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S.C. SUPREME COURT

October 1, 2026

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VIA E-MAIL (supctfilings@sccourts.org)

The Honorable Patricia A. Howard
Clerk of Court, S.C. Supreme Court
1231 Gervais Street
Columbia, SC 29201

RE: *Builders First Source-Southeast Group, LLC vs. MI Windows and Doors, Inc., ECC Contracting, LLC, Hurley Services, LLC, and Charleston Exteriors, LLC*
Appellate Case No.: 2025-001176

Dear Honorable Justices:

Counsel for Respondent-Petitioner ECC Contracting, LLC (“ECC”) and Petitioner-Respondent Builders FirstSource–Southeast Group, LLC (“BFS”) respectfully write to advise the Court of recent developments in the underlying litigation. As explained below, the operative pleadings have eliminated the vertical construction claims that formed the factual basis for the indemnity claims asserted by BFS against ECC, Hurley Services, LLC, Charleston Exteriors, LLC and MI Windows and Doors, Inc.

On June 1, 2026, Plaintiffs Patricia Damico, et al. filed a Third Amended Complaint clarifying in Footnote 1 that they

“do not any allege defects in the installation or original construction of the roofs, framing, flashing, sheathing, drywall, painting, floor coverings, siding, masonry, electrical or mechanical systems, plumbing or sewer systems, windows, or doors. Plaintiffs allege and seek recovery for damage, resulting damage, and consequential damage, to the roofs, framing, flashing, sheathing, drywall, painting, floor coverings, siding, masonry, electrical or mechanical systems, plumbing or sewer systems, windows, or doors and other components and/or areas of the homes, caused by or arising from the defects and claims asserted in this Third Amended Complaint, including but not limited to foundations, soils, and grading.”

See Enclosed Third Amended Complaint, Footnote 1.

Thus, by the current operative pleading, the Plaintiffs' claims are focused on alleged defects involving foundations, soils, grading, drainage, and related damage.

On June 16, 2026, general contractor Lennar Carolinas, LLC ("Lennar") filed its Answer to the Third Amended Complaint, along with Cross-Claims and a Third-Party Complaint. Therein, Lennar's pleading targets parties involved in site development, grading, geotechnical engineering, design, landscaping, concrete work, building pads, soils, footings, slabs, and related civil-engineering and site-development activities. Lennar asserted no claim against BFS. See Enclosed Lennar Answer to Third Amended Complaint.

While there is no active third-party claim against BFS, and correspondingly there will be no liability owed or settlement payment made to a third-party, the parties believe that the issues pending before the Court remain ripe and justiciable as the parties continue to dispute if BFS filed its contractual indemnification cause of action within the Statute of Limitations and who is to bear the costs incurred in defending against Plaintiffs and Lennar's claims.

In addition to the foregoing, BFS also contends that the trial court and the Court of Appeals erred in their analysis and application of law to BFS's pleading and contract. ECC disagrees. Both parties have fully briefed the issues on appeal and are ready to proceed with oral arguments scheduled to be heard by this Court on October 13, 2026.

Further, the parties would note that South Carolina courts may, in limited circumstances, address what may be considered a moot appeal. See *Curtis v. State*, 345 S.C. 557, 561–62, 549 S.E.2d 591, 593–94 (2001). Two of the three circumstances are present here. ECC contends, the question of the timing of the running of the statute of limitations on contractual indemnity claims, for attorney's fees in particular, is capable of repetition yet likely to evade appellate review and that there is at present no precedent in South Carolina clearly addressing such issue. Finally, BFS and ECC agree that collateral

estoppel issues are present as the trial courts in three other related appeals involving BFS's indemnification claims arising from the claims of Plaintiffs, *Dag Pavic and Stela Susas-Pavic* (Appellate Case No. 2025-001496), *Six Fifty-Six Owners' Association* (Appellate Case No. 2025-001495), and *Retreat at Charleston National* (Appellate Case No. 2025-001224) all relied on the trial court Order at issue in this case as a basis for a finding of collateral estoppel.

Counsel for ECC and BFS submit this correspondence, and the accompanying underlying pleadings, solely to ensure that the Court is apprised of the current posture of the underlying litigation, which has changed since the parties briefed the issues on appeal.

Respectfully Submitted,

F. Heyward Grimball

and

William H. Cox, III

Enclosures:

Patricia Damico Third Amended Complaint

Lennar's Answer to Patricia Damico Third Amended Complaint

Cc: All Counsel of Record