion to Reconsider, Ex. F-J (attached herein as Aff. Ex. C-G, respectively). Even though some of these documents may have existed in FCI’s files as well, this does not change the fact that the enormity of the overall production over multiple, separate productions, and the challenge of TSC’s RCE status for the first time in April of 2023 prohibited FCI from finding all relevant documents before the Hearing. Even with sophisticated discovery review software, three months was insufficient to properly uncover all evidence relevant to defend against TSC’s MSJ. Similarly, without knowing the content of TSC’s promised production of an additional 25,000 documents, FCI could not reasonably have deposed Mr. Long before the Hearing.



26. On October 18, 2023, the Parties filed a Joint Motion to Establish Complex Case Designation and Time for Trial. *See* Aff. Ex. H (hereinafter “Joint Motion”). By that time, the Parties had exchanged over one million documents containing at least twice as many pages and large native files. *See* Aff. Ex. H - Joint Motion, ¶ 3(a); *See also* Aff. Ex. B – TSC’s Motion to Extend.

27. In the Joint Motion, the Parties notified the Court that due to the complexity of the case and the five-year lifespan of the Project, they anticipated calling approximately a dozen witnesses and that “[t]he number of depositions to be taken will match or eclipse the estimated number of witnesses.” Aff. Ex. H, Joint Motion, ¶ 3(h). The Parties also joined in informing the Court that they had diligently proceeded with discovery up to that point. Aff. Ex. H.

28. Using discovery review software, FCI has now identified at least 12,738 documents relevant to Mr. Long’s assumption of authority as the RCE at the Project.

29. FCI continues to uncover documents relevant to TSC’s assumption of authority as the Project RCE and the “special relationship” between TSC and FCI as evidenced by the exhibits contained in its Motion to Reconsider and its Opposition to TSC’s Motion to Strike. *See* Motion to Reconsider, Ex. F-J (attached herein as Aff. Ex. C-G, respectively).

**Additional Discovery will Likely Uncover Additional Relevant Evidence**

30. As TSC’s Post-Hearing Production on October 6, 2023, demonstrates, relevant documentary evidence concerning the nature of TSC’s relationship with FCI continues to be discovered. *Id.*

31. Further, the Parties and their experts reasonably need additional time to properly review the millions of pages of documents produced thus far and to provide the court with all the relevant facts and circumstances concerning the nature of TSC’s relationship with FCI. Most important in

this regard would be the depositions of TSC personnel such as Mr. Long and Mr. Strub of TSC, regarding TSC's duties and assumption of authority on the Project.

32. TSC's recent responses to requests for production and answers to interrogatories provided after the Hearing also demonstrate the likely fruitfulness of additional discovery.

33. TSC's Response to Interrogatory No. 18, for example, states that "Marty Long used the title Resident Construction Engineer...." Aff. Ex. I – TranSystems' Answers to Flatiron Constructor's First Set of Interrogatories (hereinafter "Interrogatory Responses"). This admission is in direct contradiction of TSC's position in its MSJ Reply that FCI's assertion that Mr. Long held himself out as RCE was "implausible" and "incredible." What is using the title "RCE" if not holding oneself out as the RCE? A deposition of Mr. Long is likely to reveal why he used the title, how he got permission to use the title, what authority came along with using the title and a host of other pieces of information bearing upon the special relationship between TSC and FCI.

34. Exhibit 2 to TSC's Motion to Strike further demonstrates both the difficulties in piecing relevant information together in this matter and Mr. Long's assumption of authority on the Project. For instance, TSC's Exhibit 2 is incomplete. Review of other documents shows that more than two years into the construction, FCI's Ms. Nix did not know that certain submittals needed to also be sent to the SCDOT. She thought Mr. Long was the RCE. (Aff. Ex. J – Email Chain, dated February 25, 2016 (Part 1), p. 2 (Bates Stamped FIC000471613). When Mr. Long told her she should also submit the documents to SCDOT, Ms. Nix told him that she "did not know that." Aff. Ex. K – Email Chain, dated February 25, 2016 (Part 2), p. 1 (Bates Stamped FIC000193235). Mr. Kirk of FCI then emailed others at FCI that the process was broken based upon Mr. Hutcherson's position that Mr. Long had assumed RCE authority and yet was not taking action and was making the

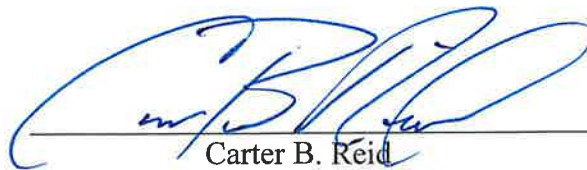
process more difficult. Aff. Ex. L – Email Chain, dated February 25, 2016 (Part 3), p. 1 (Bates Stamped FIC000467318).

35. Further documentary analysis and a deposition of Mr. Long undoubtedly will reveal that he assumed authority as RCE on the Project. Indeed, as set forth in an email early in the Project, Mr. Long called FCI and introduced himself as the Resident Construction Engineer. Aff. Ex. M – Email, dated October 29, 2013, p. 2 (Bates Stamped TSC00395298). SCDOT even emailed Mr. Long in 2014 that it had given him “contract authority” on the Project. Aff. Ex. N – Email, dated February 03, 2014, p. 1 (Bates Stamped FIC000148797) (“Marty, once Brian got your RCE access set up, I went in and gave you and Tom contract authority....”). All of these communications provide firm indications that a deposition of Mr. Long will likely give rise to meaningful, relevant evidence concerning TSC’s RCE status and its relationship with FCI.

36. Depositions have yet to be conducted. Marty Long, the primary subject of TSC’s Motion for Summary Judgment, has provided no sworn testimony about his role on the Carolina Bays Project. In fact, he did not even provide an affidavit in support of TSC’s MSJ or Reply. FCI should be provided an opportunity to depose this central figure on the Project before the Court rules on summary judgment.

37. Completion of document productions followed by depositions of Marty Long, Peter Strub, Doug Kennedy, and other TSC personnel, as well as depositions of FCI Project Managers, are essential to understanding the facts and circumstances surrounding TSC’s role on the Project and its relationship with FCI. This discovery simply could not have been completed prior to the Hearing.

FURTHER AFFIANT SAYETH NOT.

  
Carter B. Reid

Subscribed and sworn to before me,  
This 12 day of December, 2023.

  
Notary Public for the State of Virginia  
My Commission Expires: 10/31/2026



20130141.1 104117.00002

127 Dunbar St. | Ste 200 | Spartanburg, SC 29306  
200 Meeting St. | Ste 205 | Charleston, SC 29401

[mwilkes@wajlawfirm.com](mailto:mwilkes@wajlawfirm.com)  
[www.wajlawfirm.com](http://www.wajlawfirm.com)

---

**From:** Carter Reid <[creid@watttieder.com](mailto:creid@watttieder.com)>  
**Sent:** Thursday, February 17, 2022 12:55 PM  
**To:** Michael Wilkes <[mwilkes@wilkeslaw.com](mailto:mwilkes@wilkeslaw.com)>  
**Cc:** Dan Atkinson <[datkinson@wilkeslaw.com](mailto:datkinson@wilkeslaw.com)>; Alex Joyner <[ajoyner@wilkeslaw.com](mailto:ajoyner@wilkeslaw.com)>; Ellen Cheek <[echeek@wilkeslaw.com](mailto:echeek@wilkeslaw.com)>; Ashley Henderson <[ahenderson@wilkeslaw.com](mailto:ahenderson@wilkeslaw.com)>; Leslie Osman <[losman@watttieder.com](mailto:losman@watttieder.com)>; Dominick Weinkam <[dweinkam@watttieder.com](mailto:dweinkam@watttieder.com)>; Hanna Blake <[hblake@watttieder.com](mailto:hblake@watttieder.com)>  
**Subject:** RE: Flatiron v. TranSystems: RPD Issues

Mike,

I am in mediation. I will need to look into the issues you have raised. I will call you early next week to discuss them. Please let me know your availability. Thanks.

Carter

Carter B. Reid | Senior Partner



**WATT TIEDER**  
WATT, TIEDER, HOFFAR & FITZGERALD, L.L.P.

1765 Greensboro Station Place, Suite 1000 | McLean, VA 22102

**p:** 703.749.1028 | **e:** [creid@watttieder.com](mailto:creid@watttieder.com)

---

**From:** Michael Wilkes <[mwilkes@wilkeslaw.com](mailto:mwilkes@wilkeslaw.com)>  
**Sent:** Thursday, February 17, 2022 11:47 AM  
**To:** Carter Reid <[creid@watttieder.com](mailto:creid@watttieder.com)>  
**Cc:** Dan Atkinson <[datkinson@wilkeslaw.com](mailto:datkinson@wilkeslaw.com)>; Alex Joyner <[ajoyner@wilkeslaw.com](mailto:ajoyner@wilkeslaw.com)>; Ellen Cheek <[echeek@wilkeslaw.com](mailto:echeek@wilkeslaw.com)>; Ashley Henderson <[ahenderson@wilkeslaw.com](mailto:ahenderson@wilkeslaw.com)>; Leslie Osman <[losman@watttieder.com](mailto:losman@watttieder.com)>; Dominick Weinkam <[dweinkam@watttieder.com](mailto:dweinkam@watttieder.com)>  
**Subject:** Flatiron v. TranSystems: RPD Issues

**\*\*CAUTION! EXTERNAL EMAIL; when opening attachments and links be extremely careful\*\***

Carter,

I am writing regarding various RPD issues:

[1] **TCR Production:** We have just discovered that there exists another group of about 25,000 documents that CDS uploaded into Relativity from TSC but did not provide to us to review. This is a CDS error—long story of our digital times.... Of course, we are confirming we have “everything.” We are reviewing this new group of documents and will supplement our responses accordingly, probably within the next month [we are preparing for several trials during the next four months which have been delayed by Covid...].

[2] **FCI Production:** Attached are our 5.28.21 RPD to FCI, and FCI’s 8.16.21 Response. I understand that FCI has produced 1,098,992 pages of documents so far; however, FCI has not served supplemental written responses to TSC’s discovery requests. At some point, FCI’s should serve specific supplemental responses to each request, which we can discuss later as necessary. Note that we have served supplemental responses with TSC’s recent productions.

Today, my question is simple: Has FCI produced not only its documents, but any documents it received from SCDOT or any other source? Our RPD 6 requests: “All documents obtained by Flatiron via subpoena, FOIA request, or any other open source request related to the Project.” If FCI has produced documents responsive to RPD 6, please identify the bates range of the FCI documents and the bates range of documents responsive to RPD 6. If FCI has not produced any documents responsive to RPD 6, please advise why not.

Please call me in our Spartanburg office today or Charleston tomorrow, if you wish to discuss these issues.

Mike  
2.17.22

**Michael B.T. Wilkes**

864.591.2355 Spartanburg  
843.737.6229 Charleston  
864.580.1599 Mobile

127 Dunbar St. | Ste 200 | Spartanburg, SC 29306  
200 Meeting St. | Ste 205 | Charleston, SC 29401

[mwilkes@wajlawfirm.com](mailto:mwilkes@wajlawfirm.com)  
[www.wajlawfirm.com](http://www.wajlawfirm.com)



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|                              |   |                                    |
|------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA      | ) | IN THE COURT OF COMMON PLEAS       |
|                              | ) |                                    |
| COUNTY OF HORRY              | ) | C.A. NO. 2022-CP-26-06116          |
|                              | ) |                                    |
|                              | ) |                                    |
| Flatiron Constructors, Inc., | ) |                                    |
|                              | ) |                                    |
| Plaintiff,                   | ) | <b>DEFENDANT’S AMENDED MOTION</b>  |
|                              | ) | <b>EXTENSION TO RESPOND TO</b>     |
| v.                           | ) | <b>PLAINTIFF’S INTERROGATORIES</b> |
|                              | ) |                                    |
| TranSystems Corporation,     | ) |                                    |
|                              | ) |                                    |
| <u>Defendant.</u>            | ) |                                    |

Pursuant to Rule 6(b), SCRCPP, Defendant TranSystems Corporation (“TSC”) moves this Court for an Order granting TSC a twenty-nine (29) day extension to respond to Plaintiff’s Interrogatories to TSC (the “Interrogatories”), as well as Plaintiff’s Requests for Production to TSC (the “Requests”). Plaintiff served the Interrogatories and Requests on TSC via email on August 31, 2023; so its responses to the Interrogatories and Requests presently are due on October 5, 2023. On September 28, 2023, the undersigned counsel for TSC emailed Plaintiff’s counsel and requested an extension of time to respond to the Interrogatories and Requests until November 3, 2023. On September 29, 2023, the undersigned discussed this request with Plaintiff’s counsel, who took the request under advisement, but has not yet responded.

This request for extension is made before the deadline and for good cause, as follows: The parties have produced over 2,000,000 pages of documents in this case so far. Pursuant to a settlement agreement in a separate civil action in which Plaintiff sued Horry County and the South Carolina Department of Transportation (SCDOT) for over \$40,000,000 on this same Highway Project, SCDOT has produced to Plaintiff its entire Project file; but Plaintiff has not yet provided that entire SCDOT to TSC in response to TSC’s Request for Production in this case. The SCDOT file probably exceeds 1,000,000 pages. Plaintiff’s Interrogatories and Requests are extensive and

include questions asking for the identification of various documents in the answers. Responding to Plaintiff's Interrogatories and Requests will require considerable time and effort.

Pursuant to Rule 11, SCRCF, the undersigned certifies that he consulted with Carter Reid, counsel for Plaintiff, via email and then telephone as stated above prior to filing this Motion; but Plaintiff has not yet consented to the requested extension.

WILKES ATKINSON & JOYNER, LLC

October 4, 2023

s/ Michael B.T. Wilkes  
Michael B.T. Wilkes, Esq. (S.C. Bar 6107)  
[mwilkes@wajlawfirm.com](mailto:mwilkes@wajlawfirm.com)  
J. Alexander Joyner (S.C. Bar 101771)  
[ajoyner@wajlawfirm.com](mailto:ajoyner@wajlawfirm.com)  
320 Broad St., Suite 220  
Charleston, SC 29401  
843.737.6229

- And -

C. Daniel Atkinson (S.C. Bar 72721)  
[datkinson@wajlawfirm.com](mailto:datkinson@wajlawfirm.com)  
127 Dunbar Street, Suite 200  
Spartanburg, SC 29306  
Phone: (864) 591-1113

*Attorneys for TranSystems Corporation*

**From:** GV-Marty Long </O=TRANSYSTEMS CORPORATION/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=MLLONG>  
**To:** Kim Partenheimer (partenheimer@pbworld.com)  
**Sent:** 1/8/2014 8:27:13 PM  
**Subject:** FW: Partnering/Pre-construction Conference for the Carolina Bays Project (Hwy 31 Extension).  
**Attachments:** Carolina Bays Project Agenda.pdf; imaged21179.JPG; PRECON INVITE LIST.pdf

From: GV-Marty Long  
Sent: Wednesday, January 08, 2014 3:24 PM  
To: Andy Markunas (markunaa@horrycounty.org); Bert Parsons (albert.parsons@santeecooper.com); Bill Mattison (mattisonbr@scdot.org); Billy Ray Cox (billyray.cox@horryelectric.com); Brent Barker (brent.barker@htcinc.net); Brian Nickerson (nickersonbg@cecsinc.com); Christopher Stout (stoutcm@dhec.sc.gov); Craig Rivers (craig.rivers@meadhunt.com); David Gilreath (gilreath@horrycounty.org); GV-David Hoff; David Johnson (johnsondav@scdot.org); Dennis Townsend (townsenddl@scdot.org); CR-Doug Kennedy; Elizabeth Williams (elizabeth.g.williams@usace.army.mil); Evelyn Smart (evelyn.smart@uscg.mil); Frank Chapman (fhchapman@earthlink.net); Fred Crosby (crosbyf@horrycounty.org); Jason Poston (jposton@gswsa.com); Jason Thompson (thompsonjd@scdot.org); Jay Hawkins (hawkinswj@scdot.org); Jeff Burkett (jeff.burkett@meadhunt.com); CR-Jim Fisher; Johnson Dean (deanjb@scdot.org); Kelvin Waites (waiteskhorrycounty.org); Ken Beans (beanskhorrycounty.org); Kevin DuBose (dubosekw@scdot.org); Kim Partenheimer (partenheimer@pbworld.com); Kyle Berry (berrywk@scdot.org); Leah Quattlebaum (quattleblb@scdot.org); Lisa Bourcier (bourcierl@horrycounty.org); GV-Marty Long; Michael Cook (michael.cook@meanhunt.com); Mike Barbee (barbeemw@scdot.org); GV-Peter Strub; GV-Regena Wells; Robby McDonald (mcdonaldr@pbworld.com); Rocque Kneece (kneecerl@cecsinc.com); Ron Goodson (rgoodson@flatironcorp.com); Russ Touchberry (touchberrr@scdot.org); Sandra Rhodes (rhoess@horrycounty.org); Scott Rutherford (rutherfordds@horrycounty.org); Sonny Collins (ewcollins@schp.org); Steve Dimoro (sdimoro@flatironcorp.com); Steve Gosnell (gosnells@horrycounty.org); Ted Kirk (tkirk@flatironcorp.com); Todd Steagall (steagallrt@scdot.org); HU-Tom Mukai; Tom Warren (twarren@flatironcorp.com); Travis Hughes (travis.g.hughes@usace.army.mil); Travis Patrick (patricktm@scdot.org); Vance Langston (vance.langston@twcable.com); Will Fulton (fultonjw@scdot.org)  
Cc: fchapman@RDA-usa.net  
Subject: Partnering/Pre-construction Conference for the Carolina Bays Project (Hwy 31 Extension).

Ladies and Gentlemen

On behalf of Horry County and the SCDOT, we would like to invite you to attend and participate in the Partnering/Pre-construction Conference for the Carolina Bays Project (Hwy 31 Extension).

The meeting will be at the following location, date and time:

Date: January 24, 2014

Time: 9:00 AM

Facilitator: Frank Chapman with RDA

Precon: Martin Long with TranSystems

Location: Horry County Government & Justice Center

Multi-Purpose Room B (Second Floor)

1301 Second Avenue, Conway, SC

The agenda for the meeting is attached. Please RSVP by January 17th to Martin Long (mllong@transystems.com) so we can provide enough materials and food for all attendees. Also please provide the names of any additional people from your organization who will be attending so that adequate seating and meal arrangements can be made. (See attached invite list)

If you have any questions, please do not hesitate to contact our office.

Thank you.

Martin Long

RCE

864.915.0741

Frank Chapman

Facilitator

803.261.2044

Martin L. Long

TranSystems  
200 Prather Park Dr  
Myrtle Beach, SC 29588  
Main: 864-234-0866

Fax: 864-527-6873  
Cell: 864-915-0741  
www.transystems.com

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**SAMPLE IDENTIFICATION CARD****CONCRETE**

SAMPLE ID: **526-14- 2475** SC FILE: 26.036775A.1 DATE SAMPLED: 10/01/14  
 PCN: **036775BR01** DATE TO LAB: 10/02/14  
 SAMPLED BY: Galey, Brian (Tiny)  
 SCDOT RCE: Long, Martin L. PROJECT DESCRIPTION: **BRIDGE 1 (Over Intracoastal Waterway)**  
☒ Job Control ☐ For Information Only (Choose One)

**SAMPLE INFORMATION**

MATERIAL: ConcCyl. 4000  
 DESCRIPTION: Concrete Cylinder, Class 4000  
 MANUFACTURER: S&W Ready Mix Concrete Co.  
 ADDRESS: 130 Winyah Rd. Conway, SC. 29526  
 REPRESENTED QUANTITY: 9 OF 165 CY  
 SAMPLED FROM: Truck Mixer  
 JOB MIX NO.: 4000 DS  
 BREAK SPECIMEN AT: 3 @ 28 days  
 TO BE USED IN: Drilled Shaft with Wet & Dry  
Excavation - 102" Diameter  
 OTHER INFORMATION: **BENT 14-1 DS, SET-1**

BRAND: ☐ Early Break  
 Cement: Giant Type: two  
 Fine Aggregate: American Coarse Aggregate: Vulcan  
 Air Entraining: oz./bag Admixture: oz./100 lbs.  
 MIX USED 94: 7.4 : WATER: 36 SLUMP: 8.0 in.  
 AIR: 0.0% WATER ADDED: 20 gal. IN 9 CY  
 MIXED BY: Galey, Brian (Tiny) Temp: 84 °F  
 Entered By: Widdifield, Ellen Date: 10/02/14  
 S&ME Sample Results: \_\_\_\_\_  
 Check Sample Results: \_\_\_\_\_ ID: \_\_\_\_\_

**SAMPLE IDENTIFICATION CARD****CONCRETE**

SAMPLE ID: **526-14- 2476** SC FILE: 26.036775A.1 DATE SAMPLED: 10/01/14  
 PCN: **036775BR01** DATE TO LAB: 10/02/14  
 SAMPLED BY: Galey, Brian (Tiny)  
 SCDOT RCE: Long, Martin L. PROJECT DESCRIPTION: **BRIDGE 1 (Over Intracoastal Waterway)**  
☒ Job Control ☐ For Information Only (Choose One)

**SAMPLE INFORMATION**

MATERIAL: ConcCyl. 4000  
 DESCRIPTION: Concrete Cylinder, Class 4000  
 MANUFACTURER: S&W Ready Mix Concrete Co.  
 ADDRESS: 130 Winyah Rd. Conway, SC. 29526  
 REPRESENTED QUANTITY: 63 OF 165 CY  
 SAMPLED FROM: Truck Mixer  
 JOB MIX NO.: 4000 DS  
 BREAK SPECIMEN AT: 3 @ 28 days  
 TO BE USED IN: Drilled Shaft with Wet & Dry  
Excavation - 102" Diameter  
 OTHER INFORMATION: **BENT 14-1 DS, SET-2**

BRAND: ☐ Early Break  
 Cement: Giant Type: two  
 Fine Aggregate: American Coarse Aggregate: Vulcan  
 Air Entraining: oz./bag Admixture: oz./100 lbs.  
 MIX USED 94: 7.4 : WATER: 36 SLUMP: 8.0 in.  
 AIR: 0.0% WATER ADDED: 20 gal. IN 9 CY  
 MIXED BY: Galey, Brian (Tiny) Temp: 86 °F  
 Entered By: Widdifield, Ellen Date: 10/02/14  
 S&ME Sample Results: \_\_\_\_\_  
 Check Sample Results: \_\_\_\_\_ ID: \_\_\_\_\_

**SAMPLE IDENTIFICATION CARD****CONCRETE**

SAMPLE ID: **526-14- 2477** SC FILE: 26.036775A.1 DATE SAMPLED: 10/01/14  
 PCN: **036775BR01** DATE TO LAB: 10/02/14  
 SAMPLED BY: Galey, Brian (Tiny)  
 SCDOT RCE: Long, Martin L. PROJECT DESCRIPTION: **BRIDGE 1 (Over Intracoastal Waterway)**  
☒ Job Control ☐ For Information Only (Choose One)

**SAMPLE INFORMATION**

MATERIAL: ConcCyl. 4000  
 DESCRIPTION: Concrete Cylinder, Class 4000  
 MANUFACTURER: S&W Ready Mix Concrete Co.  
 ADDRESS: 130 Winyah Rd. Conway, SC. 29526  
 REPRESENTED QUANTITY: 135 OF 165 CY  
 SAMPLED FROM: Truck Mixer  
 JOB MIX NO.: 4000 DS  
 BREAK SPECIMEN AT: 3 @ 28 days  
 TO BE USED IN: Drilled Shaft with Wet & Dry  
Excavation - 102" Diameter  
 OTHER INFORMATION: **BENT 14-1 DS, SET-3**

BRAND: ☐ Early Break  
 Cement: Giant Type: two  
 Fine Aggregate: American Coarse Aggregate: Vulcan  
 Air Entraining: oz./bag Admixture: oz./100 lbs.  
 MIX USED 94: 7.4 : WATER: 36 SLUMP: 8.3 in.  
 AIR: 0.0% WATER ADDED: 15 gal. IN 9 CY  
 MIXED BY: Galey, Brian (Tiny) Temp: 82 °F  
 Entered By: Widdifield, Ellen Date: 10/02/14  
 S&ME Sample Results: \_\_\_\_\_  
 Check Sample Results: \_\_\_\_\_ ID: \_\_\_\_\_



Darlington County  
 Dillon County  
 Florence County  
 Georgetown County  
 Horry County  
 Marion County  
 Marlboro County  
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## MEMORANDUM

**TO:** M. L. Long, Resident Construction Engineer  
 T. M. Patrick, District Five Special Projects Engineer  
 Merrill Zwanka, Materials and Research Engineer

**FROM:** D. L. Johnson, District Construction Engineer



Johnson, David L  
 2016.02.09  
 09:37:36 -05'00'

**DATE:** February 9, 2016

**RE:** File 26.036775A – SC 31 Carolina Bays – Pipe Backfill Material Waiver

Based on upcoming revisions to the pipe specification, prime contractor Flatiron Constructors, Incorporated has requested to utilize additional soil classifications for pipe backfill on the subject project. Under the future revision to the SC-M-714 Pipe Specification, the SCDOT will allow A-2-4 and A-2-5 material as pipe backfill. The new specification will also not require wrapping of the pipe backfill unless determined necessary by RCE. The Director of Construction Office has expressed allowance of these alternate materials upon the request of the contractor and acceptance by the respective District Office. A material waiver for A-2-4, A-2-5, and unwrapped pipe backfill to meet the contract requirements of SC-M-714 is hereby GRANTED on the subject project.

If at any time during construction the RCE or the District feels that the waiver materials are not performing adequately in the field, we can revert back with the current pipe specification that requires A-1 or A-3 (wrapped) materials at no additional cost to the Department. The material waiver and/or change back to the original specification are at no additional cost to the Department. The RCE will create a change order to add these changes to the project contract.

If you have any questions or require additional information after reviewing the provided information, you may call me at 843-629-5222.

DLJ:dlj  
 ec: Nick Waites, Assistant Construction Engineer  
 Jason Thompson, District Bridge Engineer  
 File: D5/Florence/DLJ



District Five Engineering  
 Post Office Box 1911  
 Florence, South Carolina 29503

Phone: (843) 661-4710  
 Fax: (843) 661-4704

AN EQUAL OPPORTUNITY  
 AFFIRMATIVE ACTION EMPLOYER

**From:** CR-Marty Long </O=TRANSYSTEMS CORPORATION/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=MLLONG>  
**To:** campbelljp@scdot.org  
**Sent:** 7/18/2016 3:45:19 PM  
**Subject:** 26.036775A CBP - Question on Reporting  
**Attachments:** imageeb84fa.PNG

Hello Juanita! I don't know if you're the person to answer this or not but your email was the only one I found. Does the Prime need to list DBE's on the Quarterly Report when they actually start work on the project or when they submit their subhauler request?

Thanks for your help!!

Marty Long  
RCE Carolina Bays  
864.915.0741

Martin L. Long



*Delivering the Transportation Experience for 50 Years*

**TranSystems**  
200 Prather Park Dr  
Myrtle Beach, SC 29588

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Fax: 843-796-9378  
Cell: 864-915-0741  
[www.transystems.com](http://www.transystems.com)

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**From:** Heck, Justin LT <Justin.C.Heck@uscg.mil>  
**To:** CR-Marty Long; Zercher, Jennifer N CIV; Lawrence, Eddie H CIV  
**CC:** PatrickTM@scdot.org; CR-Doug Kennedy  
**Sent:** 7/18/2017 8:59:08 PM  
**Subject:** RE: 60 Day Notice for Work in AICWW (South Carolina)

Good Afternoon Mr. Long,

D7 Bridges is currently reviewing Mr. McGrath's Construction checklist and will be reaching out to him to ensure all necessary details are provided within the checklist. We should hear something by the end of the week.

Once an updated form is received we will be better equipped to make decisions on whether or not the channel will need to be temporarily closed and for the durations of those closures. Thanks for voicing your concerns.

Regards,

Justin Heck  
Sector Charleston  
Waterways Management Division  
P: 843-740-3184  
F: 843-740-3189

-----Original Message-----

From: mllong@transystems.com [mailto:mllong@transystems.com]  
Sent: Monday, July 17, 2017 11:11 AM  
To: Zercher, Jennifer N CIV; Heck, Justin LT  
Cc: PatrickTM@scdot.org; djkenedy@transystems.com  
Subject: [Non-DoD Source] RE: 60 Day Notice for Work in AICWW (South Carolina)

Mr. Heck

Hello. My name is Martin Long and I am the RCE for the SCDOT over the Carolina Bays Parkway project. I did not notice anything on the Contractor's attached application that noted all of the overhead work that will be done after the girders are set. The Contractor will be installing stay-in-place forms, overhangs, bracing, a drainage system and painting to name a few of the operations that will be performed over the active channel.

Will any of the above type work require any type of channel closure, traffic control and/or notifications?

Thanks for your help and guidance.

Marty Long

RCE

864.915.0741

From: McGrath, Ken [<mailto:KMcGrath@flatironcorp.com>]  
 Sent: Wednesday, July 12, 2017 1:44 PM  
 To: Zercher, Jennifer N CIV <[Jennifer.N.Zercher@uscg.mil](mailto:Jennifer.N.Zercher@uscg.mil)>; Heck, Justin LT <[Justin.C.Heck@uscg.mil](mailto:Justin.C.Heck@uscg.mil)>  
 Cc: Lawrence, Eddie H CIV <[Eddie.H.Lawrence@uscg.mil](mailto:Eddie.H.Lawrence@uscg.mil)>; Fischer, Forrest <[ffischer@flatironcorp.com](mailto:ffischer@flatironcorp.com)>; MacFawn, Ian <[IMacFawn@flatironcorp.com](mailto:IMacFawn@flatironcorp.com)>; Beiter, Jeremiah <[JBeiter@flatironcorp.com](mailto:JBeiter@flatironcorp.com)>; St. Martin, Jessica <[jstmartin@flatironcorp.com](mailto:jstmartin@flatironcorp.com)>; Martel, Ryan <[RMartel@flatironcorp.com](mailto:RMartel@flatironcorp.com)>; CR-Marty Long <[mllong@transystems.com](mailto:mllong@transystems.com)>  
 Subject: RE: 60 Day Notice for Work in AICWW (South Carolina)

Mr. Heck,

Attached is our notice to place our barge and tugboat and temporarily block marine traffic to set steel girders for the new AICWW bridge. Schedules times are not set yet but between the dates listed we will be performing the work and will keep you up to date as the work draws closer to actual blockage times needed.

Thanks,

Ken McGrath

Project Engineer  
 Flatiron Construction Corp.

860 Aviation Parkway, Suite 100

Morrisville, NC 27560

803 517 5256 CELL

[kmcgrath@flatironcorp.com](mailto:kmcgrath@flatironcorp.com) <<mailto:kmcgrath@flatironcorp.com>>

[www.flatironcorp.com](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.flatironcorp.com_&d=DwMGaQ&c=0NKfg44GVknAU-XkWXjNkQ&r=K7nPVFDaWfoogoF_bZN9BWLGCvU5hC_XB_8FxEOjvX0&m=8kyZZbFh-LoXMTA32vMEXSx0WEZd_by-P7_T5bM93Xs&s=HHK6jilucts7O7JVY6KVwXDiS39hZTFvAbvr0pFduWc&e=>) <[https://urldefense.proofpoint.com/v2/url?u=http-3A\\_\\_www.flatironcorp.com\\_&d=DwMGaQ&c=0NKfg44GVknAU-XkWXjNkQ&r=K7nPVFDaWfoogoF\\_bZN9BWLGCvU5hC\\_XB\\_8FxEOjvX0&m=8kyZZbFh-LoXMTA32vMEXSx0WEZd\\_by-P7\\_T5bM93Xs&s=HHK6jilucts7O7JVY6KVwXDiS39hZTFvAbvr0pFduWc&e=>](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.flatironcorp.com_&d=DwMGaQ&c=0NKfg44GVknAU-XkWXjNkQ&r=K7nPVFDaWfoogoF_bZN9BWLGCvU5hC_XB_8FxEOjvX0&m=8kyZZbFh-LoXMTA32vMEXSx0WEZd_by-P7_T5bM93Xs&s=HHK6jilucts7O7JVY6KVwXDiS39hZTFvAbvr0pFduWc&e=>)>

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From: Zercher, Jennifer N CIV [<mailto:Jennifer.N.Zercher@uscg.mil>]  
 Sent: Wednesday, July 12, 2017 10:28 AM  
 To: McGrath, Ken <[KMcGrath@flatironcorp.com](mailto:KMcGrath@flatironcorp.com)>  
 Cc: Lawrence, Eddie H CIV <[Eddie.H.Lawrence@uscg.mil](mailto:Eddie.H.Lawrence@uscg.mil)>; Heck, Justin LT <[Justin.C.Heck@uscg.mil](mailto:Justin.C.Heck@uscg.mil)>  
 Subject: FW: 60 Day Notice for Work in AICWW (South Carolina)

Good morning Mr. McGrath,

Please fill out the attached Pre-Construction checklist for the project below. LT Justin Heck from Sector Charleston Waterways Division

will be your point of contact for waterways restrictions/closures.

LT Justin Heck  
USCG Sector Charleston (Waterways)  
(843) 740-3184  
Justin.e.heck@uscg.mil

Once we receive the updated information, we will update the Local Notice to Mariners with changes that LT Heck approves.

If you have any questions, please give me or Mr. Eddie Lawrence, (305) 415-6946, a call.

R.  
Jennifer Zercher  
Bridge Management Specialist  
U.S. Coast Guard District 7 Bridge Branch  
909 SE 1st Ave Ste 432  
Miami FL 33131-3050  
PH: 305.415.6740

-----Original Message-----

From: McGrath, Ken [<mailto:KMcGrath@flatironcorp.com>]  
Sent: Wednesday, July 12, 2017 9:16 AM  
To: Dragon, Barry CIV  
Cc: Fischer, Forrest; MacFawn, Ian; Beiter, Jeremiah; St. Martin, Jessica; Martel, Ryan  
Subject: [Non-DoD Source] 60 Day Notice for Work in AICWW (South Carolina)

Mr. Dragon,

I am writing to give the USCG the required the 60 day required notice of construction activities that require restriction, either total or partial, to be placed upon navigational interests, commercial or recreational marine traffic in the American Intercostal Waterway (AICWW) in Socastee, SC. This will require partial and full closure of the waterway for the placement of steel girders across the AICWW for the Carolina Bays Parkway construction project for the South Carolina Department of Transportation (SCDOT). The duration of the work period to erect the steel girders over the AICWW will be approximately 12 weeks.

If you have any questions feel free to call me at my cell phone number below.

Thanks,

Ken McGrath  
  
Project Engineer  
Flatiron Construction Corp.  
  
860 Aviation Parkway, Suite 100  
  
Morrisville, NC 27560  
  
803 517 5256 CELL  
  
[kmcgrath@flatironcorp.com](mailto:kmcgrath@flatironcorp.com)

www.flatironcorp.com <[https://urldefense.proofpoint.com/v2/url?u=http-3A\\_\\_www.flatironcorp.com&d=DwMGaQ&c=0NKfg44GVknAU-XkWXjNkQ&r=K7nPVFDaWfoogoF\\_bZN9BWLGCvU5hC\\_XB\\_8FxEOjvX0&m=8kvZZbFh-LoXMTA32vMEXSx0WEZd\\_by-P7\\_T5bM93Xs&s=HGIHBOrcGrXrofD\\_3Jio6QzsqwYsP0jvSgFkJfjNkY&e=>](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.flatironcorp.com&d=DwMGaQ&c=0NKfg44GVknAU-XkWXjNkQ&r=K7nPVFDaWfoogoF_bZN9BWLGCvU5hC_XB_8FxEOjvX0&m=8kvZZbFh-LoXMTA32vMEXSx0WEZd_by-P7_T5bM93Xs&s=HGIHBOrcGrXrofD_3Jio6QzsqwYsP0jvSgFkJfjNkY&e=>)>  
<[https://urldefense.proofpoint.com/v2/url?u=http-3A\\_\\_www.flatironcorp.com\\_&d=DwMFaQ&c=0NKfg44GVknAU-XkWXjNkQ&r=vxefCZz-bKVK1IE1nUpJTgRNRn1jWq-cxN6WmnrNplY&m=HJ5MC4ZeIPZiM4woa2YN9GQD2q7E7Wo8Fn-8teiJmXQ&s=JchsMJlqxlg7BPBB5m\\_5Oe0Zi0lp6cZu4xSYmV-78mY&e=>](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.flatironcorp.com_&d=DwMFaQ&c=0NKfg44GVknAU-XkWXjNkQ&r=vxefCZz-bKVK1IE1nUpJTgRNRn1jWq-cxN6WmnrNplY&m=HJ5MC4ZeIPZiM4woa2YN9GQD2q7E7Wo8Fn-8teiJmXQ&s=JchsMJlqxlg7BPBB5m_5Oe0Zi0lp6cZu4xSYmV-78mY&e=>)>

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~~~ FLATIRON CONFIDENTIALITY STATEMENT ~~~ The information in this email is confidential and may be legally privileged. It is intended solely for the addressee. Access to this email by anyone else is unauthorized. If you receive this email in error, please reply to notify me immediately. Thank you.


STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Flatiron Constructors, Inc.,

Plaintiff,

v.

TranSystems Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS

Case No. 2022-CP-26-06116

**JOINT MOTION TO ESTABLISH
COMPLEX CASE DESIGNATION AND
TIME FOR TRIAL**

1. We, the undersigned counsel for all parties who have appeared in this action, hereby move for an order designating this case as complex and asking that the trial of the case take place on or after July 30, 2024. We understand that if this motion is granted, continuances will not be granted after the date established herein except under exceptional circumstances.

2. At present, we feel that it is too early in the case to achieve settlement. Defendant filed a Motion for Summary Judgment, which is under advisement. A hearing was held on August 7, 2023. Prior to the hearing, the court issued an order committing the Parties to participate in mediation within 90 days of the Court's ruling on Defendant's dispositive motion. We realize that if this case should be settled after being called for trial, we will be performing a disservice to other counsel who have cases following this case on the active trial roster, and we will endeavor to settle this case, if at all, before the noted trial date.

3. We submit the following information for use of the court in support of this motion:

(a) Nature of the case

This case involves claims related to the construction of the Carolina Bays Highway Project (the "Project") in Horry County. Horry County contracted the South Carolina Department of Transportation ("SCDOT") to administer the Project as part of an Intergovernmental Agreement

(the “IGA”) among Horry County, SCDOT, and the South Carolina Transportation Infrastructure Bank (“SCTIB”). On December 6, 2013, SCDOT, on behalf of Horry County, awarded the Project to Plaintiff Flatiron Constructors, Inc. (“FCI”) in the amount of \$97,868,087. Horry County also directly contracted with Defendant TranSystems Corporation (“TSC”) (the “TSC Contract”) to provide Construction, Engineering, and Inspection Services (“CEI Services”) for the Project. The Parties disagree about the interpretation and legal effect of TSC’s Contract, including the certification.

FCI alleges, and TSC denies, FCI incurred damages in completing the Construction Contract because TSC breached the standard of care in the performance of its CEI Services. TSC denies these allegations and argues that no such standard of care applies to it, that its efforts were consistent with its contractual obligations, and that any relief should be sought elsewhere.

To date, more than one million documents have been produced, containing at least twice as many pages and large native files. Despite the extensive files already produced in this matter, more document production remains to be performed. For example, TSC just produced approximately 25,000 additional documents to FCI. Similarly, TSC has asked that FCI produce the files that FCI received from SCDOT following the recent settlement of FCI’s claim filed against SCDOT and Horry County on the Project. This production contains tens of thousands of documents. Similarly, FCI anticipates potential third-party document productions from other subconsultants. The scale of this production is commensurate with the complexity of this dispute which involves scores of construction events on a complex, public infrastructure project performed over the course of at least five years (2014 through substantial completion in 2019).

The claims brought by FCI require detailed expert analysis of extensive Project documents provided by SCDOT, Horry County, FCI, TSC, and subconsultants. Expert testimony is required

to address FCI's allegations of violations of the professional standard of care concerning TSC's multiple construction administration duties, to present critical path scheduling analyses of whether and how any proven violations impacted the Project schedule, and to demonstrate the complex calculations associated with proving any resultant direct and/or indirect damages such as loss of productivity, extended general conditions, and other impacts. The experts that TSC and FCI will retain must conduct a detailed investigation of the continuing document productions and deposition testimony concerning how TSC performed its construction engineering and inspection services and whether it met the applicable standard of care in South Carolina if TSC owed FCI a duty of care. These analyses must cover the entire five-year lifespan of this \$100 million Project.

(b) The number of witnesses for the plaintiff

Both FCI and TSC will rely upon the testimony of an exceptionally large number of fact witnesses and experts due to the nature of FCI's claims, the time period over which the Project Work was conducted, and the number of different people and entities involved in the construction and construction administration (e.g., FCI, TSC, SCDOT, Horry County, subcontractors and subconsultants).

Plaintiff anticipates that it will call at least a dozen fact witnesses to testify. These witnesses include current and former employees of SCDOT, Horry County, FCI, TSC, and select subcontractors and subconsultants who will testify regarding FCI's claims. The Project reached substantial completion in 2019, meaning these fact witnesses now reside in multiple jurisdictions, and many no longer work for the Parties.

FCI also anticipates presenting experts in the standard of care, alleged violations of that standard, construction critical path method scheduling, and construction damages calculations. These experts must analyze nearly two million pages of documents including, but not limited to,

daily work logs, submittals, RFIs, change orders, notes, meeting minutes, computerized record-keeping systems, project schedules, cost reports, correspondence, contract and subcontract documents as well as extensive email communications between and among dozens of individuals.

(c) The number of witnesses for defendant

TSC anticipates that it will call 12-15 fact witnesses to testify. TSC will also present multiple expert witnesses on engineering duties and scheduling issues.

(d) Anticipated time needed to try the case

The trial is anticipated to take approximately three weeks, depending upon the resolution of pretrial motions. Notably, TSC has requested a jury trial for the case.

(e) Motions pending

On April 04, 2023, TSC filed a motion for summary judgment. The Parties have fully briefed the motion, and a hearing was held on August 7, 2023. The Motion is under advisement with Judge Curtis. There are no other pending motions.

(f) Additional motions anticipated before trial

The Parties anticipate numerous motions related to discovery as well as motions in limine and any other motions that may be necessary to appropriately sculpt this complex construction matter into a case suitable for trial by a jury.

(g) Discovery pending

Although the parties have diligently exchanged discovery over the life of this dispute, there remain certain documents for both Plaintiff and Defendant to produce. Due to administration prerequisites and a recent settlement of claims against the SCDOT and Horry County, FCI just received the full Project file from SCDOT on July 20, 2023. FCI is in the process of preparing the SCDOT file for production to TSC along with any remaining documents received that have yet to

be produced. The SCDOT Project file alone is 53 GB and contains approximately 50,000 documents. On October 6, 2023, TSC produced a collection of approximately 25,000 documents and has pending responses to interrogatories and requests for production.

(h) Additional discovery contemplated

As written discovery and document productions continue, the Parties have yet to take depositions in this matter. The number of depositions to be taken will match or eclipse the estimated number of witnesses. FCI and TSC will attempt to work together to maximize efficiency and cost-effectiveness in this process. In addition, certain third-party subpoenas may be necessary. For example, third-party subconsultants were also at work on the Project who observed practices and work areas. These may be important to the case. Completion of document production will allow for a more accurate assessment of whether such additional discovery is needed.

(i) Other information which might prove helpful to the court

Although this matter bears a 2022 case number, discovery has not proceeded normally due to the prolonged effort to resolve certain issues with SCDOT and Horry County. During this effort, the Parties to this action acknowledged the benefits of refraining from extensive litigation expense pending the possibility of reducing the costs and complexity of the instant matter. The SCDOT/Horry County matter only concluded in July of 2023, which led to the production of the SCDOT's Project file to FCI. As indicated, FCI is now in the process of providing that file to TSC. From FCI's perspective, the settlement with SCDOT/Horry County did not significantly simplify the case against TSC.

The Parties seek a complex case designation to ensure adequate time to conduct discovery and depositions and to properly prepare for trial. The consideration of discovery, evidentiary, and other potential motions will be greatly enhanced by the participation of an assigned judge through

a complex case designation. The Parties anticipate significant discovery issues due to the sheer volume of documents and potential fact witnesses involved. As a result of the five-year Project duration, the passage of time since Project completion, and the nature of design and construction work, the fact witnesses in this matter now reside in multiple jurisdictions, and many now work for other employers such that a date certain for trial is necessary to allow for dependable, long-lead-time witness scheduling and coordination. Similarly, significant expert witness testimony is necessary, frequently leading to *Council*-type challenges and prolonged deposition efforts. Finally, the demands of streamlining and managing a complex construction matter into a suitable case for presentation to a jury over the course of approximately three weeks will require a judge fully familiar with the complicated legal and factual issues at play in this matter. For these reasons, the Parties join in respectfully requesting this case be given a complex case designation.

Respectfully submitted this 18th day of October, 2023

s/Mason A. Goldsmith, Jr.

Mason A. Goldsmith, Jr. (S.C. Bar No. 11704)
Elmore Goldsmith Kelley & deHoll, P.A.
19 Blair Street (29607)
Post Office Box 1887
Greenville, South Carolina 29602
Telephone: (864) 255-9500
agoldsmith@elmoregoldsmith.com

Carter B. Reid (*Admitted Pro Hac Vice*)
Watt, Tieder, Hoffar & Fitzgerald, LLP
1765 Greensboro Station Place, Suite 1000
McLean, Virginia 22102
Telephone: (703) 749-1028
creid@watttieder.com

Attorneys for Plaintiff Flatiron Constructors, Inc.

We Consent and Join in the Motion for an Order designating the matter as complex:

s/C. Daniel Atkinson

Michael B.T. Wilkes (S.C. Bar 6107)
J. Alexander Joyner (S.C. Bar 101771)
Wilkes Atkinson & Joyner, LLC
320 Broad Street, Suite 220
Charleston, South Carolina 29401
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C. Daniel Atkinson (S.C. Bar 72721)
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Spartanburg, South Carolina 29306
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datkinson@wajlawfirm.com

Attorneys for Defendant TranSystems Corporation

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	C.A. No.: 2018-CP-26-02633
	)	
Flatiron Constructors, Inc.,	)	
	)	TRANSYSTEMS' ANSWERS TO FLATIRON
Plaintiff,	)	CONSTRUCTORS, INC.'S
	)	FIRST SET OF INTERROGATORIES
vs.	)	(1-27)
	)	
TranSystems Corporation,	)	
	)	
Defendant.	)	
_____	)	

TranSystems Corporation ("TSC") hereby responds to Flatiron Constructors, Inc.'s First Set of Interrogatories ("Flatiron's Interrogatories") as follows:

General Objections

1. The following answers are made subject to and without waiver of any objections to the admissibility of these answers or any part thereof at trial or otherwise.

2. TSC objects to Flatiron's Interrogatories to the extent they seek information protected by the attorney-client privilege or the work-product doctrine.

3. The following answers are based upon information presently available to TSC after good faith investigation and in light of the present state of discovery. Said answers are made without prejudice to TSC's right to rely upon subsequently discovered facts and documents. TSC reserves the right to supplement these answers upon its further investigation and acquisition of information or documents that it does not possess, recall or presently have in its possession.

ANSWERS TO INTERROGATORIES

1. Identify all persons having knowledge of the facts or circumstances of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements; and summarize the knowledge of each such person

and indicate whether a written or recorded statement has been taken from each person and, if so, indicate who has possession of the written or recorded statement.

ANSWER: TranSystems notes that this case is at an early stage of discovery; therefore, TranSystems expressly reserves the right to supplement this response as it obtains additional information. Given the nature and scope of this claim, TranSystems will likely be required to supplement its response hereto:

1.0 Plaintiff Flatiron Constructors, Inc.

TranSystems incorporates herein by reference all witnesses identified by Flatiron in Flatiron's Answers to TranSystems Interrogatories, as well as any witnesses identified in supplemental responses thereto.

2.0 Defendant TranSystems Corporation –witnesses associated with TranSystems can be contacted via TranSystems' undersigned counsel.

2.1 Martin Long, P.E.

Long served as Project Manager for TranSystems for the Carolina Bays project. He is expected to testify regarding his interactions with Flatiron and his work with the SCDOT and Horry County for the Carolina Bays Project.

Long has not given written or recorded statements.

2.2 Peter Strub, P.E.

Strub is an executive with TranSystems, who negotiated and executed the TranSystems contract. He is expected to testify regarding TranSystems' contract and procedures for the company.

Strub has given an affidavit in this case, which has been provided to Flatiron.

2.3 Doug Kennedy

Kennedy was a senior bridge inspector for TranSystems for the Carolina Bays Project. He is expected to testify regarding his inspections for the Carolina Bays Project as well as his interaction with Flatiron.

TranSystems is unaware of any written or recorded statements from Kennedy.

2.4 Regina Wells

Wells was office administrator for TranSystems for the Carolina Bays Project. She is expected to testify regarding her handling and logging of submittals for the Project, as well as her interaction with Flatiron.

Wells has not given any written or recorded statements.

2.5 Chance Cargile

Cargile was a bridge inspector for TranSystems during girder installation and deck pours. He is expected to testify regarding his inspections, as well as his interactions with Flatiron.

Cargile has not given any written or recorded statements.

2.6 Allen Freeland

Freeland was a Senior Inspector for TranSystems. He is expected to testify regarding his bridge inspections on behalf of TranSystems.

Freeland has not given any written or recorded statements.

2.7 Jim Blackmore

Blackmore was a Foundation Inspector who oversaw inspection of drill shafts. He is expected to testify regarding his inspections, as well as his interactions with Flatiron.

Blackmore has not given any written or recorded statements.

3.0 SCDOT

3.1 Travis Patrick, P.E.

Patrick served as Resident Construction Engineer for SCDOT. He is expected to testify regarding his role in the Project, and his supervision of TranSystems.

TranSystems is unaware of whether Patrick has given any written or recorded statements.

3.2 Steve Nanney, P.E.

Nanney was the Bridge Construction Engineer for SCDOT. He is expected to testify regarding his observations and findings in his professional role.

TranSystems is unaware of whether Nanney has given any written or recorded statements.

3.3 Bill Madison, P.E.

Madison was Bridge Construction Engineer for the first two years of the Project. He is expected to testify regarding his findings and observations.

TranSystems is unaware of whether Madison has given any written or recorded statements.

4.0 Horry County

4.1 Jason Thompson, P.E.

Thompson was originally a bridge engineer for SCDOT; however, he eventually transferred to employment with Horry County. He is expected to testify regarding his work on the Project, and his interaction with Flatiron and TranSystems.

TranSystems is unaware of whether Thompson has given any written or recorded statements.

5.0 S&ME, Inc.

Greg Canavan, P.E.

Canavan is a geotechnical engineer with S&ME, Inc. He is expected to testify regarding his evaluation of the Project, and his interaction with TranSystems and Flatiron.

TranSystems is unaware of whether Canavan has given any written or recorded statements.

2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of TranSystems that relate to Flatiron's claim or TranSystems' defense in the case.

ANSWER: In lieu of a list, TSC has produced copies of all items in its possession responsive to this Interrogatory, in response to Flatiron's previously-served Requests for Production of Documents. As noted in the responses, TSC has not produced items protected by the Attorney-Client Privilege, nor has it identified those items via privilege log.

3. Set forth the names and addresses of all insurance companies that have issued liability insurance, property insurance, professional liability insurance, and other insurance coverage relating to TranSystems' work on the Project and set forth the number or numbers of the policies involved and the amount or amounts of coverage provided in each policy.

ANSWER: TranSystems objects to this Interrogatory as beyond the scope of discovery allowed by Rule 26, SCRCP, because it seeks all insurance policies held by TranSystems. The Rules of Civil Procedure allow only for discovery of insurance agreements "under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment." Rule 26(b)(2), SCRCP. Flatiron's request seeks information of all insurance coverage, much of which, like Workers Compensation or automobile coverage, would never be required to satisfy any potential judgment in this case. Subject to and without waiving this Objection, TranSystems states that TranSystems has certain coverages under a professional liability policy issued by Continental Casualty Company, bearing Policy Number AEH591904307, with limits of liability stated therein. TranSystems is producing a copy of the Policy, bearing Bates labels CNA 1 - 60, with premium information redacted, in response to Plaintiff's Second Requests for Production. TranSystems also possesses certain additional professional liability coverages, and TranSystems will produce copies and supplemental information regarding those policies.

4. If TranSystems has made claims with an insurer regarding the Project or damage arising from or connected to the Project, for each claim, please: State when the claim was made; identify the insurer to which the claim was made; state where the damage occurred; describe the nature of the damage and the alleged cause of the damage and describe the status of the claim.

ANSWER: TranSystems objects to this Interrogatory as seeking information prepared in anticipation of litigation by TranSystems and its insurer, which is exempt from discovery pursuant to Rule 26(b)(3). Subject to this objection, and in compliance with Rule 26(b)(2), SCRCF, TranSystems states that it notified its professional liability carrier of this claim, and it has responded by offering defense to same.

5. List the names and addresses of expert witnesses whom TranSystems proposes to call as witnesses at the trial of the case, state the subject matter on which each expert is expected to testify, and state the facts and opinions to which each expert is expected to testify and a summary of the grounds of each opinion.

ANSWER: TranSystems has not identified specific experts to provide trial testimony; however, it will do so in accordance with any Scheduling Order entered in this case. Further, TranSystems expressly reserves the right to supplement this response in accordance with any Scheduling Order entered by the Court in this case.

6. For each person known to TranSystems or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform Flatiron of the important facts known to or observed by such witness or provide a copy of written or recorded statements taken from such witnesses.

ANSWER: See Answer to Interrogatory 1.

7. Identify your involvement in prior lawsuits relating to allegations of negligent inspection. For each lawsuit, provide the case name, court name, date the complaint was filed, nature of the allegations, and the outcome or current status of the lawsuit.

ANSWER: TranSystems objects to this Interrogatory as overly broad and vague, because “allegations of negligent inspection” is insufficiently defined. Additionally, TranSystems

objects to this Interrogatory, because it is not limited in time or scope. Subject to these objections and the general objections above, TranSystems states that TranSystems has not been involved in any litigation asserted by a third-party non-client, based upon its provision of Construction, Engineering, Inspection and Testing Services. TranSystems is a defendant in one other civil action in South Carolina, but it is not related to inspection or testing services.

8. Identify and describe TranSystems' method of processing submittals and maintaining records of submittals and requests for information (RFI's). Provide a description of the steps involved in processing submittals, documentation generated during the submittal review process, methods used to maintain records of submittals and requests for information, and individuals or parties responsible for overseeing the submittal process and maintaining records of the submittal process.

ANSWER: TranSystems objects to this Interrogatory to the extent it requests company-wide methods of processing submittals for all projects, as the procedure varies project-to-project. This request is overbroad, due to the number and types of different submittals, and the fact that different submittals were forwarded to different supervisors at SCDOT. Subject to this objection, TranSystems states that its method for processing submittals and maintaining records of RFIs for the Project at issue was:

- a. Marty Long would review a submittal to verify it was appropriate for his review. If it was not, he would notify Flatiron who was the appropriate recipient for the submittal.
- b. Upon receipt, Long would add the submittal status for the running agenda item list for submittals for each bi-weekly project progress meeting.

- c. Shortly after receipt, Long would make comments in response to the submittal, as needed, or he would forward the submittal to the next person in the review chain. He would note the change of status of this on the agenda for the upcoming bi-weekly meeting.
- d. If Long had comments that needed a response from Flatiron, he would not take further action, other than status review at progress meetings, until he received a response to the comments.
- e. After forwarding to SCDOT personnel, Long would again change the status on the agenda and await a response from the person from SCDOT with authority for a specific response.
- f. After SCDOT approval, Long would notify Flatiron and note the approval in the upcoming agenda. The submittal would then be removed from subsequent agendas.

Each submittal chain, and each agenda and meeting minutes prepared by Long was uploaded to ProjectWise, and was available for review by all interested parties.

9. Identify all inspectors employed by or affiliated with TranSystems who were involved in the Project, and for each inspector, provide the following information: Full name; employment status (employee, independent contractor, e.g.); dates of employment or affiliation; roles and responsibilities on the Project; and dates the inspector was assigned to the Project and when they were on the Project site.

ANSWER: TranSystems objects to this Interrogatory as overly broad and unduly burdensome. Flatiron is already in possession of a list of the inspectors, as referenced in Exhibit II.16 to Flatiron's Global Claim to the DRB. TranSystems incorporates by reference that Exhibit

as identifying all inspectors. This information is also included SCDOT's FOIA response to Flatiron. TranSystems objects to the Request for employment status and dates, as irrelevant to the claims presented and unduly burdensome to TranSystems. The daily reports, contained within that document, state the dates that the inspectors were on the site and performing inspections.

10. Identify the methods used by TranSystems for assessing requests for inspections on the Project, including a description of the process for accepting, processing, and responding to such requests, a description of documentation generated as part of the request for inspection process, and the individuals responsible for creating or maintaining documentation involved in the request for inspection process so identified.

ANSWER: TranSystems objects to the Interrogatory, because it implies a universal procedure for a wide variety of different circumstances. Subject to this objection, TranSystems states the general procedure followed for inspections was that Flatiron would produce a three-week schedule for construction, with all parties understanding the construction schedule was tentative based on progress, weather and availability of materials. Based on the schedule, Flatiron would schedule production and delivery of concrete for pouring. TranSystems would perform running inspections as available, but final inspections would typically be performed immediately prior to pouring of concrete, within 24 hours of the scheduled concrete pour. Requestors from Flatiron would vary, based on the field engineer responsible for a particular structure. Documentation would include the three-week schedule produced by Flatiron, as well as weekly day-by-day schedules produced by Flatiron, which were updated daily based on progress. Documentation produced by TranSystems would include the pre-pour checklist, to be signed by the assigned inspector for TranSystems. If TranSystems noted deficiencies or issues in the schedules produced

by Flatiron, Marty Long would notify if there were issues of non-compliance, like missing certifications or material tests.

11. Identify any and all deficiencies, defects, errors, omissions, or other issues in Flatiron's work, workmanship, or construction activities on the Project, and for each instance, provide the following information: date when the deficiency, defect, error, omission, or other issue was identified; the name of the inspector who identified the deficiency, defect, error, omission, or other issue; a detailed description of the deficiency, defect, error, omission, or other issue; an explanation of the reason for the deficiency, defect, error, omission, or other issue; and identify the steps taken by TranSystems after the deficiency, defect, error, omission, or other issue was identified.

ANSWER: TranSystems objects to this Interrogatory as overly broad and unduly burdensome, particularly given that TranSystems has presented no claim against Flatiron in this case. All communications and inspections were documented in writing, and were provided to Flatiron contemporaneously. Additionally, TranSystems has produced its project file, which includes all reports of deficiencies. Deficiencies could range in scope from minor compliance or missing paperwork, to work that failed to meet certification requirements for safety. It is impossible for TranSystems to identify every deficiency in a list form; however, TranSystems' files, as well as the reports provided to SCDOT and maintained in SCDOT's computer database will contain every documented deficiency, as well as the steps taken to respond to same.

12. Identify the methods employed by TranSystems to give notice to Flatiron of deficiencies, defects, errors, omissions, or other issues identified during inspections of Flatiron's work on the Project. Include a description of how notice is given, in what timeframe, and the individuals responsible for providing said notice.

ANSWER: TranSystems objects to this Request as overly broad and unduly burdensome, because there were a wide range of responses, based on the nature and extent of deficiency discovered. Subject to this Objection, TranSystems states that the general procedure for responses to deficiencies was as follows:

After the discovery of any deficiency, pursuant to the terms of its contract for services with Horry County, TranSystems notified SCDOT, Horry County, and Flatiron of any inspections revealing problems or concerns, and it provided comments to Flatiron for potential correction. Flatiron had the option to make changes, or to follow the escalation procedure provided in its contract with Horry County for resolution of any disputes. As to minor deficiencies, TranSystems would not notify Horry County or SCDOT, unless or until Flatiron refused to make changes to resolve the minor deficiencies and the dispute became part of the escalation process.

13. Identify all instances in which TranSystems instructed Flatiron to stop work, modify its work, suspend performance, or re-sequence work in relation to the Project, and for each instance, provide: Date of the instruction; nature and purpose of the instruction; grounds or reasons for the instruction; names and titles of individuals involved in giving or receiving the instruction; and written or documented communication conveying the instruction.

ANSWER: TranSystems objects to this Interrogatory as overly broad and unduly burdensome, because it contains no limit in scope as to the request. As the request is drafted, a minor paperwork revision would require the same response as a stop work order. Subject to this objection, TranSystems states that, at SCDOT's direction, it communicated partial project stop work orders on limited occasions, which were documented at the following locations in production:

- A. FIC000584029 – FIC000584033, from November 2016, regarding concrete issues at Bent 15;
- B. FIC000082888 – FIC000082935, from October 2016, involving concrete pours;
- C. FIC000030270, involving a temporary suspension of work in July, 2016;
- D. FIC000031582 – FIC000031589, involving lifting of a temporary suspension of work in August 2016;
- E. FIC000152248, addressing a SCDOT stop work order in December, 2015;
- F. FIC000180746, addressing a stop work order for Drilled Shafts in July, 2014; and
- G. FIC000021679, relating to a hold on mass pours pending approval of a revised Mass Concrete Plan, in December 2014.

14. Identify all instances where TranSystems sought instruction, permission, or approval from SCDOT to approve Flatiron's work, declare the work deficient, stop work, suspend performance, re-sequence work, or affect the ongoing work on the Project, and for each instance, provide: Date the instruction, permission, or approval from SCDOT was sought; description of the work related to the requested instruction, permission, or approval; names and titles of individuals involved in giving or receiving instruction, permission, or approval; and written or documented communication conveying the instruction.

ANSWER: TranSystems objects to this Interrogatory as overly broad and unduly burdensome, because it requests TranSytems to essentially provide a description of the entirety of its work on the project in an Interrogatory Answer. TranSystems has produced its available Project File, and SCDOT has produced its file to Flatiron, which contains all information responsive to this Interrogatory. The burden on Flatiron is equal to that for TranSystems to search SCDOT's file for this information.

15. Identify the methods used by TranSystems for documenting inspections performed on the Project, including a description of the process of inspection, a description of documentation generated as part of the inspection process, and individuals responsible for creating or maintaining documentation involved in the inspection process so identified.

ANSWER: SCDOT provided a form to be completed for every inspection of concrete pours, and all inspection protocols are listed in the 2004 SCDOT Manual for Construction, which has been produced in this case. Individual inspectors would complete the form appropriate for each inspection, and the inspection forms were maintained by being uploaded into Site Manager, the SCDOT database, and ProjectWise, as appropriate.

16. Identify all meetings, discussions, conferences, or communications by TranSystems to provide updates on the Project, whether they occurred regularly (daily, weekly, monthly, e.g.) or otherwise.

ANSWER: TranSystems objects to this Interrogatory as overly broad and unduly burdensome, as it requires TranSystems to describe all work it did on this Project in an Interrogatory response. Subject to this objection, TranSystems states that it conducted bi-weekly project progress meetings, and daily meetings of Marty Long with Lou Hutcherson on every week day, to discuss project progress. TranSystems kept minutes of the bi-weekly meetings, which were uploaded to ProjectWise, and which were sent contemporaneously to Flatiron. Additionally, TranSystems would respond to email or other requests as needed. Those emails would have also been uploaded to ProjectWise.

17. Identify reports, summaries, logs, or other documents created to provide project updates.

ANSWER: TranSystems objects to this Interrogatory as overly broad and unduly burdensome. Further, the Interrogatory does not specify the people or entities to be updated on project status. Subject to this Objection, TranSystems states generally that it created the following categories of reports:

1. Bi-weekly meeting minutes;
2. Certification logs, which lists certification of materials;
3. Material testing log;
4. Rain log, documenting weather;
5. Inspectors Daily Work Reports;
6. Drill Shaft Logs;
7. Concrete Pre-Pour Checklist;
8. Stored Material Payment Report;
9. Change Order Log; and
10. ICWW Concrete and Rebar Installation Log.

All of these categories of reports were uploaded to SCDOT ProjectWise or Site Manager, as appropriate. Upon information and belief, Flatiron has obtained all of these reports via a Freedom of Information Act request to SCDOT. Additionally, Flatiron had to sign many of these reports as they were completed during construction.

18. Identify all persons acting as the Resident Construction Engineer (“RCE”) on the Project.

ANSWER: TranSystems objects to this Interrogatory as vague and insufficiently defined. Subject to this Objection, TranSystems states the following:

Although Marty Long used the title Resident Construction Engineer in his capacity with TranSystems, he never had authority as SCDOT's RCE. That authority is vested solely in an employee of SCDOT, under Section 101.2 of the SCDOT Standard Specifications. Travis Patrick was the primary Resident Construction Engineer for SCDOT for the Project. In 2017, Katherine Scott obtained the SCDOT title of Resident Construction Engineer, when Patrick became District 5 Assistant Construction Engineer. AJ Bostic also had a title of Resident Construction Engineer. Derrick Tindall also became Resident Construction Engineer for District 5.

19. Identify all instances in which TranSystems' inspection was requested, but the inspection was denied, and for each instance, provide: Date the inspection was requested; nature and purpose of the requested inspection; grounds or reasons for denying the inspection; names and titles of individuals involved in giving or receiving the denial; and written or documented communication conveying the request and denial.

ANSWER: There are no known instances where TranSystems was requested to perform an inspection, and such request was denied. Alleging that an inspection was denied would allege that portions of the project were built without an inspection, which such allegation is not supported by the project records. It is possible that a requested inspection was delayed allowing TranSystems inspectors to complete initiated inspections at other areas or awaiting Flatiron's Field Engineer to complete his/her QC as outlined in the project records or perform other inspections requested at the same time. As soon as an inspector was available to perform an inspection, it would be performed.

20. State in detail all facts and identify all documents upon which you rely in support of your Second Defense that "Flatiron's alleged damages were caused by its own negligence" (See TranSystems' Answer to Amended Complaint, ¶ 51, dated November 13, 2020).

ANSWER: SCDOT asserted errors on the part of Flatiron on multiple occasions, and TranSystems cannot respond to this in full until it has had an opportunity to review all documents provided by SCDOT. TranSystems will supplement this response.

21. State in detail all facts and identify all documents upon which you rely in support of your Third Defense that “Flatiron’s alleged damages were caused by the intervening or superseding fault or breach of others and/or Acts of God” (*See* TranSystems’ Answer to Amended Complaint, ¶ 52, dated November 13, 2020).

ANSWER: TranSystems cannot respond to this in full until it has had an opportunity to review all documents provided by SCDOT. TranSystems will supplement this response.

22. State in detail all facts and identify all documents upon which you rely in support of your Fifth Defense that “Flatiron’s claims may be barred by the equitable doctrines or waiver, estoppel, and/or laches . . . based on Flatiron’s claims under its Construction Contract with Horry County” (*See* TranSystems’ Answer to Amended Complaint, ¶ 54, dated November 13, 2020).

ANSWER: TranSystems cannot respond to this in full until it has had an opportunity to review all documents provided by SCDOT. TranSystems will supplement this response.

23. State in detail all facts and identify all documents upon which you rely in support of your Sixth Defense that “TranSystems is entitled to a setoff for any compensation received by Flatiron for the damages alleged in its Amended Complaint.” (*See* TranSystems’ Answer to Amended Complaint, ¶ 55, dated November 13, 2020).

ANSWER: TranSystems cannot respond to this request in full until it has reviewed all documents from SCDOT and Flatiron. TranSystems reserves the right to supplement this response.

24. State in detail all facts and identify all documents upon which you rely in support of your Seventh Defense that “Flatiron’s claims against TranSystems may be barred by the doctrine of accord and satisfaction and/or satisfaction and release” (*See* TranSystems’ Answer to Amended Complaint, ¶ 56, dated November 13, 2020).

ANSWER: TranSystems cannot respond to this request in full until it has reviewed all documents from SCDOT and Flatiron. TranSystems reserves the right to supplement this response.

25. State in detail all facts and identify all documents upon which you rely in support of your Ninth Defense that “Flatiron’s alleged damages were caused by the intervening or superseding fault or breach of others and/or Acts of God” (*See* TranSystems’ Answer to Amended Complaint, ¶ 58, dated November 13, 2020).

ANSWER: Discovery is in an early phase in this case, and TranSystems continues to evaluate evidence, as well as its potential affirmative defenses. Accordingly, TranSystems reserves the right to supplement this response. Subject to this reservation, TranSystems states that significant portions of the delay claimed by Flatiron was a product of weather, which was not within the control of TranSystems. Additionally, in various locations, Flatiron has claimed delays related to weather, which would constitute Acts of God. TranSystems will supplement this response.

26. State in detail all facts and identify all documents upon which Mr. Peter Strub relied upon to claim that “[n]either TranSystems Corporation nor I ever considered or intended Flatiron to be a third-party beneficiary of TranSystems’ contract with Horry County.” (*See* TSC MSJ, ¶ 9, Ex. F – Affidavit of Peter Strub, P.E.).

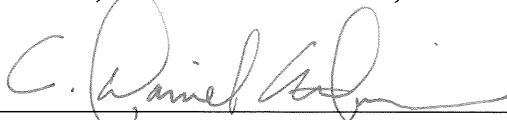
ANSWER: Peter Strub is the person who executed and negotiated TranSystems' contract with Horry County, and he based his sworn testimony on his own personal knowledge held at the time of the Contract's execution, as well as the terms negotiated thereunder. Further, at the time of the execution of the TranSystems Contract, Flatiron was not hired as General Contractor, making it impossible for Flatiron to be an intended third party beneficiary of a contract entered before it agreed to do work on the Carolina Bays project.

27. State in detail all facts and identify all documents upon which Mr. Peter Strub relied to claim that "[a]lthough the TranSystems Contract included a document entitled 'Engineer Certification for Project Plans and Specifications,' signed by [Mr. Peter Strub], TranSystems never prepared, signed, or sealed any design plans for the Project. Accordingly, the Engineering Certification for Plans and Specifications was never performed by TranSystems for the Carolina Bays Project." (See TSC MSJ, ¶ 7, Ex. F – Affidavit of Peter Strub, P.E.).

ANSWER: TranSystems objects to this Interrogatory as posed, because it requests for TranSystems to identify documents to prove that something did not happen, which is impossible. There is no document, because it did not happen.

November 3, 2023

WILKES, ATKINSON & JOYNER, LLC



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- And -

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127 Dunbar Street, Suite 200
Spartanburg, SC 29306
Phone: (864) 591-1113

Attorneys for TranSystems Corporation

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	C.A. No.: 2018-CP-26-02633
	)	
Flatiron Constructors, Inc.,	)	
	)	CERTIFICATE OF SERVICE
Plaintiff,	)	
	)	
vs.	)	
	)	
TranSystems Corporation,	)	
	)	
Defendant.	)	
_____	)	

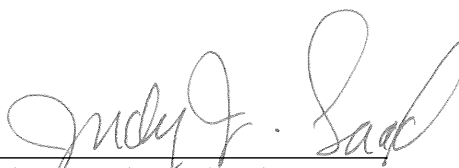
I hereby certify that I have this date, served a true and correct copy of *TranSystems Corporation's Answers to Flatiron Constructors, Inc.'s First Set of Interrogatories* via Email

only to the following counsel of record:

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Carter B. Reid, Esq.
 Watt, Tieder, Hoffar & Fitzgerald, LLP
 1765 Greensboro Station Place, Suite 1000
 McLean, VA 22102
creid@watttieder.com

November 3, 2023


 Judy J. Saad, Paralegal

Date: Thu, 25 Feb 2016 4:04:59 PM (UTC)
Sent: Thu, 25 Feb 2016 4:04:58 PM (UTC)
Subject: FW: Flatiron - Barrier Completion Date Stamp Material Approval
From: Hutcherson, Lou <LHutcherso@flatironcorp.com>
To: Kirk, Ted <tkirk@flatironcorp.com>; Lieberman, Daniel <DLieberman@flatironcorp.com>;
CC: Gaidanowicz, Bryan <BGaidanowicz@flatironcorp.com>; Brumfield, Linda <LBrumfield@flatironcorp.com>; Sanborn, Todd <tsanborn@flatironcorp.com>; Nix, Lisa <LNix@flatironcorp.com>;

Mr. Kirk –

Please see Marty's e-mail below to Lisa this morning validating and confirming my Recovery Plan Issue Item 21.B.; and in addition, if it's a structure issue, you can add time for SCDOT Bridge Division, (and they don't work every day), the Project's EOR, Rocque at CECS, and the respective structure's DOR, whether STV, (ICWW Bridge) or Mead & Hunt, (SC-707 and Enterprise bridges).

You would believe that Marty, the designated RCE has actual authority; that per the Specifications he has express authority; and the position title alone provides apparent authority; but, in actuality he does not possess, and nor will he demonstrate, any authority - as evidenced in the e-mail below. Decisions that the RCE should be making, and can make per the Specifications, are a two, three, four, five, and sometimes six step process.

Lou

From: Nix, Lisa
Sent: Thursday, February 25, 2016 10:39 AM
To: Hutcherson, Lou
Subject: FW: Flatiron - Barrier Completion Date Stamp Material Approval

Lisa Nix
 Cost Engineer
 Carolina Bays Parkway Extension
 843.655.6774 CELL

From: mllong@transystems.com [mailto:mllong@transystems.com]
Sent: Thursday, February 25, 2016 10:35 AM
To: Nix, Lisa
Subject: RE: Flatiron - Barrier Completion Date Stamp Material Approval

Lisa

On this project, since I'm a consultant, anywhere it says RCE you can replace it with the word District which would be Jason or Travis. With that said you can show it to Travis at the bi-weekly or run by his office if you need an answer sooner.

From: Nix, Lisa [mailto:LNix@flatironcorp.com]
Sent: Thursday, February 25, 2016 10:30 AM
To: CR-Marty Long
Subject: RE: Flatiron - Barrier Completion Date Stamp Material Approval

I have purchased only two set of stamps- which we will need both for the construction of the project. The drawing states the RCE is to approve the material and doesn't mention the DOT. If the DOT needs to be involved is it something Travis can look at in the bi-weekly meeting so we don't lose the ones we have?

Thanks,

Lisa Nix
Cost Engineer
Carolina Bays Parkway Extension
843.655.6774 CELL

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To: Nix, Lisa
Subject: RE: Flatiron - Barrier Completion Date Stamp Material Approval

Lisa

Do you have an actual sample I can send to the DOT?

From: Nix, Lisa [mailto:LNix@flatironcorp.com]
Sent: Thursday, February 25, 2016 10:08 AM
To: CR-Marty Long
Subject: Flatiron - Barrier Completion Date Stamp Material Approval

Marty,

Per the note on SCDOT drawing 702-305-00 the RCE is to approve the material for the completion date stamp in the barrier of the bridges.

"Recess numbers in the concrete using numbers from reusable / durable material that is approved by the RCE."

The numbers we have purchased are made out of Ultra High Molecular Plastic (UHMW) which is very reusable and durable. These are machined here in South Carolina and used on many bridge barriers in the state. I've attached a photo of the actual numbers for your use.

Keys features and benefits of UHMW plastic are:

1. Corrosion resistant & exhibits virtually no water absorption
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3. Abrasion, Wear, and Impact Resistant

This material is typically used for impact and high-wear applications.

Do you find this material to be acceptable?

If you have any further questions or need any additional information please let me know.

Thanks,

Lisa Nix
Cost Engineer
Carolina Bays Parkway Extension
843.655.6774 CELL

Date: Thu, 25 Feb 2016 10:51:44 PM (UTC)
Sent: Thu, 25 Feb 2016 10:52:31 PM (UTC)
Subject: RE: Flatiron - Barrier Completion Date Stamp Material Approval
From: mllong@transystems.com
To: LNix@flatironcorp.com;

No problem 😊

From: Nix, Lisa [mailto:LNix@flatironcorp.com]
Sent: Thursday, February 25, 2016 10:40 AM
To: CR-Marty Long
Subject: RE: Flatiron - Barrier Completion Date Stamp Material Approval

I did not know that. But will know now for in the future.

Thanks Marty.

Lisa Nix
Cost Engineer
Carolina Bays Parkway Extension
843.655.6774 CELL

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Date: Thu, 25 Feb 2016 11:10:29 PM (UTC)
Sent: Thu, 25 Feb 2016 11:10:28 PM (UTC)
Subject: FW: Flatiron - Barrier Completion Date Stamp Material Approval
From: Kirk, Ted <tkirk@flatironcorp.com>
To: Gaidanowicz, Bryan <BGaidanowicz@flatironcorp.com>; Lieberman, Daniel <DLieberman@flatironcorp.com>;

I guess I'm a bit sidetracked by our own form of submittal. Lisa shouldn't ride solo on this stuff and should at least copy the PM and appropriate Field Engineer. Talk to the staff about the importance of sharing and copying. Also this kind of response gives us a huge out. Start sending submittals to Marty and Travis and copy the reviewing authority all at once. When they resist or complain we need to tell them the process has been broken since the beginning delaying the work.

Ted Kirk
 Vice President
Flatiron
 Southeast Division
 215 Southport Drive, Suite 1400
 Morrisville, North Carolina 27560
 919 460 5393 X8309 **PHONE**
 919 460 5708 **FAX**
 919 723 1299 **CELL**
 www.flatironcorp.com

Build the Best. Be the Best.

From: Hutcherson, Lou
Sent: Thursday, February 25, 2016 11:05 AM
To: Kirk, Ted; Lieberman, Daniel
Cc: Gaidanowicz, Bryan; Brumfield, Linda; Sanborn, Todd; Nix, Lisa
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Thanks,

Lisa Nix

Cost Engineer

Carolina Bays Parkway Extension

843.655.6774 CELL

From: GV-Peter Strub </O=TRANSYSTEMS CORPORATION/OU=TRANSYSTEMS/CN=RECIPIENTS/CN=PMS>
To: GV-Marty Long
CC: HU-Tom Mukai; GV-David Hoff
Sent: 12/11/2013 1:03:12 PM
Subject: Re: CBP

I am okay with Jan 13/14 or the week of Jan 20. Jan 15-17 I am at an ACEC ExCom meeting in New Orleans.

Peter

Sent from my iPhone

On Dec 11, 2013, at 7:52 AM, "GV-Marty Long" <mllong@transystems.com> wrote:

FYI

From: GV-Marty Long
Sent: Tuesday, December 10, 2013 9:35 AM
To: 'Rudloff, Paul'
Cc: Warren, Tom; Kirk, Ted; DiMuro, Steve; Johnson, David L; Berry, Kyle (BerryWK@scdot.org)
Subject: RE: CBP

Thanks Paul

Do any of the dates in mid-January work for you listed below? When do you expect to submit your CPM schedule?

Thanks again!

From: Rudloff, Paul [<mailto:prudloff@flatironcorp.com>]
Sent: Tuesday, December 10, 2013 9:32 AM
To: GV-Marty Long
Cc: Warren, Tom; Kirk, Ted; DiMuro, Steve
Subject: RE: CBP

See attached Precon Invite List with Flatiron attendees. Sorry for the holdup

Paul T. Rudloff
Flatiron Construction Corp
215 Southport Dr.
Suite 1400
Morrisville, NC 27560
919-460-5393 ext 8319
813-786-5205 cell
prudloff@flatironcorp.com

From: mllong@transystems.com [<mailto:mllong@transystems.com>]
Sent: Thursday, December 05, 2013 7:56 AM
To: Rudloff, Paul
Cc: Warren, Tom; twmukai@transystems.com; dbhoff@transystems.com
Subject: RE: CBP

Good Morning Paul

The DOT would like to schedule the partnering/precon meeting the week of January 13-17 or early the week of January 20th. Could you please provide 2 or 3 dates that Flatiron would be available in that time period? The meeting will be somewhere in Horry County.

Thanks
Marty Long
RCE
864.915.0741

From: Rudloff, Paul [<mailto:prudloff@flatironcorp.com>]
Sent: Tuesday, October 29, 2013 3:17 PM
To: GV-Marty Long
Cc: Warren, Tom
Subject: CBP

Martin, thanks for calling and introducing yourself as the Resident Engineer for our Carolina Bays III project. We will keep you in the loop as to when we may be ready for a preconstruction meeting. Tom Warren who is copied on this email will be the project manager.
Thanks for your time

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ELECTRONICALLY FILED - 2023 Dec 12 2:13 PM - HORRY - COMMON PLEAS - CASE#2022CP2606116

Date: Mon, 3 Feb 2014 3:29:14 PM (UTC)
Sent: Mon, 3 Feb 2014 3:25:44 PM (UTC)
Subject: RE: Construction Forms
From: Long, Martin L - TranSystems <MLLong@transystems.com >
To: Patrick, Travis M <PatrickTM@scdot.org>;
Attachments: 02031401.PDF

Yes. See below. I've attached some of the DN 37 that I have so far.

Regena Wells: Resident Admin
Bobbie Hemmingway: Inspector
Doug Kennedy: Inspector
Jim Blackwell: Inspector
Michael Cook: Inspector
Neal McClure: Inspector

From: Patrick, Travis M [mailto:PatrickTM@scdot.org]
Sent: Monday, February 03, 2014 10:16 AM
To: GV-Marty Long; GV-Tom Mukai
Subject: RE: Construction Forms

Marty,

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Travis M. Patrick, PE

Resident Construction Engineer – Horry County
South Carolina Department of Transportation
4145 Hwy 701 North
Conway, SC 29526
Office: 843-365-2106
Fax: 843-365-0338

From: Parnell, Brian
Sent: Monday, February 03, 2014 9:59 AM
To: Patrick, Travis M; Long, Martin L - TranSystems
Subject: RE: Construction Forms

Done

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 Your SiteManager account is currently active. Are you still having issues logging in?

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From: Long, Martin L - TranSystems
Sent: Thursday, January 30, 2014 4:23 PM
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From: Johnson, David L [mailto:JohnsonDAV@scdot.org]
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CMS Users,

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(also known as the Construction Forms system). We are moving to fillable pdfs located on the SCDOT Extranet page under "Documents" / "Construction Forms" (easily accessible to internal personnel through the link on the DOC Intranet page under "Resources" or here: <http://extranet2.sharepoint.dot.state.sc.us/ce/default.aspx>). Some of the forms have been updated and will continue to be changed as needed. Prime contractors are also able to access these forms to complete and submit to agency personnel.

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Please discontinue use of the Construction Management System effective 1/1/2014 and feel free to notify me of any questions or concerns.

Brian Parnell
Construction Support Manager
South Carolina Department of Transportation
803-737-1147
parnelljb@scdot.org

**E
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B**

From: GV-Peter Strub </O=TRANSSYSTEMS CORPORATION/OU=TRANSSYSTEMS/CN=RECIPIENTS/CN=PMS>
To: GV-Marty Long
CC: HU-Tom Mukai; GV-David Hoff
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EXHIBIT C

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Brian Parnell
Construction Support Manager
South Carolina Department of Transportation
803-737-1147
parnelljb@scdot.org

EXHIBIT D

Date: Thu, 25 Feb 2016 4:04:59 PM (UTC)
Sent: Thu, 25 Feb 2016 4:04:58 PM (UTC)
Subject: FW: Flatiron - Barrier Completion Date Stamp Material Approval
From: Hutcherson, Lou <LHutcherso@flatironcorp.com>
To: Kirk, Ted <tkirk@flatironcorp.com>; Lieberman, Daniel <DLieberman@flatironcorp.com>;
CC: Gaidanowicz, Bryan <BGaidanowicz@flatironcorp.com>; Brumfield, Linda <LBrumfield@flatironcorp.com>; Sanborn, Todd <tsanborn@flatironcorp.com>; Nix, Lisa <LNix@flatironcorp.com>;

Mr. Kirk –

Please see Marty's e-mail below to Lisa this morning validating and confirming my Recovery Plan Issue Item 21.B.; and in addition, if it's a structure issue, you can add time for SCDOT Bridge Division, (and they don't work every day), the Project's EOR, Rocque at CECS, and the respective structure's DOR, whether STV, (ICWW Bridge) or Mead & Hunt, (SC-707 and Enterprise bridges).

You would believe that Marty, the designated RCE has actual authority; that per the Specifications he has express authority; and the position title alone provides apparent authority; but, in actuality he does not possess, and nor will he demonstrate, any authority - as evidenced in the e-mail below. Decisions that the RCE should be making, and can make per the Specifications, are a two, three, four, five, and sometimes six step process.

Lou

From: Nix, Lisa
Sent: Thursday, February 25, 2016 10:39 AM
To: Hutcherson, Lou
Subject: FW: Flatiron - Barrier Completion Date Stamp Material Approval

Lisa Nix
 Cost Engineer
 Carolina Bays Parkway Extension
 843.655.6774 CELL

From: mllong@transystems.com [mailto:mllong@transystems.com]
Sent: Thursday, February 25, 2016 10:35 AM
To: Nix, Lisa
Subject: RE: Flatiron - Barrier Completion Date Stamp Material Approval

Lisa

On this project, since I'm a consultant, anywhere it says RCE you can replace it with the word District which would be Jason or Travis. With that said you can show it to Travis at the bi-weekly or run by his office if you need an answer sooner.

From: Nix, Lisa [mailto:LNix@flatironcorp.com]
Sent: Thursday, February 25, 2016 10:30 AM
To: CR-Marty Long
Subject: RE: Flatiron - Barrier Completion Date Stamp Material Approval

I have purchased only two set of stamps- which we will need both for the construction of the project. The drawing states the RCE is to approve the material and doesn't mention the DOT. If the DOT needs to be involved is it something Travis can look at in the bi-weekly meeting so we don't lose the ones we have?

Thanks,

Lisa Nix
Cost Engineer
Carolina Bays Parkway Extension
843.655.6774 CELL

From: mllong@transystems.com [mailto:mllong@transystems.com]
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To: Nix, Lisa
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Lisa

Do you have an actual sample I can send to the DOT?

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Subject: Flatiron - Barrier Completion Date Stamp Material Approval

Marty,

Per the note on SCDOT drawing 702-305-00 the RCE is to approve the material for the completion date stamp in the barrier of the bridges.

"Recess numbers in the concrete using numbers from reusable / durable material that is approved by the RCE."

The numbers we have purchased are made out of Ultra High Molecular Plastic (UHMW) which is very reusable and durable. These are machined here in South Carolina and used on many bridge barriers in the state. I've attached a photo of the actual numbers for your use.

Keys features and benefits of UHMW plastic are:

1. Corrosion resistant & exhibits virtually no water absorption
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This material is typically used for impact and high-wear applications.

Do you find this material to be acceptable?

If you have any further questions or need any additional information please let me know.

Thanks,

Lisa Nix
Cost Engineer
Carolina Bays Parkway Extension
843.655.6774 CELL

EXHIBIT E

Date: Thu, 25 Feb 2016 10:51:44 PM (UTC)
Sent: Thu, 25 Feb 2016 10:52:31 PM (UTC)
Subject: RE: Flatiron - Barrier Completion Date Stamp Material Approval
From: mllong@transystems.com
To: LNix@flatironcorp.com;

No problem 😊

From: Nix, Lisa [mailto:LNix@flatironcorp.com]
Sent: Thursday, February 25, 2016 10:40 AM
To: CR-Marty Long
Subject: RE: Flatiron - Barrier Completion Date Stamp Material Approval

I did not know that. But will know now for in the future.

Thanks Marty.

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Cost Engineer
Carolina Bays Parkway Extension
843.655.6774 CELL

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EXHIBIT F

Date: Thu, 25 Feb 2016 11:10:29 PM (UTC)
Sent: Thu, 25 Feb 2016 11:10:28 PM (UTC)
Subject: FW: Flatiron - Barrier Completion Date Stamp Material Approval
From: Kirk, Ted <tkirk@flatironcorp.com>
To: Gaidanowicz, Bryan <BGaidanowicz@flatironcorp.com>; Lieberman, Daniel <DLieberman@flatironcorp.com>;

I guess I'm a bit sidetracked by our own form of submittal. Lisa shouldn't ride solo on this stuff and should at least copy the PM and appropriate Field Engineer. Talk to the staff about the importance of sharing and copying. Also this kind of response gives us a huge out. Start sending submittals to Marty and Travis and copy the reviewing authority all at once. When they resist or complain we need to tell them the process has been broken since the beginning delaying the work.

Ted Kirk
Vice President
Flatiron
Southeast Division
215 Southport Drive, Suite 1400
Morrisville, North Carolina 27560
919 460 5393 X8309 **PHONE**
919 460 5708 **FAX**
919 723 1299 **CELL**
www.flatironcorp.com

Build the Best. Be the Best.

From: Hutcherson, Lou
Sent: Thursday, February 25, 2016 11:05 AM
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RECEIVED

Aug 13 2024

SC Court of Appeals

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

s/K. Jay Anthony

K. Jay Anthony, Esq. (S.C. Bar # 77433)

Anthony Law, LLC
650 E. Washington Street
Greenville, SC 29601
janthony@anthonylawsc.com

Mason A. Goldsmith, Jr., Esq. (S.C. Bar # 2182)
Elmore Goldsmith Kelley & Deholl, P.A.
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Carter B. Reid, Esq. (*pro hac vice*)
Hanna Lee Blake, Esq. (*pro hac vice*)
Robert B. Cimmino, Esq. (*pro hac vice*)
Watt, Tieder, Hoffar & Fitzgerald, LLP
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Counsel for Appellant