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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA**
**IN THE COURT OF APPEALS**

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Appeal from Charleston County
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

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Case No. 2015-CP-10-00955
Appellate Case No. 2026-000077

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Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Elizabeth A. Bushey, individually, and on behalf of all others similarly situated,

Appellants,

v.

Island Pointe, LLC; Complete Building Corporation; Tri-County Roofing, Inc.; Creekside, Inc.; American Residential Services, LLC d/b/a ARS/Rescue Rooter Charleston; Andersen Windows, Inc.; Atlantic Building Construction Services, Inc. n/k/a Atlantic Construction Services, Inc.; Builder Services Group, Inc. d/b/a Gale Contractor Services; Novus Architects, Inc. f/k/a SGM Architects, Inc.; Tallent and Sons, Inc.; WC Services, Inc., CRG Engineering, Inc.; CertainTeed Corporation; Kelly Flooring Products, Inc. d/b/a Carpet Baggers; Cornerstone Construction and Mark Malloy d/b/a Cornerstone Construction; Miracle Siding, LLC and Wilson Lucas Sales d/b/a Miracle LLC; Mark Palpoint a/ka Micah Palpoint; Elroy Alonzo Vasquez; Chris a/k/a John Doe 61; Alderman Construction; Stanley's Vinyl Fence Designs; Cohen's Drywall Company, Inc; Mosley Concrete; Hand A Framing Construction, LLC a/k/a H&A Framing Construction, LLC and d/b/a H and A Framing, LLC, H&A Construction, and Hand A Construction; JMC Construction, Inc.; JMC Construction, LLC; John Doe 1–15,

Defendants,

Of which Tri-County Roofing, Inc., is the

Respondent.

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# INITIAL BRIEF OF APPELLANTS

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**Counsel identified on the following page*

Edward D. Buckley, Jr. (SC Bar No. 994)
Russell G. Hines (SC Bar No. 72100)
CLEMENT RIVERS, LLP
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 724-5446

*-and-*

Justin O. Lucey (SC Bar No. 15438)
Anna S. McCann (SC Bar No. 102314)
Sohayla R. Townes (SC Bar No. 102814)
JUSTIN O'TOOLE LUCEY, P.A.
415 Mill Street
Mt. Pleasant, South Carolina 29464
P.O. Box 806 (29465)
(843) 849-8400

*Attorneys for Appellants*

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## STATEMENT OF ISSUES ON APPEAL

**I. Where Plaintiffs[1] obtained a judgment against TCR[2] for more than $1,000,000; where TCR appealed and, to stay execution of the judgment pending the appeal (i.e., in exchange for the benefit of preventing Plaintiffs from executing on the judgment pending the appeal), posted a $1,000,000 surety bond to "guarantee the payment of the judgment pending the appeal;"[3] and where the appeal concluded with finality with Plaintiffs remaining entitled to a judgment against TCR for more than $1,000,000, which remains unsatisfied, did the trial court err in denying Plaintiffs' motion for the full $1,000,000 amount of TCR's appeal bond to be immediately and unconditionally disbursed to Plaintiffs in partial satisfaction of the judgment?[4]**

**A. Did the trial court err by relating Plaintiffs' right to the bond proceeds to any question of insurance coverage for the judgment against TCR?**

**B. Did the trial court err by considering the equities? And even assuming, *arguendo*, it was proper for the trial court to consider the equities, did it err by not finding that they favor Plaintiffs?**

**C. Did the trial court err by relying on facts not in evidence about Plaintiffs' settlement agreements with certain of TCR's insurers?**

**II. Assuming, *arguendo*, the Court is not inclined to agree with Plaintiffs with respect to Issue/Argument I, should the Court confirm that the operation of the 120-day disbursement trigger in the trial court's August 28, 2025, order itself unconditionally entitles Plaintiffs to be paid the full amount of TCR's appeal bond in partial satisfaction of the judgment?**

## STATEMENT OF THE CASE

This construction defect lawsuit was filed against TCR, as well as other parties irrelevant to this appeal, in the Charleston County Court of Common Pleas on February 13, 2015.

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[1] "Plaintiffs" refers to Plaintiffs/Appellants, Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Elizabeth A. Bushey, individually, and on behalf of all others similarly situated.

[2] "TCR" refers to Defendant/Respondent, Tri-County Roofing, Inc.

[3] S.C. Code Ann. § 18-9-130(A)(1).

[4] This issue, and the corresponding argument below, is advanced subject to and without waiving Plaintiffs' position that, as explained in footnote 19, *infra*, the operation of the 120-day disbursement trigger in the trial court's August 28, 2025, order itself unconditionally entitles Plaintiffs to be paid the full amount of TCR's appeal bond in partial satisfaction of the judgment.

(Summons & Compl.)[5] It came on for a jury trial in May of 2019, the Honorable Jennifer B. McCoy presiding, and Plaintiffs obtained a verdict against TCR in the amount of $7,000,000, including $500,000 in punitive damages. (Verdict Form.) Post-trial proceedings resulted in TCR being allowed a setoff in the amount of $1,670,000, and in accordance with the trial court's order filed July 23, 2019, judgment was entered in favor of Plaintiffs against TCR in the amount of $5,330,000,[6] whereupon, on October 14, 2019, TCR appealed,[7] contending it was entitled to a greater setoff than the trial court allowed.

By motion filed October 21, 2019,[8] TCR sought and, by order filed January 28, 2020,[9] was granted a stay of execution pending its appeal on the condition that it post an appeal bond in the amount of $1,000,000, pursuant to § 18-9-130, and on February 4, 2020, TCR posted a $1,000,000 appeal bond executed by surety U.S. Specialty Insurance Company ("USSIC"). (Original Appeal Bond.) Years later, on February 7, 2025, while TCR's appeal was still pending, and pursuant to a consent order filed January 2, 2025,[10] this bond was replaced by a substitute bond,[11] but insofar as the security provided to Plaintiffs is concerned—and, indeed, as expressly required by the aforementioned consent order allowing it[12]—the material terms of the

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[5] The operative complaint is Plaintiffs' second amended complaint, filed November 2, 2017. (2d Am. Compl.)

[6] (Order filed 7/23/19.)

[7] TCR's notice of appeal (TCR's NOA & POS, dated 10/14/19) timely followed the trial court's September 25, 2019, order denying TCR's motion for reconsideration of its July 23, 2019, order. (Order filed 9/25/19.)

[8] (TCR's Mot. to Stay Execution of J. and/or to Set an Appellate Bond, filed 10/21/19.)

[9] (Order filed 1/28/20.)

[10] (Order filed 1/2/25.)

[11] (Substitute Appeal Bond.)

[12] (Order filed 1/2/25 p. 5.)

substitute bond are identical to those of the original. (*Compare* Substitute Appeal Bond *with* Original Appeal Bond.)[13]

All told, the appeal resulted in TCR being allowed an additional setoff of $1,500,000, i.e., a setoff of $1,500,000 more than the $1,670,000 the trial court had already allowed. First, by opinion filed June 28, 2023,[14] this Court held that TCR was entitled to set off an additional $500,000. Then, by opinion filed April 30, 2025,[15] our Supreme Court affirmed the additional $500,000 setoff, found TCR entitled to set off another $1,000,000 beyond that, and remanded the case to the trial court for calculation of the judgment to be entered against TCR in light of its holding.

The remittitur was issued on June 5, 2025,[16] and that same day, Plaintiffs filed a motion asking the trial court, specifically, Judge McCoy, to enter judgment in accordance with the Supreme Court's opinion and, as TCR's appeal was concluded and the judgment to be entered against it remained unsatisfied and would certainly exceed the $1,000,000 amount of TCR's appeal bond, to order the bond proceeds to be immediately disbursed to Plaintiffs in partial satisfaction of the judgment. (Pls.' Mot. for Entry of J. and Disbursement of Bond, filed 6/5/25; *see also* 7/30/25 Email from Pls. (via Weiland) to J. McCoy with Pls.' Proposed Order & Exs. A

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[13] The difference between the substitute bond and the original bond merely reflects that, during the pendency of the appeal, Plaintiffs were able to reach settlements with two of TCR's three insurers, Builders Mutual Insurance Company ("BMIC") and Scottsdale Insurance ("Scottsdale"), but not with Certain Underwriters of Lloyd's, London ("Lloyd's"). (Order filed 1/2/25.) Unlike the original bond, which states that all three of TCR's insurers have agreed with USSIC to guarantee the bond amount (Original Appeal Bond p. 2), the substitute bond only states that Lloyd's has agreed with USSIC to guarantee the bond amount. (Substitute Appeal Bond p. 3.)

[14] *Palmetto Pointe at Peas Island Condominium Property Owners Assoc., Inc. v. Island Pointe, LLC*, 440 S.C. 190, 890 S.E.2d 603 (Ct. App. 2023).

[15] *Palmetto Pointe at Peas Island Condominium Property Owners Assoc., Inc. v. Island Pointe, LLC*, ___ S.C. ___, 915 S.E.2d 501 (2025).

[16] (Remittitur, dated 6/5/25.)

and B thereto; Pls.' Proposed Order & Exs. A and B thereto; 8/18/25 Email from Pls. (via Weiland) to J. McCoy Objecting to TCR's Proposed Order and Submitting Pls.' Modified Proposed Order; Pls.' Modified Proposed Order.)

While it did not oppose Plaintiffs' calculation of the judgment amount or the entry of judgment against it for the same, TCR opposed Plaintiffs' request for disbursement of the bond proceeds, arguing that the pendency of a declaratory judgment action regarding coverage for the judgment under TCR's insurance policies with Lloyd's (the "coverage action") prevented the bond funds from being disbursed and cross-moving for a stay pending the outcome of the coverage action. (TCR's Response in Opp'n to Pls.' Mot. for Entry of J. and Cross-Mot. to Stay, filed 7/28/25; TCR's Mot. to Stay, filed 7/29/25; *see also* 7/30/25 Email from TRC (via Stegmaier) to J. McCoy with Copies of TCR's Response in Opp'n and Cross-Mot. & Separate Mot. to Stay; TCR's Reply in Opp'n to Pls.' Proposed Order, filed 7/31/25; 8/15/25 Email from TCR (via Stegmaier) with TCR's Proposed Order; TCR's Proposed Order.)

Following a hearing on July 31, 2025,[17] by order filed August 28, 2025, the trial court directed entry of judgment in favor of Plaintiffs against TCR in the amount of $3,486.317.70, which amount is inclusive of $1,906,317.70 in post-judgment interest accrued between July 23, 2019, and July 31, 2025. (Order filed 8/28/25.)[18] The trial court did not, however, order immediate disbursement of the appeal bond proceeds to Plaintiffs in partial satisfaction of the judgment but rather ordered Lloyd's to deposit the $1,000,000 bond amount with the clerk of court, released/cancelled the bond and discharged USSIC from its obligations thereunder, and

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[17] (Tr. of 7/31/25 Hr'g.)

[18] Again, TCR does not dispute the amount of the judgment or Plaintiffs' entitlement to its entry. (TCR's Response in Opp'n to Pls.' Mot. for Entry of J. and Cross-Mot. to Stay, filed 7/28/25 p. 2; 7/30/25 Email from TRC (via Stegmaier) to J. McCoy with Copies of TCR's Response in Opp'n and Cross-Mot. & Separate Mot. to Stay; TCR's Reply in Opp'n to Pls.' Proposed Order, filed 7/31/25 p. 1; TCR's Proposed Order pp. 3, 5.)

directed the clerk to hold the deposited funds until the earlier of (a) final resolution of the coverage action or (b) 120 days from the date of the order, i.e., 120 days from August 28, 2025. (Order filed 8/28/25 pp. 5–6.)[19]

[19] Specifically, regarding the retention and disbursement of the funds deposited with the clerk, the trial court's August 28, 2025, order reads as follows:

> 4. **Retention and Disbursement**
>
> The funds shall remain in the registry [of the court] until the earlier of:
>
> a. Final resolution (including appeals) of [the coverage action]; or
>
> b. 120 Days from the Issuance of this Order.
>
> If Plaintiffs prevail in the coverage action, the funds and accrued interest [while on deposit with the clerk] shall be disbursed to them in accordance with that judgment. If coverage is denied in whole or in part, the funds (or applicable portion) shall be returned to the insurers.
>
> If the coverage case is not reached within 120 days of this Order, TCR shall dis[b]urse funds.

(Order filed 8/28/25 p. 6.) The trial court's decision to provide for the alternative of the 120-day disbursement trigger marks a notable departure from the relief that TCR sought. As reflected in the proposed order TCR submitted to the trial court, TCR wanted the clerk to hold the deposited funds pending (a) final resolution of the coverage action or (b) further order of the trial court. (TCR's Proposed Order p. 6.) While the trial court largely adopted TCR's proposed order, it opted against TCR's proposed further-order-of-the-court provision in favor of the 120-day disbursement trigger and language expressly providing that, "[i]f the coverage case is not reached within 120 days of this Order, TCR shall dis[b]urse funds." (Order filed 8/28/25 p. 6.) And subsequently, while otherwise denying Plaintiffs' motion to reconsider, the trial court clarified that this language regarding the funds being disbursed if the coverage action was not reached within 120 days was intended to refer to "the Clerk of Court," not "TCR." (Order filed 12/11/25.) Accordingly, given that it has now been far more than 120 days since August 28, 2025, the operation of the 120-day disbursement trigger should itself unconditionally entitle Plaintiffs to the full amount of the bond funds (whether they are paid to Plaintiffs in the form of $1,000,000 from USSIC or the clerk of court's disbursement of the $1,000,000 (plus interest) that Lloyd's deposited pursuant to the trial court's August 28, 2025, order). But, out of an abundance of caution, to the extent that there remains any question about whether Plaintiffs are

Pursuant to Rule 59(e), SCRCP, Plaintiffs moved the trial court to alter, amend, and/or reconsider its August 28, 2025, order ("Plaintiffs' motion to reconsider"). (Pls.' Mot. to Reconsider.) By order filed December 11, 2025, the trial court denied Plaintiffs' motion to reconsider except "as to clarify that the Clerk of Court, and not TCR, may direct disbursement of funds (if/when necessary)." (Order filed 12/11/25.)[20]

By notice served and filed January 8, 2026, this appeal timely follows. (Pls.' NOA & POS.)

## STANDARD OF REVIEW

This appeal involves questions of law with respect to the interpretation of a statute (§ 18-9-130),[21] circuit court orders (the trial court's orders setting, and allowing substitution of, TCR's appeal bond, and, insofar as Plaintiffs' position regarding the effect of 120-day disbursement trigger is concerned, the trial court's orders of August 28 and December 11, 2025),[22] and clear and unambiguous contracts (TCR's original and substituted appeal bonds),[23] which are subject to

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unconditionally entitled to these funds (without regard to any question of insurance coverage for Plaintiffs' judgment against TCR), and in light of the then-anticipated and now-filed TCR appeal (*see* Appellate Case No. 2026-000531), Plaintiffs are proceeding with this appeal to make sure their rights to the full protection and proceeds of TCR's appeal bond are vindicated.

[20] As quoted above, the trial court's order of August 28, 2025, states, "If the coverage case is not reached within 120 days of this Order, *TCR* shall dis[b]urse funds. (Order filed 8/28/25 p. 6 (emphasis added).) Among other things, Plaintiffs' motion to reconsider asked the trial court to clarify that the *clerk of court*, not *TCR*, was to disburse the $1,000,000 on deposit, plus all accrued interest, once the 120-day period expired. (Plaintiffs' Motion to Reconsider p. 7.)

[21] *Univ. of S. California v. Moran*, 365 S.C. 270, 274, 617 S.E.2d 135, 137 (Ct. App. 2005) ("An issue regarding statutory interpretation is a question of law.").

[22] *Doe v. Bishop of Charleston*, 407 S.C. 128, 134, 754 S.E.2d 494, 498 (2014) ("[T]he interpretation of a judgment is a question of law for the court.")

[23] *See Moore Elec. Supply, Inc. v. Ward*, 316 S.C. 367, 369, 450 S.E.2d 96, 97 (Ct. App. 1994) ("A bond is nothing more than an agreement or contract under seal to pay money or to do some thing . . . ."); 5 C.S.J. *Appeal and Error* § 1202 ("On an appeal bond, the surety's undertaking is a contract that the surety will, failing a reversal, pay the judgment rendered against the appellant.") (footnote omitted); *Lee v. Univ. of S.C.*, 407 S.C. 512, 517, 757 S.E.2d

de novo review[24] and may be decided with no particular deference to the trial court. *Verenes v. Alvanos*, 387 S.C. 11, 15, 690 S.E.2d 771, 772 (2010) ("An appellate court may decide questions of law with no particular deference to the trial court.").

## ARGUMENT

### I. The trial court erred in denying Plaintiffs' motion for the full $1,000,000 amount of TCR's appeal bond to be immediately and unconditionally disbursed to Plaintiffs in partial satisfaction of the judgment.

#### A. The trial court erred by relating Plaintiffs' right to the bond proceeds to any question of insurance coverage for the judgment against TCR.

The fundamental problem here is any conflation of the question of whether Plaintiffs are entitled to the proceeds of TCR's appeal bond with the question of whether, and to what extent, there is insurance coverage for Plaintiffs' judgment against TCR.

"A 'supersedeas bond' is a judicial bond designed to supersede the enforcement of the trial court's judgment; it is a contract in which the surety obligates itself to pay a final judgment rendered against the principal." 5 C.J.S. § 1202. "*The bond provides security* in the event the judgment whose effectiveness is set aside during an appeal is later affirmed." *Id.* (emphasis added). "In essence, *an appeal bond provides assurances* that any remaining judgment, left standing following an appeal, *will be satisfied*." *Id.* (emphasis added).

As is clear from the language of the statute under which the bond was required, the purpose of the bond is to "*guarantee* the payment of the judgment pending the appeal" (up to the amount of the bond). § 18-9-130(A)(1) (emphasis added); (*see also* Consent Order Regarding Supersedeas/Appellate Bond p. 4 (recognizing that the purpose of the bond required under § 18-

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394, 397 (2014) ("[T]he construction of a clear and unambiguous contract is a matter of law for the court . . . .").

[24] *Citizens for Quality Rural Living, Inc. v. Greenville Cnty. Plan. Comm'n*, 426 S.C. 97, 102, 825 S.E.2d 721, 724 (Ct. App. 2019) ("As to questions of law, this court's standard of review is de novo.").

9-130(A)(1) is to "provide adequate security 'to guarantee the payment of the judgment pending the appeal . . . .'").) Here, there is no question that Plaintiffs are entitled to judgment against TCR in an amount that exceeds $1,000,000. Indeed, without objection from TCR, the trial court correctly directed entry of judgment in favor of Plaintiffs against TCR in the amount of $3,486,317.70 (inclusive of post-judgment interest) as of July 31, 2025, with additional post-judgment interest to accrue thereafter. (Order filed 8/28/25 p. 5.)

The subject bond is the substitute Supersedeas Bond/Appellate Bond, posted February 7, 2025, which was posted pursuant to the Consent Order Regarding Supersedeas/Appellate Bond, filed January 2, 2025. This bond was posted by TCR and USSIC, as surety. The reason the substitute bond was posted was to make Lloyd's the sole guarantor of the bond—to guarantee Lloyd's would repay USSIC for USSIC's payment to Plaintiffs under the bond—following Plaintiffs' settlement with TCR's other insurers, BMIC and Scottsdale. Thus, Lloyd's, with knowledge that Plaintiffs had settled with TCR's other insurers, consented to becoming the sole guarantor of a substitute bond, which, other than identifying Lloyd's as its sole guarantor, was required to be "in a form identical to the existing bond"[25] posted in February of 2020, i.e., the original bond posted *before* Plaintiffs' settlement with TCR's other insurers.

Neither the bond nor the consent order under which Lloyd's agreed to be its sole guarantor says anything about the outcome of the pending coverage action having any bearing on the bond. Rather, in terms identical to the original bond, which, again, was posted before any settlement between Plaintiffs and TCR's other insurers, the $1,000,000 obligation under the substitute bond is triggered simply by the appeal being concluded with a judgment in Plaintiffs' favor and "[TCR] and/or its insurer" not satisfying such judgment. (Substitute Appeal Bond p.

[25] (Consent Order Regarding Supersedeas/Appellate Bond filed January 2, 2025, p. 5.)

3.) The appeal has now long been concluded with finality and the case remitted to the trial court, and neither TCR nor Lloyd's has satisfied Plaintiffs' judgment against TCR. Under the express terms of the bond, there is simply no other condition precedent to Plaintiffs' recovery under the bond.

The circuit court states that its ruling "[s]ecures [the bond] funds for Plaintiffs if they prevail . . . ." (Order filed 8/282/5 p. 5.) But insofar as Plaintiffs' entitlement to the bond proceeds is concerned, Plaintiffs have already prevailed. Indeed, "[i]n South Carolina, a judgment against a principal is binding and conclusive on a surety." *Int'l Fid. Ins. Co. v. China Const. Am. (SC) Inc.*, 375 S.C. 175, 179, 650 S.E.2d 677, 679 (Ct. App. 2007). It is not necessary to know whether, and to what extent, Lloyd's is obligated to provide insurance coverage for the judgment against TCR to know that the bond surety—which, again, is not Lloyd's but rather USSIC—is liable under the bond. All that needs to be known is already known: There is a judgment against TCR and neither TCR nor Lloyd's has or will now pay it. The time that the bond "bought" TCR was the time that it took for the appeal to run its course, nothing more. Now that the appeal is over, Plaintiffs are entitled to the benefit of the bond immediately and unconditionally. Tying Plaintiffs' ability to recover under the bond to the outcome of the coverage action renders illusory the protection that was supposed to be "guaranteed" by the bond. The stay that TCR was granted pending the appeal was granted in exchange for the certainty of recovery that the bond granted Plaintiffs in the event that judgment against TCR remained intact at the conclusion of the appeal. To deny Plaintiffs this certainty is to deny them the very essence of what the bond was supposed to provide them.

And to be clear, the unconditional payment of the bond proceeds to Plaintiffs in advance of the outcome of the insurance coverage action poses no threat of double recovery. The amount

paid to Plaintiffs as bond proceeds is simply deducted from the amount that TCR owes on the judgment. In no event will Plaintiffs receive more than the full amount of their judgment (plus interest) against TCR.

Plaintiffs have every right to be paid the $1,000,000 bond amount now (with no strings attached), and Lloyd's has no right to have Plaintiffs' right to the bond proceeds in any way conditioned on whether it is obligated to provide insurance coverage for Plaintiffs' judgment against TCR. The trial court should have found Plaintiffs entitled to the immediate, unconditional payment of the $1,000,000 bond proceeds (i.e., with Plaintiff's entitlement to such funds in no way contingent upon or subject to the outcome of the coverage action) and ordered the same to be immediately paid to Plaintiffs in partial satisfaction of judgment.

**B. The trial court erred by considering the equities? And assuming, *arguendo*, it was proper for the trial court to consider the equities, it erred by not finding that they favor Plaintiffs.**

The trial court also erred by considering the "equities." (Order filed 8/28/25 p. 3; *see also id.* at p. 4 ("the equitable and prudent course is to . . .").) Equity follows the law,[26] and as explained above and incorporated herein by reference, it is the law that controls here, not principles of equity. But even assuming, *arguendo*, it was proper for the trial court to consider the equities, the trial court erred by not finding that they favor Plaintiffs here, because, as also explained above and incorporated herein by reference, Plaintiffs did not (nor do they now) seek any form of double recovery but simply not to be deprived of the very security TCR's bond is supposed to "guarantee"[27] them—and, to the extent that equity is even a proper consideration in

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[26] *Smith v. Barr*, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct. App. 2007) ("It is well known that equity follows the law."); *see also Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989) ("[T]he court's equitable powers must yield in the face of an unambiguously worded statute.").

[27] § 18-9-130(A)(1).

the first place, this Court should now find it favor Plaintiffs. *Fesmire v. Digh*, 385 S.C. 296, 303, 683 S.E.2d 803, 807 (Ct. App. 2009) ("In an action in equity, the appellate court may resolve questions of fact in accordance with its own view of the preponderance of the evidence.") Now that TCR's appeal has been concluded with finality and Plaintiffs' entitlement to judgment against TCR for more than $1,000,000 has been conclusively established, there is nothing equitable about denying Plaintiffs immediate and unconditional recourse to the bond funds in partial satisfaction of judgment. Indeed, this is not even helpful to TCR. Make no mistake, Plaintiffs' motion to disburse the bond funds was opposed in TCR's name but not for its benefit. The only "party" who stands to benefit from the wrongful conflation of the bond funds with insurance proceeds is Lloyd's, who is not a party to this case at all.

### C. The trial court erred by relying on facts not in evidence about Plaintiffs' settlement agreements with certain of TCR's insurers.

The trial court also erred by finding, "[u]pon information and belief," that "Plaintiffs have released TCR from any individual or personal liability for the judgment balance" and that "[t]he present dispute concerns only funds sought from the remaining not-settling insurers, which are the subscribing insurers of Certain Underwriters at Lloyd's London." (Order filed 8/28/25 p. 3.) The settlement agreements between Plaintiffs and TCR's other insurers are not of record, and TCR's counsel's argument about what he suspects the terms of the settlement agreements to be is not evidence. *S.C. Dep't of Transp. v. Thompson*, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003) ("Arguments made by counsel are not evidence."). To be clear, there is *no evidence* that supports a finding that Plaintiffs have released TCR. Accordingly, this finding is erroneous because there is no evidence to support it. *Historic Charleston Holdings, LLC v. Mallon*, 381

S.C. 417, 434, 673 S.E.2d 448, 457 (2009) ("An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support.").[28]

## II. Assuming, *arguendo*, the Court is not inclined to agree with Plaintiffs with respect to Issue/Argument I, the Court should confirm that the operation of the 120-day disbursement trigger in the trial court's August 28, 2025, order itself unconditionally entitles Plaintiffs to be paid the full amount of TCR's appeal bond in partial satisfaction of the judgment.

As explained above and incorporated herein by reference, given that the trial court expressly provided for the alternative of the 120-day disbursement trigger and that it has now been far more than 120 days since August 28, 2025, the operation of the 120-day disbursement trigger should itself unconditionally entitle Plaintiffs to such funds (whether they are paid to Plaintiffs in the form of $1,000,000 from USSIC or the clerk of court's disbursement of the $1,000,000 (plus interest) that Lloyd's deposited pursuant to the trial court's August 28, 2025, order). Indeed, the trial court expressly stated that the operation of its August 28, 2025, order "[a]voids the need for post-payment recovery actions,"[29] meaning that the trial court contemplated that the passage of the 120-day period would both trigger disbursement and establish Plaintiffs' unconditional right to the funds, thus foreclosing any post-payment recovery actions. So, assuming, *arguendo*, the Court is not inclined to agree with Plaintiffs with respect to Issue/Argument I, it should confirm that the operation of the 120-day disbursement trigger in the trial court's August 28, 2025, order itself unconditionally entitles Plaintiffs to be paid the full amount of TCR's appeal bond in partial satisfaction of the judgment.

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[28] Indeed, the very fact that this finding is based "[u]pon information and belief" confirms that it is not based upon evidence.

[29] (Order filed 8/28/25 p. 5.)

## CONCLUSION

For the foregoing reasons, Plaintiffs ask this Honorable Court to reverse the trial court and find that Plaintiffs' are entitled to and should have been immediately paid the full $1,000,000 amount of TCR's appeal bond in partial satisfaction of the judgment (with Plaintiff's entitlement to such funds in no way contingent upon or subject to the outcome of the insurance coverage litigation) or, assuming, *arguendo*, the Court is not inclined to agree with Plaintiffs with respect to Issue/Argument I, confirm that the operation of the 120-day disbursement trigger in the trial court's August 28, 2025, order itself unconditionally entitles Plaintiffs to be paid the full amount of TCR's appeal bond in partial satisfaction of the judgment.

Respectfully submitted,

By: s/Russell G. Hines

Edward D. Buckley, Jr. (SC Bar No. 994)
Russell G. Hines (SC Bar No. 72100)
CLEMENT RIVERS, LLP
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 724-5446

*-and-*

Justin O. Lucey (SC Bar No. 15438)
Anna S. McCann (SC Bar No. 102314)
Sohayla R. Townes (SC Bar No. 102814)
JUSTIN O'TOOLE LUCEY, P.A.
415 Mill Street
Mt. Pleasant, South Carolina 29464
P.O. Box 806 (29465)
(843) 849-8400

*Attorneys for Appellants*

Charleston, South Carolina

May 22, 2026