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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

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

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.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-00955

Palmetto Pointe at Peas Island Condominium
Property Owners Association, et al.

Island Pointe, LLC, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ **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 Tri-County Roofing, Inc.'s Motions for Judgment Not Withstanding the Verdict, New Trial Absolute, and New Trial Nisi Remittitur are DENIED.

Additionally, Tri-County Roofing, Inc.'s motion regarding the award of punitive damages is DENIED. The jury awarded punitive damages in the amount of \$500,000 against Defendants Tri-County Roofing, Inc., and Complete Building Corporation. The court has reviewed the award of punitive damages and finds it appropriate pursuant to the factors articulated in both *BMW of North America v. Gore*, 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996), and *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991). Punitive damages are appropriate where there is evidence of recklessness or grossly negligent conduct. *Daniels v. Bernard*, 270 S.C. 51, 240 S.E.2d 518 (1978). Sufficient evidence was presented at trial of Defendant TCR and CBC's gross negligence, specifically in the form of testimony regarding building code violations, among other issues. Therefore, the court properly charged the jury that an award of punitive damages was appropriate, and, given the Plaintiffs' damages, the award of \$500,000.00 in punitive damages against TCR is not excessive.

As to Tri-County Roofing, Inc.'s Motion for Setoff, the judgment against TCR should be reduced by \$1,670,000.00 for a total judgment against TCR of \$5,330,000.00 in accordance with the Plaintiffs' proposed allocations and setoff amounts. Plaintiffs may file a proposed formal order to this effect if necessary.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
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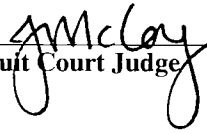
N/A		
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If applicable, describe the property, including tax map information and address, referenced in the order: N/A		
--	--	--

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2764

Judge Code

7/18/19

Date

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

) NINTH JUDICIAL CIRCUIT

PALMETTO POINTE AT PEAS ISLAND
CONDOMINIUM PROPERTY OWNERS
ASSOCIATION, INC. AND JACK LOVE,
INDIVIDUALLY, AND ON BEHALF OF
ALL OTHERS SIMILARLY SITUATED,

) CASE NO. 2015-CP-10-0955

Plaintiffs,

VS.

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.; W C 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 SIDING,
LLC; MARK PALPOINT A/K/A MICAH
PALPOINT; ELROY ALONZO VASQUEZ;
CHRIS A/K/A JOHN DOE 61; ALDERMAN
CONSTRUCTION; STANLEY'S VINYL
FENCE DESIGNS; COHEN'S DRYWALL
COMPANY, INC.; MOSELY CONCRETE;
HAND A FRAMING CONSTRUCTION, LLC
A/K/A H&A FRAMING CONSTRUCTION,
LLC AND D/B/AH AND A FRAMING, LLC,

FILED
2019 SEP 25 PM 4:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

**ORDER DENYING TRI-COUNTY
ROOFING, INC.'S MOTION TO
RECONSIDER**

JBm/1

H&A CONSTRUCTION, AND HAND A)
CONSTRUCTION; JMC CONSTRUCTION,)
INC.; JMC CONSTRUCTION, LLC; JOHN)
DOE 1-15,)

Defendants.)
)
)
)
)

COMPLETE BUILDING CORPORATION,)
INC.,)

Third-Party Plaintiff,)
)

VS.)
)

LEONARD T. BROWNE AND)
CHRISTOPHER N. UNION,)
)

Third-Party Defendants.)
)

CREEKSID, INC.,)
)

Third-Party Plaintiff,)
)

VS.)
)

CHRISTOPHER N. UNION,)
)

Third-Party Defendant.)
)

AMERICAN RESIDENTIAL SERVICES, LLC,)
)

Third-Party Plaintiff,)
)

VS.)
)

VICTOR HUGO HERNANDEZ; HERNANDEZ)
ELECTRIC, LLC; LILIANA ROJAS FLORES;)
MARTIN BARR D/B/A PORT CITY)
STRUCTURED WIRING; KELLER)
ELECTRIC, LLC; JOHN TOOLIN D/B/A)
JOHN F. TOOLIN HEAT AND AIR; RUSSELL)
"RUSTY" HILL D/B/A RUSTY'S HEATING &)
AIR; and WARREN ANDERSON,)
)

Third-Party Defendants.)
)

This construction defendant case is before the court upon Tri-County Roofing, Inc.'s ("TCR") Motion to Reconsider this Court's Order filed July 23, 2019, which allowed a setoff in favor of TCR in the amount of \$1,670,000.00 against the jury verdict of \$6,500,000.00 actual damages and \$500,000.00 punitive damages. TCR contends that the Court should reconsider and revise its setoff to allow the sum of \$5,415,000.00 rather than the \$1,670,000.00 allowed in my Order.

I have reviewed TCR's motion, Exhibit "A" incorporated therein, (which Exhibit was presented to and considered by the Court in TCR's post-trial motions filed May 28, 2019), the Plaintiffs' Memorandum in Opposition to TCR's Motion to Reconsider, and TCR's reply to Plaintiffs' opposition memorandum. I also have consider the evidence presented at trial as well as the absence of evidence to establish that the setoff TCR seeks is warranted.

At trial, plaintiff presented evidence of actual damages in excess of \$12,000,000.00. Their earlier estimate which predated most of the settlement plaintiffs received, was \$15,257,000.00. That estimate was introduced at trial by the defendants. The jury awarded actual damages of \$6,500,000.00. The court cannot parce the jury's award to determine which items or portions of plaintiffs' claims it accepted or, conversely, which items it allowed. The plaintiffs presented evidence that they had reduced their damages estimate and eliminated a number of defects from the \$15,257,000.00 jury's consideration prior to the close of the evidence.

TCR has not demonstrated to the court that it is entitled to a dollar-for-dollar setoff of all sums Plaintiffs have received from the settling defendants, nor can TCR do so based upon the record before me.

I find that TCR has failed to establish that the settlements plaintiffs received in excess of \$1,670,000.00 are damages awarded against a settling joint tortfeasors who has compensated the Plaintiff for the same claim and for the same injury. S.C. Code Ann. §15-38-50; Smith v. Widener, 397 S.C. 468, 471-472, 724 S.E. 2nd 188, 190 (Ct. App.2012). Here, the record before the Court reflects that only \$1,670,000.00 in settlement meets those criteria. The remaining settlements, as allocated by the settling defendants and the plaintiffs, compensate the Plaintiffs for different injuries from those tried to verdict. Hawkins v. Pathology Assoc. of Greenville, P.A., 330 S.C. 92, 114-115, 498 S.E. 2nd 395, 407 (Ct. App. 1998). By way of illustration, H and A Framing paid \$500,000.00 for damages to shear walls, window installation, deflecting floors and framing defects. Arguably, none of that settlement represents compensation for damages which are included in the jury's verdict against TCR. Nevertheless, the court in the exercise of its discretion, accepted the plaintiffs' allocation of \$50,000.00 of that sum as damages potentially representing TCR's joint liability, and the court included that amount in its setoff. The court analyzed each of the settlements in the same manner.

Where, as here, the moving party seeks to setoff damages which are not compensation for the same damages encompassed with the jury's verdict, the Court must determine whether the plaintiffs' allocations with the settlement defendants amount to an unfair windfall to the plaintiffs. TCR has failed to meet its burden of persuasion to demonstrate to the court that the allocations, though clearly beneficial to the plaintiffs, are unfair or unjust.

As the Supreme Court elucidated in Riley v. Ford Motor Co., 414 S.C. 185, 186, 777 S.E. 2d 824, 831 (2015),

A plaintiff who enters into a settlement with a defendant gains a position of control and acquires leverage in relation to a nonsettling defendant. This posture is reflected in the plaintiff's ability to apportion the settlement proceeds in the manner most

advantageous to it. Settlements are not designed to benefit nonsettling third parties. They are instead created by the settling parties in the interests of these parties. If the position of a nonsettling defendant is worsened by the terms of a settlement, this is the consequence of a refusal to settle. A defendant who fails to bargain is not rewarded with the privilege of fashioning and ultimately extracting a benefit from the decisions of those who do.

Id. (citations and quotations omitted). Thus, a Court cannot “disturb the settling parties’ agreed-upon allocation solely because the apportionment may have been advantageous to [Plaintiff].” *Id.*

Again, by way of illustration, the design professional, Novus Architects settled for \$600,000.00. TCR has not demonstrated any evidence in the record to establish that Novus was, or ever could be, jointly responsible for TCR’s hundreds or perhaps, thousands of code violations in the defective installation of otherwise non-defective materials such as roof shingles and siding. Yet, TCR advocates for a setoff in the entire amount of the Novus payment. The court found initially and now reaffirms its earlier finding that TCR has not established that the Novus settlements and other like settlement overlap or coincide with the damages the jury awarded against it.

The court notes also and has considered that counsel for the general contractor, Complete Building Corp. (“CBC”) argued extensively to the jury that the jury should exclude from its award damages for which the plaintiffs had been compensated prior to submission of the case to the jury. On its face, the award of approximately half the plaintiffs’ claimed damages indicates that the jury may have done that here.

The court has analyzed each and every settlement, the allocations the settling parties argued upon the record in this case, and TCR’s arguments with regard to each of those payments. The court is convinced and finds that the setoff in the amount of \$1,670,000.00 actual damages is

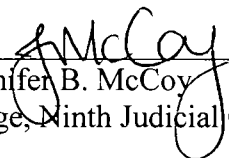
appropriate, just and fair. TCR is not entitled to any setoff for the \$500,000.00 punitive damages awarded against it.

THEREFORE, the court orders that TCR's motion is denied;

FURTHER, that the judgment entered in the amount of \$5,330,000.00 reflects the setoff to which TCR is entitled; and

FURTHER, that the entry of judgment in the amount of \$5,330,000.00 against TCR remains the order of this court.

IT IS SO ORDERED.



Jennifer B. McCoy
Judge, Ninth Judicial Circuit

September 24, 2019
Charleston, S.C.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015CP1000955

Palmetto Pointe at Peas Island Condominium Property Owners A et al
PLAINTIFF(S)

Island Pointe LLC et al
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 Tri-County Roofing, Inc.'s Motion to Stay Execution of the Judgment from Trial and/or to Set an Appellate Bond was filed on October 21, 2019 and was heard by this Court on January 27, 2020. The Appellate Bond is hereby set at \$1,000,000.00. The Defendant has 10 days from this Order to post bond to the Clerk of Court.

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 01/28/2020 .

Litchfield Seamless Gutters
Hernandez Electric LLC
Victor Hugo Hernandez
John 1-15 Doe
Doe, John 1-15
Mark Palpoint
Micah Palpoint
Eloy Vasquez
TriCounty Roofing
John 61 Doe
Doe John 61
Chris
Elroy Alonzo Vasquez

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.



Charleston Common Pleas

Case Caption: Palmetto Pointe at Peas Island Condominium Property Owners A ,
plaintiff, et al VS Island Pointe LLC , defendant, et al

Case Number: 2015CP1000955

Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2020-01-28 12:02:23 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

Plaintiffs,

vs.

Island Pointe, LLC, Complete Building
Corporation, Tri-County Roofing, Inc., WC
Services, Inc. Miracle Siding, LLC and
Wilson Lucas Sales d/b/a Miracle Siding,
LLC, Eloy Alonzo Vasquez, JMC
Construction, Inc., and JMC Construction,
LLC

Defendants.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL DISTRICT

Case No.: 2015-CP-10-00955

**CONSENT ORDER REGARDING
SUPERSEDEAS/APPELLATE BOND**

Currently pending before the Court is a Motion to Revoke Supersedeas/Appellate Bond filed by non-party Scottsdale Insurance Company (“Scottsdale”) on January 29, 2024 (the “Motion”). Non-party Builders Mutual Insurance Company (“BMIC”) joined the Motion on November 27, 2024. In the Motion, in light of the separate agreements reached by Scottsdale and BMIC with Plaintiffs and Tri-County resolving claims made against the relevant Scottsdale and BMIC policies, Scottsdale and BMIC requested that the supersedeas/appellate bond posted by Defendant Tri-County Roofing, Inc. (“Tri-County”) on February 4, 2020 (the “February 4 Bond”) be revoked, such that Tri-County and Certain Underwriters at Lloyd’s, London Subscribing to Policy No. ART002591 and Certain Underwriters at Lloyd’s London Subscribing to Policy No. ART004630 (the sole carriers still participating in Tri-County’s appeal, hereinafter collectively “Lloyd’s”) could post a substitute supersedeas/appellate bond that does not include Scottsdale or

BMIC as guarantors. By way of the instant Consent Order, Lloyd's consents to serving as the sole guarantor of a substitute supersedeas bond, to be filed with fourteen (14) days of the date of this Consent Order.

NOW, THEREFORE, the Court **FINDS**, and **CONCLUDES**, as follows:

FINDINGS OF FACT

1. This action was tried before the Honorable Jennifer B. McCoy May 6 through 16, 2019 resulting in a jury verdict in favor of Plaintiffs against several defendants, including Tri-County.

2. After post-trial motions and subsequent motions to reconsider were argued, the final judgment amount entered against Tri-County effective May 16, 2019 was in the amount of Five Million Three Hundred Thirty Thousand Dollars (\$5,330,000.00) (the "May 16, 2019 judgment").

3. Tri-County timely appealed the final decision of the trial court when it filed its notice of appeal on October 14, 2019, and electronically filed this notice of appeal with the Charleston County Clerk of Court on October 21, 2019.

4. On October 21, 2019, pursuant to S.C. Code § 18-9-130, Tri-County filed a motion to stay the execution of the judgment and to set the amount of the appellate bond. The hearing on this motion was held before Judge McCoy on January 27, 2020.

5. On January 28, 2020, a Form Order setting the amount of the Appellate Bond at the sum of One Million Dollars (\$1,000,000.00) was filed. This bond amount was set by the application of S.C. Code § 18-9-130.

6. On February 4, 2020, Tri-County filed the February 4 Bond, whereby Tri-County and the insurers then-participating in its defense (Scottsdale, BMIC, and Lloyd's) agreed to

guarantee the \$1,000,000.00 bond, secured via surety U.S. Specialty Insurance Company, in order to stay the execution of the judgment during the pendency of Tri-County's appeal.

7. During the pendency of Tri-County's appeal, Scottsdale and BMIC reached separate agreements with Plaintiffs and Tri-County, resolving Scottsdale's and BMIC's portion of the claim, leaving Lloyd's as the only carrier still participating in Tri-County's appeal, which is still pending.

8. Following its settlement, Scottsdale unsuccessfully requested that Lloyd's assume responsibility for the Bond.

9. Thereafter, Scottsdale filed this instant Motion to Revoke Supersedeas/Appellate Bond on January 29, 2024 (the "Motion"). Non-party Builders Mutual Insurance Company ("BMIC") joined the Motion on November 27, 2024. Plaintiff filed its opposition to Motion on November 27, 2024. This matter is set for hearing on December 6, 2024.

10. Lloyd's has now agreed to serve as the sole guarantor of a substitute supersedeas bond, to be obtained with fourteen (14) days of the date of this Consent Order.

CONCLUSIONS OF LAW

1. Rule 62(d) of the South Carolina Rules of Civil Procedure authorizes the Court to grant a stay of execution of judgment upon issuance of a supersedeas bond during the pendency of an appeal from the judgment. *See* S.C. R. Civ. P. 62(d).

2. Section 18-9-130(A)(1) of the South Carolina Code sets forth a statutory minimum amount of such a bond, providing that when a stay of execution is granted and the presiding judge "requires a bond or other surety to guarantee the payment of the judgment pending the appeal, the amount of the bond or other surety may not exceed the amount of the judgment or: (a) twenty-five million dollars, whichever is less, for a business entity that employs more than fifty persons and

has gross revenues exceeding five million dollars for the previous tax year; or (b) one million dollars, whichever is less, for all other entities or individuals.” S.C. Code § 18-9-130(A)(1).

3. Aside from the statutory minimum set forth in S.C. Code § 18-9-130, the amount of any appellate bond is committed to the sound discretion of the trial court. *See United Dominion Realty Trust, Inc. v. Wal-Mart Stores, Inc.*, 307 S.C. 102, 108, 413 S.E.2d 866, 870 (1992).

4. The February 4 Bond is for the minimum amount required by S.C. Code § 18-9-130(A)(1) based on the amount of the May 16, 2019 judgment.

5. Requiring non-parties Scottsdale and BMIC, no longer participants in Tri-County’s appeal, to serve as guarantors of a supersedeas/appellate bond would be inconsistent with the purpose of the February 4 Bond because Scottsdale and BMIC are no longer potential indemnitors with regard to the May 16, 2019 judgment, if Tri-County’s appeal is unsuccessful.

6. Revocation of the February 4 Bond based upon the agreement of the only carrier still participating in Tri-County’s appeal – Certain Underwriters at Lloyd’s, London – to guarantee a substitute supersedeas/appellate bond, in advance of the revocation of the February 4 Bond, provides adequate security “to guarantee the payment of the judgment pending the appeal” S.C. Code § 18-9-130(A)(1).

7. In the exercise of its discretionary authority under South Carolina law, the Court has determined that the assumption by Certain Underwriters at Lloyd’s, London of the obligations of Scottsdale and BMIC under the February 4 Bond in a substitute supersedeas/appellate bond provides adequate security of the May 16, 2019 judgment.

The **COURT**, therefore, hereby **ORDERS, ADJUDGES, and DECREES:**

1. Defendant Tri-County Roofing, Inc. and Lloyds are ordered to file a substitute bond with Certain Underwriters at Lloyd’s, London assuming the

former obligations of Scottsdale Insurance Company and Builders Mutual Insurance Company within **fourteen (14) days** of entry of this Order.

2. The substitute bond in the amount of \$1,000,000, in a form identical to the existing bond, shall be issued by a surety authorized to engage in the business of surety in the State of South Carolina;
3. The February 4, 2020 Bond shall remain in place until the substitute bond is filed;
4. Upon the filing of the substitute bond, and service upon and acknowledgement of receipt by Plaintiff of the substitution and suitability of the substitute Bond, the February 4, 2020 Supersedeas/Appellate Bond filed by Defendant Tri-County Roofing, Inc., is revoked.

This the ____ day of December 2024.

The Honorable _____

We so consent, this the 5th day of December 2024:

/s/ Justin Lucey (with permission)

Justin Lucey
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806
jlucey@lucey-law.com
Counsel for Plaintiff

/s/ Christian Stegmaier (with permission)

Christian Stegmaier
1330 Lady Street Sixth Floor
P.O. Box 12487 (29211)
Columbia, SC 29201
cstegmaier@collinsandlacy.com
Counsel for Tri-County Roofing

/s/ Robert M. Kennedy, Jr.

Robert M. Kennedy, Jr.
Phelps Dunbar LLP
4141 ParkLake Ave, Suite 530
Raleigh, North Carolina 27612
robert.kennedy@phelps.com
Counsel for Scottsdale Insurance Company

/s/ William Silverman (with permission)

William Silverman
4000 S. Faber Place Drive
Suite 3000
Charleston, South Carolina 29405
wsilverman@wwhblaw.com
*Counsel for Certain Underwriters at Lloyd's London Subscribing to Policy No. ART002591 and
Certain Underwriters at Lloyd's London Subscribing to Policy No. ART004630*

/s/ John McCants (with permission)

John L. McCants, SC Bar #10423
Baker Ravenel & Bender, L.L.P
3710 Landmark Drive, Suite 400
Columbia, SC 29204
P.O. Box 8057
Columbia, SC 29202
Direct Dial: 803-343-3866
jmccants@brblegal.com
Counsel for Builders Mutual Insurance Company



Charleston Common Pleas

Case Caption: Palmetto Pointe at Peas Island Condominium Property Owners A ,
plaintiff, et al VS Island Pointe LLC , defendant, et al
Case Number: 2015CP1000955
Type: Order/Consent Order

So Ordered

s/Marvin H. Dukes III #2785

Electronically signed on 2025-01-02 12:02:58 page 7 of 7

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON
	)	PLEAS
COUNTY OF CHARLESTON	)	
	)	NINTH JUDICIAL CIRCUIT
Palmetto Pointe at Peas Island	)	
Condominium Property Owners	)	Civil Action No.: 2015-CP-10-00955
Association, Inc. and Elizabeth A.	)	
Bushey, individually, and on behalf	)	
of all others similarly situated,	)	
	)	ORDER
Plaintiffs,	)	
v.	)	
	)	
Tri-County Roofing, Inc., et al.	)	
	)	
Defendants.	)	

This matter arises from a two-week construction defect jury trial in May 2019, in which Plaintiffs obtained a verdict against Defendant Tri-County Roofing, Inc. (“TCR”) in the amount of \$7,000,000, including \$500,000 in punitive damages. Following post-trial motions, this Court entered judgment on July 23, 2019, in the amount of \$5,330,000 after applying certain set-offs.

TCR appealed. The South Carolina Court of Appeals affirmed this Court’s rulings in part but granted an additional \$500,000 set-off for a post-trial settlement.

On certiorari, the South Carolina Supreme Court affirmed the Court of Appeals on set-off allocation and granted TCR an additional \$1,000,000 set-off for a pre-trial covenant-not-to-execute, resulting in a final principal judgment amount of \$3,830,000. The Supreme Court remitted the matter to this Court for calculation and entry of the amended judgment with applicable post-judgment interest.

Following remittitur, Plaintiffs sought entry of judgment and for immediate disbursement of the \$1,000,000.00 supersedeas bond. In response, TCR moved to stay disbursement pending resolution of a related insurance coverage action.

Plaintiffs maintain the judgment far exceeds the bond amount and that the purpose of the bond is to protect the judgment holder from loss through delay or nonperformance. Plaintiffs contend that because TCR's appeals have concluded, they are entitled to immediate payment of the bond proceeds in partial satisfaction of the judgment.

TCR opposes immediate disbursement because it cannot bind the Lloyd's Market subscribing insurers, which serve as the guarantor of the appellate bond. Instead, TCR has moved to stay enforcement of the bond until the related declaratory judgment action—Palmetto Pointe at Peas Island Condo. Prop. Owners Ass'n, Inc. v. Certain Underwriters at Lloyd's London, et al., Case No. 2021-CP-10-04380—is resolved.¹ TCR contends that the bond is backed by its insurer, that Plaintiffs have released TCR from any personal liability (leaving insurance proceeds as the sole potential source of payment), and that forcing payment now would impair the insurer's rights before coverage issues are decided. Having

¹ This case is currently under a scheduling order with a "Trial Not Before" date of November 13, 2025. This is considered an old case in Charleston County and no further scheduling orders will be considered absent extraordinary circumstances.

reviewed the submissions and concordant argument, and considered the equities, the Court finds and orders as follows:

FINDINGS

1. Judgment Amount and Interest

Pursuant to the South Carolina Supreme Court's decision and remittitur, the principal judgment against TCR is \$3,830,000.00. After post-verdict settlements totaling \$2,250,000.00, the remaining principal is \$1,580,000.00. Post-judgment interest calculated under S.C. Code Ann. § 34-31-20(B) totals \$1,906,317.70 through July 31, 2025, making the total judgment as of that date \$3,486,317.70.

2. Release of TCR from Personal Liability

Upon information and belief, through previous agreement, Plaintiffs have released TCR from any individual or personal liability for the judgment balance. The present dispute concerns only funds sought from the remaining not-settling insurers, which are the subscribing insurers of Certain Underwriters at Lloyd's London.

3. Pending Declaratory Judgment Action

Plaintiffs have filed Palmetto Pointe at Peas Island Condo. Prop. Owners Ass'n, Inc. v. Certain Underwriters at Lloyd's London, et al., Case No. 2021-CP-10-04380, seeking a declaration of the remaining insurers'

coverage obligations. That case is set for trial no earlier than November 13, 2025.

4. Purpose of Supersedeas Bond

In South Carolina, a supersedeas bond exists to ensure funds are available to satisfy the judgment when due. Ordinarily, the bond would become due and subject to disbursement upon remittitur of the case by the appellate court and entry of judgment by the trial court. With that said, where the defendant has no personal liability for the judgment, the defendant's insurers are the guarantors of the bond, and there has not been an adjudication of the companion coverage action (which was brought by Plaintiffs), the equitable and prudent course is to preserve the bond proceeds within the custody of the Court until the coverage dispute is finally adjudicated, thereby ensuring that the funds remain available for satisfaction of the judgment should Plaintiffs prevail, while safeguarding the insurer's due process rights and avoiding the potential for disbursements that may not be recoverable.

5. Defendant's Insurers' Proposed Resolution

The subscribing insurers agree to deposit \$1,000,000.00—the bond amount—into the Charleston County Clerk of Court's registry, in an interest-bearing account, pending resolution of the coverage action. This arrangement:

- Secures funds for Plaintiffs if they prevail, with accrued interest;
- Preserves funds for return to insurers if coverage is denied in whole or part;
- Avoids the need for post-payment recovery actions.

ORDER

Based upon the foregoing, it is ordered:

1. Entry of Judgment

Judgment is entered in favor of Plaintiffs and against TCR in the amount of \$3,486,317.70 as of July 31, 2025, inclusive of post-judgment interest.

2. Deposit into Registry

Within **10** days of entry of this Order, the subscribing insurers for TCR shall deposit \$1,000,000.00 with the Charleston County Clerk of Court. The Clerk shall place the funds into an interest-bearing account pursuant to Rule 67, SCRCF.

3. Release of Existing Appellate Bond

Upon deposit of the \$1,000,000.00 into the registry of the Court in accordance with Paragraph 2 above, the existing supersedeas bond posted by TCR's subscribing insurers in connection with its appeal shall be cancelled/released. The Clerk is directed to discharge the surety and close the bond on the Court's records.

4. Retention and Disbursement

The funds shall remain in the registry until the earlier of:

- a. Final resolution (including appeals) of Case No. 2021-CP-10-04380; or
- b. 120 Days from the Issuance of this Order.

If Plaintiffs prevail in the coverage action, the funds and accrued interest 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 disburse funds.

5. Preservation of Rights

This Order does not adjudicate the merits of the coverage action and preserves all rights of the parties therein.

IT IS SO ORDERED.

The Honorable Jennifer B. McCoy
Presiding Judge of the Ninth Judicial Circuit

Dated: _____
Charleston, South Carolina



Charleston Common Pleas

Case Caption: Palmetto Pointe at Peas Island Condominium Property Owners A ,
plaintiff, et al VS Island Pointe LLC , defendant, et al

Case Number: 2015CP1000955

Type: Order/Other

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2025-08-27 11:20:27 page 7 of 7

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015CP1000955

Palmetto Pointe at Peas Island Condominium Property Owners A et al
PLAINTIFF(S)

Island Pointe LLC et al
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:

Plaintiff's Motion to Reconsider is DENIED in part, and GRANTED as to clarify that the Clerk of Court, and not TCR, may direct the disbursement of funds (if/when necessary).

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 12/11/2025 .

Litchfield Seamless Gutters
Hernandez Electric LLC
Victor Hugo Hernandez
Case Party Info Protected
Mark Palpoint
Micah Palpoint
Eloy Vasquez
TriCounty Roofing
Chris
Elroy Alonzo Vasquez

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.



Charleston Common Pleas

Case Caption: Palmetto Pointe at Peas Island Condominium Property Owners A ,
plaintiff, et al VS Island Pointe LLC , defendant, et al

Case Number: 2015CP1000955

Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2025-12-11 12:04:37 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015CP1000955

Palmetto Pointe at Peas Island Condominium Property Owners A et al
PLAINTIFF(S)

Island Pointe LLC et al
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:

Upon contact from the Clerk's office, this order is to clarify that the funds including accrued interest may be released to counsel of record for plaintiffs.

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 12/29/2025 .

Litchfield Seamless Gutters
Hernandez Electric LLC
Victor Hugo Hernandez
Case Party Info Protected
Mark Palpoint
Micah Palpoint
Eloy Vasquez
TriCounty Roofing
Chris
Elroy Alonzo Vasquez

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.



Charleston Common Pleas

Case Caption: Palmetto Pointe at Peas Island Condominium Property Owners A ,
plaintiff, et al VS Island Pointe LLC , defendant, et al

Case Number: 2015CP1000955

Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2025-12-29 16:35:07 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

Plaintiffs,

vs.

Tri County Roofing, Inc., et al.

Defendants.

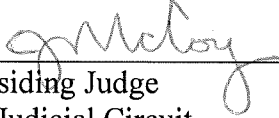
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10-00955

**ORDER DENYING DEFENDANT TRI-
COUNTY ROOFING, INC.'S MOTION
TO RECONSIDER**

Defendant Tri County Roofing, Inc.'s Motion to Reconsider was filed December 30, 2025, and came before this court on January 30, 2026. Defendant's motion is hereby DENIED. At Plaintiff's request, their position is expressed in the attached email exchange hereto.

IT IS SO ORDERED.



Presiding Judge
9th Judicial Circuit

McCoy, Jennifer B. Law Clerk (Eliza Lay)

From: Justin Lucey <jlucey@lucey-law.com>
Sent: Wednesday, January 28, 2026 1:12 PM
To: McCoy, Jennifer B. Secretary (Brooke Slade); Christian Stegmaier; McCoy, Jennifer B. Law Clerk (Eliza Lay)
Cc: Lee Weiland; 'Hines, Russell'; Stephanie Drawdy; Evan M. Gessner; Sohayla Townes; 'Buckley, Edward D. (Ed)'; ademato@ycrlaw.com; Anna McCann; 'Glover, Sherry'; Richard E. Zelonka
Subject: RE: Request for Hearing: Palmetto Pointe at Peas Island Condominium Property Owners Ass'n, Inc. v. Certain Underwriters at Lloyd's London, et al., C/A No. 2021-CP-10-04380.
Attachments: RE: Palmetto Pointe POA v. Island Pointe, LLC, et al. (2015-CP-10-00955) -- Notice of Appeal

Good afternoon Brooke,

Attached please find the Notice of Appeal file stamped by the Court of Appeals.

Plaintiffs believe that further hearings on this issue in the Circuit Court are stayed by this appeal. While Movant couches its motion as a Motion to Reconsider the December 30, 2025 order, all the relief sought in the motion pertains to the order issued on August 28, 2025, which is on appeal. (Reconsideration of the August 28, 2025, Order was denied on December 11, 2025).

I will further note that as such, Movants December 30, 2025 Motion to Reconsider is in fact an impermissible second and untimely motion to reconsider the August 28, 2025, Order. It is not a motion to reconsider the December 30, 2025 form order.

For starters, nowhere does the current motion challenge the only relief granted in this Court's December 30, 2025 Order – the clarification of the payee.

In fact, the instant motion focuses entirely on the deadlines set forth in the August 28, 2025 Order, for the completion of the Plaintiffs other action against Lloyds and the disbursement of the funds./1 As stated above, the August 28, 2025 Order is on appeal.

Moreover, pursuant to this Court's August 28, 2025 Order, and the clarification of the payee in the December 30, 2025, 10:33am Form 4 Order, the Clerk of Court disbursed the funds to Plaintiffs' counsel on December 30, 2025. This disbursement occurred prior to the Defendant contacting the Court, and prior to the later filed

motion. So, besides the Motion being an untimely second motion to reconsider, and being preempted by the jurisdiction of the Court of Appeals, the subject matter has now been mooted by the Clerk's execution of the previously ordered relief.

To recap, Plaintiffs believe that jurisdiction of this Court has been stayed by the appeal. Moreover, the instant motion is an untimely, second, motion to reconsider an Order which has already been put into effect by the Clerk of Court.

Subject thereto, counsel will make themselves available at the time and location directed by the Court if the Court decides to proceed.

Respectfully submitted,

Justin Lucey & Ed Buckley

/1 After paying lip service to the Dec. 30, 2025 Order in the introductory paragraph, the Motion goes on to address "The original Order" and what it "contemplated" and requests "that the Court extend the applicable deadline governing the stay of disbursement" which Movant had discussed earlier in the Motion as originating in the August 28, 2025 Order.

Justin O'Toole Lucey, P.A.

415 Mill Street

Mount Pleasant, SC 29464

Office: 843.849.8400

Direct: 843.849.8406

www.lucey-law.com

From: McCoy, Jennifer B. Secretary (Brooke Slade) <jmccoysc@sccourts.org>

Sent: Tuesday, January 27, 2026 3:07 PM

To: Christian Stegmaier <cstegmaier@collinsandlacy.com>; McCoy, Jennifer B. Law Clerk (Eliza Lay) <jmccoyle@sccourts.org>

Cc: Lee Weiland <lweiland@lucey-law.com>; 'Hines, Russell' <RHines@ycrlaw.com>; Stephanie Drawdy <sdrawdy@lucey-law.com>; Evan M. Gessner <egessner@collinsandlacy.com>; Sohayla Townes <stownes@lucey-law.com>; 'Buckley, Edward D. (Ed)' <ebuckley@ycrlaw.com>; ademato@ycrlaw.com; Anna McCann <amccann@lucey-law.com>; 'Glover, Sherry' <sglover@ycrlaw.com>; Richard E. Zelonka <rzelonka@wshblaw.com>; Justin Lucey <jlucey@lucey-law.com>

Subject: RE: Request for Hearing: Palmetto Pointe at Peas Island Condominium Property Owners Ass'n, Inc. v. Certain Underwriters at Lloyd's London, et al., C/A No. 2021-CP-10-04380.

Good afternoon,

Thank you. Our office did not receive notice of appeal. Judge McCoy is available Friday, January 30, 2026 at 10:00 AM if a hearing is needed. The login information for her virtual courtroom is below.

You may access the Virtual Courtroom by clicking the following link:
https://link.edgepilot.com/s/d78001b4/6xb_VALSUUCbHf78YFjkvw?u=https://scjudicial.webex.com/scjudicial/j.php?MTID=mc495d441e0f1d8b3f9f7c9c7919edc23

If you are unable to access the link, go to
https://link.edgepilot.com/s/66e3e8f5/QBtN_yk9PUy7VZL_WWBWPg?u=http://www.sccourts.org/.
 Hover over "Quick Links" tab, then click on "Trial Court Virtual Portal", then click on "List of Circuit Court Virtual Courtrooms by Judge". Find Judge McCoy's name and click on the virtual courtroom hyperlink.

Thanks.

Best,

Brooke S. Slade

Administrative Assistant
 The Honorable Jennifer B. McCoy
 100 Broad Street, Suite 348
 Charleston, SC 29401
 Phone: (843) 958-5066

From: Christian Stegmaier <cstegmaier@collinsandlacy.com>

Sent: Tuesday, January 27, 2026 2:21 PM

To: McCoy, Jennifer B. Secretary (Brooke Slade) <jmccoysc@sccourts.org>; McCoy, Jennifer B. Law Clerk (Eliza Lay) <jmccoyle@sccourts.org>

Cc: Lee Weiland <lweiland@lucey-law.com>; 'Hines, Russell' <RHines@ycrlaw.com>; Stephanie Drawdy <sdrawdy@lucey-law.com>; Evan M. Gessner <egessner@collinsandlacy.com>; Sohayla Townes <stownes@lucey-law.com>; 'Buckley, Edward D. (Ed)' <ebuckley@ycrlaw.com>; ademato@ycrlaw.com; Anna McCann <amccann@lucey-law.com>; 'Glover, Sherry' <sglover@ycrlaw.com>; Richard E. Zelonka <rzelonka@wshblaw.com>; Justin Lucey <jlucey@lucey-law.com>

Subject: Request for Hearing: Palmetto Pointe at Peas Island Condominium Property Owners Ass'n, Inc. v. Certain Underwriters at Lloyd's London, et al., C/A No. 2021-CP-10-04380.

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

Good afternoon-

We would request an in person or Webex hearing on the motion for reconsideration on the recent Form 4 re: release of the funds on deposit with the Clerk of Court. My only unavailability for the next two weeks is Thursday. Otherwise, I can be available at the Court's convenience.

As the Court may be aware, Plaintiff served and filed a notice of appeal of the Court's order on the payment of the funds in the Clerk's office; however, this notice was served and filed after the current motion of reconsideration was filed with this Court (but not yet disposed of).

Plaintiff's counsel has related to me his belief the Circuit Court is now divested of jurisdiction due to recent appeal. We do not concur for several reasons including the fact there remains the pending motion before this Court; hence, the request to be heard (which was originally made in late December). See Rule 241(a) SCACR (mechanism for permitting Circuit Court to maintain jurisdiction notwithstanding pendency of an appeal).

Thank you for your time and attention; we will await your guidance.

V/R

Christian Stegmaier
Collins & Lacy, PC
Cell 803-467-9699

From: McCoy, Jennifer B. Secretary (Brooke Slade) <jmccoysc@sccourts.org>
Sent: Tuesday, January 20, 2026 10:33 AM
To: Christian Stegmaier <cstegmaier@collinsandlacy.com>; Justin Lucey <jlucey@lucey-law.com>; McCoy, Jennifer B. Law Clerk (Eliza Lay) <jmccoyle@sccourts.org>
Cc: Lee Weiland <lweiland@lucey-law.com>; 'Hines, Russell' <RHines@ycrlaw.com>; Stephanie Drawdy <sdrawdy@lucey-law.com>; Evan M. Gessner <egessner@collinsandlacy.com>; Sohayla Townes <stownes@lucey-law.com>; 'Buckley, Edward D. (Ed)' <ebuckley@ycrlaw.com>; ademato@ycrlaw.com; Anna McCann <amccann@lucey-law.com>; 'Glover, Sherry' <sglover@ycrlaw.com>; Richard E. Zelonka <rzelonka@wshblaw.com>
Subject: RE: Request: Palmetto Pointe at Peas Island Condominium Property Owners Ass'n, Inc. v. Certain Underwriters at Lloyd's London, et al., C/A No. 2021-CP-10-04380.

Caution: This is an external email. Please take care when clicking links or opening attachments.

Good morning,

I am following up on the below email. Please let us know if you need anything further.

Best,

Brooke S. Slade

Administrative Assistant
The Honorable Jennifer B. McCoy
100 Broad Street, Suite 348
Charleston, SC 29401
Phone: (843) 958-5066

From: McCoy, Jennifer B. Secretary (Brooke Slade)
Sent: Tuesday, January 6, 2026 11:23 AM
To: 'Christian Stegmaier' <cstegmaier@collinsandlacy.com>; Justin Lucey <jlucey@lucey-law.com>; McCoy, Jennifer B. Law Clerk (Eliza Lay) <jmccoyle@sccourts.org>
Cc: Lee Weiland <lweiland@lucey-law.com>; 'Hines, Russell' <RHines@ycrlaw.com>; Stephanie Drawdy

<sdrawdy@lucey-law.com>; Evan M. Gessner <egessner@collinsandlacy.com>; Sohayla Townes <stownes@lucey-law.com>; 'Buckley, Edward D. (Ed)' <ebuckley@ycrlaw.com>; ademato@ycrlaw.com; Anna McCann <amccann@lucey-law.com>; 'Glover, Sherry' <sglover@ycrlaw.com>; Richard E. Zelonka <rzelonka@wshblaw.com>

Subject: RE: Request: Palmetto Pointe at Peas Island Condominium Property Owners Ass'n, Inc. v. Certain Underwriters at Lloyd's London, et al., C/A No. 2021-CP-10-04380.

Thank you. Judge McCoy is will be in trial that week. However, she will stop to accommodate this matter. Please discuss a date and time together and let us know when you would like this hearing to go forward. Also, let us know if you all prefer in person or virtual.

Availability:

January 21-22; January 26-30

Monday, January 19th is a holiday. She is qualifying the jury Tuesday, January 20th, and Friday, January 23rd is a mandatory seminar she has to attend alongside all judges.

Thanks!

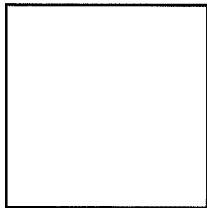
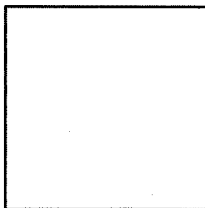
Brooke S. Slade

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The Honorable Jennifer B. McCoy
100 Broad Street, Suite 348
Charleston, SC 29401
Phone: (843) 958-5066

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In light of the Amended Order of the S.C. Supreme Court effective February 4, 2022 (Order 2020-04-03-01), we will be serving discovery via e-mail only.


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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

PALMETTO POINTE AT PEAS ISLAND  
CONDOMINIUM PROPERTY OWNERS  
ASSOCIATION, INC. and KATHY MILNER,  
Individually, and on behalf of all others  
Similarly situated,

Plaintiffs,

vs.

ISLAND POINTE, LLC; LEONARD T.  
BROWNE; COMPLETE BUILDING  
CORPORATION; TRI-COUNTY ROOFING,  
INC.; CREEKSIDE, INC.; AMERICAN  
RESIDENTIAL SERVICES, LLC d/b/a  
ARS/RESCUE ROOTER CHARLESTON;  
AND JOHN DOE 1-60,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015-CP-10-955

FILED  
2015 FEB 13 PM 4:19  
JULIE J. ARMSTRONG  
CLERK OF COURT

Submitted By: Joshua P. Cantwell  
Address: Young Clement Rivers, LLP  
Post Office Box 993  
Charleston, SC 29402-0993

SC Bar #: 76368  
Telephone #: (843) 720-5446  
Fax #: (843) 579-2942  
E-mail: jcantwell@ycrlaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

**DOCKETING INFORMATION** (Check all that apply)

*\*If Action is Judgment/Settlement do not complete*

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.  
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

**NATURE OF ACTION** (Check One Box Below)

- |                                                         |                                                                                             |                                                           |                                                         |
|---------------------------------------------------------|---------------------------------------------------------------------------------------------|-----------------------------------------------------------|---------------------------------------------------------|
| <b>Contracts</b>                                        | <b>Torts - Professional Malpractice</b>                                                     | <b>Torts - Personal Injury</b>                            | <b>Real Property</b>                                    |
| <input checked="" type="checkbox"/> Constructions (100) | <input type="checkbox"/> Dental Malpractice (200)                                           | <input type="checkbox"/> Assault/Slander/Libel (300)      | <input type="checkbox"/> Claim & Delivery (400)         |
| <input type="checkbox"/> Debt Collection (110)          | <input type="checkbox"/> Legal Malpractice (210)                                            | <input type="checkbox"/> Conversion (310)                 | <input type="checkbox"/> Condemnation (410)             |
| <input type="checkbox"/> Employment (120)               | <input type="checkbox"/> Medical Malpractice (220)                                          | <input type="checkbox"/> Motor Vehicle Accident (320)     | <input type="checkbox"/> Foreclosure (420)              |
| <input type="checkbox"/> General (130)                  | <input type="checkbox"/> Notice/ File Med Mal (230)                                         | <input type="checkbox"/> Premises Liability (330)         | <input type="checkbox"/> Mechanic's Lien (430)          |
| <input type="checkbox"/> Breach of Contract (140)       | <input type="checkbox"/> Other (299)                                                        | <input type="checkbox"/> Products Liability (340)         | <input type="checkbox"/> Partition (440)                |
| <input type="checkbox"/> Other (199)                    |                                                                                             | <input type="checkbox"/> Personal Injury (350)            | <input type="checkbox"/> Possession (450)               |
|                                                         |                                                                                             | <input type="checkbox"/> Wrongful Death (360)             | <input type="checkbox"/> Building Code Violation (460)  |
|                                                         |                                                                                             | <input type="checkbox"/> Other (399)                      | <input type="checkbox"/> Other (499)                    |
| <b>Inmate Petitions</b>                                 | <b>Judgments/Settlements</b>                                                                | <b>Administrative Law/Relief</b>                          | <b>Appeals</b>                                          |
| <input type="checkbox"/> PCR (500)                      | <input type="checkbox"/> Death Settlement (700)                                             | <input type="checkbox"/> Reinstate Driver's License (800) | <input type="checkbox"/> Arbitration (900)              |
| <input type="checkbox"/> Mandamus (520)                 | <input type="checkbox"/> Foreign Judgment (710)                                             | <input type="checkbox"/> Judicial Review (810)            | <input type="checkbox"/> Magistrate-Civil (910)         |
| <input type="checkbox"/> Habeas Corpus (530)            | <input type="checkbox"/> Magistrate's Judgment (720)                                        | <input type="checkbox"/> Relief (820)                     | <input type="checkbox"/> Magistrate-Criminal (920)      |
| <input type="checkbox"/> Other (599)                    | <input type="checkbox"/> Minor Settlement (730)                                             | <input type="checkbox"/> Permanent Injunction (830)       | <input type="checkbox"/> Municipal (930)                |
|                                                         | <input type="checkbox"/> Transcript Judgment (740)                                          | <input type="checkbox"/> Forfeiture-Petition (840)        | <input type="checkbox"/> Probate Court (940)            |
|                                                         | <input type="checkbox"/> Lis Pendens (750)                                                  | <input type="checkbox"/> Forfeiture-Consent Order (850)   | <input type="checkbox"/> SCDOT (950)                    |
|                                                         | <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) | <input type="checkbox"/> Other (899)                      | <input type="checkbox"/> Worker's Comp (960)            |
|                                                         | <input type="checkbox"/> Other (799)                                                        |                                                           | <input type="checkbox"/> Zoning Board (970)             |
|                                                         |                                                                                             |                                                           | <input type="checkbox"/> Administrative Law Judge (980) |

**Special/Complex /Other**

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|------------------------------------------------|---------------------------------------------------------|
| <input type="checkbox"/> Environmental (600)   | <input type="checkbox"/> Pharmaceuticals (630)          |
| <input type="checkbox"/> Automobile Arb. (610) | <input type="checkbox"/> Unfair Trade Practices (640)   |
| <input type="checkbox"/> Medical (620)         | <input type="checkbox"/> Out-of State Depositions (650) |
| <input type="checkbox"/> Other (699)           | <input type="checkbox"/> Sexual Predator (510)          |

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| <input type="checkbox"/> Public Service Commission (990) |
| <input type="checkbox"/> Employment Security Comm (991)  |
| <input type="checkbox"/> Other (999)                     |

**Submitting Party Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

2/13/2015

**Note:** Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

**FOR MANDATED ADR COUNTIES ONLY**

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,  
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

**You are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.  
Failure to do so may affect your case or may result in sanctions.**

) IN THE COURT OF COMMON PLEAS  
) FOR THE NINTH JUDICIAL CIRCUIT  
) CASE NO. 2015-CP-10- 0955

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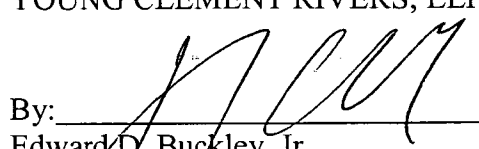
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JULIE A. STRONG  
CLERK OF COURT

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Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By: 

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P.O. Box 993

Charleston, South Carolina 29402

(843) 720-5446

*Attorneys for the Plaintiffs*

Charleston, South Carolina

Dated: 2/13/2015

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

PALMETTO POINTE AT PEAS ISLAND  
CONDOMINIUM PROPERTY OWNERS  
ASSOCIATION, INC. and KATHY MILNER,  
individually, and on behalf of all others  
similarly situated,

Plaintiffs,

vs.

ISLAND POINTE, LLC; LEONARD T.  
BROWNE; COMPLETE BUILDING  
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INC.; CREEKSIDE, INC.; AMERICAN  
RESIDENTIAL SERVICES, LLC d/b/a  
ARS/RESCUE ROOTER CHARLESTON;  
AND JOHN DOE 1-60,

Defendants.

) IN THE COURT OF COMMON PLEAS  
) FOR THE NINTH JUDICIAL CIRCUIT  
) CASE NO. 2015-CP-10- 0955  
)  
)  
)

**COMPLAINT**  
(Defective Construction)

(Jury Trial Demanded)

FILED  
2015 FEB 13 PM 4:19  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

The Plaintiffs, Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Kathy Milner, individually and on behalf of all others similarly situated, complaining of the Defendants named herein, would respectfully allege and show the Court as follows:

**PARTIES AND JURISDICTIONAL STATEMENT**

1. Plaintiff Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. ("POA") is a non-profit corporation organized and existing under the laws of the State of South Carolina.

2. The POA is the property owners association for the Palmetto Pointe at Peas Island Horizontal Property Regime.

3. The Palmetto Pointe at Peas Island Horizontal Property Regime is a Horizontal Property Regime ("Palmetto Pointe") which exists by virtue of a Master Deed dated January 6,

2006 and recorded on January 10, 2006 in the RMC Office of Charleston County in Book W568, Page 532 and the Amended and Restated Master Deed dated January 19, 2007 and recorded January 22, 2007 in the RMC Office of Charleston County in Book R612, Page 823.

4. Palmetto Pointe originally consisted of forty (40) townhome style condominiums located in twenty (20) buildings and related common elements and a clubhouse, which are located in Charleston County, South Carolina. There are four (4) recently built units in two (2) buildings, which are not subject to this matter.

5. By virtue of governing documents and the South Carolina Horizontal Property Regime Act, S.C. Code § 27-31-10, *et. seq.*, the POA is charged with certain duties, powers, rights and authority in connection with Palmetto Pointe.

6. The POA is charged with, *inter alia*, the management and administration of Palmetto Pointe, the investigation, maintenance and repair of Palmetto Pointe's Common Elements and other areas of responsibility, including exteriors and roofs, and has the right and obligation to bring this action on behalf of Palmetto Pointe, the POA, and the respective owners and members.

7. Plaintiff Kathy Milner (hereinafter "Plaintiff Milner") is an owner of a condominium within Palmetto Pointe more particularly described as 1610 Folly Creek Way, Charleston, South Carolina, 29412, and she owns an undivided interest in all other property within the Palmetto Pointe regime, except such property comprising the remaining thirty-nine (39) units.

8. By virtue of property ownership in Palmetto Pointe, Plaintiff Milner is a member of the POA, has been a member of the POA at all times relevant hereto, and has ownership and membership rights relating thereto.



9. Defendant Island Pointe, LLC (“Island Pointe”) is a limited liability company organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Island Pointe was engaged in the business of designing, developing, marketing, constructing, and/or selling condominiums in Charleston County, South Carolina.

10. Defendant Leonard T. Browne (“Browne”) is an individual residing in Charleston, South Carolina. At all times, Browne was engaged in the business of designing, developing, marketing, constructing, and/or selling condominiums in Charleston, South Carolina.

11. At all times relevant hereto, Browne controlled Island Pointe and acted as its agent and the Island Pointe, LLC which form the basis of the complaint herein. Additionally, he and /or Island Pointe, LLC controlled the POA until that control was turned over to the owners themselves.

12. Defendant Complete Building Corporation (hereinafter “Complete Building”) is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Complete Building was engaged in the business of designing, constructing condominiums in Charleston County, South Carolina.

13. At all times relevant hereto, Browne, Island Pointe, and Complete Building were acting in concert with each other, and as agents for each other, and each are jointly responsible for each other’s failures.

14. Defendant Tri-County Roofing, Inc. (hereinafter “Tri-County Roofing”) is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Tri-County Roofing supplied materials, installed roofing and related materials, among other work, at Palmetto Pointe.

15. Defendant Creekside. Inc. (hereinafter “Creekside”) is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action,

Creekside supplied materials, applied painting and caulking, among other work, at Palmetto Pointe.

16. Defendant American Residential Services, LLC d/b/a ARS/Rescue Rooter Charleston (hereinafter “ARS”) is a limited liability company organized and existing under the laws of the State of Delaware. At all times relevant to this action, ARS supplied materials, installed the HVAC systems, among other work, at Palmetto Pointe.

17. The address and identity of all John Doe Defendants are unknown at this time.

18. Defendants John Doe #1-60 (hereinafter “John Doe Defendants”) are subcontractors and/or other entities involved in the design, development, marketing, construction, material manufacturing and/or supplying, and/or sale of Palmetto Pointe.

19. This Honorable Court has jurisdiction over all subject matter alleged herein and over all parties hereto and venue is proper in this forum.

### **FACTUAL ALLEGATIONS**

20. This matter arises out of the design, development, construction, and sale of Palmetto Pointe.

21. At the time the Certificates of Occupancy were issued, Palmetto Pointe contained latent building defects.

22. The latent building defects in combination with fortuitous weather, repeated water intrusion and/or other events have resulted in consequential damage to other building components and other property.

23. A preliminary inspection of Palmetto Pointe evidences failure of one or more components the exterior building envelopes; water intrusion into and through the exterior building envelope; and resulting consequential damage to non-defective building components,

structural members, and other property. Inspection also reveals failure of other various and sundry building components, with consequential damages resulting there from.

24. Defendants had a duty to design, develop, construct, and repair Palmetto Pointe in a workmanlike manner with suitable materials and free from all defects.

25. The aforementioned deficiencies and consequential damages evidence that Defendants breached their duties to Plaintiffs.

26. The Defendants' acts and omissions have resulted in building deficiencies, consequential damages, and partial loss of use and enjoyment.

27. Remedying the above-wrongs will result in additional consequential damages and loss of use.

28. As a direct and proximate result of Defendants' violation of their legal duties, Plaintiffs and class members have been proximately damaged in an amount to be determined by the trier of fact, and have had to incur a reasonable attorney's fees and costs for the retention of experts to determine the damage and the scope of work for repair.

29. Upon information and belief, the water intrusion and resulting consequential damages have occurred and have been occurring in each and every year since the completion of construction and constitute "occurrences" and "property damage" under the standard and/or typical general liability policies.

### **CLASS ACTION ALLEGATIONS**

30. Pursuant to the common law of South Carolina and Rule 23 of the South Carolina Rules of Civil Procedure ("SCRCP"), Plaintiff Milner brings this action both individually and as a proposed class action against Defendants on behalf of herself and all other similarly situated persons and entities, who own, per the class definition, a condominium within Palmetto Pointe (hereinafter collectively referred to as the "Class"). The Class is particularly defined as follows:

All persons and entities that own a townhome style condominium within Palmetto Pointe located in Charleston, South Carolina.

Excluded from the Class are: (a) any Judge presiding over this action and members of their families; (b) Defendants and any entity in which Defendants have a controlling interest or which have a controlling interest in Defendants; (c) Defendants' legal representatives, assigns and successors of Defendants; (d) Defendants' current or former employees, investors, members, or officers; and (e) all persons who properly execute and file a timely request for exclusion from the Class.

31. *Numerosity:* The Class is composed of in excess of forty (40) persons or entities geographically dispersed throughout the State of South Carolina and the United States, the joinder of whom in one action is impractical. When spouses and co-owners are considered, the Class is expected to be in excess of sixty (60) members.

32. *Commonality:* Questions of law and fact common to the Class exist as to all members of the Class and predominate over any questions affecting only individual members of the Class. These common legal and factual issues include the following:

- (a) Whether the construction of Palmetto Pointe was defective;
- (b) Whether Defendants knew or should have known of the defects;
- (c) Whether Defendants failed to disclose to purchasers and/or homeowners the defects;
- (d) Whether Defendants have acted or refused to act on grounds generally applicable to the Class;
- (e) Whether Defendants are financially responsible to pay the full costs and expenses of repair of said defective conditions;
- (f) Whether Defendants' expertise, superiority, and financial interest in sales transactions gave rise to a duty to disclose the material facts which were concealed; thereby, giving rise to a claim for fraudulent concealment;
- (g) Whether Plaintiffs and the Class are entitled to compensatory damages, including,

among other things: (i) compensation for all out-of-pocket monies expended by other members of the Class for repair of their condominiums as well as repair/replacement of other property damage; (ii) temporary repairs and (iii) compensation for loss of use.

(h) Whether Defendants negligently designed, developed, and/or constructed Palmetto Pointe;

(i) Whether the Plaintiffs are entitled to prejudgment interest, attorneys' fees and costs from Defendants.

33. *Typicality*: Plaintiffs' claims are typical of the claims of the members of the Class, as all such claims arise out of Defendants' wrongful conduct in designing, developing, constructing, and selling Palmetto Pointe, Defendants' conduct in concealing the defective condition of Palmetto Pointe, and Plaintiffs' and Class Members' purchasing homes containing building defects.

34. *Adequate Representation*: Plaintiff Milner will fairly and adequately protect the interests of the members of the Class and has no interests antagonistic to those of the Class. Plaintiff Milner has retained counsel experienced in the prosecution of construction defect claims and complex litigation, including consumer class actions involving product liability and product design defects.

35. *Predominance and Superiority*: This class action is appropriate for certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual members, and a Class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable. Should individual Class Members be required to bring separate actions, this Court would be confronted with a multiplicity of lawsuits burdening the

court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single Court.

36. Defendants have acted on grounds generally applicable to the Class. Class certification is appropriate under South Carolina law because Defendants engaged in a uniform and common practice. All Class Members have the same legal right to and interest in redress for damages associated with the defective conditions existing within Palmetto Pointe.

37. Plaintiff Milner and the Class envision no unusual difficulty in the management of this action as a class action.

38. Each Class Member has an interest of more than \$100.00.

39. The amount of money at stake for each Class Member is not sufficient for each member to hire his own counsel and engineers and bring their own action.

**ESTOPPEL FROM PLEADING AND TOLLING OF  
APPLICABLE STATUTES OF LIMITATIONS**

40. Defendants are estopped from relying on any statutes of limitation or repose by virtue of its acts. Upon information and belief, Defendants should have known Palmetto Pointe was defectively constructed and failed to alert the Plaintiffs of Palmetto Pointe's defective condition.

41. Defendants had a duty to inform Plaintiffs of the defects described herein, which it should have known. Notwithstanding its duty, Defendants never disclosed the defects to Plaintiffs.

42. Despite exercising reasonable diligence, Plaintiffs could not have discovered the

defective condition of Palmetto Pointe.

43. Given Defendants' failure to disclose this non-public information about the defective nature of Palmetto Pointe – information over which it had exclusive control – and because Plaintiffs could not reasonably have known of Palmetto Pointe's defective nature, Defendants are estopped from relying on any statutes of limitations or repose that might otherwise be applicable to the claims asserted herein.

44. Defendants are further estopped from relying upon any statute of limitations as they have represented to Plaintiffs that they are only responsible for correcting work for a period of one year after sale.

**ESTOPPEL FROM PLEADING ANY ANTI-SUIT PROVISIONS  
CONTAINED IN PALMETTO POINTE'S MASTER DEED AND BY-LAWS**

45. The Island Pointe and Browne Defendants are estopped from relying on any anti-suit provisions contained in Palmetto Pointe's Master Deed and By-Laws because said provisions are void pursuant to public policy and the Horizontal Property Regime Act and/or voidable as such constitutes a breach of the Island Pointe/Browne's fiduciary duty to Plaintiffs.

**FOR A FIRST CAUSE OF ACTION  
(Negligence/Gross Negligence as to All Defendants)**

46. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

47. At all times relevant hereto, the Defendants, its agents, servants, employees, and subcontractors undertook and had a duty to Plaintiffs to exercise and use due care in the design and construction of Palmetto Pointe in a good workmanlike manner and with suitable materials, in accordance with the applicable building codes, state law, good design, and in conformance with the prevailing industry standards.

48. Defendants breached their duties to Plaintiffs and the Class in a manner that was negligent, careless, reckless, willful, and wanton in the following particulars:

- (a) In designing, developing, constructing, and selling Palmetto Pointe with construction deficiencies including those previously identified;
- (b) In failing to construct Palmetto Pointe in accordance with due care and in accordance with standard building practices;
- (c) In failing to construct Palmetto Pointe in accordance with building code;
- (d) In failing to properly supervise the work and construction of Palmetto Pointe;
- (e) In failing to properly coordinate the subcontractors;
- (f) In failing to construct with an adequate exterior building envelope;
- (g) In failing to act as a reasonable person would in the circumstances then and there prevailing;
- (h) In covering up their own defective work and the defective work of others;
- (i) In failing to make proper repairs; and
- (j) Such other failures to be proven at trial.

49. Any violations of applicable building codes constitutes negligence *per se*.

50. Plaintiffs and the Class have been damaged as a direct and proximate result if the negligence, carelessness, recklessness, willfulness, and wantonness of the Defendants.

51. If it is shown that said failures were committed with gross negligence and/or reckless disregard for the rights of others, and/or constituted negligence *per se*, Plaintiffs and Class are entitled to an award of punitive damages against the Defendants.



**FOR A SECOND CAUSE OF ACTION**  
**(Breach of Warranty as to all Defendants)**

52. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if more fully set forth herein.

53. The design, construction, and/or sale of Palmetto Pointe came with express and implied warranties that the work would be performed in a careful, diligent and workmanlike manner and that Palmetto Pointe would be constructed with suitable materials and components and free from all defects and be of superior quality befitting of an upscale condominium complex.

54. The design, construction, and/or sale of Palmetto Pointe, and the components used therein, came with implied warranties of fitness, merchantability, and workmanship.

55. Additionally, Defendant Developers owed Plaintiffs a warranty of habitability.

56. Defendants have breached their warranties by constructing Palmetto Pointe in a defective manner as set forth above.

57. As a direct and proximate result of the Defendants' breach of the implied warranty, Plaintiff's have suffered actual and consequential damages.

**FOR A THIRD CAUSE OF ACTION**  
**(Strict Liability in Tort: *S.C. Code Ann. § 15-73-10 et seq.* as to John Doe Defendants who manufactured and/or supplied components used in the construction of Palmetto Pointe)**

58. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if more fully set forth herein.

59. In manufacturing and supplying products for the construction of Palmetto Pointe, the manufacturer and supplier John Doe Defendants placed products into the stream of commerce.

60. By introducing their products into the stream of commerce, the manufacturer and supplier John Doe Defendants represented said products were safe and suitable for their foreseeable use.

61. In the manufacture and supply of products to Palmetto Pointe, the manufacturer and supplier John Doe Defendants anticipated and expected that their products would reach the public in substantially the same condition in which they were designed, developed, constructed, and sold.

62. The manufacture and supplier John Doe Defendants have supplied and manufactured their products in a defective manner unreasonably dangerous to persons or property other than the products themselves, which has resulted in repeated water intrusion into and damage to Palmetto Pointe and other building deficiencies.

63. Plaintiffs could not have discovered the product defects through the exercise of reasonable care.

64. The cost of altering the design, construction, and/or repair of the products supplied to Palmetto Pointe was substantially less than the resulting damage, cost, and injury suffered by the Plaintiffs.

65. The design and manufacture of the products supplied to Palmetto Pointe was inherently defective as sold was a direct and proximate cause of the damages suffered by Plaintiffs.

66. The manufacturer and supplier John Doe Defendants are therefore liable to Plaintiffs under the doctrine of strict liability in an amount to be determined by the trier of fact.

**FOR A FOURTH CAUSE OF ACTION**  
**(Breach of Fiduciary Duty as to Defendants Island Pointe and Browne)**

67. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

68. The Island Pointe and Browne Defendants have a fiduciary relationship to the Plaintiffs by virtue of their capacity as the developer and steward of Palmetto Pointe and their former capacity controlling the POA.

69. The Island Pointe and Browne Defendants promoted, created and maintained control of the POA and Palmetto Pointe for a period of time, and thus, had fiduciary duties they owed to the POA, its members and individual homeowners.

70. The Island Pointe and Browne Defendants breached the fiduciary duties they owed to the Plaintiffs by:

- (a) failing to investigate defective conditions prior to handing over the property to the POA and the homeowners;
- (b) failing to disclose said defective conditions;
- (c) failing to properly repair said defective conditions prior to handing over the property to the POA and the homeowners;
- (d) turning over the property to the POA in said defective condition without depositing sufficient funds to the account of the POA to bring the elements up to a reasonable standard;
- (e) failing to timely hold the other Defendants accountable for the construction defects; and
- (f) inserting provisions in the Master Deed which benefited Defendants at the expense of Plaintiffs.

71. As a direct and proximate result of the Island Pointe and Browne Defendants' breach of fiduciary duty, Plaintiffs have been damaged as hereinabove set forth and as to be further proven at trial.

**FOR A FIFTH CAUSE OF ACTION**  
**(Unfair Trade Practices as to Island Pointe, Browne, and Complete Building)**

72. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

73. At all times relevant herein, the Island Pointe, Browne, and Complete Building Defendants engaged in the business of developing, designing, constructing, and selling Palmetto Pointe into the stream of commerce.

74. The Island Pointe, Browne, and Complete Building Defendants were engaged in commerce as defined by the South Carolina Unfair Trade Practices Act.

75. The Island Pointe, Browne, and Complete Building Defendants above-described activities, including placing Palmetto Pointe with defective design and construction into the stream of commerce, failing to comply with the building code, failing to disclose those defects to potential and actual purchasers and other acts to be shown through the course of discovery and at trial, constitute unfair and deceptive practices in the conduct of the Island Pointe, Browne, and Complete Building Defendants' trade.

76. The Island Pointe, Browne, and Complete Building Defendants' above-described acts are capable of repetition and adversely affect the public interest.

77. The Island Pointe, Browne, and Complete Building Defendants knew or should have known that their conduct was in violation of the S.C. Code Ann. § 39-5-20.

78. As a direct, foreseeable, and proximate result of the Island Pointe, Browne, and Complete Building Defendants' unfair trade practices in South Carolina, Plaintiffs have suffered

significant damage and have and will incur attorney's fees and the costs and expenses of this action.

**FOR A SIXTH CAUSE OF ACTION**  
**(Declaratory Action/Reformation as to Island Pointe and Browne Defendants)**

82. Plaintiffs re-allege the allegations, which are not inconsistent with this cause of action and are, contained in the above paragraphs as if fully set forth herein.

83. The anti-suit provisions of the Palmetto Pointe Master Deed are in violation of public policy, statutory law and/or provisions of the Constitution, and the Island Pointe and Browne Defendants' fiduciary duties.

84. Plaintiffs are entitled to a declaration by this Court that the anti-suit provisions included within the Master Deed by the Island Pointe and Browne Defendants are in violation of statutory law and/or provisions in the Constitution and are therefore void and/or require reformation to eliminate the subject provisions.

85. As the provisions in the Master Deed are severable, the Plaintiffs are entitled to a declaration by this Court that the anti-suit provisions are severable from the other terms of the Master Deed.

86. Plaintiffs are also entitled to have ambiguous and contradictory provisions in the Master Deed construed against the Island Pointe and Browne Defendants and/or reformed by the Court to more accurately reflect the reasonable expectations of the POA and Homeowners.

WHEREFORE, Plaintiffs demand a trial by jury and pray actual and consequential damages; statutory or punitive damages expected to be millions of dollars; reasonable attorneys' fees; costs of suit; and prejudgment interest; declaration/reformation of the Master Deed; and granting such further relief as the Court deems just and proper.

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By:

  
\_\_\_\_\_  
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Charleston, SC 29402

(843)720-5446

*Attorneys for the Plaintiffs*

February 13, 2015

Charleston, South Carolina

|                                     |   |                              |
|-------------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA             | ) | IN THE COURT OF COMMON PLEAS |
|                                     | ) |                              |
| COUNTY OF CHARLESTON                | ) | NINTH JUDICIAL CIRCUIT       |
|                                     | ) |                              |
| PALMETTO POINTE AT PEAS ISLAND      | ) | CASE NO. 2015-CP-10-0955     |
| CONDOMINIUM PROPERTY OWNERS         | ) |                              |
| ASSOCIATION, INC. AND JACK          | ) |                              |
| LOVE, INDIVIDUALLY, AND ON          | ) |                              |
| BEHALF OF ALL OTHERS SIMILARLY      | ) |                              |
| SITUATED,                           | ) |                              |
|                                     | ) |                              |
| PLAINTIFFS,                         | ) |                              |
|                                     | ) |                              |
| vs.                                 | ) |                              |
|                                     | ) |                              |
| 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.; W C 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 SIDING,   | ) |                              |
| LLC; MARK PALPOINT A/K/A MICAH      | ) |                              |
| PALPOINT; ELROY ALONZO VASQUEZ;     | ) |                              |
| CHRIS A/K/A JOHN DOE 61;            | ) |                              |
| ALDERMAN CONSTRUCTION;              | ) |                              |
| STANLEY'S VINYL FENCE DESIGNS;      | ) |                              |
| COHEN'S DRYWALL COMPANY, INC.;      | ) |                              |
| MOSELY CONCRETE;                    | ) |                              |
| HAND A FRAMING CONSTRUCTION,        | ) |                              |
| LLC A/K/A H&A FRAMING               | ) |                              |

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JULIE J. ARMSTRONG  
CLERK OF COURT  
BY *js*

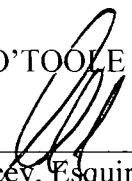
**SECOND AMENDED SUMMONS**

|                                |   |
|--------------------------------|---|
| 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.                    | ) |
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| COMPLETE BUILDING CORPORATION, | ) |
| INC.,                          | ) |
|                                | ) |
| THIRD-PARTY PLAINTIFF,         | ) |
|                                | ) |
| VS.                            | ) |
|                                | ) |
| LEONARD T. BROWNE AND          | ) |
| CHRISTOPHER N. UNION,          | ) |
|                                | ) |
| THIRD-PARTY DEFENDANTS.        | ) |
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| CREEKSIDE, INC.,               | ) |
|                                | ) |
| THIRD-PARTY PLAINTIFF,         | ) |
|                                | ) |
| VS.                            | ) |
|                                | ) |
| CHRISTOPHER N. UNION,          | ) |
|                                | ) |
| THIRD-PARTY DEFENDANT.         | ) |
| <hr/>                          |   |

YOU ARE HEREBY SUMMONED and required to answer the Second Amended Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Amended Complaint upon the subscriber at his office at 415 Mill Street, Post Office Box 806, Mount Pleasant, South Carolina within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer within the prescribed time, a judgment by default will be rendered against you for the amount or other remedy requested in the attached Second Amended Complaint plus interest and costs.



JUSTIN O'TOOLE LUCEY, P.A.

BY: 

Justin Lucey, Esquire

Stephanie Drawdy, Esquire

415 Mill Street

Post Office Box 806

Mount Pleasant, S.C. 29465-0806

*-and-*

Edward D. Buckley, Jr.

YOUNG CLEMENT RIVERS, LLP

P.O. Box 993

Charleston, SC 29402

(843) 724-5446

*Attorneys for the Plaintiffs*

Charleston, South Carolina

Dated: 11/2/2017

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
)  
COUNTY OF CHARLESTON ) NINTH JUDICIAL CIRCUIT

PALMETTO POINTE AT PEAS ISLAND ) CASE NO. 2015-CP-10-0955  
CONDOMINIUM PROPERTY OWNERS )  
ASSOCIATION, INC. AND JACK )  
LOVE, INDIVIDUALLY, AND ON )  
BEHALF OF ALL OTHERS SIMILARLY )  
SITUATED, )

PLAINTIFFS, )

vs. )

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.; W C 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 SIDING, )  
LLC; MARK PALPOINT A/K/A MICAH )  
PALPOINT; ELROY ALONZO VASQUEZ;) )  
CHRIS A/K/A JOHN DOE 61; )  
ALDERMAN CONSTRUCTION; )  
STANLEY'S VINYL FENCE DESIGNS; )  
COHEN'S DRYWALL COMPANY, INC.; )  
MOSELY CONCRETE; )  
HAND A FRAMING CONSTRUCTION, )  
LLC A/K/A H&A FRAMING )

**PLAINTIFFS' SECOND  
AMENDED COMPLAINT**

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JULIE J. ARISTONG  
CLERK OF COURT  
BY \_\_\_\_\_

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|--------------------------------|---|
| 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.                    | ) |
| <hr/>                          |   |
| COMPLETE BUILDING CORPORATION, | ) |
| INC.,                          | ) |
|                                | ) |
| THIRD-PARTY PLAINTIFF,         | ) |
|                                | ) |
| VS.                            | ) |
|                                | ) |
| LEONARD T. BROWNE AND          | ) |
| CHRISTOPHER N. UNION,          | ) |
|                                | ) |
| THIRD-PARTY DEFENDANTS.        | ) |
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| CREEKSIDE, INC.,               | ) |
|                                | ) |
| THIRD-PARTY PLAINTIFF,         | ) |
|                                | ) |
| VS.                            | ) |
|                                | ) |
| CHRISTOPHER N. UNION,          | ) |
|                                | ) |
| THIRD-PARTY DEFENDANT.         | ) |
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The Plaintiffs, Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Jack Love, individually and on behalf of all others similarly situated, complaining of the Defendants named herein, would respectfully allege and show the Court as follows:

## **PARTIES AND JURISDICTIONAL STATEMENT**

1. Plaintiff Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. ("POA") is a non-profit corporation organized and existing under the laws of the State of South Carolina.

2. The POA is the property owners association for the Palmetto Pointe at Peas Island Horizontal Property Regime.

3. The Palmetto Pointe at Peas Island Horizontal Property Regime is a Horizontal Property Regime ("Palmetto Pointe") which exists by virtue of a Master Deed dated January 6, 2006 and recorded on January 10, 2006 in the RMC Office of Charleston County in Book W568, Page 532 and the Amended and Restated Master Deed dated January 19, 2007 and recorded January 22, 2007 in the RMC Office of Charleston County in Book R612, Page 823.

4. Palmetto Pointe originally consisted of forty (40) townhome style condominiums located in twenty (20) buildings and related common elements and a clubhouse, which are located in Charleston County, South Carolina. There are four (4) recently built units in two (2) buildings, which are not subject to this matter.

5. By virtue of governing documents and the South Carolina Horizontal Property Regime Act, S.C. Code § 27-31-10, *et. seq.*, the POA is charged with certain duties, powers, rights and authority in connection with Palmetto Pointe.

6. The POA is charged with, *inter alia*, the management and administration of Palmetto Pointe, the investigation, maintenance and repair of Palmetto Pointe's Common Elements and other areas of responsibility, including exteriors and roofs, and has the right and obligation to bring this action on behalf of Palmetto Pointe, the POA, and the respective owners

and members. Additionally, the POA is the assignee of homeowner interests relating to these claims and repairs.

7. Plaintiff Jack Love (hereinafter "Plaintiff Love") is an owner of a condominium within Palmetto Pointe more particularly described as 1651 Folly Creek Way, Charleston, South Carolina, 29412, and he owns an undivided interest in all other property within the Palmetto Pointe regime, except such property comprising the remaining thirty-nine (39) units.

8. By virtue of property ownership in Palmetto Pointe, Plaintiff Love is a member of the POA, has been a member of the POA at all times relevant hereto, and has ownership and membership rights relating thereto.

9. Defendant Island Pointe, LLC ("Island Pointe") is a limited liability company organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Island Pointe was engaged in the business of designing, developing, marketing, constructing, and/or selling condominiums in Charleston County, South Carolina.

10. Defendant Complete Building Corporation (hereinafter "Complete Building") is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Complete Building was engaged in the business of designing and constructing condominiums in Charleston County, South Carolina.

11. At all times relevant hereto, Island Pointe and Complete Building were acting in concert with each other, and as agents for each other, and each are jointly responsible for each other's failures.

12. Defendant Tri-County Roofing, Inc. (hereinafter "Tri-County Roofing") is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Tri-County Roofing supplied materials and installed roofing and related

materials, among other work, at Palmetto Pointe. Tri-County also supplied siding, flashing, deck waterproofing, gutters and other materials at Palmetto Pointe.

13. Defendant Creekside, Inc. (hereinafter "Creekside") is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Creekside supplied materials and applied painting and caulking, among other work, at Palmetto Pointe.

14. Defendant American Residential Services, LLC d/b/a ARS/Rescue Rooter Charleston (hereinafter "ARS") is a limited liability company organized and existing under the laws of the State of Delaware. At all times relevant to this action, ARS supplied materials and installed the HVAC systems, among other work, at Palmetto Pointe.

15. Defendant Andersen Windows, Inc. (hereinafter "Andersen") is a corporation organized and existing under the laws of the State of Minnesota. At all times relevant to this action, Andersen supplied windows and related products at Palmetto Pointe.

16. Defendant Atlantic Building Construction Services, Inc. n/k/a Atlantic Construction Services, Inc. (hereinafter "Atlantic") is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Atlantic supplied materials and installed framing, metal fabrications, rough carpentry, metal plate connected wood trusses, weather resistant barriers, sheet metal flashing and trim, joint sealants, and wood windows and doors, among other work and products, at Palmetto Pointe.

17. Defendant Builder Services Group, Inc. d/b/a Gale Contractor Services (hereinafter "BSG") is a corporation organized and existing under the laws of the State of Florida. At all times relevant to this action, BSG supplied materials and installed fireplaces, among other work, at Palmetto Pointe.

18. Defendant Novus Architects, Inc., f/k/a SGM Architects, Inc. (hereinafter “Novus”) is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Novus performed design work, among other work, at Palmetto Pointe.

19. Defendant Tallent and Sons, Inc. (hereinafter “Tallent”) is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Tallent performed grading and paving work, among other work, at Palmetto Pointe.

20. Defendant W C Services, Inc. (hereinafter “W C”) is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, WC supplied and installed fire sprinkler systems and related components, among other work, at Palmetto Pointe.

21. Defendant CRG Engineering, Inc. (hereinafter “CRG”) is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, CRG provided civil engineering services, among other work, at Palmetto Pointe.

22. Defendant CertainTeed Corporation (hereinafter “CertainTeed”) is a corporation organized and existing under the laws of the State of Delaware. At all times relevant to this action, CertainTeed manufactured and supplied aluminum trim coil stock and siding, among other products, at Palmetto Pointe.

23. Defendant Kelly Flooring Products, Inc. d/b/a Carpet Baggers (hereinafter “Carpet Baggers”) is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Carpet Baggers supplied materials and installed carpet, wood flooring and related materials, among other work, at Palmetto Pointe.

24. Defendants Cornerstone Construction Corporation and Mark Malloy d/b/a Cornerstone Construction (“Cornerstone”) are South Carolina companies located in Charleston County, South Carolina. At all times relevant to this action, Cornerstone supplied materials and installed siding, flashing, and related components, among other work, at Palmetto Pointe.

25. Defendant Miracle Siding, LLC and Wilson Lucas Sales d/b/a Miracle Siding (“Miracle Siding”) is a Limited Liability Company organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Miracle Siding supplied materials and installed siding, flashing, and related components, among other work, at Palmetto Pointe.

26. Defendant Mark Palpoint a/k/a Micah Palpoint (“Palpoint”) is a South Carolina resident who, at all times relevant to this action, installed Sealoflex waterproofing, among other work, at Palmetto Pointe.

27. Defendant Eloy Alonzo Vasquez (“Vasquez”) was a South Carolina resident who, at all times relevant to this action, installed roofing, flashing, other roofing components, and waterproofing, among other work, at Palmetto Pointe.

28. Defendant Chris a/k/a John Doe No. 61 (“Doe No. 61”) is a resident of South Carolina and, at all times relevant to this action, installed waterproofing, among other work at Palmetto Pointe.

29. Defendant Alderman Construction, Inc. (“Alderman”) is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Alderman supplied and installed interior trim, among other work, at Palmetto Pointe.

30. Defendant Stanley's Vinyl Fence Designs (“Stanley’s”), is a North Carolina company located in Kinston, North Carolina. At all times relevant to this action, Stanley’s supplied and installed residential railings, among other work, at Palmetto Pointe.



31. Defendant Cohen's Drywall Company, Inc. ("Cohen's") is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Cohen's supplied and installed insulation and drywall, among other work, at Palmetto Pointe.

32. Defendant Mosley Concrete ("Mosley") is a South Carolina company located in Richland County, South Carolina. At all times relevant to this action, Mosley supplied and installed concrete, among other work, at Palmetto Pointe.

33. Defendant H and A Framing Construction, LLC a/k/a H&A Framing Construction, LLC and d/b/a Hand A Framing, LLC, H&A Construction, and Hand A Construction ("H&A") is a South Carolina limited liability company organized and existing under the laws of the State of South Carolina. At all times relevant to this action, H&A supplied materials and installed framing, among other work and products, at Palmetto Pointe.

34. Defendant JMC Construction, Inc. and JMC Construction, LLC (collectively "JMC") is a South Carolina corporation and a limited liability company organized and existing under the laws of the State of South Carolina. At all times relevant to this action, JMC supplied materials and installed framing, among other work and products, at Palmetto Pointe

35. The address and identity of all John Doe Defendants are unknown at this time.

36. Defendants John Doe #1-15 (hereinafter "John Doe Defendants") are subcontractors and/or other entities involved in the design, development, marketing, construction, material manufacturing and/or supplying, and/or sale of Palmetto Pointe.

37. Defendant Andersen, CertainTeed, and John Doe #1 are hereinafter referred to collectively as the "Manufacturing and Supplier Defendants."

38. This Honorable Court has jurisdiction over all subject matter alleged herein and over all parties hereto and venue is proper in this forum.

### **FACTUAL ALLEGATIONS**

39. This matter arises out of the design, development, construction, and sale of Palmetto Pointe.

40. At the time the Certificates of Occupancy were issued, Palmetto Pointe contained latent building defects.

41. The latent building defects in combination with fortuitous weather, repeated water intrusion and/or other events have resulted in consequential damage to other building components and other property.

42. A preliminary inspection of Palmetto Pointe evidences failure of one or more components the exterior building envelopes; water intrusion into and through the exterior building envelope; and resulting consequential damage to non-defective building components, structural members, and other property. Inspection also reveals failure of other various and sundry building components, with consequential damages resulting therefrom.

43. Defendants had a duty to design, develop, construct, and repair Palmetto Pointe in a workmanlike manner with suitable materials and free from all defects.

44. The aforementioned deficiencies and consequential damages evidence that Defendants breached their duties to Plaintiffs.

45. The Defendants' acts and omissions, individually and collectively, have resulted in building deficiencies, consequential damages, and partial loss of use and enjoyment.

46. Remedying the above-wrongs will result in additional consequential damages and loss of use.

47. As a direct and proximate result of Defendants' violation of their legal duties, Plaintiffs and class members have been proximately damaged in an amount to be determined by the trier of fact, and have had to incur reasonable attorney's fees and costs for the retention of experts to determine the damage and the scope of work for repair.

48. Upon information and belief, the water intrusion and resulting consequential damages have occurred and have been occurring in each and every year since the completion of construction and constitute "occurrences" and "property damage" under the standard and/or typical commercial general liability policies.

### **CLASS ACTION ALLEGATIONS**

49. Pursuant to the common law of South Carolina and Rule 23 of the South Carolina Rules of Civil Procedure ("SCRCP"), Plaintiff Love brings this action both individually and as a proposed class action against Defendants on behalf of himself and all other similarly situated persons and entities, who own, per the class definition, a condominium within Palmetto Pointe (hereinafter collectively referred to as the "Class"). The Class is particularly defined as follows:

All persons and entities that own a townhome style condominium within Palmetto Pointe located in Charleston, South Carolina.

Excluded from the Class are: (a) any Judge presiding over this action and members of their families; (b) Defendants and any entity in which Defendants have a controlling interest or which have a controlling interest in Defendants; (c) Defendants' legal representatives, assigns and successors of Defendants; (d) Defendants' current or former employees, investors, members, or officers; (e) all persons who properly execute and file a timely request for exclusion from the Class; and (f) the owners of the four excluded units referenced in Paragraph 4.

50. *Numerosity*: The Class is composed of in excess of forty (40) persons or entities geographically dispersed throughout the State of South Carolina and the United States, the

joinder of whom in one action is impractical. When spouses and co-owners are considered, the Class is expected to be in excess of sixty (60) members.

51. *Commonality*: Questions of law and fact common to the Class exist as to all members of the Class and predominate over any questions affecting only individual members of the Class. These common legal and factual issues include the following:

- a) Whether the construction of Palmetto Pointe was defective;
- b) Whether Defendants knew or should have known of the defects;
- c) Whether Defendants failed to disclose to purchasers and/or homeowners the defects;
- d) Whether Defendants have acted or refused to act on grounds generally applicable to the Class;
- e) Whether Defendants are financially responsible to pay the full costs and expenses of repair of said defective conditions;
- f) Whether Defendants' expertise, superiority, and financial interest in sales transactions gave rise to a duty to disclose the material facts which were concealed; thereby, giving rise to a claim for fraudulent concealment;
- g) Whether Plaintiffs and the Class are entitled to compensatory damages, including, among other things: (i) compensation for repair of their condominiums; (ii) temporary repairs; and (iii) compensation for loss of use; and
- h) Whether Defendants negligently designed, developed, and/or constructed Palmetto Pointe.

52. *Typicality*: Plaintiffs' claims are typical of the claims of the members of the Class, as all such claims arise out of Defendants' wrongful conduct in designing, developing, constructing, and selling Palmetto Pointe, Defendants' conduct in concealing the defective condition of Palmetto Pointe, and Plaintiffs' and Class Members' purchasing homes containing building defects.

53. *Adequate Representation*: Plaintiff Love will fairly and adequately protect the interests of the members of the Class and has no interests antagonistic to those of the Class. Plaintiff Love has retained counsel experienced in the prosecution of construction defect claims

and complex litigation, including consumer class actions involving product liability and product design defects.

54. *Predominance and Superiority*: This class action is appropriate for certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual members, and a Class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable. Should individual Class Members be required to bring separate actions, this Court would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single Court.

55. Defendants have acted on grounds generally applicable to the Class. Class certification is appropriate under South Carolina law because Defendants engaged in a uniform and common practice. All Class Members have the same legal right to and interest in redress for damages associated with the defective conditions existing within Palmetto Pointe.

56. Plaintiff Love and the Class envision no unusual difficulty in the management of this action as a class action.

57. Each Class Member has an interest of more than \$100.00.

58. The amount of money at stake for each Class Member is not sufficient for each member to hire his own counsel and engineers and bring their own action.

**ESTOPPEL FROM PLEADING AND TOLLING OF  
APPLICABLE STATUTES OF LIMITATIONS**

59. Defendants are estopped from relying on any statutes of limitation or repose by virtue of their acts. Upon information and belief, Defendants should have known Palmetto Pointe was defectively constructed and failed to alert the Plaintiffs of Palmetto Pointe's defective condition.

60. Defendants had a duty to inform Plaintiffs of the defects described herein, which they should have known. Notwithstanding their duty, Defendants never disclosed the defects to Plaintiffs.

61. Despite exercising reasonable diligence, Plaintiffs could not have discovered the defective condition of Palmetto Pointe.

62. Given Defendants' failure to disclose this non-public information about the defective nature of Palmetto Pointe - information over which they had exclusive control and because Plaintiffs could not reasonably have known of Palmetto Pointe's defective nature, Defendants are estopped from relying on any statutes of limitations or repose that might otherwise be applicable to the claims asserted herein.

63. Defendants are further estopped from relying upon any statute of limitations as they have represented to Plaintiffs that they are only responsible for correcting work for a period of one year after sale.

**ESTOPPEL FROM PLEADING ANY ANTI-SUIT PROVISIONS  
CONTAINED IN PALMETTO POINTE'S MASTER DEED AND BY-LAWS**

64. Island Pointe is estopped from relying on any antisuit provisions contained in Palmetto Pointe's Master Deed and By-Laws because said provisions are void pursuant to public policy and the Horizontal Property Regime Act and/or are voidable as such constitutes a breach of Island Pointe's fiduciary duties to Plaintiffs.

**FOR A FIRST CAUSE OF ACTION**  
**(Negligence/Gross Negligence as to All Defendants)**

65. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

66. At all times relevant hereto, the Defendants, their agents, servants, employees, and subcontractors undertook and had a duty to Plaintiffs to exercise and use due care in the design and construction of Palmetto Pointe in a good workmanlike manner and with suitable materials, in accordance with the applicable building codes, state law, good design, and in conformance with the prevailing industry standards.

67. Defendants breached their duties to Plaintiffs and the Class in a manner that was negligent, careless, reckless, willful, and wanton in the following particulars:

- a) In designing, developing, constructing, and selling Palmetto Pointe with construction deficiencies including those previously identified;
- b) In failing to design and construct Palmetto Pointe in accordance with due care, good workmanship, and in accordance with standard building practices and the plans;
- c) In failing to design and construct Palmetto Pointe in accordance with the building code;
- d) In failing to properly supervise the work and construction of Palmetto Pointe;
- e) In failing to properly coordinate the subcontractors;
- f) In failing to design and construct an adequate exterior building envelope;
- g) In failing to act as a reasonable person would in the circumstances then and there prevailing;
- h) In covering up their own defective work and the defective work of others;
- i) In failing to make proper repairs; and
- j) Such other failures to be proven at trial.

68. Any violations of applicable building codes constitute negligence *per se*.

69. Plaintiffs and the Class have been damaged as a direct and proximate result of the negligence, carelessness, recklessness, willfulness, and wantonness of the Defendants.

70. If it is shown that said failures were committed with gross negligence and/or reckless disregard for the rights of others, and/or constituted negligence per se, Plaintiffs and Class are entitled to an award of punitive damages against the Defendants.

**FOR A SECOND CAUSE OF ACTION**  
**(Breach of Warranty as to all Defendants)**

71. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if more fully set forth herein.

72. The design, construction, and/or sale of Palmetto Pointe came with express and implied warranties that the work would be performed in a careful, diligent and workmanlike manner and that Palmetto Pointe would be constructed with suitable materials and components and free from all defects and be of superior quality befitting of an upscale condominium complex.

73. The design, construction, and/or sale of Palmetto Pointe, and the components used therein, came with implied warranties of fitness, merchantability, and workmanship.

74. Additionally, Island Pointe owed Plaintiffs a warranty of habitability.

75. Defendants have breached their warranties by constructing Palmetto Pointe in a defective manner as set forth above.

76. As a direct and proximate result of the Defendants' breach of the implied warranty, Plaintiffs have suffered actual and consequential damages.

**FOR A THIRD CAUSE OF ACTION**  
**(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 et seq. as to**  
**Manufacturing and Supplier Defendants)**

77. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if more fully set forth herein.



78. In manufacturing and supplying products for the construction of Palmetto Pointe, the Manufacturing and Supplier Defendants (including Andersen, CertainTeed, and John Doe. No. 1) placed products into the stream of commerce.

79. By introducing their products into the stream of commerce, the Manufacturing and Supplier Defendants represented said products were safe and suitable for their foreseeable use.

80. In the manufacture and supply of products to Palmetto Pointe, Manufacturing and Supplier Defendants anticipated and expected that their products would reach the public in substantially the same condition in which they were designed, developed, constructed, and sold.

81. The Manufacturing and Supplier Defendants have supplied and manufactured their products in a defective manner unreasonably dangerous to persons and/or property other than the products themselves, which has resulted in repeated water intrusion into and damage to Palmetto Pointe and other building deficiencies.

82. Plaintiffs could not have discovered the product defects through the exercise of reasonable care.

83. The cost of altering the design, construction, and/or repair of the products supplied to Palmetto Pointe was substantially less than the resulting damage, cost, and injury suffered by the Plaintiffs.

84. The design and manufacture of the products supplied to Palmetto Pointe was inherently defective as sold and was a direct and proximate cause of the damages suffered by Plaintiffs.

85. The Manufacturing and Supplier Defendants are therefore liable to Plaintiffs under the doctrine of strict liability in an amount to be determined by the trier of fact.

**FOR A FOURTH CAUSE OF ACTION**  
**(Unfair Trade Practices as to Island Pointe)**

86. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

87. At all times relevant herein, Island Pointe was engaged in the business of developing, designing, constructing, and selling Palmetto Pointe, and thereby placing Palmetto Pointe into the stream of commerce.

88. Island Pointe was engaged in commerce as defined by the South Carolina Unfair Trade Practices Act.

89. Island Pointe's above-described activities, including placing Palmetto Pointe with defective design and construction into the stream of commerce, failing to comply with the building code, failing to disclose those defects to potential and actual purchasers, and other acts to be shown through the course of discovery and at trial, constitute unfair and deceptive practices in the conduct of Island Pointe's trade.

90. Island Pointe's above-described acts are capable of repetition and adversely affect the public interest.

91. Island Pointe knew or should have known that its conduct was in violation of the S.C. Code Ann. § 39-5-20.

92. As a direct, foreseeable, and proximate result of Island Pointe's unfair trade practices in South Carolina, Plaintiffs have suffered significant damage and have and will incur attorney's fees and the costs and expenses of this action.

**FOR A FIFTH CAUSE OF ACTION**  
**(Declaratory Action/Reformation as to Island Pointe)**

93. Plaintiffs re-allege the allegations, which are not inconsistent with this cause of action and are contained in the above paragraphs as if fully set forth herein.

94. The anti-suit provisions of the Palmetto Pointe Master Deed are in violation of public policy, statutory law and/or provisions of the Constitution, and the Island Pointe's fiduciary duties.

95. Plaintiffs are entitled to a declaration by this Court that the anti-suit provisions included within the Master Deed by Island Pointe are in violation of statutory law and/or provisions in the Constitution and are therefore void and/or require reformation to eliminate the subject provisions.

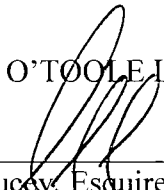
96. As the provisions in the Master Deed are severable, the Plaintiffs are entitled to a declaration by this Court that the anti-suit provisions are severable from the other terms of the Master Deed.

97. Plaintiffs are also entitled to have ambiguous and contradictory provisions in the Master Deed construed against Island Pointe and/or reformed by the Court to more accurately reflect the reasonable expectations of the POA and Homeowners.

WHEREFORE, Plaintiffs demand a trial by jury and pray actual and consequential damages in excess of \$17.5 Million; statutory and/or punitive damages; reasonable attorneys' fees; costs of suit; prejudgment interest; engineering and diagnostic fees; declaration/reformation of the Master Deed; and granting such further relief as the Court deems just and proper.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

BY: 

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Stephanie Drawdy, Esquire

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*-and-*

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*Attorneys for the Plaintiffs*

Charleston, South Carolina

Dated: 11/2/2017

STATE OF SOUTH CAROLINA                   \*       COURT OF COMMON PLEAS  
                                                  \*  
 COUNTY OF CHARLESTON                   \*       TRANSCRIPT OF RECORD

-----X  
 PALMETTO POINTE AT PEAS ISLAND\*  
 CONDO POA,                               \*  
                                                  \*  
                                           Plaintiff,       \*  
 vs.                                         \* Case No. 2015-CP-10-0955  
                                                  \*  
 ISLAND POINTE, LLC, et al.,       \*  
                                                  \*  
                                           Defendants.       \*  
 -----X

July 31, 2025

B E F O R E:

The Honorable Jennifer B. McCoy, Presiding Judge

A P P E A R A N C E S:

Justin Lucey, Esq.  
                                   Attorney for the Plaintiff

Christian Stagmaier, Esq.  
                                   Attorney for the Defendant

Recorded by: DCRP Court Monitor Haley Burnett

Court Reporter: Bobbi Fisher, RPR  
 SC Official Court Reporter III

## I N D E X

| DESCRIPTION | PAGE |
|-------------|------|
| Proceedings | 3    |

## E X H I B I T S

(None.)

COURT REPORTER/TRANSCRIBER LEGEND

|                 |                                                                    |
|-----------------|--------------------------------------------------------------------|
| Dash (--)       | Indicates an interruption in speech                                |
| Ellipses (...)  | Indicates trailing off in speech                                   |
| (ph)            | Indicates phonetic word                                            |
| [sic]           | Indicates the word is written as said                              |
| (Indiscernible) | Indicates word(s) is not known due to poor audio recording quality |

## P R O C E E D I N G S

(The proceedings commenced at 11:23 AM:)

THE COURT: Let's get on the record. We are here for Case No. 2015-CP-10-00955, Palmetto Pointe at Peas Island Condominium Property Owners Association versus several defendants.

This was a case that was tried several years ago, went up to the Supreme Court, I believe, and it's come back down. And we have a Motion for an Entry of Judgment and Disbursement of Bond filed by the plaintiffs on my docket this morning.

Mr. Lucey, I'm happy to hear from you.

MR. LUCEY: Yes, ma'am. Justin Lucey for the plaintiff, with Ed Buckley, Your Honor.

You're right; you did try this case in 2019. It was a week and a half, two-week trial. At one point, we did have 30-odd attorneys in the case. It got whittled down for trial and whittled down again for appeal, and the only remaining party is TCR.

TCR suffered judgment. TCR got a partial set-off from Your Honor. They went up on appeal. They asked to post a bond for -- to stay execution during the appeal.

That was their request. Their request was granted. They were given the opportunity to post a bond to stay execution during appeal.

They posted the bond. Along the way, several of the

1 insurance carriers for TR -- for TCR settled out, and so then  
2 there was an amended bond posted along the way by the one  
3 remaining carrier.

4 To be frank about it, the bonding company did not change  
5 from the first bond to the second bond, United Specialty, but,  
6 apparently, whoever was paying for it behind the scenes  
7 changed because the other carriers were out.

8 So they posted a substitute bond, Your Honor, in February  
9 of this year. I have plenty of copies of it with me if the  
10 Court would like them for any reason. And it's an appellate  
11 bond.

12 The Supreme Court granted remittitur in this matter on  
13 June 5. It's been down here. Judgment has not been paid.  
14 We've documented to the other side what they owe. It's not  
15 paid.

16 They don't dispute our calculation of the judgment. They  
17 put that in writing to the Court now in three different  
18 filings, that they don't dispute our calculation. They don't  
19 dispute that we're entitled to judgment. They're just saying  
20 that, for some magical reason, you should give them some kind  
21 of relief on their appellate bond, even though there's no  
22 longer an appeal. There's no precedent for that, Your Honor.

23 Lloyd's is not part of this case. This nonsense that  
24 they've grieved about Lloyd's having been denied intervention  
25 back in 2019 relating to the trial, Your Honor will recall,



1 please, that the only reason Lloyd's moved to intervene at  
2 that time was to have a special interrogatory submitted to the  
3 jury. They never said they needed to be part of this case  
4 because of some bonding issues. They've never asked to be  
5 part of this case because of bonding issues. They clearly  
6 know the case exists because they signed the Consent Order  
7 that this Court enrolled in February of 2025.

8 Lloyd's signed that Order, which, once again, confirmed  
9 that this is an appellate bond. They have no standing in this  
10 matter. They have no -- they're not a party to this matter.  
11 The bond that has been submitted by TCR to the Court is  
12 submitted by U.S. Specialty Insurance Company.

13 They concede the amount owed. The Exhibit A on our  
14 Proposed Order, that amount is in the total amount of three  
15 million four hundred and eighty-eight thousand -- eight-six  
16 thousand, three hundred and seventeen dollars and 70 cents, as  
17 of today, July 31st, if I got my days right.

18 And we also documented what interest was earned in that  
19 period, and we recalculated the balances forward every time we  
20 took a payment off of another insurance carrier. And they  
21 have conceded in writing to the Court that all of our  
22 calculations are correct.

23 And for the Court's information, the reason the interest  
24 is itemized separately is not only for accounting but also  
25 because that's a different type of insured damage, and it's

1 easier for the parties going forward if that's -- if that is,  
2 in fact, itemized separately.

3 So we have submitted a -- and, Your Honor, frankly, even  
4 today, counsel asked us what can we work out. Well, I said,  
5 "Did you bring a check?"

6 We've been at this now -- I took this case in 2016 or  
7 maybe late 2015. This is ten years old. They tried to block  
8 our trial in 2019. They tried to get the Court of Appeals to  
9 stop you from trying our case. They then had that whole thing  
10 about the appeal about whether or not they're entitled to  
11 submit special interrogatories to the jury.

12 We've been on appeal. Even after the -- even after they  
13 lost in the Supreme Court, they filed a motion for an  
14 extension of time to move for a rehearing and reconsider --  
15 and stretch it out for another three or four months, and then  
16 they never even filed the motion.

17 So it was almost kind of like a surprise that the case  
18 finally came back down on June 5, but the case was remitted on  
19 June 5. There is no appeal. We're entitled to an Order.  
20 We're entitled to execution on that \$1 million bond, Your  
21 Honor.

22 Thank you.

23 THE COURT: Okay.

24 MR. STAGMAIER: Judge, good morning.

25 THE COURT: Good to see you.

1 MR. STAGMAIER: I'm glad to see you. May I approach,  
2 ma'am?

3 THE COURT: Yes. And, for the record, just tell the  
4 court reporter who you are.

5 MR. STAGMAIER: Certainly. I am Christian Stagmaier of  
6 Collins & Lacy. We represent the sole defendants in this  
7 case, TCR -- the sole remaining defendants.

8 THE COURT: Thank you.

9 MR. STAGMAIER: As the appellate lawyer, I can tell you  
10 I've spent a lot of time with the record, and, you know, as  
11 we've said, about 30 lawyers and all that, I can only imagine  
12 how much of that was to referee and manage that traffic.

13 I have found, Your Honor, on behalf of TCR -- and, of  
14 course, we've been appointed by the carriers in London to  
15 represent them as defense counsel. I'm not coverage counsel  
16 or anything along those lines. All we do is represent TCR in  
17 this case.

18 THE COURT: Okay.

19 MR. STAGMAIER: We have filed our Return and sent it to  
20 the chambers. We also filed a Cross-Motion to Stay the  
21 disbursement of the appellate bond.

22 As a technical matter, I believe that's a timely motion.  
23 It's appropriate. And I think I could even come into open  
24 court and make a motion for a Motion to Stay.

25 THE COURT: Mm-hmm.

1 MR. STAGMAIER: And so I would -- I would request the  
2 Court at least consider that for purposes of argument in this  
3 matter.

4 THE COURT: I don't have a problem with it, but it's --  
5 you know, do y'all waive notice or do you want to --

6 MR. LUCEY: Well, Your Honor, we actually briefed to the  
7 Court that the Motion to Stay is out of time. And it was  
8 remitted on June 5th.

9 THE COURT: I agree. And they all sort of go together.  
10 I just want to make sure that we're not going to have to come  
11 back here and do all this again.

12 MR. LUCEY: We ask the Court to overrule that motion as  
13 untimely and completely lacking in merit.

14 THE COURT: Okay.

15 MR. STAGMAIER: Well...

16 THE COURT: Well, at any rate, I'll consider it.

17 So go ahead.

18 MR. STAGMAIER: Thank you. And I would say, for purposes  
19 of the record, it's technically not out of time or untimely in  
20 this matter.

21 We had filed with the Court, again, our Return as well as  
22 our reply to the Proposed Order that was filed yesterday  
23 afternoon.

24 You know, briefly -- I certainly don't want to read the  
25 motion to the Court as far as this goes, but, the thing -- the

1 two things that I believe are probably very important to  
2 remind the Court of is this, is that there exists both the  
3 Builders Mutual Insurance Company case that was disposed of by  
4 the Supreme Court back in 2020, and that's material to this  
5 matter for a multitude of reasons.

6 Number one, that's directly related to this action as it  
7 pertains to the matter of intervention in this case. In that  
8 matter, the trial court, as you well know, denied the Motion  
9 to Intervene, did not permit it. It went up on appeal. And,  
10 of course, the Supreme Court ultimately agreed with the trial  
11 court that, in a discretionary judgment like that, that was  
12 appropriate.

13 But the Supreme Court also stated that, as it relates to  
14 coverage matters or coverage issues, that the carriers are  
15 certainly entitled to prosecute that. And they have.

16 You know, back subsequent to the issuance of that  
17 decision, there was the commencement of a companion coverage  
18 action that remains live, that remains pending in Charleston  
19 County.

20 And one of the important components to that is this: Is  
21 that all of the necessary entities, necessary parties are  
22 involved, including the insurers in this case, and that a  
23 scheduling order has been issued in that matter that  
24 contemplates trial sometime after the middle of November.

25 So we're not talking about anything distant or anything

1 along those lines.

2 THE COURT: That's a dec action; right?

3 MR. STAGMAIER: Yes, ma'am.

4 THE COURT: Okay.

5 MR. STAGMAIER: Yes, ma'am.

6 THE COURT: And so when you say "trial," is it a bench  
7 trial?

8 MR. STAGMAIER: I would assume it is. Mr. Lucey's  
9 prosecuting it, so...

10 THE COURT: All right. Go ahead.

11 MR. STAGMAIER: Okay. So the matter of coverage has not  
12 been disposed of yet as far as the obligation to pay as it  
13 relates to these particular underwriters in London, and so I  
14 think that's very important.

15 And in tandem with that, we're not looking at anything  
16 too distant in the future as it relates to ultimate  
17 disposition of the matter in this case.

18 So with regard to the related coverage action pending,  
19 that's a basis for a stay in this matter.

20 The other thing is this, is that the disbursement of the  
21 supersedeas bond is premature. There is a distinction between  
22 a Rule 67 bond that would be posted that would stay, among  
23 other things, interest and this appellate bond. This is not  
24 -- a supersedeas bond is not what's contemplated under  
25 Rule 67.

1 I would agree -- I would agree that, if a bond had been  
2 posted pursuant to Rule 67, it could be dispersed at this  
3 point in time, but that's not the case at this point in time.  
4 This is a supersedeas bond that stayed the execution.

5 And what's important about that is, while USI might be  
6 the guaran- -- it might be the bond issuer in this case,  
7 ultimately, the carrier in this matter is the guarantor, who  
8 is not a party in this matter.

9 And one of the things I've shared with in our pleadings,  
10 as well as with our counsel in conversations, is they are a  
11 non-party. And our position is, by virtue of the Builder's  
12 Mutual decision, they were never going to be a party in this  
13 case, and the coverage matter is being separately litigated in  
14 this matter.

15 So if the Court issues disbursement at this point in  
16 time--

17 THE COURT: Mm-hmm.

18 MR. STAGMAIER: --at this point in time, it's essentially,  
19 for all intents and purposes, compelling a non-party, an  
20 insurer that has a coverage dispute with the plaintiff in this  
21 case, to pay those funds in.

22 And so, if we look ahead down the road, what happens if  
23 that obligation to pay by the Court is not upheld--

24 THE COURT: Right.

25 MR. STAGMAIER: --if the Court says there's no coverage?

1 THE COURT: Then I guess they'd have an action at that  
2 point, right, to receive judgment?

3 I mean, you're saying, in other words, don't make me pay.  
4 What if we -- then we have to take the money back? I mean,  
5 I'm just putting it in simple terms.

6 MR. STAGMAIER: That's a very -- that's a very succinct  
7 analysis as far as that goes.

8 THE COURT: Okay.

9 MR. STAGMAIER: And that's easier said than done because,  
10 if that million dollars gets disbursed now and the issue of  
11 coverage is disposed of later and that million dollars doesn't  
12 exist -- but they don't have a -- they don't have a mechanism  
13 to claw it back.

14 And so you have extreme prejudice that could exist as it  
15 relates to the carrier. And keep in mind, what's  
16 uncomfortable and to a large extent is this, is that the  
17 carriers are a non-party to this matter. I'm just defense  
18 counsel, but I can't do anything to put the carrier in a  
19 position of prejudice. That's against the rules as far as  
20 that goes.

21 And so for me to just tell Mr. Lucey, "Okay, we'll  
22 stipulate to the disbursement," I think is a problem from a  
23 circumstance as far as potentially prejudicing a non-party in  
24 this case.

25 The other thing I just wanted to just share with --



1 THE COURT: But you are only here on behalf of Tri-County  
2 Roofing.

3 MR. STAGMAIER: Correct.

4 THE COURT: Who is a party.

5 MR. STAGMAIER: Yes.

6 THE COURT: All right.

7 MR. STAGMAIER: Correct.

8 THE COURT: It's an interesting--

9 MR. STAGMAIER: Imbroglio.

10 THE COURT: --position.

11 MR. STAGMAIER: Yes, ma'am.

12 And I'd say this too, as well, and, you know, facts drive  
13 the law, as Professor Flanagan (ph) used to say.

14 The initial appellate bond was issued way back when, but  
15 it was issued before Builders Mutual was -- issued by the  
16 Supreme Court. And that's important because the Supreme Court  
17 said you can't intervene now, but you can -- you can prosecute  
18 your coverage action later. And then the coverage matter  
19 ensued. So the matter of whether coverage exists or not is  
20 actively being litigated.

21 So you have the original language of the bond back in  
22 2020, and then when we renewed the bond in 2025, the same  
23 language was used. And what I would say is this, is that if  
24 we had distant early warning of the plaintiff's intention to  
25 liquidate the bond at this point in time before the coverage

1 action was disposed of, we certainly would have written the  
2 language differently to contemplate this particular  
3 circumstance.

4 So, like I say, this is a difficult circumstance, and the  
5 one thing I don't want to do -- and not being histrionic about  
6 it -- this is what I told Mr. Buckley is, I would love to  
7 avoid any sort of prospect for appeal in this matter.

8 This is a case that never ends, and I keep telling my  
9 former colleague, Mr. Cole, thank you for letting me inherit  
10 this, but my -- our suggestion is, ultimately, if a stay is  
11 granted through the disposition of the coverage matter, nobody  
12 is ultimately truly prejudiced.

13 And I would recognize that the meter still runs as it  
14 relates to interest.

15 THE COURT: Sure.

16 MR. STAGMAIER: I recognize that.

17 THE COURT: That's the cost you're willing to take.

18 MR. STAGMAIER: I think it's not even a matter of  
19 willing. It's -- I think that's what we would have to take in  
20 order to have that stay.

21 Thank you, Ma'am.

22 THE COURT: Sure. Okay.

23 And I guess that interest is, you know, that's what  
24 prevents it from being totally unfair.

25 MR. STAGMAIER: I would say so.

1 THE COURT: Okay.

2 Happy to hear from you.

3 MR. LUCEY: The defendants conflates the insurance policy  
4 with the surety (ph) policy. What's at issue in this case is  
5 surety (ph) policy.

6 U.S. Specialty for money -- for money -- voluntarily  
7 signed a document that they authorized to be filed in this  
8 court that said to the plaintiffs, "This will protect you for  
9 \$1 million of your judgment if your judgment debtor goes out  
10 of business, isn't around, whatever, five years from now when  
11 your appeal comes down."

12 And this Court set the amount as a million. And that was  
13 an absolute guarantee. And the only condition was that the  
14 judgment not be vacated. The appeal is done. The judgment is  
15 not vacated.

16 Lloyd's is not part of this bond. U.S. Speciality is the  
17 bond. Lloyd's may have paid for it. They know how to find  
18 this courthouse. Like we said, they signed your Consent Order  
19 in February of 2025. In this case, they signed the Consent  
20 Order substituting the bond. They know how to find this  
21 courthouse. They're not here. U.S. Specialty is.

22 They filed an undertaking. This attorney wrote this  
23 Court, sent in this bond from U.S. Specialty and says, "We'll  
24 pay a million of that judgment if it's not reversed on  
25 appeal."

1           We're here. Appeal over. Game order [sic].

2           If they're threatening another appeal now and they want  
3 us all to do a little dance, well, we'll have another bond  
4 hearing. We'll see what the bond is for the second appeal,  
5 and maybe we'll get back more of our judgment.

6           Imagine that TCR doesn't exist anymore because, during  
7 the five years we've been on appeal, they've changed company  
8 names, they've transferred all trucks out, all employees out,  
9 all business out, and all we have left is a piece of paper  
10 because they delayed our execution five years.

11           You don't have to imagine that because that's what  
12 happened. There is no TCR. All we have is that piece of  
13 paper.

14           Thank you, ma'am.

15           THE COURT: Listen, at the end of the day, I want to do  
16 what's fair and what's just for the -- and I want to speak the  
17 will of the jury verdict.

18           I mean, that's what this is all about, at the end of the  
19 day. This case went to trial. You know, we need to take  
20 steps to honor the jury verdict, that that part that was  
21 upheld by our Supreme Court, at least, and, you know, I'll do  
22 my best to make sure I sign the Order that I find the most  
23 appropriate in light of that. Okay? So I think that's what  
24 this system demands.

25           I understand both sides, and I'm certainly happy to hear

1 from you.

2 MR. STAGMAIER: Well, Judge -- and I appreciate what  
3 you've just said. I didn't understand initially that you had  
4 elicited Proposed Orders. I know they were filed  
5 notwithstanding that. Are you entertaining Proposed Orders?

6 THE COURT: I would.

7 THE CLERK: Oh, sorry. I realized that I had two from  
8 one (indiscernible).

9 THE COURT: Yeah. I'm happy to entertain your Proposed  
10 Order. How long you need? Is ten days good?

11 MR. STAGMAIER: If you don't mind.

12 THE COURT: That's fine with me.

13 MR. STAGMAIER: Thank you.

14 THE COURT: I won't have a clerk after tomorrow.

15 MR. STAGMAIER: I know. Congratulations. This is that  
16 time of year.

17 THE COURT: It is.

18 So, you know, send it to JMcCoySC-

19 MR. STAGMAIER: Yes, ma'am.

20 THE COURT: -@sccourts.org.

21 MR. STAGMAIER: Yes, ma'am.

22 THE COURT: Thank you.

23 MR. STAGMAIER: Thank you.

24 THE COURT: All right. Good to see you all.

25 MR. LUCEY: And the only difference between the two

1 Orders we submitted, the later Order has a section overruling  
2 their new motion for a stay. That's all.

3 THE COURT: Okay. Yeah, that makes sense.

4 MR. LUCEY: Thank you.

5 THE COURT: Alrighty.

6 MR. LUCEY: Appreciate it.

7 THE COURT: Y'all take care. Good to see everyone.

8 MR. STAGMAIER: Thank you.

9 (The proceedings concluded at 11:41 a.m.)  
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# Certificate of Transcriber

CASE NAME: Palmetto Pointe v. Tri-County Roofing

DATE OF HEARING: 7/31/25

RECORDING METHOD: DCRP Court Monitor Haley Burnett

I, Bobbi Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that I was not present for the live proceeding; and that said proceedings were transcribed to the best of my ability from the audio and/or video recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case; and I have no interest, financial or otherwise, in its outcome.

*Bobbi Fisher*

/s/ Bobbi Fisher

Bobbi Fisher, SC Official Court Reporter III, RPR

Transcript Prepared: 2/6/26

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|                                |   |                           |
|--------------------------------|---|---------------------------|
| STATE OF SOUTH CAROLINA        | * | COURT OF COMMON PLEAS     |
|                                | * |                           |
| COUNTY OF CHARLESTON           | * | TRANSCRIPT OF RECORD      |
| -----X                         |   |                           |
| PALMETTO POINTE AT PEAS ISLAND | * |                           |
| CONDOMINIUM PROPERTY OWNERS    | * |                           |
| ASSOCIATION, INC. AND          | * |                           |
| ELIZABETH A. BUSHEY,           | * |                           |
| INDIVIDUALLY, AND ON BEHALF OF | * |                           |
| ALL OTHERS SIMILARLY SITUATED  | * |                           |
|                                | * |                           |
| Plaintiffs,                    | * |                           |
| vs.                            | * | Case No. 2015-CP-10-00955 |
|                                | * |                           |
| ISLAND POINTE, LLC, et al.,    | * |                           |
|                                | * |                           |
| Defendants.                    | * |                           |
| -----X                         |   |                           |

January 30, 2026

B E F O R E:

The Honorable Jennifer B. McCoy, Presiding Judge

A P P E A R A N C E S:

Justin Lucey, Esq.  
Edward Buckley, Esq.  
Attorneys for the Plaintiffs

Christian Stegmaier, Esq.  
Attorney for the Defendants

Recorded by: WebEx Recording

Court Reporter: Bobbi Fisher, RPR  
SC Official Court Reporter III



## I N D E X

| DESCRIPTION | PAGE |
|-------------|------|
| Proceedings | 3    |

## E X H I B I T S

(None.)

COURT REPORTER/TRANSCRIBER LEGEND

|                 |                                                                    |
|-----------------|--------------------------------------------------------------------|
| Dash (--)       | Indicates an interruption in speech                                |
| Ellipses (...)  | Indicates trailing off in speech                                   |
| (ph)            | Indicates phonetic word/unclear word                               |
| [sic]           | Indicates the word is written as said                              |
| (Indiscernible) | Indicates word(s) is not known due to poor audio recording quality |

## P R O C E E D I N G S

(The proceedings commenced as follows:)

THE COURT: Well, good morning, Mr. Lucey.

I'll let y'all state for the record who you are and who you're here for.

MR. STEGMAIER: Yes, ma'am. Good morning again. This is Christian Stegmeier of Collins & Lacy. We're the movant in this matter. We represent the defendant, TCR, in this matter.

MR. LUCEY: Justin Lucey and Ed Buckley. We represent the plaintiff in this matter, Your Honor.

THE COURT: Well, good morning. And let me just start out by saying that I'm certainly not attempting to circumvent the jurisdiction of the Court of Appeals. I just simply had a pending motion. I certainly don't want them to kick it back to the circuit level because they say there's some pending motion that needs to be ruled on.

So that's the vein through which I'm just trying to wrap this up for y'all with a bow so that they can have it all nice and neat and there's no worry that there won't be a final determination on everything that's outstanding.

So with that framework -- and I understand your position -- in no way do I think this -- your appearance this morning, Mr. Lucey, waives your position that I don't have jurisdiction, and I don't take that as such either, and we received your email and we're happy to file that if you'd like

1 us to, to sum up your position, that's perfectly fine.

2 But with that, I'll just turn it over to the movant for  
3 this very narrow Motion to Reconsider, which is all I'm here  
4 for today, on the form order directing the clerk's office, as  
5 you stated in your timeline correctly, to be able to release  
6 the fund to the attorney instead of just the plaintiffs. That  
7 was the issue that was presented to me was that it was unclear  
8 to the clerk's office whether the issuance of the money to the  
9 plaintiffs also could mean the plaintiff's attorney, and that  
10 was the only reason that issue -- the Order was issued.

11 So, with that, Mr. Stegmaier, happy to hear from you.

12 MR. STEGMAIER: Yes, ma'am. And if -- listening to what  
13 you just said, if the Court takes the position ultimately that  
14 the money stays with the plaintiff's attorney, then we  
15 potentially have resolution.

16 Mr. Hines and I have had a series of extended  
17 conversations about this during the course of the week, and  
18 there's a lot of water under the bridge between Mr. Hines and  
19 I. We've had a lot of appeals together over the years, and I  
20 trust him implicitly.

21 The thing that we're seeking clarity on is this, is where  
22 the money is going to be during the pendency of the appeal. I  
23 recognize that there's a difference of opinion about whether,  
24 ultimately, with regard to the coverage action, if the  
25 carriers prevail or don't prevail, whether or not the

1 plaintiffs would be entitled to the appellate bond  
2 irrespective of who prevails at the appeal or resolution of  
3 the -- of the coverage action. That's not here for the -- for  
4 this, obviously, to be disposed of.

5 We do suggest that you do have jurisdiction over this  
6 matter pursuant to Rule 241(a) of the appellate court rules  
7 and that this is an appropriate hearing by virtue of the fact  
8 that there was a pending Motion to Reconsider. The genesis  
9 for the Motion to Reconsider was this, was obviously the  
10 issuance of the Form 4. And the Form 4 would otherwise be  
11 expected under the language of the Order that was issued by  
12 the Court dated August 28th, 2025.

13 The circumstances that had changed between the issuance  
14 of the Order and ultimately the issuance of the Form 4 Orders  
15 are the fact that the coverage action had not been reached by  
16 the circuit court, and as I understand it, has been referred  
17 to the Master in Equity for disposition.

18 As this Court knows, because I know you've handled plenty  
19 of coverage actions, this ends up being more or less just a  
20 super fancy Motion for Summary Judgment, and it ends up being  
21 a decision that is rightfully tried by the bench rather than  
22 by a jury -- by a single judge. But, obviously, that hasn't  
23 been scheduled for disposition or anything along those lines.  
24 And what we had sought in the course of our Motion to  
25 Reconsider was, for all intents and purposes, extending the

1 deposit of the monies into -- that are on deposit -- the  
2 million dollars on deposit to extend that deposit with the  
3 Clerk of Court. That's what we were seeking ultimately to do.

4 I will share with you that Mr. Hines, like I said, he and  
5 I have spoken at length, and he has assured me that that  
6 million dollars remains on deposit with Young Clement or  
7 Clement Rivers -- I'm sorry; I always call it by the old name  
8 -- but it's on deposit with that firm.

9 You know, I will say this, kind of the "splitting the  
10 baby" disposition of this particular motion, if the Court  
11 ultimately issues an Order disposing of this Motion to  
12 Reconsider, essentially stating or directing that the money  
13 stays on deposit with Clement Rivers through the pendency of  
14 the underlying appeal and the disposition of the coverage  
15 action, I think, were satisfied.

16 What the underwriters are guarded about is, if there were  
17 any sort of disbursement to the plaintiffs themselves -- and  
18 as we've already articulated when we met together in  
19 Charleston back in the summer, if ultimately the carrier  
20 prevails in the coverage action and it's entitled to that  
21 million dollars back, "blood from the stone" kind of thing.

22 So that, in lump sum, in short, that's the position of  
23 the defendants in this case, is that there is ultimately an  
24 assurance that that million dollars becomes preserved, remains  
25 accountable to whatever juris- -- to whatever tribunal.

1 THE COURT: Okay.

2 MR. STEGMAIER: Thank you.

3 THE COURT: Sure.

4 Mr. Lucey, did you want to add anything or just --

5 MR. LUCEY: Yes, I do, because there are several  
6 misstatement of facts in the papers that the movant has filed.

7 First of all, the movant portrays the referral and the  
8 Order referring the matter to the Master in Equity as manna  
9 from above. It just happened. It just arrived.

10 It did not just happen. Lloyds was unprepared for trial.  
11 We were called to trial. We were on the trial roster. We  
12 were, like, No. 3. Lloyds was unprepared. They came to me  
13 and asked for a continuance. They did not ask for an escrow.  
14 They asked for a continuance.

15 I said that -- I informed them, as a fellow member of the  
16 Bar, that I perceived it was unlikely they would get a  
17 continuance. We were working on our trial brief.

18 I said, "It's unlikely you're going to get a continuance,  
19 but you may have more success, if you want to refer it to the  
20 master, we wouldn't object to that."

21 And that's the course of action that was taken. Lloyd's  
22 took that course of action.

23 This Court, apparently believing it was exercising its  
24 equitable jurisdiction, stayed Plaintiff's entitlement to that  
25 bond for 90 days for Lloyd's to get that case done. It was

1 clear it was what the Order was. And the law said we were  
2 entitled to have that bond immediately. It's not a bond about  
3 coverage. It's a bond about appeal. We won the appeal.  
4 We're entitled to get it.

5 The Court granted Lloyd's a -- through Lloyd's, a safety  
6 raft, gave him three months to get the thing resolved before  
7 the disbursement. They didn't get it resolved. Period.  
8 That's it.

9 They're not moving to reconsider the payee, which is the  
10 only subject matter of the December 30th form Order.

11 And I'd like to note that -- the Court's probably aware  
12 of this -- but we had nothing to do with the December 30th  
13 form Order that. Apparently, the clerk wasn't sure who to  
14 write the check to, and she contacted your office. We had  
15 nothing to do with that.

16 The moving party also portrays us as having secured the  
17 funds after the Motion to Reconsider. Nonsense. The funds  
18 were secured before counsel objected and before there was a  
19 Motion to Reconsider. Those funds were disbursed by the clerk  
20 on the 30th and pursuant to the two Orders she had in her  
21 possession. They were properly disbursed, and they've been  
22 disbursed to Plaintiff's counsel, as they should have been in  
23 the beginning because it was an appellate bond, and we won the  
24 appeal.

25 There is no motion pending in front of this Court right

1 now for an escrow. There's only one thing: Reconsider the  
2 Order of the 30th. The only thing the Order on the 30th did  
3 was the payee. There's no -- and it's academic whether the  
4 payee is the plaintiff's counsel or plaintiffs themselves, so  
5 that's of no moment. And nowhere in the current motion does  
6 the defendant, the movant, ask the Court to change the payee.  
7 So they're not asking the Court to do anything at all about  
8 December 30th Order. So the jurisdiction has sailed.

9 As I pointed out in my email, at best, the current Motion  
10 to Reconsider is a second Motion to Reconsider on the August  
11 30th Order. And second motion is to reconsider -- excuse me,  
12 August 28th Order, I believe it is. The second Motion to  
13 Reconsider are not acceptable. The appeal was properly filed  
14 within 30 days of the denial of Plaintiff's Motion to  
15 Reconsider, and this matter is now on appeal.

16 Frankly, the initial argument by the movant here about  
17 the December 30th Order, that was purely lip service to try  
18 and get himself within the time of a Motion to Reconsider.  
19 There's no Motion to Reconsider on the December 30th Order.  
20 It's a Motion to Reconsider as he briefed in the motion. It's  
21 a Motion to Reconsider the original Order, which is August  
22 28th.

23 So, Your Honor, we ask you -- we ask the Court to either  
24 decline to entertain the current motion or to dismiss it as  
25 the matter's on appeal as it lacks jurisdiction; otherwise, to



1 dismiss it on the merits, as it's not a proper Motion to  
2 Reconsider, and it doesn't seek any reconsideration of the  
3 payee.

4 Thank you, ma'am.

5 THE COURT: All right. Anything else?

6 And I'm sorry; they're washing my windows right now, so  
7 if you hear some noise, I apologize.

8 Mr. Stegmaier, anything else in response?

9 MR. STEGMAIER: I guess two things, Judge. And I  
10 appreciate that. Obviously, it's a timely motion. I think we  
11 are -- we clearly articulated it as it related to the  
12 February 4 hearing or the Form 4 Order that was issued by the  
13 Court on December 30th.

14 Let me ask this, Judge. I don't want to put you on the  
15 spot, but maybe we cut to the chase if I ask you, what are you  
16 inclined to do?

17 THE COURT: Well, given that this form Order from the  
18 Court was really just a response from the Clerk of Court  
19 seeking literally just, "Hey, Judge, it says 'plaintiffs.'  
20 We're nervous writing this million-dollar check. Can you say  
21 'plaintiff's attorney' just to clear that up for us?" So  
22 that's literally all it was. There was no thought process  
23 other than that behind it. And that was just, "Sure. I'm  
24 happy to do that." That's not -- you know, that's fine, if  
25 that makes the Clerk of Court more comfortable. That's all

1 that that was in response to. And I'm sure it probably did  
2 come, you know, kind of out of left field, but that's simply  
3 all it was. There's no -- you know, there's really nothing  
4 for me to really consider or reconsider as it were. I don't  
5 fault you for filing the motion. I mean, you know, I  
6 understand you kind of received this order out of left field  
7 and felt the need to do that to protect your client's  
8 interests.

9 I'm really -- so, for that reason -- and not -- because  
10 it was done for such a limited purpose, I'm really not  
11 inclined to reconsider it. You know, obviously, if you and  
12 Mr. Hines want to enter into some sort of a consent  
13 agreement -- sounds like you sort of already have -- but, you  
14 know, that's on you-all. Obviously, I wouldn't have any  
15 position on that. But, you know, I don't know that there's  
16 really much for me to reconsider, if that makes sense, you  
17 know?

18 MR. STEGMAIER: Yes, ma'am. Well -- and I appreciate --  
19 thank you for that. I appreciate that. And I guess I'm maybe  
20 putting Mr. Buckley on the spot because Mr. Hines told me he  
21 wasn't going to be able to attend, and, obviously, I'd ask  
22 Mr. Lucey this too as well.

23 Mr. Lucey and I are never going to get on the same page  
24 about whether -- at this point in time, whether or not,  
25 irrespective of how the coverage action turns out, whether or

1 not the plaintiffs would be entitled to that appellate bond or  
2 the money that's on deposit. That's ultimately, I suggest --  
3 the circuit court has to dispose of that and then  
4 prospectively the Court of Appeals and the Supreme Court.

5 What I -- obviously, I've got to remain accountable for  
6 this million dollars. That's where I'm at as far as this  
7 goes.

8 THE COURT: Mm-hmm.

9 MR. STEGMAIER: Here's my question, and it's posed to  
10 Mr. Buckley and Mr. Lucey: Are we able to put in together  
11 some sort of consent that leaves the money on deposit with  
12 Young Clement for the duration of the remainder of the  
13 dispute?

14 Because if we get into a circumstance where Underwriters  
15 is entitled to the return of the million dollars and the  
16 million dollars doesn't exist, that's going to be very  
17 problematic.

18 MR. LUCEY: I don't know if that's an implied threat.  
19 I'm not here to negotiate in front of the Court. The Court  
20 has indicated it's ruling on the only matter pending, and I  
21 believe that this hearing can be adjourned.

22 MR. STEGMAIER: Well, I appreciate that, Mr. Lucey. You  
23 haven't been elected to the circuit bench yet, so let me --  
24 I'm going to -- nobody's threatening anybody. I'm just asking  
25 whether or not we can have agreement or concurrence that the

1 money stays on deposit with Clement Rivers.

2 MR. LUCEY: You have no agreement with me. You have no  
3 agreement with Plaintiffs. Nothing.

4 MR. STEGMAIER: So --

5 THE COURT: I wish I could help mediate this.  
6 Unfortunately, you know, I don't know that I can. But -- you  
7 know, I understand the difficulty.

8 I'll let y'all hopefully have further conversations with  
9 other folks and continue this. Sometimes it helps to have a  
10 judge around, sometimes it doesn't, so maybe it's not right  
11 now.

12 But I appreciate y'all coming on this morning and letting  
13 me hear your positions, and I hope it was at least insightful  
14 to know where the Court came from with that.

15 MR. STEGMAIER: Yes, ma'am.

16 THE COURT: Y'all take care.

17 MR. STEGMAIER: Yes. Well, I've got two pieces of  
18 housekeeping.

19 THE COURT: Okay.

20 MR. STEGMAIER: Number one, I think I've heard from  
21 chambers about putting on the record or filing with the record  
22 our latest transmission, if we'd be allowed to do that.

23 And the second thing is this: There is an active  
24 appellate bond that exists through a broker in New Orleans.  
25 I'd like to cut that loose. And I've talked to the people in

1 New Orleans about that. They would need a Court Order for  
2 them to discontinue that appellate bond. I would like to  
3 prepare such an Order for transmittal to the chambers so I can  
4 dispose of that active appellate bond. Otherwise, we have to  
5 pay premium on an additional million dollars that I think  
6 exists for no reason at this point in time.

7 MR. BUCKLEY: Your Honor, if I could be heard. Ed  
8 Buckley.

9 MR. LUCEY: Ed, I've got it covered. Ed?

10 MR. BUCKLEY: Okay. All right.

11 MR. LUCEY: Mr. Stegmaier, I'd be happy to consider any  
12 requests you have. This is out of the blue. I do not have  
13 the paperwork. I'm unable to respond without seeing whatever  
14 paperwork you're referring to.

15 MR. STEGMAIER: Okay. I'll send you what you need,  
16 Mr. Lucey.

17 MR. LUCEY: Thank you.

18 MR. STEGMAIER: Judge McCoy.

19 THE COURT: It sounds like y'all might need to have some  
20 discussions before we kind of get in front of the Court for an  
21 Order on that. But -- and, of course, I'm really -- I'm not  
22 trying to be silly. I'm really just here for the one purpose,  
23 which was just to wrap up your Motion to Reconsider.

24 I'd love to help y'all out. I really would. I hope that  
25 more conversations can be fruitful. I wish this whole thing

1 could settle and go away, but you know...

2 MR. STEGMAIER: Every time I see my friend Andy Cole,  
3 it's the gift that keeps on giving. So I appreciate it,  
4 Judge. And thank you. And I hope you have a great rest of  
5 your day.

6 THE COURT: Sure. Y'all take care and be careful with  
7 this impending weather. Good to see everybody.

8 MR. LUCEY: Good to see you, Judge. See you.

9 THE COURT: All-righty. Thank you.

10 (The above hearing concluded.)

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# Certificate of Transcriber

CASE NAME: Palmetto Pointe at Peas Island Condo POA v.

Island Pointe, LLC

DATE OF HEARING: 1/30/26

RECORDING METHOD: WebEx

I, Bobbi Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that I was not present for the live proceeding; and that said proceedings were transcribed to the best of my ability from the audio and/or video recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case; and I have no interest, financial or otherwise, in its outcome.

/s/ Bobbi Fisher

Bobbi Fisher, SC Official Court Reporter III, RPR

Transcript Prepared: 4/8/26

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|                                 |   |                              |
|---------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA         | ) | IN THE COURT OF COMMON PLEAS |
|                                 | ) |                              |
| COUNTY OF CHARLESTON            | ) | NINTH JUDICIAL CIRCUIT       |
|                                 | ) |                              |
| PALMETTO POINTE AT PEAS         | ) | CASE NO. 2015-CP-10-0955     |
| ISLAND CONDOMINIUM PROPERTY     | ) |                              |
| OWNERS ASSOCIATION, INC. AND    | ) |                              |
| JACK LOVE, INDIVIDUALLY, AND    | ) |                              |
| ON BEHALF OF ALL OTHERS         | ) |                              |
| SIMILARLY SITUATED,             | ) |                              |
|                                 | ) |                              |
|                                 | ) |                              |
| PLAINTIFFS,                     | ) |                              |
|                                 | ) |                              |
| vs.                             | ) | <b>VERDICT FORM</b>          |
|                                 | ) |                              |
| COMPLETE BUIDLING CORP., ET AL, | ) |                              |
|                                 | ) |                              |
| DEFENDANTS.                     | ) |                              |
|                                 | ) |                              |

1) We, the jury, find for the Plaintiffs against the following Defendants on the cause of action for Breach of Implied Warranty (select all that apply):

- |    |                                                        |                                          |
|----|--------------------------------------------------------|------------------------------------------|
| a) | <input checked="" type="radio"/> Yes / No (Circle one) | Complete Building Corporation;           |
| b) | <input checked="" type="radio"/> Yes / No (Circle one) | TriCounty Roofing;                       |
| c) | Yes / <input checked="" type="radio"/> No (Circle one) | WC Services;                             |
| d) | <input checked="" type="radio"/> Yes / No (Circle one) | Wilson Lucas Sales d/b/a Miracle Siding; |
| e) | <input checked="" type="radio"/> Yes / No (Circle one) | Eloy Vasquez.                            |

2) We, the jury, find for the Plaintiffs against the following Defendants on the cause of action for Negligence (select all that apply):

- |    |                                                        |                                |
|----|--------------------------------------------------------|--------------------------------|
| a) | <input checked="" type="radio"/> Yes / No (Circle one) | Complete Building Corporation; |
| b) | <input checked="" type="radio"/> Yes / No (Circle one) | TriCounty Roofing;             |



- c) Yes / No (Circle one) WC Services;
- d) Yes / No (Circle one) Wilson Lucas Sales d/b/a Miracle Siding;
- e) Yes / No (Circle one) Eloy Vasquez.

**(Answer next questions only if one or more subparts in the first two (2) questions were found in favor of the Plaintiffs)**

- 3) If the answer to any of the subparts to the foregoing two (2) questions is in favor of the Plaintiffs, set forth below your award of damages to the Plaintiffs:

(\$ 6,544,044.00)

- 4) If you find through clear and convincing evidence that any of the Defendants acted with gross negligence, or with conscious or reckless disregard for Plaintiffs' rights, so indicate by circling Yes below. Otherwise, circle No below:

- a) Yes / No (Circle one) Complete Building Corporation;
- b) Yes / No (Circle one) TriCounty Roofing;
- c) Yes / No (Circle one) WC Services;
- d) Yes / No (Circle one) Wilson Lucas Sales d/b/a Miracle Siding;
- e) Yes / No (Circle one) Eloy Vasquez.

- 5) If your answer to the foregoing question (4) was yes, how much do you award against the specified Defendants in punitive damages?

- a) Complete Building Corporation:

(\$ 500,000.00)

b) TriCounty Roofing:

\_\_\_\_\_  
(\$ 500,000.00 )

c) WC Services:

\_\_\_\_\_  
N/A  
(\$ \_\_\_\_\_ )

d) Wilson Lucas Sales d/b/a Miracle Siding:

\_\_\_\_\_  
N/A  
(\$ \_\_\_\_\_ )

e) Eloy Vasquez:

\_\_\_\_\_  
N/A  
(\$ \_\_\_\_\_ )

6) Do you find that Complete Building Corp. is entitled to indemnity from TriCounty Roofing ? Yes / No (circle one).

If yes, how much do you award Complete Building Corp. on its cross-claim against TriCounty Roofing ?

\_\_\_\_\_  
(\$ 1,000.00 )

7) Do you find that Complete Building Corp. is entitled to indemnity from WC Services ?

Yes / No (circle one).

If yes, how much do you award Complete Building Corp. on its cross-claim against WC Services ?

\_\_\_\_\_  
(\$ n/a )

Date: 16 May 19

Walter J. Dean  
Presiding Juror

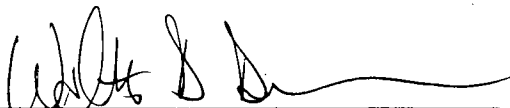
|                                 |   |                              |
|---------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA         | ) | IN THE COURT OF COMMON PLEAS |
|                                 | ) |                              |
| COUNTY OF CHARLESTON            | ) | NINTH JUDICIAL CIRCUIT       |
|                                 | ) |                              |
| PALMETTO POINTE AT PEAS         | ) | CASE NO. 2015-CP-10-0955     |
| ISLAND CONDOMINIUM PROPERTY     | ) |                              |
| OWNERS ASSOCIATION, INC. AND    | ) |                              |
| JACK LOVE, INDIVIDUALLY, AND    | ) |                              |
| ON BEHALF OF ALL OTHERS         | ) |                              |
| SIMILARLY SITUATED,             | ) |                              |
|                                 | ) |                              |
|                                 | ) |                              |
| PLAINTIFFS,                     | ) |                              |
|                                 | ) |                              |
| vs.                             | ) | <b>SPECIAL VERDICT FORM</b>  |
|                                 | ) |                              |
| COMPLETE BUIDLING CORP., ET AL, | ) |                              |
|                                 | ) |                              |
| DEFENDANTS.                     | ) |                              |
|                                 | ) |                              |

1) Please indicate what percentage of the \$6,500,000.00 actual damages awarded to the Plaintiff is attributable to the following Defendants:

Wilson Lucas Sales d/b/a Miracle Siding 5 %

Eloy Vasquez 5 %

Date: 16  
19 May 19

  
Presiding Juror

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Civil Action No. 2015-CP-10-00955

**RECEIVED**  
OCT 14 2019  
SC Court of Appeals

Palmetto Pointe At Peas Island Condominium Property Owners Association, Inc. And Jack Love,  
Individually, and on behalf of all others similarly situated, ..... Plaintiffs,

vs.

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; W C 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 Siding, LLC; Mark Palpoint a/k/a Micah Palpoint; Elroy Alonzo Vasquez; Chris a/k/a  
John Doe 61; Alderman Construction; Stanley's Vinyl Fence Designs; Cohen's Drywall Company,  
Inc; Mosely 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,

-and-

Complete Building Corporation, Inc,.....Third-Party Plaintiff,

vs.

Leonard T. Browne And Christopher N. Union, .....Third-Party Defendants,

-and-

Creekside, Inc., .....Third-Party Plaintiff,

vs.

Christopher N. Union..... Third-Party Defendant,

-and-

American Residential Services, LLC,..... Third-Party Plaintiff,

vs.

Victor Hugo Hernandez; Hernandez Electric, LLC; Liliana Rojas Flores; Martin Barr d/b/a Port City Structured Wiring; Keller Electric, LLC; John Toolin d/b/a John F. Toolin Heat And Air; Russell "Rusty" Hill d/b/a Rusty's Heating & Air; and Warren Anderson, ..... Third-Party Defendants.

-of whom -

Palmetto Pointe At Peas Island Condominium Property; Owners Association, Inc. And Jack Love, Individually, and on behalf of all others similarly situated, ..... Respondent.

vs.

Tri-County Roofing, Inc. .... Appellant.

---

### NOTICE OF APPEAL

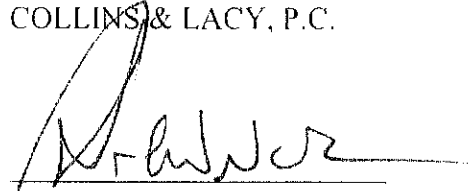
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Tri-County Roofing, Inc. ("Appellant") timely appeals two (2) Orders of the Honorable Jennifer B. McCoy in the above matter: (1) July 23, 2019 Form 4 Judgement Order Denying Tri-County Roofing, Inc.'s Motions for Judgment Not Withstanding the Verdict, New Trial Absolute, and New Trial Nisi Remittitur and Denying Tri-County Roofing, Inc.'s Motion Regarding the Award of Punitive Damages and (2) September 25, 2019 Order Denying Tri-County Roofing, Inc.'s Motion to Reconsider. Copies of these Orders are attached hereto. Appellant received written notice by electronic copy of the form order on July 24, 2019 and of the second order by electronic copy on October 4, 2019.

Respectfully submitted,

COLLINS & LACY, P.C.

By:



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Columbia, South Carolina

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STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-00955

Palmetto Pointe at Peas Island Condominium  
Property Owners Association, et al.  
PLAINTIFF(S)

Island Pointe, LLC, et al.

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ 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 Tri-County Roofing, Inc.'s Motions for Judgment Not Withstanding the Verdict, New Trial Absolute, and New Trial Nisi Remittitur are DENIED.

Additionally, Tri-County Roofing, Inc.'s motion regarding the award of punitive damages is DENIED. The jury awarded punitive damages in the amount of \$500,000 against Defendants Tri-County Roofing, Inc., and Complete Building Corporation. The court has reviewed the award of punitive damages and finds it appropriate pursuant to the factors articulated in both *BMW of North America v. Gore*, 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996), and *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991). Punitive damages are appropriate where there is evidence of recklessness or grossly negligent conduct. *Daniels v. Bernard*, 270 S.C. 51, 240 S.E.2d 518 (1978). Sufficient evidence was presented at trial of Defendant TCR and CBC's gross negligence, specifically in the form of testimony regarding building code violations, among other issues. Therefore, the court properly charged the jury that an award of punitive damages was appropriate, and, given the Plaintiffs' damages, the award of \$500,000.00 in punitive damages against TCR is not excessive.

As to Tri-County Roofing, Inc.'s Motion for Setoff, the judgment against TCR should be reduced by \$1,670,000.00 for a total judgment against TCR of \$5,330,000.00 in accordance with the Plaintiffs' proposed allocations and setoff amounts. Plaintiffs may file a proposed formal order to this effect if necessary.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be<br>Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|-------------------------------------------------------------|
|----------------------------------------------|------------------------------------------|-------------------------------------------------------------|

FILED

2019 JUL 23 PM 4:42  
JULIE J. ARMSTRONG  
CLERK OF COURT

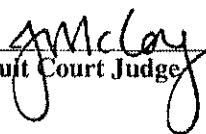
N/A

If applicable, describe the property, including tax map information and address, referenced in the order:  
N/A

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

**Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

  
Circuit Court Judge

2764

Judge Code

7/18/19

Date

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON ) NINTH JUDICIAL CIRCUIT

PALMETTO POINTE AT PEAS ISLAND ) CASE NO. 2015-CP-10-0955  
CONDOMINIUM PROPERTY OWNERS )  
ASSOCIATION, INC. AND JACK LOVE, )  
INDIVIDUALLY, AND ON BEHALF OF )  
ALL OTHERS SIMILARLY SITUATED, )

Plaintiffs,

VS.

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.; W C SERVICES, INC.; CRG )  
ENGINEERING, INC.; CERTAINTED )  
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 SIDING, )  
LLC; MARK PALPOINT A/K/A MICAH )  
PALPOINT; ELROY ALONZO VASQUEZ; )  
CHRIS A/K/A JOHN DOE 61; ALDERMAN )  
CONSTRUCTION; STANLEY'S VINYL )  
FENCE DESIGNS; COHEN'S DRYWALL )  
COMPANY, INC.; MOSELY CONCRETE; )  
HAND A FRAMING CONSTRUCTION, LLC )  
A/K/A H&A FRAMING CONSTRUCTION, )  
LLC AND D/B/AH AND A FRAMING, LLC, )

**FILED**  
2019 SEP 25 PM 4:11  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

**ORDER DENYING TRI-COUNTY  
ROOFING, INC.'S MOTION TO  
RECONSIDER**



H&A CONSTRUCTION, AND HAND A  
CONSTRUCTION; JMC CONSTRUCTION,  
INC.; JMC CONSTRUCTION, LLC; JOHN  
DOE 1-15,

Defendants.

COMPLETE BUILDING CORPORATION,  
INC.,

Third-Party Plaintiff,

VS.

LEONARD T. BROWNE AND  
CHRISTOPHER N. UNION,

Third-Party Defendants.

CREEKSID, INC.,

Third-Party Plaintiff,

VS.

CHRISTOPHER N. UNION,

Third-Party Defendant.

AMERICAN RESIDENTIAL SERVICES, LLC,

Third-Party Plaintiff,

VS.

VICTOR HUGO HERNANDEZ; HERNANDEZ  
ELECTRIC, LLC; LILIANA ROJAS FLORES;  
MARTIN BARR D/B/A PORT CITY  
STRUCTURED WIRING; KELLER  
ELECTRIC, LLC; JOHN TOOLIN D/B/A  
JOHN F. TOOLIN HEAT AND AIR; RUSSELL  
"RUSTY" HILL D/B/A RUSTY'S HEATING &  
AIR; and WARREN ANDERSON,

Third-Party Defendants.

This construction defendant case is before the court upon Tri-County Roofing, Inc.'s ("TCR") Motion to Reconsider this Court's Order filed July 23, 2019, which allowed a setoff in favor of TCR in the amount of \$1,670,000.00 against the jury verdict of \$6,500,000.00 actual damages and \$500,000.00 punitive damages. TCR contends that the Court should reconsider and revise its setoff to allow the sum of \$5,415,000.00 rather than the \$1,670,000.00 allowed in my Order.

I have reviewed TCR's motion, Exhibit "A" incorporated therein, (which Exhibit was presented to and considered by the Court in TCR's post-trial motions filed May 28, 2019), the Plaintiffs' Memorandum in Opposition to TCR's Motion to Reconsider, and TCR's reply to Plaintiffs' opposition memorandum. I also have consider the evidence presented at trial as well as the absence of evidence to establish that the setoff TCR seeks is warranted.

At trial, plaintiff presented evidence of actual damages in excess of \$12,000,000.00. Their earlier estimate which predated most of the settlement plaintiffs received, was \$15,257,000.00. That estimate was introduced at trial by the defendants. The jury awarded actual damages of \$6,500,000.00. The court cannot parce the jury's award to determine which items or portions of plaintiffs' claims it accepted or, conversely, which items it allowed. The plaintiffs presented evidence that they had reduced their damages estimate and eliminated a number of defects from the \$15,257,000.00 jury's consideration prior to the close of the evidence.

TCR has not demonstrated to the court that it is entitled to a dollar-for-dollar setoff of all sums Plaintiffs have received from the settling defendants, nor can TCR do so based upon the record before me.

I find that TCR has failed to establish that the settlements plaintiffs received in excess of \$1,670,000.00 are damages awarded against a settling joint tortfeasors who has compensated the Plaintiff for the same claim and for the same injury. S.C. Code Ann. §15-38-50; Smith v. Widener, 397 S.C. 468, 471-472, 724 S.E. 2<sup>nd</sup> 188, 190 (Ct. App.2012). Here, the record before the Court reflects that only \$1,670,000.00 in settlement meets those criteria. The remaining settlements, as allocated by the settling defendants and the plaintiffs, compensate the Plaintiffs for different injuries from those tried to verdict. Hawkins v. Pathology Assoc. of Greenville, P.A., 330 S.C. 92, 114-115, 498 S.E. 2<sup>nd</sup> 395, 407 (Ct. App. 1998). By way of illustration, H and A Framing paid \$500,000.00 for damages to shear walls, window installation, deflecting floors and framing defects. Arguably, none of that settlement represents compensation for damages which are included in the jury's verdict against TCR. Nevertheless, the court in the exercise of its discretion, accepted the plaintiffs' allocation of \$50,000.00 of that sum as damages potentially representing TCR's joint liability, and the court included that amount in its setoff. The court analyzed each of the settlements in the same manner.

Where, as here, the moving party seeks to setoff damages which are not compensation for the same damages encompassed with the jury's verdict, the Court must determine whether the plaintiffs' allocations with the settlement defendants amount to an unfair windfall to the plaintiffs. TCR has failed to meet its burden of persuasion to demonstrate to the court that the allocations, though clearly beneficial to the plaintiffs, are unfair or unjust.

As the Supreme Court elucidated in Riley v. Ford Motor Co., 414 S.C. 185, 186, 777 S.E. 2d 824, 831 (2015),

A plaintiff who enters into a settlement with a defendant gains a position of control and acquires leverage in relation to a nonsettling defendant. This posture is reflected in the plaintiff's ability to apportion the settlement proceeds in the manner most

advantageous to it. Settlements are not designed to benefit nonsettling third parties. They are instead created by the settling parties in the interests of these parties. If the position of a nonsettling defendant is worsened by the terms of a settlement, this is the consequence of a refusal to settle. A defendant who fails to bargain is not rewarded with the privilege of fashioning and ultimately extracting a benefit from the decisions of those who do.

*Id.* (citations and quotations omitted). Thus, a Court cannot “disturb the settling parties’ agreed-upon allocation solely because the apportionment may have been advantageous to [Plaintiff].” *Id.*

Again, by way of illustration, the design professional, Novus Architects settled for \$600,000.00. TCR has not demonstrated any evidence in the record to establish that Novus was, or ever could be, jointly responsible for TCR’s hundreds or perhaps, thousands of code violations in the defective installation of otherwise non-defective materials such as roof shingles and siding. Yet, TCR advocates for a setoff in the entire amount of the Novus payment. The court found initially and now reaffirms its earlier finding that TCR has not established that the Novus settlements and other like settlement overlap or coincide with the damages the jury awarded against it.

The court notes also and has considered that counsel for the general contractor, Complete Building Corp. (“CBC”) argued extensively to the jury that the jury should exclude from its award damages for which the plaintiffs had been compensated prior to submission of the case to the jury. On its face, the award of approximately half the plaintiffs’ claimed damages indicates that the jury may have done that here.

The court has analyzed each and every settlement, the allocations the settling parties argued upon the record in this case, and TCR’s arguments with regard to each of those payments. The court is convinced and finds that the setoff in the amount of \$1,670,000.00 actual damages is

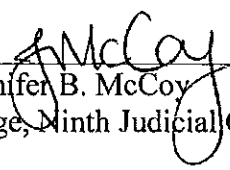
appropriate, just and fair. TCR is not entitled to any setoff for the \$500,000.00 punitive damages awarded against it.

THEREFORE, the court orders that TCR's motion is denied;

FURTHER, that the judgment entered in the amount of \$5,330,000.00 reflects the setoff to which TCR is entitled; and

FURTHER, that the entry of judgment in the amount of \$5,330,000.00 against TCR remains the order of this court.

IT IS SO ORDERED.

  
\_\_\_\_\_  
Jennifer B. McCoy  
Judge, Ninth Judicial Circuit

September 24, 2019  
Charleston, S.C.

**JULIE J. ARMSTRONG**  
CLERK OF COURT, C.F. & G.S.  
100 BROAD STREET, SUITE 100  
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19



ANDREW N. COLE  
PO BOX 12487  
COLUMBIA SC 29211-2487

**NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRCF**

**Order Denying Tri-County Roofing's Motion to Reconsider**

**CASE NO: 2015CP1000955**

**Palmetto Pointe at Peas Island Condominium Property Owners A , plaintiff, et al VS Island Pointe**

This judgment was entered on the 25th day of September, 2019, and notice mailed first class on Tuesday, October 01, 2019, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.

ELECTRONICALLY FILED - 2019 Oct 21 2:05 PM - CHARLESTON - COMMON PLEAS - CASE#2015CP1000955

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Civil Action No. 2015-CP-10-00955

**RECEIVED**  
OCT 14 2019  
SC Court of Appeals

Palmetto Pointe At Peas Island Condominium Property Owners Association, Inc. And Jack Love,  
Individually, and on behalf of all others similarly situated, ..... Plaintiffs,

vs.

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; W C 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 Siding, LLC; Mark Palpoint a/k/a Micah Palpoint; Elroy Alonzo Vasquez; Chris a/k/a  
John Doe 61; Alderman Construction; Stanley's Vinyl Fence Designs; Cohen's Drywall Company,  
Inc; Mosely 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,

-and-

Complete Building Corporation, Inc,..... Third-Party Plaintiff,

vs.

Leonard T. Browne And Christopher N. Union, ..... Third-Party Defendants,

-and-

Creekside, Inc., ..... Third-Party Plaintiff,

vs.

Christopher N. Union, ..... Third-Party Defendant,

-and-

American Residential Services, LLC, ..... Third-Party Plaintiff,

vs.

Victor Hugo Hernandez; Hernandez Electric, LLC; Liliana Rojas Flores; Martin Barr d/b/a Port City Structured Wiring; Keller Electric, LLC; John Toolin d/b/a John F. Toolin Heat And Air; Russell "Rusty" Hill d/b/a Rusty's Heating & Air; and Warren Anderson, ..... Third-Party Defendants.

-of whom -

Palmetto Pointe At Peas Island Condominium Property Owners Association, Inc. And Jack Love, Individually, and on behalf of all others similarly situated, ..... Respondent.

vs.

Tri-County Roofing, Inc. .... Appellant.

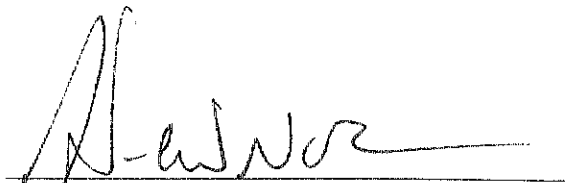
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**PROOF OF SERVICE**

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I certify that I have served the Notice of Appeal on Other Counsel of Record by depositing a copy of it in the United States Mail, postage prepaid, on October 11, 2019, addressed as follows:

October 14, 2019



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Charleston County Clerk of Court  
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|                                           |   |                                       |
|-------------------------------------------|---|---------------------------------------|
| STATE OF SOUTH CAROLINA                   | ) | IN THE COURT OF COMMON PLEAS          |
|                                           | ) |                                       |
| COUNTY OF CHARLESTON                      | ) | NINTH JUDICIAL CIRCUIT                |
|                                           | ) |                                       |
| Palmetto Pointe at Peas Island            | ) | Civil Action No.: 2015CP1000955       |
| Condominium Property Owners               | ) |                                       |
| Association, Inc. and Jack Love,          | ) |                                       |
| individually, and on behalf of all others | ) |                                       |
| similarly situated,                       | ) |                                       |
|                                           | ) | <b>TRI-COUNTY ROOFING, INC.'S</b>     |
| Plaintiffs,                               | ) | <b>MOTION TO STAY EXECUTION OF</b>    |
|                                           | ) | <b>THE JUDGMENT FROM TRIAL AND/OR</b> |
|                                           | ) | <b>TO SET AN APPELLATE BOND</b>       |
| vs.                                       | ) |                                       |
|                                           | ) |                                       |
| Island Pointe, LLC, Complete Building     | ) |                                       |
| Corporation, Tri-County Roofing, Inc., WC | ) |                                       |
| Services, Inc., Miracle Siding, LLC and   | ) |                                       |
| Wilson Lucas Sales d/b/a Miracle Siding,  | ) |                                       |
| LLC, Eloy Alonzo Vasquez, JMC             | ) |                                       |
| Construction, Inc., and JMC Construction, | ) |                                       |
| LLC,                                      | ) |                                       |
|                                           | ) |                                       |
| Defendants.                               | ) |                                       |
|                                           | ) |                                       |

Pursuant to S.C. Code §18-9-130, Tri-County Roofing, Inc. ("Tri-County") petitions the Honorable Jennifer B. McCoy to stay the execution of the judgment in the above-referenced matter and/or to determine the amount of the appellate bond or other surety. Tri-County demands a hearing on this matter as soon as this matter can be heard.

### **BACKGROUND**

This action was tried before Judge McCoy May 6 through 16, 2019. Seven defendants were still in the case when trial started. One defendant reached a settlement with Plaintiffs on the second day of trial. One defendant was dismissed by a grant of directed verdict at the close of Plaintiffs' case. Five defendants were still in the case when the jury began deliberations. One of these defendants received a defense verdict. The jury rendered a judgment against the remaining four defendants: Complete Building Corporation ("Complete Building"), the general contractor;



Tri-County, the principal siding, roofing, and waterproofing subcontractor; Wilson Lucas Sales d/b/a Miracle Siding, LLC (“Miracle Siding”), a siding sub-subcontractor; and Eloy Alonzo Vasquez (“Vasquez”), a roofer and waterproofing sub-subcontractor. On July 24, 2019, Tri-County’s counsel received electronic copies of the filed verdict form, which was retroactively file stamped on May 16, 2019. The joint verdict against Complete Building and Tri-County was \$6,500,000.00 actual damages and \$500,000.00 punitive damages. The verdict against Miracle Siding was \$325,000.00 actual damages. The verdict against Vasquez was \$325,000.00 actual damages.

Complete Building, Miracle Siding, and Vasquez settled with Plaintiffs after the trial and judgment but before the post-trial motions were argued. Tri-County timely filed its post-trial motions on May 28, 2019. The hearing on the post-trial motions was on June 7, 2019. Judge McCoy filed her Form Order regarding Tri-County’s post-trial motions on July 23, 2019. Judge McCoy *inter alia* applied a portion of the setoff requested by Tri-County and reduced the judgment amount against Tri-County to a total of \$5,330,000.00. On August 5, 2019, Tri-County timely filed its motion to reconsider the Form Order Filed July 23, 2019. Plaintiffs emailed Judge McCoy a memorandum opposing the motion to reconsider on August 15, 2019, but this memorandum was not filed with the Charleston County Clerk of Court. Tri-County filed a return to Plaintiffs’ memorandum on August 26, 2019. Judge McCoy’s Order Denying Tri-County Roofing’s Motion to Reconsider was filed on September 25, 2019. Tri-County timely filed its notice of appeal on October 14, 2019 and served this notice of appeal on the Charleston County Clerk of Court via electronic filing on October 21, 2019. Tri-County files this motion now because Plaintiffs’ counsel informs Tri-County that it will start execution on the judgment after Wednesday, October 23, 2019.

## **DISCUSSION**

Upon the service of a notice of appeal, the appellate court has exclusive jurisdiction over the appeal. See Rule 205, SCACR. However, “[n]othing in the[ Appellate Court] Rules shall prohibit the lower court... from proceeding with matters not affected by the appeal.” Id. South Carolina Code §18-9-130 specifically allows the trial judge, i.e. “the presiding judge before whom the judgment was obtained,” to grant a stay of execution. The statute further provides that the trial judge may require a bond or other surety in an amount within the trial judge’s discretion, with some limitations. In the present case, the amount of the bond or other surety “may not exceed the amount of the judgment or... one million dollars, whichever is less, for all other entities or individuals.” S.C. Code §18-9-130(A)(1)(b).

Tri-County respectfully requests a stay in the execution of the jury verdict against it. Tri-County addressed the amount of the verdict in its post-trial motions and arguments. Tri-County timely appealed the post-trial orders by Judge McCoy. Allowing the Plaintiffs to execute on its judgment while the underlying case is under appeal will create a hardship for Tri-County. Tri-County respectfully requests that the stay be “effective upon the filing of the notice of appeal and during the entire course of the appellate review of the judgment.” S.C. Code §18-9-130(B)(2).

If the Court elects to require Tri-County to produce an appeal bond or other surety, then Tri-County requests a reasonable bond be set, but pursuant to S.C. Code §18-9-130 the bond can be no more than one million dollars.

Respectfully submitted,  
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October 21, 2019  
Columbia, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
Palmetto Pointe at Peas Island )  
Condominium Property Owners )  
Association, Inc. and Jack Love, )  
individually, and on behalf of all others )  
similarly situated, )  
  
Plaintiffs, )  
  
vs. )  
  
Island Pointe, LLC, Complete Building )  
Corporation, Tri-County Roofing, Inc., WC )  
Services, Inc., Miracle Siding, LLC and )  
Wilson Lucas Sales d/b/a Miracle Siding, )  
LLC, Eloy Alonzo Vasquez, JMC )  
Construction, Inc., and JMC Construction, )  
LLC, )  
  
Defendants. )

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Civil Action No.: 2015CP1000955

**SUPERSEDEAS BOND /  
APPELLATE BOND**

FILED  
2020 FEB -4 PM 4:02  
JULIE J. ANTONIO  
CLERK OF COURT

KNOW ALL MEN BY THESE PRESENTS, that Tri-County Roofing, Inc. (hereinafter ("Tri-County")) is firmly bound unto the Clerk of Court for Charleston County and Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., Plaintiff, in a sum not to exceed One Million Dollars (\$1,000,000.00), which represents the amount of the Appellate Bond that was set by the Honorable Jennifer B. McCoy by an order filed on January 28, 2020, to the payment of which we firmly bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally, by these presents.

The condition of this obligation is such that:

WHEREAS, the underlying action was tried before the Honorable Jennifer B. McCoy May 6 through 16, 2019 resulting in a jury verdict in favor of Plaintiffs against several

defendants, including Tri-County, and the dismissal of one defendant at directed verdict and one defendant at the end of the trial.

WHEREAS, after post-trial motions and subsequent motions to reconsider were argued, the final judgment amount entered against Tri-County effective May 16, 2019, was in the amount of Five Million Three Hundred Thirty Thousand Dollars (\$5,330,000.00).

WHEREAS, Tri-County timely appealed the final decision of the trial court when it filed its notice of appeal on October 14, 2019, and electronically filed this notice of appeal with the Charleston County Clerk of Court on October 21, 2019.

WHEREAS, on October 21, 2019, pursuant to S.C. Code §18-9-130, Tri-County filed a motion to stay the execution of the judgment and to set the amount of the appellate bond. The hearing on this motion was held before Judge McCoy on January 27, 2020.

WHEREAS, on January 28, 2020, a Form Order setting the amount of the Appellate Bond at the sum of One Million Dollars (\$1,000,000.00) was filed. This bond amount is set by the application of S.C. Code §18-9-130.

WHEREAS, the appeal as described above is still pending and proceeding forward in the South Carolina Court of Appeals with the Appellate Case No. 2019-001790.

WHEREAS, Builders Mutual Insurance Company, Certain Underwriters of Lloyd's, London, and Scottsdale Insurance have been defending Tri-County under reservations of rights but, by separate agreements with U.S. Specialty Insurance Company, these insurance companies entered into certain pro-rata guarantees for the total amount of the appellate bond.

Now, therefore, the condition of this obligation is such that if Tri-County and/or its insurers shall satisfy the judgment in full together with all applicable costs and/or interest if the appeal is dismissed or if the judgment is affirmed, or if Tri-County and/or its insurers shall

satisfy in full such judgment or modification of the judgment and such costs, attorney's fees, interest, and damages as this Circuit Court of Charleston County, South Carolina may adjudge and award, or if the said judgment be set aside, then the obligation shall be void, otherwise to remain in full force and virtue. In no event shall the aggregate liability under this bond exceed One Million Dollars (\$1,000,000.00).

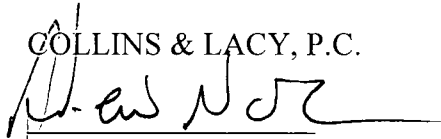
Dated this 3<sup>rd</sup> day of February, 2020.

U.S. SPECIALTY INSURANCE COMPANY, Surety

By:

  
Conway C. Marshall Attorney-in-Fact

PROFFERED BY:

  
COLLINS & LACY, P.C.

Andrew N. Cole, Esquire  
Bar Number: 68384  
acole@collinsandlacy.com  
Post Office Box 12487  
Columbia, SC 29211  
803.256.2660 (voice)  
803.771.4484 (fax)

ATTORNEYS FOR TRI-COUNTY ROOFING, INC.



TOKIOMARINE  
HCC

## POWER OF ATTORNEY

AMERICAN CONTRACTORS INDEMNITY COMPANY TEXAS BONDING COMPANY  
UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY

KNOW ALL MEN BY THESE PRESENTS: That American Contractors Indemnity Company, a California corporation, Texas Bonding Company, an assumed name of American Contractors Indemnity Company, United States Surety Company, a Maryland corporation and U.S. Specialty Insurance Company, a Texas corporation (collectively, the "Companies"), do by these presents make, constitute and appoint:

Catherine Kehoe, Darlene Bornt, Clark Fitzhugh, Conway Marshall, Elizabeth Kearney, Linda Sheffield,  
Kristine Donovan, Stephen Beahm, Roxanne M. Craven, Andrea N. Becker, David C. Joseph of New Orleans.

its true and lawful Attorney(s)-in-fact, each in their separate capacity if more than one is named above, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver **any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include riders, amendments, and consents of surety, providing the bond penalty does not exceed \*\*\*UNLIMITED\*\*\* Dollars** (\*\*UNLIMITED\*\*). This Power of Attorney shall expire without further action on April 23<sup>rd</sup>, 2022. This Power of Attorney is granted under and by authority of the following resolutions adopted by the Boards of Directors of the Companies:

*Be it Resolved*, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings, including any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts, and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

*Be it Resolved*, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, The Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 1<sup>st</sup> day of June, 2018.

AMERICAN CONTRACTORS INDEMNITY COMPANY TEXAS BONDING COMPANY  
UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY

State of California  
County of Los Angeles



By:   
Daniel P. Aguilar, Vice President

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document

On this 1<sup>st</sup> day of June, 2018, before me, Sonia O. Carrejo, a notary public, personally appeared Daniel P. Aguilar, Vice President of American Contractors Indemnity Company, Texas Bonding Company, United States Surety Company and U.S. Specialty Insurance Company who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(seal)



I, Kio Lo, Assistant Secretary of American Contractors Indemnity Company, Texas Bonding Company, United States Surety Company and U.S. Specialty Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have herunto set my hand and affixed the seals of said Companies at Los Angeles, California this 3<sup>rd</sup> day of February, 2020

Corporate Seals

Bond No.

10062617

Agency No.

11511



Kio Lo, Assistant Secretary

HCCSMANPOA06/2018

visit [tmhcc.com/surety](http://tmhcc.com/surety) for more information



TOKIO MARINE  
HCC

2015-CP-10-955  
Filed 2/4/20-8

## POWER OF ATTORNEY

AMERICAN CONTRACTORS INDEMNITY COMPANY TEXAS BONDING COMPANY  
UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY

KNOW ALL MEN BY THESE PRESENTS: That American Contractors Indemnity Company, a California corporation, Texas Bonding Company, an assumed name of American Contractors Indemnity Company, United States Surety Company, a Maryland corporation and U.S. Specialty Insurance Company, a Texas corporation (collectively, the "Companies"), do by these presents make, constitute and appoint:

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*Attorney-in-Fact* may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements, or indemnity and other conditional or obligatory undertakings, including any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts, and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

*Be it Resolved*, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, The Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 1<sup>st</sup> day of June, 2018.

AMERICAN CONTRACTORS INDEMNITY COMPANY TEXAS BONDING COMPANY  
UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY

State of California  
County of Los Angeles



By:

Daniel P. Aguilar, Vice President

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document

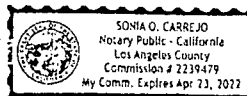
On this 1<sup>st</sup> day of June, 2018, before me, Sonia O. Carrejo, a notary public, personally appeared Daniel P. Aguilar, Vice President of American Contractors Indemnity Company, Texas Bonding Company, United States Surety Company and U.S. Specialty Insurance Company who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(seal)



I, Kio Lo, Assistant Secretary of American Contractors Indemnity Company, Texas Bonding Company, United States Surety Company and U.S. Specialty Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Los Angeles, California this 3<sup>rd</sup> day of February, 2020.

Corporate Seals

Bond No.

100/02/617

Agency No.

11511



Kio Lo, Assistant Secretary



STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

Ninth JUDICIAL CIRCUIT

COUNTY OF Charleston )

CASE NO.: 2015-CP-10-00955

Palmetto Pointe at Peas Island Condominium  
Property Owners Association, Inc. and Jack  
Love, Individually and on behalf of all others  
similarly situated,

MOTION AND ORDER INFORMATION

Plaintiff, )

FORM AND COVERSHEET

vs. )

Island Pointe, LLC, Complete Building  
Cororation, Tri-County Roofing, Inc., WC  
Services, Inc. Miracle Siding, LLC and Wilson  
Lucas Sales d/b/a Miracle Siding, LLC, Eloy  
Alonzo Vasquez, JMC Construction, Inc., and  
JMC Construction, LLC

Defendant. )

Plaintiff's Attorney:  
Justin Lucey, Bar No. 15438  
Address:  
415 Mill Street  
Mount Pleasant, SC 29465  
Phone: 843-849-8400 Fax \_\_\_\_\_  
E-mail: jlucey@lucey-law.com Other: \_\_\_\_\_

Defendant's Attorney:  
Christian Stegmaier, Bar No. 68648  
Address:  
1330 Lady Street Sixth Floor  
Columbia, SC 29201  
Phone: (803) 256-2660 Fax \_\_\_\_\_  
E-mail: cstegmaier@collinsandlacy.com Other: \_\_\_\_\_

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)  
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Revoke Appellate Bond

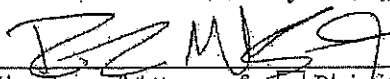
Estimated Time Needed: 15

Court Reporter Needed: ☐ YES/☒ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached  
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

  
Signature of Attorney for ☐ Plaintiff ☒ Defendant

1/29/2024

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25

☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support  
☐ Domestic Abuse or Abuse and Neglect  
☐ Indigent Status ☐ State Agency v. Indigent Party  
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief  
☐ Motion for Stay in Bankruptcy  
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)  
☐ Proposed order submitted at request of the court, or,  
reduced to writing from motion made in open court per judge's instructions  
Name of Court Reporter: \_\_\_\_\_  
☐ Other: \_\_\_\_\_

|                                                                                                                                                               |                                     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| <b>JUDGE'S SECTION</b>                                                                                                                                        |                                     |
| <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.<br><input type="checkbox"/> Other:                                          | JUDGE CODE _____<br><br>Date: _____ |
| <b>CLERK'S VERIFICATION</b>                                                                                                                                   |                                     |
| Collected by: _____ Date Filed: _____<br><input type="checkbox"/> MOTION FEE COLLECTED: \$ _____<br><input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____ |                                     |

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

Plaintiffs,

vs.

Island Pointe, LLC, Complete Building  
Corporation, Tri-County Roofing, Inc., WC  
Services, Inc. Miracle Siding, LLC and  
Wilson Lucas Sales d/b/a Miracle Siding,  
LLC, Eloy Alonzo Vasquez, JMC  
Construction, Inc., and JMC Construction,  
LLC

Defendants.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL DISTRICT

Case No.: 2015-CP-10-00955

**MOTION TO REVOKE  
SUPERSEDEAS/APPELLATE BOND**

2024 JAN 29 AM 10:01  
JULIE J. ARTHUR  
CLERK OF COURT

NOW COMES non-party Scottsdale Insurance Company ("Scottsdale") and moves the court to revoke the Supersedeas/Appellate Bond filed with this Court on February 4, 2020. In support of this motion, Scottsdale shows the Court as follows:

1. This action was tried before the Honorable Jennifer B. McCoy May 6 through 16, 2019 resulting in a jury verdict in favor of Plaintiffs against several defendants, including Tri-County Roofing, Inc. ("Tri-County").
2. After post-trial motions and subsequent motions to reconsider were argued, the final judgment amount entered against Tri-County effective May 16, 2019, was in the amount of Five Million Three Hundred Thirty Thousand Dollars (\$5,330,000.00).

3. Tri-County timely appealed the final decision of the trial court when it filed its notice of appeal on October 14, 2019, and electronically filed this notice of appeal with the Charleston County Clerk of Court on October 21, 2019.

4. On October 21, 2019, pursuant to S.C. Code §18-9-130, Tri-County filed a motion to stay the execution of the judgment and to set the amount of the appellate bond. The hearing on this motion was held before Judge McCoy on January 27, 2020.

5. On January 28, 2020, a Form Order setting the amount of the Appellate Bond at the sum of One Million Dollars (\$1,000,000.00) was filed. This bond amount is set by the application of S.C. Code §18-9-130.

6. On February 4, 2020, Tri-County filed the above-referenced Supersedeas/Appellate Bond, whereby Tri-County and the insurers then-participating in its defense (Scottsdale, Builders Mutual Insurance Company, and Certain Underwriters at Lloyd's, London) agreed to post the \$1,000,000 bond, secured via surety U.S. Specialty Insurance Company, in order to stay the execution of the judgment during the pendency of Tri-County's appeal.

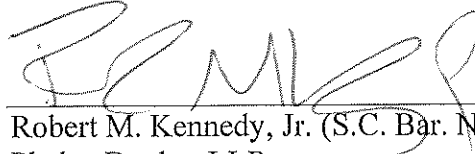
7. During the pendency of Tri-County's appeal, Scottsdale and Builders Mutual Insurance Company ("BMIC") reached separate agreements with Plaintiffs and Tri-County, resolving Scottsdale's and BMIC's portion of the claim, leaving Certain Underwriters at Lloyd's, London as the only carrier still participating in Tri-County's appeal, which is still pending.

8. Certain Underwriters at Lloyd's, London have not yet agreed to assume Scottsdale's obligations with respect to the February 4, 2020 Supersedeas/Appellate Bond.

9. Accordingly, Scottsdale respectfully requests that the February 4, 2020 Supersedeas/Appellate Bond be revoked - such that Tri-County and Certain Underwriters at

Lloyd's London can file a separate supersedeas/appeal bond, presuming they otherwise wish to continue the stay of execution of judgment during the pendency of Tri-County's appeal).

Respectfully submitted this the 25<sup>th</sup> day of January 2024.



Robert M. Kennedy, Jr. (S.C. Bar. No. 102288)

Phelps Dunbar LLP

4141 ParkLake Ave, Suite 530

Raleigh, North Carolina 27612

919-789-5303

919-789-5301

[robert.kennedy@phelps.com](mailto:robert.kennedy@phelps.com)

*Attorneys for Scottsdale Insurance Company*

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

Plaintiffs,

vs.

Island Pointe, LLC, Complete Building  
Corporation, Tri-County Roofing, Inc., WC  
Services, Inc. Miracle Siding, LLC and  
Wilson Lucas Sales d/b/a Miracle Siding,  
LLC, Eloy Alonzo Vasquez, JMC  
Construction, Inc., and JMC Construction,  
LLC

Defendants.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL DISTRICT

Case No.: 2015-CP-10-00955

**CERTIFICATE OF SERVICE**

FILED  
2024 JAN 29 AM 10:01  
JULIE J. ARMSTRONG  
CLERK OF COURT

I hereby certify that I have this day served a copy of the foregoing Scottsdale Insurance Company's Motion to Revoke Supersedeas/Appellate Bond upon all parties to this matter by depositing a true copy of the same in the U.S. Mail and/or electronic mail to all counsel of records as follows:

Justin Lucey  
415 Mill Street  
Post Office Box 806  
Mount Pleasant, SC 29465-0806  
[jlucey@lucey-law.com](mailto:jlucey@lucey-law.com)  
*Counsel for Plaintiff*

Richard Zelonka  
1230 Peachtree Street NE  
Suite 2350  
Atlanta, GA 30309  
[RZelonka@wshblaw.com](mailto:RZelonka@wshblaw.com)  
*Counsel for Certain Underwriters at Lloyd's,  
London*

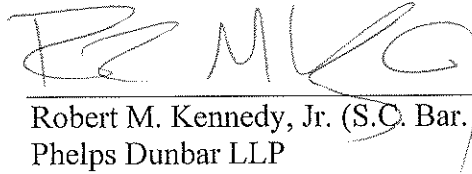
Edward D Buckley Jr.  
25 Calhoun Street, Suite 400  
Charleston, SC 29401  
[ebuckley@yerlaw.com](mailto:ebuckley@yerlaw.com)  
*Counsel for Plaintiff*

John McCants  
1901 Main Street, Ste. 1200  
PO Box 11803 (29211)  
Columbia, SC 29201  
[jmccants@rogerslewis.com](mailto:jmccants@rogerslewis.com)  
*Counsel for Builders Mutual*

Christian Stegmaier  
1330 Lady Street Sixth Floor  
P.O. Box 12487 (29211)  
Columbia, SC 29201  
[cstegmaier@collinsandlacy.com](mailto:cstegmaier@collinsandlacy.com)  
*Counsel for Tri-County Roofing, Inc.*

Stanley Rodgers  
55 Broad Street, Suite 200  
Charleston, South Carolina 29401  
[scr@stanleyrodgers.com](mailto:scr@stanleyrodgers.com)  
*Counsel for Tri-County Roofing, Inc.*

Respectfully submitted this the 25<sup>th</sup> day of January 2024.



---

Robert M. Kennedy, Jr. (S.C. Bar. No. 102288)  
Phelps Dunbar LLP  
4141 ParkLake Ave, Suite 530  
Raleigh, North Carolina 27612  
919-789-5303  
919-789-5301  
[robert.kennedy@phelps.com](mailto:robert.kennedy@phelps.com)  
*Attorneys for Scottsdale Insurance Company*

|                                                 |   |                                 |
|-------------------------------------------------|---|---------------------------------|
| STATE OF SOUTH CAROLINA                         | ) | IN THE COURT OF COMMON PLEAS    |
|                                                 | ) |                                 |
| COUNTY OF CHARLESTON                            | ) | NINTH JUDICIAL CIRCUIT          |
|                                                 | ) |                                 |
| Palmetto Pointe at Peas Island Condominium      | ) | Civil Action No.: 2015CP1000955 |
| Property Owners Association, Inc. and Jack      | ) |                                 |
| Love, individually, and on behalf of all others | ) |                                 |
| similarly situated,                             | ) |                                 |
|                                                 | ) | <b>SUPERSEDEAS BOND /</b>       |
| Plaintiffs,                                     | ) | <b>APPELLATE BOND</b>           |
|                                                 | ) |                                 |
| vs.                                             | ) |                                 |
|                                                 | ) |                                 |
| Island Pointe, LLC, Complete Building           | ) |                                 |
| Corporation, Tri-County Roofing, Inc., WC       | ) |                                 |
| Services, Inc., Miracle Siding, LLC and         | ) |                                 |
| Wilson Lucas Sales d/b/a Miracle Siding,        | ) |                                 |
| LLC, Eloy Alonzo Vasquez, JMC                   | ) |                                 |
| Construction, Inc., and JMC Construction,       | ) |                                 |
| LLC,                                            | ) |                                 |
|                                                 | ) |                                 |
| Defendants.                                     | ) |                                 |
|                                                 | ) |                                 |
|                                                 | ) |                                 |

KNOW ALL MEN BY THESE PRESENTS, that Tri-County Roofing, Inc. (hereinafter ("Tri-County")) is firmly bound unto the Clerk of Court for Charleston County and Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., Plaintiff, in a sum not to exceed One Million Dollars (\$1,000,000.00), which represents the amount of the Appellate Bond that was originally set by the Honorable Jennifer B. McCoy by an order filed on January 28, 2020, to the payment of which we firmly bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally, by these presents.

The condition of this obligation is such that:

WHEREAS, the underlying action was tried before the Honorable Jennifer B. McCoy May 6 through 16, 2019, resulting in a jury verdict in favor of Plaintiffs against several defendants, including Tri-County, and the dismissal of one defendant at directed verdict and one defendant at the end of the trial.



WHEREAS, after post-trial motions and subsequent motions to reconsider were argued, the final judgment amount entered against Tri-County effective May 16, 2019, was in the amount of Five Million Three Hundred Thirty Thousand Dollars (\$5,330,000.00).<sup>1</sup>

WHEREAS, Tri-County timely appealed the final decision of the trial court when it filed its notice of appeal on October 14, 2019, and electronically filed this notice of appeal with the Charleston County Clerk of Court on October 21, 2019.

WHEREAS, on October 21, 2019, pursuant to S.C. Code §18-9-130, Tri-County filed a motion to stay the execution of the judgment and to set the amount of the appellate bond. The hearing on this motion was held before Judge McCoy on January 27, 2020.

WHEREAS, on January 28, 2020, a Form Order setting the amount of the Appellate Bond at the sum of One Million Dollars (\$1,000,000.00) was filed. This bond amount is set by the application of S.C. Code §18-9-130.<sup>2</sup>

WHEREAS, Builders Mutual Insurance Company and Scottsdale Insurance had been defending Tri-County under respective reservations of rights but, by separate agreements with Plaintiff, have since resolved Plaintiff's pending claims against them and thus have been released from the instant case.

WHEREAS, the appeal as described above is still pending and proceeding forward in the South Carolina Supreme Court.

---

<sup>1</sup> Via an opinion of the South Carolina Court of Appeals, dated June 28, 2023, Tri-County Roofing was granted an additional \$500,000 setoff from the jury's verdict that the trial court had previously denied. All other setoff denials and awards were affirmed.

<sup>2</sup> By subsequent order dated January 2, 2025, the Circuit Court issued a consent order revoking the supersedeas/appellate bond previously posted by Tri-County Roofing, Inc. after its insurers, Scottsdale Insurance Company and Builders Mutual Insurance Company, settled their portions of the claim. The order required Certain Underwriters at Lloyd's, London, the sole remaining insurer in Tri-County's appeal, to post a substitute bond to ensure continued security for the judgment pending appeal. Hence, the instant bond.

WHEREAS, Certain Underwriters of Lloyd's, London, which remains defending Tri-County under reservations of rights and by agreements with U.S. Specialty Insurance Company, has entered certain guarantees for the total amount of the appellate bond.

Now, therefore, the condition of this obligation is such that if Tri-County and/or its insurer shall satisfy the judgment in full together with all applicable costs and/or interest if the appeal is dismissed or if the judgment is affirmed, or if Tri-County and/or its insurers shall satisfy in full such judgment or modification of the judgment and such costs, attorney's fees, interest, and damages as this Circuit Court of Charleston County, South Carolina or the South Carolina Supreme Court may adjudge and award, or if the said judgment be set aside, then the obligation shall be void, otherwise to remain in full force and virtue. In no event shall the aggregate under this bond exceed One Million Dollars (\$1,000,000.00).

Dated this 6<sup>th</sup> day of February 2025.

U.S. SPECIALTY INSURANCE COMPANY, Surety

By: Amanda Riedl  
Amanda Riedl, Attorney-in-Fact

PROFFERED BY:

 COLLINS & LACY, P.C.

Christian Stegmaier  
Bar Number: 68648  
cstegmaier@collinsandlacy.com  
Post Office Box 12487  
Columbia, SC 29211  
803.256.2660 (voice)  
803.771.4484 (fax)

ATTORNEYS FOR TRI-COUNTY ROOFING, INC.





TOKIO MARINE  
HCC

**POWER OF ATTORNEY**  
**AMERICAN CONTRACTORS INDEMNITY COMPANY TEXAS BONDING COMPANY**  
**UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY**

KNOW ALL MEN BY THESE PRESENTS: That American Contractors Indemnity Company, a California corporation, Texas Bonding Company, an assumed name of American Contractors Indemnity Company, United States Surety Company, a Maryland corporation and U.S. Specialty Insurance Company, a Texas corporation (collectively, the "Companies"), do by these presents make, constitute and appoint:

Andre Autin, Stephen M. Beahm, Kristine Donovan, Clark P. Fitz-Hugh, David Cleveland Joseph, Elizabeth K. Kearney, Catherine C. Kehoe, Conway C. Marshall, Amanda Alice Riedl or Victoria Scruggs of New Orleans, Louisiana

its true and lawful Attorney(s)-in-fact, each in their separate capacity if more than one is named above, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver **any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include riders, amendments, and consents of surety, providing the bond penalty does not exceed** \*\*\*\*\*Seventy Five Million\*\*\*\*\* Dollars (\*\*\*75,000,000.00\*\*\*). This Power of Attorney shall expire without further action on April 23<sup>rd</sup>, 2026. This Power of Attorney is granted under and by authority of the following resolutions adopted by the Boards of Directors of the Companies:

Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings, including any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts, and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, The Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 18<sup>th</sup> day of April 2022.

**AMERICAN CONTRACTORS INDEMNITY COMPANY TEXAS BONDING COMPANY**  
**UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY**

State of California

County of Los Angeles



By: 

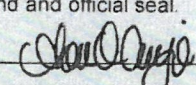
Daniel P. Aguilar, Vice President

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document

On this 18<sup>th</sup> day of April 2022, before me, Sonia O. Carrejo, a notary public, personally appeared Daniel P. Aguilar, Vice President of American Contractors Indemnity Company, Texas Bonding Company, United States Surety Company and U.S. Specialty Insurance Company who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (seal)



I, Kio Lo, Assistant Secretary of American Contractors Indemnity Company, Texas Bonding Company, United States Surety Company and U.S. Specialty Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Los Angeles, California this 18 day of February, 2025.

Corporate Seals

Bond No. 1001208647

Agency No. 16586

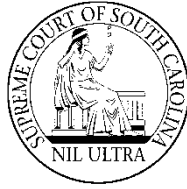


  
Kio Lo, Assistant Secretary

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HCCSMANPOA02/2023





# The Supreme Court of South Carolina

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June 05, 2025

The Honorable Julie J. Armstrong  
100 Broad St Ste 106  
Charleston, SC 29401-2210

## **REMITTITUR**

Re: Palmetto Pointe v. Tri-County Roofing  
Lower Court Case No. 2015CP1000955  
Appellate Case No. 2023-001422

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

CHIEF DEPUTY CLERK

cc: Edward D. Buckley, Jr.  
Justin O'Toole Lucey

Stephanie D. Drawdy  
Joshua Fletcher Evans  
Anna Scarborough McCann  
Christian Stegmaier  
Russell Grainger Hines  
Kelsey Jan Brudvig  
Henry Dargan McMaster, Jr.  
Evan Markus Gessner  
Michael C. Bunda  
Sohayla Roudsari Townes

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

) NINTH JUDICIAL CIRCUIT

) CASE NO. 2015-CP-10-0955

PALMETTO POINTE AT PEAS ISLAND )  
 CONDOMINIUM PROPERTY OWNERS )  
 ASSOCIATION, INC. and JACK LOVE, Co- )  
 Trustee on behalf of the LOVE-MCKIM )  
 LIVING TRUST and Attorney-in-Fact for his )  
 wife, Janet I. McKim, and Co-Trustee, )  
 individually, and on behalf of all others )  
 similarly situated, )

Plaintiffs, )

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; )  
 TALLENT AND SONS, INC.; W C SERVICES, )  
 INC KELLY FLOORING PRODUCTS, INC., )  
 D/B/A CARPET BAGGERS; MIRACLE )  
 SIDING, LLC AND WILSON LUCAS SALES )  
 D/B/A MIRACLE SIDING, LLC; MARK )  
 PALPOINT A/K/A MICAH PALPOINT; )  
 ELROY ALONZO VASQUEZ; CHRIS A/K/A )  
 JOHN DOE 61 STANLEY'S VINYL FENCE )  
 DESIGNS; MOSLEY CONCRETE; JMC )  
 CONSTRUCTION, INC.; JMC )  
 CONSTRUCTION, LLC; VICTOR HUGO )  
 HERNANDEZ; HERNANDEZ ELECTRIC, )  
 LLC; LILIANA ROJAS FLORES; MARTIN )  
 BARR D/B/A PORT CITY STRUCTURED )  
 WIRING; KELLER ELECTRIC, LLC; JOHN )  
 TOOLIN D/B/A JOHN F. TOOLIN HEAT AND )  
 AIR; RUSSELL "RUSTY" HILL D/B/A )

**MOTION FOR ENTRY OF JUDGMENT  
 AND DISBURSEMENT OF BOND  
 (THE HONORABLE JENNIFER B.  
 MCCOY)**

RUSTY'S HEATING & AIR; WARREN )  
 ANDERSON; and JOHN DOE 10-15, )  
 )  
Defendants. )

Plaintiffs, by and through their undersigned counsel, respectfully petition the Honorable Jennifer B. McCoy, pursuant to Rule 58, SCRCPP, and in accordance with the April 30, 2025, Opinion of the South Carolina Supreme Court in *Palmetto Pointe at Peas Island v. Tri-County Roofing, Inc.*, Opinion No. 28278 (attached as Exhibit "A"), for the following relief:

Plaintiffs request that this Court enter final judgment against Defendant Tri-County Roofing, Inc. ("TCR"), in an amount consistent with the Supreme Court's ruling. On appeal, Tri-County Roofing, Inc. ("TCR") sought additional set-offs against the judgment entered by order of the Honorable Jennifer B. McCoy in the amount of \$4,830,000.00 actual damages and \$500,000.00 punitive damages, having ruled upon TCR's motion to set off all sums received by Plaintiff through settlements with parties other than TCR. While both Appellate and Supreme Courts sustained most of the Trial Court's setoff rulings, each allowed one additional setoff, the Court of Appeals, Opinion No. 5996 (attached as Exhibit "B"), allowed an additional \$500,000.00 set-off, and the Supreme Court, on certiorari, allowed set-off of \$1,000,000.00 on top of the Court of Appeals' adjustment. The Supreme Court remanded the case to the Court of Common Pleas for the purpose of entering judgment consistent with the rulings of the Court of Appeals and the Supreme Court.

Plaintiffs respectfully request that the Court enroll the final judgment against TCR, inclusive of post-judgment interest accruing post-trial and during this appeal. As the resulting judgment will exceed the amount of the \$1,000,000 supersedeas or appeal bond filed February 7, 2025, (attached as Exhibit "C") Plaintiffs request that the Court order that the \$1,000,000 bond

posted by TCR and U.S. Specialty Insurance Company, surety, be immediately released and disbursed to Plaintiffs' counsel of record, in partial satisfaction of the judgment. This request is made pursuant to the Court's inherent authority and because the amount of the judgment, as revised and affirmed on appeal, exceeds the bond amount.

Plaintiffs reserve all rights to seek supplemental proceedings or other actions for recovery of any unpaid balance of the judgment.

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in accordance with the Supreme Court's Opinion and order the disbursement of the \$1,000,000 bond to Plaintiffs' counsel forthwith. A proposed order will be submitted in advance of the hearing on this matter.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

/s/Justin Lucey

Justin Lucey

Stephanie Drawdy

Anna S. McCann

Sohayla Townes

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Mount Pleasant, SC 29464

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-and-

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*Attorneys for the Plaintiffs*

June 5, 2025

Charleston, South Carolina



**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Jack Love, individually, and on behalf of all others similarly situated, Plaintiffs,

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/k/a Micah Palpoint; Elroy Alonzo Vasquez; Chris a/k/a John Doe 61; Alderman Construction; Stanley's Vinyl Fence Designs; Cohen's Drywall Company, Inc.; Mosely Concrete; H and A Framing Construction, LLC a/k/a H&A Framing Construction, LLC and d/b/a Hand A Framing, LLC, H&A Construction, and Hand A Construction; JMC Construction, Inc., JMC Construction, LLC, John Doe 1-15, Defendants,

of which Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Jack Love, individually, and on behalf of all others similarly situated are the Respondents,

and

Tri-County Roofing, Inc. is the Petitioner.

Appellate Case No. 2023-001422

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**ON WRIT OF CERTIORARI TO THE COURT OF APPEALS**

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Appeal from Charleston County  
Jennifer B. McCoy, Circuit Court Judge

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Opinion No. 28278  
Heard January 14, 2025 – Filed April 30, 2025

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**REVERSED IN PART, AFFIRMED IN PART, AND  
REMANDED**

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Christian Stegmaier, Kelsey Jan Brudvig, Henry Dargan McMaster, Jr., Evan Markus Gessner, and Michael C. Bunda, all of Collins & Lacy, PC, of Columbia, for Petitioner.

Edward D. Buckley, Jr. and Russell Grainger Hines, both of Clement Rivers, LLP, of Charleston; Justin O'Toole Lucey, Joshua Fletcher Evans, Sohayla Roudsari Townes, and Anna Scarborough McCann, all of Justin O'Toole Lucey, P.A., of Mt. Pleasant; and Stephanie D. Drawdy, of Justin O'Toole Lucey, P.A., of Summerville, all for Respondents.

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**JUSTICE JAMES:** The issue in this construction defect case concerns the amount Tri-County Roofing (TCR), a subcontractor on a townhome project named Palmetto Pointe at Peas Island (Palmetto), is entitled to set off from Palmetto's joint and several verdict against TCR and the general contractor, Complete Building Corporation (CBC). We address two categories of pretrial settlement payments received by Palmetto: (1) \$1,000,000 paid to Palmetto by CBC's insurer in exchange for a covenant-not-to-execute approximately ten months before trial; and (2) pretrial settlements paid by four other defendants totaling \$1,975,000—part of which Palmetto conceded TCR was entitled to set off. The court of appeals held TCR is not entitled to setoff for either the \$1,000,000 covenant-not-to-execute or the total amount of the settlements paid by the four other defendants. *Palmetto Pointe at Peas Island Condo. Prop. Owners Ass'n v. Island Pointe, LLC*, 440 S.C. 190, 213, 890 S.E.2d 603, 615 (Ct. App. 2023). We reverse in part, affirm in part, and remand to the trial court for the calculation of judgment to be entered against TCR.

## I.

In 2005, developer Island Pointe, LLC contracted with general contractor CBC to construct a condominium project near Folly Beach named Palmetto Pointe at Peas Island. CBC subcontracted with TCR for the roofing, exterior siding, and related work. Many other parties were involved in the project, including architectural firm Novus Architects, Inc., f/k/a SGM Architects, Inc., and subcontractors Atlantic Construction Services, Inc. (framing); H and A Framing Construction, LLC (framing); and Cohen's Drywall Company, Inc. (drywall and insulation).

In late 2014 to early 2015, Palmetto noticed leaking issues related to roofing and hired an engineer who discovered numerous building code violations and construction defects. Palmetto sued CBC, TCR, and numerous other parties involved in the project, alleging negligence, gross negligence, and breach of warranty.

Palmetto received \$6,800,000 in pretrial and post-trial settlements. As noted above, two groups of pretrial settlements are before us. First, in July 2018, about ten months before trial, CBC's insurer paid Palmetto \$1,000,000 in exchange for a covenant-not-to-execute. The covenant stated, "[e]xcept for this payment constituting a credit in the same amount *against any judgment obtained against CBC*, this partial payment shall not otherwise affect the Plaintiffs' defective construction claim(s) and Plaintiffs reserve all claims against CBC, its

non-participating insurance carriers, and all non-settling parties." (emphasis added). Second, Novus paid \$650,000; Atlantic paid \$700,000; H and A paid \$500,000; and Cohen's paid \$125,000.

The two-week trial began on May 6, 2019. Palmetto presented evidence to the jury of damages resulting from numerous code violations and construction defects in the condominiums. The evidence presented largely centered on issues for which CBC and TCR shared responsibility—roofing, siding, and decking. Testimony also addressed drywall issues, a small number of framing issues, and roof design and planning as potential causes of the leaking.<sup>1</sup> Five defendants remained at the verdict stage: CBC; TCR; Miracle Siding, LLC; Elroy Alonzo Vasquez; and WC Services, Inc. Miracle supplied materials and installed siding, flashing, and related components. Vasquez installed roofing, flashing, other roofing components, and waterproofing. Both were subcontractors of TCR.

The jury returned a verdict in favor of defendant WC Services but against CBC, TCR, Miracle, and Vasquez for actual damages totaling \$6,500,000. The jury also found CBC and TCR grossly negligent and awarded Palmetto \$500,000 in punitive damages against CBC and \$500,000 in punitive damages against TCR. The trial court granted Miracle and Vasquez's motion for apportionment of percentages of liability under subsection 15-38-15(C)(3) of the South Carolina Code (Supp. 2024), and the jury completed a special verdict form attributing 5% to Miracle and 5% to Vasquez (which they paid). Because the jury found CBC and TCR to be grossly negligent, they were not entitled to an apportionment of liability.<sup>2</sup> See S.C. Code Ann. § 15-38-15(F) ("This section does not apply to a defendant whose conduct is determined to be wilful, wanton, reckless, grossly negligent, or intentional

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<sup>1</sup> The court of appeals' opinion provides a more thorough overview of the testimony presented at trial. See *Palmetto Pointe*, 440 S.C. at 198-99, 210-13, 890 S.E.2d at 607-08, 614-15. We provide a briefer summary of the relevant testimony to give context to the narrower issues before us.

<sup>2</sup> The court of appeals stated CBC and TCR were "jointly and severally liable for the remaining 90% of actual damages—\$5,850,000." 440 S.C. at 200, 890 S.E.2d at 608. The question of whether CBC and TCR would—absent the payments made by Miracle and Vasquez—be jointly and severally liable for 90% or 100% of the \$6,500,000 verdict has not been presented by the parties at any stage of the proceedings.

..."). The punitive damages awards against TCR and CBC are unaffected by the allocations of liability among the defendants and are not before us.

TCR moved for setoff. Prior to the setoff hearing, CBC paid an additional \$1,137,500 to Palmetto. The settlement agreement concerning this payment released CBC from any further liability to Palmetto. The allocation of this payment was before the court of appeals but is not before this Court. *See Palmetto Pointe*, 440 S.C. at 207, 890 S.E.2d at 612 (holding "the trial court erred in denying a setoff to TCR for the remaining \$500,000 of the CBC settlement allocated to framing for HVAC access and fire separation penetrations not related to sprinkler installation"). The settlement agreement between CBC and Palmetto concerning CBC's \$1,137,500 post-trial payment to Palmetto also addressed the July 2018 \$1,000,000 payment by CBC's insurer to Palmetto. The agreement allocated the \$1,000,000 payment to items of damage not pursued by Palmetto at trial (\$900,000 to HVAC/electrical and \$100,000 to concrete, flooring, interior handrails, fireplaces, and drainage).

The trial court denied TCR's motion to set off the \$1,000,000 paid in July 2018 by CBC's insurer. Palmetto conceded to the trial court that TCR is entitled to set off \$65,000 of the Novus settlement; \$75,000 of the Atlantic settlement; and \$50,000 of the H and A settlement to "account for any inadvertent overlap in issues" presented at trial. Palmetto also conceded TCR is entitled to set off \$62,500 of the Cohen's settlement to account for drywall/firewall issues litigated at trial. The trial court agreed with Palmetto and denied further setoffs for the Novus, Atlantic, H and A, and Cohen's settlements. The court of appeals affirmed the trial court's rulings on the two setoff issues before us. *Palmetto Pointe*, 440 S.C. at 213, 890 S.E.2d at 615.

## II.

A non-settling defendant's right to setoff arises by operation of law when the settlement funds are paid to compensate the same plaintiff on a claim for the same injury. *Jolly v. Fisher Controls Int'l, LLC*, 443 S.C. 511, 531, 905 S.E.2d 380, 391 (2024) (citing *Smith v. Widener*, 397 S.C. 468, 472, 724 S.E.2d 188, 190 (Ct. App. 2012)). Under this circumstance, the trial court has no discretion in applying a setoff. *Smith*, 397 S.C. at 472, 724 S.E.2d at 190 (citing *Ellis v. Oliver*, 335 S.C. 106, 113, 515 S.E.2d 268, 272 (Ct. App. 1999)); *see* S.C. Code Ann. § 15-38-50 (2005). When a settlement involves more than one type of damage, the trial court has discretion to reasonably allocate the proceeds. *See Oaks at Rivers Edge Prop. Owners Ass'n v. Daniel Island Riverside Devs., LLC*, 420 S.C. 424, 438-39, 803 S.E.2d 475, 482-83

(Ct. App. 2017). Appellate courts review the reasonableness of the trial court's allocation under an abuse of discretion standard. *See Jolly*, 443 S.C. at 534, 905 S.E.2d at 393. The court will not disturb settling parties' agreed-upon allocation of proceeds simply because it may be more advantageous to the plaintiff. *Riley v. Ford Motor Co.*, 414 S.C. 185, 196, 777 S.E.2d 824, 831 (2015).

### III.

#### A. \$1,000,000 pretrial covenant-not-to-execute

The court of appeals erred in holding TCR is not entitled to setoff for the \$1,000,000 paid to Palmetto by CBC's insurer in July 2018, ten months before trial.

Section 15-38-50 of the South Carolina Code provides:

When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury . . . it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater . . . .

Palmetto unquestionably gave the pretrial covenant-not-to-execute to CBC in good faith, and the covenant stipulates the \$1,000,000 is a "credit in the same amount against *any judgment obtained against CBC*." (emphasis added). The judgment (here, clearly the verdict) obtained against CBC was obviously for categories of damage presented to the jury. TCR and CBC were found liable to Palmetto for the same categories of damage. And here, the verdict as rendered made CBC and TCR jointly and severally liable for those damages. Under the facts of this case, allowing Palmetto to belatedly allocate CBC's \$1,000,000 pretrial payment to categories of damage for which Palmetto did not seek recovery at trial flies in the face of the plain language of section 15-38-50.

We reverse the court of appeals on this issue and hold TCR is entitled to set off the full amount of the \$1,000,000 paid by CBC's insurer to Palmetto in exchange for the covenant-not-to-execute.



## **B. Pretrial settlements between Palmetto and Novus, Atlantic, H and A, and Cohen's**

We hold the court of appeals did not err in holding TCR was not entitled to full setoff for the pretrial settlements between Palmetto and Novus, Atlantic, H and A, and Cohen's. *See Palmetto Pointe*, 440 S.C. at 208-13, 890 S.E.2d at 613-15. In his dissent, the Chief Justice's sole disagreement is with our holding as to the settlement paid by Cohen's.

As is customary in construction litigation, Palmetto sued numerous defendants and claimed it was entitled to damages for multiple types of injuries. During trial, evidence of several types of injuries were presented to the jury. Cohen's performed drywall and insulation work on the project and was sued by Palmetto. Before trial, Cohen's paid \$125,000 to Palmetto in exchange for a full release, and Cohen's was dismissed from the action. The Cohen's release contained no allocation between drywall and insulation. Defects arising from drywall installation were tried before the jury, while defects related to insulation were not. After the jury rendered its general verdict, Palmetto unilaterally allocated 50 percent of the Cohen's settlement to drywall issues. In its setoff motion, TCR claimed it was entitled to a setoff of the entire \$125,000 paid by Cohen's. Thus, as the moving party, TCR had to establish Palmetto's allocation of the Cohen's settlement was unreasonable. After considering the arguments of TCR and Palmetto, the trial court found the allocation was reasonable.

Echoing his dissent in *Jolly*, 443 S.C. at 539-42, 905 S.E.2d at 395-97, the Chief Justice states he would hold the entire \$125,000 settlement paid by Cohen's to Palmetto must be set off from the verdict because the pretrial release between Palmetto and Cohen's contained no allocation. We disagree. As the majority concluded in *Jolly*, the Chief Justice's interpretation of section 15-38-50 does not take into account its predicate language providing that setoff is allowed for payments "for the same injury or the same wrongful death." *See Jolly*, 443 S.C. at 534, 905 S.E.2d at 393.

In *Jolly*, we clarified the procedure for setoff when a plaintiff internally allocates pretrial settlement proceeds that involve more than one claim—some proceeds for the same injury as the claim tried to verdict and some not. 443 S.C. at 534, 905 S.E.2d at 392. We held a unilateral, internal allocation of settlement proceeds is acceptable if the allocation is reasonable. *Id.* "A 'reasonable allocation' is one that fairly approximates the value the settling defendants paid in exchange for

a release of each of the several claims." *Id.* at 532, 905 S.E.2d at 391. "[T]he *setoff judge* has the responsibility to make a reasonable allocation of settlement funds as a predicate to a setoff ruling" and is not permitted to "blindly accept a party's allocation of settlement funds for purposes of setoff." *Id.* at 532, 905 S.E.2d at 391.

We know Cohen's involvement in the project was twofold—drywall (an issue tried to the jury) and insulation (an issue not tried to the jury). Therein lies the rub in this case—was the entire Cohen's payment to Palmetto "for the same injury (drywall)" tried to the jury? Here, the trial court, which had the advantage of seeing and evaluating what was and was not presented to the jury, considered the parties' arguments and concluded the 50 percent allocation was reasonable. For the reasons stated by the court of appeals, we hold the trial court properly exercised its discretion. *See Palmetto Pointe*, 440 S.C. at 208-13, 890 S.E.2d at 613-15.

#### IV.

For the foregoing reasons, we reverse the court of appeals' setoff holding on the \$1,000,000 payment to Palmetto in July 2018 and hold TCR is entitled to set off that amount against the verdict. We affirm the court of appeals' holding on the Novus, Atlantic, H and A, and Cohen's settlements. We remand to the trial court for calculation of the amount of judgment to be entered against TCR.

**REVERSED IN PART, AFFIRMED IN PART, AND REMANDED.**

**FEW, HILL and VERDIN, JJ., concur. KITTREDGE, C.J., concurring in part and dissenting in part in a separate opinion.**



**CHIEF JUSTICE KITTREDGE:** I concur in part and dissent in part.

As set forth by the majority, section 15-38-50 of the South Carolina Code (2005) provides,

When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury . . . it reduces the claim against the others to the extent of any amount *stipulated by the release or the covenant, or in the amount of the consideration paid for it*, whichever is the greater . . . ."

(Emphasis added).

In *Jolly v. Fisher Controls International, L.L.C.*, I rejected the majority's construction of section 15-38-50 that sanctioned a "secret, 'internal' allocation [of settlement proceeds] completed only after the jury render[ed] a verdict in the trial against any non-settling defendants."<sup>3</sup> 443 S.C. 511, 540, 905 S.E.2d 380, 395 (2024) (Kittredge, C.J., dissenting). I explained the plain and unambiguous text of the statute manifestly compels "settling parties to allocate settlement proceeds at the time of the settlement" and that the allocation be "stipulated by the release." *Id.* at 540, 905 S.E.2d at 395–96. As I wrote then, if the settling parties fail to do so, the statute unequivocally requires setoff of the full amount for which the parties settled.

*Jolly* involved multiple parties the plaintiffs claimed were responsible for one—or "the same"—injury. Here, in contrast, Palmetto Pointe at Peas Island (Palmetto) sued multiple subcontractors, each of whom performed specific and discrete tasks on a townhome project, for numerous alleged construction defects. Prior to trial, many of those subcontractors settled with Palmetto and were dismissed as defendants. In doing so, each subcontractor settled any claim(s) flowing from its specified work. With one exception, Palmetto did not present evidence at trial related to the allegedly negligent, discrete work performed by the settling

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<sup>3</sup> While the majority refers to allocations in this context as "internal," that characterization is a misnomer, as it wrongly implies that litigants actually allocate settlement proceeds at the time of settlement. In such circumstance, *there is no allocation at the time of settlement*. What occurs is a purposeful decision by a plaintiff not to allocate, but to delay the allocation of the settlement proceeds until *after* the verdict is rendered.

subcontractors. Accordingly, we can be sure the jury verdict did not include damages for work performed by those settling subcontractors. That being the case, affording a non-settling defendant the benefit of a setoff would run counter to section 15-38-50 and common sense.<sup>4</sup>

Where I respectfully dissent from the majority is with respect to the setoff of the pretrial settlement between Palmetto and Cohen's Drywall Company, Inc. (Cohen's). Cohen's performed drywall and insulation work for the townhome project and paid a sum of \$125,000 to Palmetto to settle issues arising from that work. Unlike with the claims against the other settling subcontractors, Palmetto *did* present evidence at trial regarding part of the purportedly negligent work of Cohen's—damages which, therefore, could have been included in the jury's general verdict. Significantly, Palmetto did not allocate the Cohen's settlement proceeds between issues related to its drywall work (litigated at trial) and its insulation work (not litigated at trial) in the release at the time of the settlement. Because Palmetto allocated the proceeds only *after* the jury rendered its verdict, I would apply the plain language of section 15-38-50 to find Tri-County Roofing is entitled to a setoff for the full amount for which Palmetto and Cohen's settled.<sup>5</sup> Apart from my disagreement with the majority on the setoff issue as to the pretrial settlement with Cohen's, I otherwise join the majority.

This is the second occasion on which a majority of this Court has interpreted section 15-38-50 in a manner that I believe contravenes the statute's plain language favoring transparency at the time of the settlement. In allowing a post-verdict "unilateral[

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<sup>4</sup> I recognize that Palmetto agreed to a ten percent setoff related to the settling subcontractors, notwithstanding the fact that no evidence of their allegedly negligent work was presented at trial. However, Palmetto's motivation for doing so—perhaps a good faith gesture or done out of concern for its failure to comply with section 15-38-50—is not relevant here in my judgment.

<sup>5</sup> I do not disagree that allowing a setoff for half of the total \$125,000 settlement may be equitable in this case, but this Court is not presented with a matter of equity or tasked with assessing a trial court's exercise of discretion in determining the "reasonableness" of the post-verdict allocation. We are charged with interpreting and applying the statute as written. Even assuming Tri-County Roofing had the burden of proof as the majority suggests, it has established—and *Palmetto has conceded*—that no settlement proceeds were allocated at the time of the settlement.

and] internal allocation of settlement proceeds[,]" the majority has taken a scalpel to the statute, removing the express requirement that the allocation of the settlement proceeds be "stipulated by the release or the covenant." In my judgment, a trial court's after-the-fact finding of reasonableness in no manner cures the flagrant disregard of section 15-38-50. By permitting—indeed, encouraging—plaintiffs to ignore the clear dictates of the statute, the Court is inviting mischief, gamesmanship, and, ultimately, multiple recoveries for the same injury. I am hopeful our trial court judges will not indulge this practice.

If the majority's construction of the statute is at odds with what the legislature intended, as I believe, it is incumbent on the General Assembly to take corrective action.



Tri-County Roofing, Inc. is the Appellant.

Appellate Case No. 2019-001790

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Appeal From Charleston County  
Jennifer B. McCoy, Circuit Court Judge

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Opinion No. 5996  
Heard February 14, 2023 – Filed June 28, 2023

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**AFFIRMED IN PART AND REVERSED IN PART**

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Christian Stegmaier and James Lloyd Williams, both of  
Collins & Lacy, PC, of Columbia, for Appellant.

Stephanie D. Drawdy and Joshua Fletcher Evans, both of  
Justin O'Toole Lucey, P.A., of Summerville; Edward D.  
Buckley, Jr., of Clement Rivers, LLP, of Charleston; and  
Anna Scarborough McCann and Justin O'Toole Lucey,  
both of Justin O'Toole Lucey, P.A, of Mount Pleasant, all  
for Respondents.

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**KONDUROS, J.:** In this condominium construction defect case, subcontractor defendant Tri-County Roofing, Inc. (TCR) appeals the trial court's decision regarding setoff. TCR contends the trial court erred in not setting off the entirety of a posttrial settlement between the plaintiffs and codefendant general contractor Complete Building Corporation (CBC). TCR further contends the trial court erred in denying its motion for a complete setoff of pretrial settlements between the plaintiffs and several other defendants involved in the project. We affirm in part and reverse in part.

## FACTS/PROCEDURAL HISTORY

In 2005, Island Pointe, LLC, as developer, entered into a contract with CBC for the construction of forty duplex condominium units<sup>1</sup> as a project called Palmetto Pointe at Peas Island, located near Folly Beach. CBC subcontracted with TCR to install the siding and roofing. Later, the installation of waterproof membranes on decks was added by change order. TCR's general scope of work included the roofing, siding, trim, and waterproofing the decks, and their bid included fascia, soffits, gutters, and downspouts. TCR hired subcontractors to complete its obligations to CBC,<sup>2</sup> including Eloy Alonzo Vazquez and Miracle Siding, LLC (Miracle). Vazquez was responsible for roofs and waterproof membranes, and Miracle was responsible for siding on seventeen of the twenty buildings. The units were built during 2006 and 2007.

In late 2014 to early 2015, the Palmetto Pointe Condominium Property Owners Association (the Association) noticed ongoing leaking issues related to the roofing. The Association hired a company to investigate. Later, an engineer was hired and discovered building code violations and other construction deficiencies.

On February 13, 2015, the Association and a homeowner, as class representative,<sup>3</sup> (collectively, Plaintiffs) filed a complaint. The complaint alleged negligence, gross negligence, and breach of implied warranty against CBC, TCR, and other subcontractors. The complaint requested actual and punitive damages. TCR answered and cross-claimed against its subcontractors. Plaintiffs amended their complaint twice and added TCR's subcontractors as defendants. CBC, the developer, and Novus Architects filed cross-claims against other defendants.

Prior to trial, numerous defendants reached settlement agreements with Plaintiffs totaling in aggregate between \$4,725,000 and \$5,012,500. The parties agree some of the settlements were for damages that were removed from the trial of the case.

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<sup>1</sup> Eventually, two more duplex buildings were built. Those were built at a later time by different entities and were not at issue in these proceedings.

<sup>2</sup> TCR did not do any actual work on the construction of the units; it was a middleman between CBC and TCR's subcontractors and also supervised those subcontractors' work.

<sup>3</sup> That representative was later replaced by another homeowner, Jack Love, who is a respondent in addition to the Association in this appeal. The class was never certified.

Those settlements total \$1,407,500 and have been referred to as issue release settlements.<sup>4</sup>

In addition to the issue release settlements, Plaintiffs entered into several other settlement agreements. Plaintiffs settled with Novus Architects, Inc. f/k/a SGM Architects, Inc. for \$650,000,<sup>5</sup> and with Cohen's Drywall Company, Inc. (Cohen's) for \$125,000 for work related to installing insulation and drywall. Plaintiffs settled with framing subcontractor, Atlantic Building Construction Services, Inc. n/k/a Atlantic Construction Services, Inc. for \$700,000 and with a subcontractor to Atlantic, H and A Framing Construction, LLC, (H and A) for \$500,000.<sup>6</sup>

Trial began on May 6, 2019, with eight remaining defendants: Stanley's Vinyl Fence Designs; JMC Construction, Inc. (JMC); Island Pointe; CBC; TCR; Miracle; Vasquez; and W.C. Services, Inc. Prior to the verdict, three defendants left the case. Stanley's settled on the second day of trial for \$295,000. The trial court dismissed JMC at the directed verdict stage, and Plaintiffs released their claims against Island Pointe prior to closing arguments.

During trial, Plaintiffs presented testimony from various experts demonstrating numerous code violations and faulty workmanship. Plaintiffs' expert, Russell

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<sup>4</sup> Most of these settlement agreements are included in the record. For a few, the record only contains emails agreeing to settlement terms. The following settlements are referred to as issue release settlements: (1) American Residential Services, LLC d/b/a ARS/Rescue Rooter Charleston, HVAC, \$795,000; (2) Andersen Windows, Inc.; window product manufacturer, \$200,000; (3) Tallent and Sons, Inc., grading & paving, \$195,000; (4) Kelly Flooring Products, Inc. d/b/a Carpet Baggers, carpet and wood flooring installer, \$25,000; (5) Alderman Construction, interior trim & railings, \$75,000; and (6) Mosley Concrete, concrete, \$95,000. Plaintiffs also settled with Builder Services Group, Inc. d/b/a Gale Contractor Service, which had supplied and installed fireplaces, for \$22,500.

<sup>5</sup> The trial court's posttrial order states that the settlement amount was \$600,000, but this appears to be incorrect.

<sup>6</sup> Plaintiffs entered into a few more pretrial settlements that were not issue releases but are not at dispute on appeal: Creekside, Inc., \$150,000, painting and caulking; Certainteed, Corp., \$35,000, manufacturer of roofing shingles, siding, and trim; and Cornerstone Construction, \$150,000, siding and flashing. In the settlement agreement with Cornerstone, Plaintiffs agreed to grant TCR a setoff for the amount paid by Cornerstone for TCR's release of its claims against Cornerstone.

Mease, testified as to the scope of work that would be required to remedy the defects at Palmetto Pointe. Much of the work he described required significant demolition and reconstruction in order to rectify the buildings' defects. Plaintiffs' damages expert, Jerry Handegan, testified regarding an estimate he prepared after being provided with Mease's scope of work evaluation. Handegan's original estimate, prepared in December of 2017, totaled \$15,257,512. A hand-revised estimate, removing certain elements of damage and other revisions, totaled \$13,428,826 and was completed in May of 2019.

CBC hired Alan Schweickhardt<sup>7</sup> to investigate the alleged defects at Palmetto Pointe. Schweickhardt's testimony focused on deficiencies in the areas covered by TCR and its subcontractors, namely roofing, decking, and siding as a water intrusion investigation. Steven Watkins prepared an estimate for the scope of work investigated by Schweickhardt using more targeted repairs and arrived at a cost of \$1,898,163.27.

Mark Poyner testified as the operations manager for TCR. He stated the contract between TCR and CBC for was roofing, siding, and deck waterproofing and totaled \$1,382,558.24. He also testified the amount of the contract between CBC and Palmetto Pointe was \$11,578,454. His testimony addressed, among other things, the liability of CBC and the designers of the project for the resultant defects.

James Lawrence "Larry" Elkin was the damages expert who evaluated the damages as to Miracle Siding and Vasquez. Elkin testified the work on the issues causing the water intrusion, including flashing and waterproofing, should have been coordinated, supervised, and tested—shifting ultimate responsibility back up the contracting chain to TCR and CBC.

In closing, Plaintiffs requested \$12.8 million in damages comprised of \$12.4 million in repair costs and \$800,000 in lost use. CBC questioned Handegan's damages estimate and encouraged the jury to go line by line to see which items should be included and which items should be reduced based on the timeline of the

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<sup>7</sup> Schweickhardt, Watkins, and Poyner are all listed as a plaintiff's witness presumably because of the cross-claims between CBC and TCR.



revised estimate.<sup>8</sup> After reviewing some of these items with the jury, CBC suggested \$6.5 million would be the remaining amount of damages.

The jury returned a verdict in W.C. Services' favor. As to the remaining defendants, the jury found actual damages in the amount of \$6.5 million. The jury also found CBC was grossly negligent and awarded punitive damages in the amount of \$500,000. It likewise found TCR grossly negligent and awarded \$500,000 in punitive damages. After the verdict form was received, the trial court, pursuant to section 15-38-15 of the South Carolina Code (Supp. 2022), crafted a special verdict form for the jury in which it would apportion the percentage of responsibility for the \$6.5 million among the remaining defendants. However, because CBC and TCR had been found grossly negligent, their liability could not be apportioned pursuant to subsection 15-38-15(F).<sup>9</sup> The jury found Miracle and Vasquez each responsible for 5% of the actual damages, or \$325,000 each. CBC and TCR were therefore jointly and severally liable for the remaining 90% of actual damages—\$5,850,000. The trial court gave the parties ten days to file posttrial motions.

Prior to the hearing on posttrial motions and twenty-one days after the conclusion of the trial, Plaintiffs entered into a settlement with CBC for \$2,137,500. The parties allocated \$1 million of the settlement proceeds to items not discussed at trial and \$637,500 to items that were considered by the jury at trial. \$500,000 of the settlement proceeds were earmarked for CBC's punitive damages.

TCR filed multiple posttrial motions, including ones for new trial nisi remittitur, new trial absolute, judgment notwithstanding the verdict, elimination of punitive damages, and setoff. Both parties prepared setoff recommendation charts. The trial court issued a Form 4 Order denying all of TCR's motions except the motion for setoff, which it granted in the amount conceded to by Plaintiffs—\$1.67 million. TCR filed a motion for reconsideration that was primarily devoted to the issue of setoff. The trial court did not alter the amount of setoff but offered a somewhat more detailed explanation for its rulings. The trial court held a plaintiff is entitled

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<sup>8</sup> Plaintiffs argued some costs should be reduced because they were based on renting equipment etc. for a shorter period of time than originally anticipated.

<sup>9</sup> § 15-38-15(F) ("This section does not apply to a defendant whose conduct is determined to be wilful, wanton, reckless, grossly negligent, or intentional or conduct involving the use, sale, or possession of alcohol or the illegal or illicit use, sale, or possession of drugs.").



to allocate settlement funds in the most advantageous way to it even if that may disadvantage a nonsettling tortfeasor like TCR. *See Riley v. Ford Motor Co.*, 414 S.C. 185, 197, 777 S.E.2d 824, 831 (2015). Additionally, the trial court concluded TCR had not met its burden of establishing a dollar-for-dollar setoff by establishing the settlements with other defendants were for the same injury. This appeal followed.

## GENERAL LAW REGARDING SETOFF

"A nonsettling defendant is entitled to credit for the amount paid by another defendant who settles." *Welch v. Epstein*, 342 S.C. 279, 312, 536 S.E.2d 408, 425 (Ct. App. 2000). "[S]uch a credit is to prevent an injured person from obtaining a second recovery of that part of the amount of damages sustained which has already been paid to him. In other words, there can be only one satisfaction for an injury or wrong." *Id.* (citation omitted). "Allowing this credit prevents an injured person from obtaining a double recovery for the damage he sustained, for it is 'almost universally held that there can be only one satisfaction for an injury or wrong.'" *Rutland v. S.C. Dep't of Transp.*, 400 S.C. 209, 216, 734 S.E.2d 142, 145 (2012) (quoting *Truesdale v. S.C. Highway Dep't*, 264 S.C. 221, 235, 213 S.E.2d 740, 746 (1975), *overruled on other grounds by McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985)).

"The right to setoff has existed at common law in South Carolina for over 100 years." *Riley*, 414 S.C. at 195, 777 S.E.2d at 830. "In 1988, these equitable principles were codified as part of the South Carolina Contribution Among Tortfeasors Act (the Act), [sections] 15-38-10 to -70 [of the South Carolina Code] (2005 and Supp. 2014)." *Id.* "[T]he Act represents the Legislature's determination of the proper balance between preventing double-recovery and South Carolina's 'strong public policy favoring the settlement of disputes.'" *Id.* at 196, 777 S.E.2d at 830 (quoting *Chester v. S.C. Dep't of Pub. Safety*, 388 S.C. 343, 346, 698 S.E.2d 559, 560 (2010)).

Section 15-38-50 provides:

When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

- (1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and
- (2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

*Id.*

[A] critical feature of the [Act] is the codification of the empty chair defense—a defendant 'retain[s] the right to assert another potential tortfeasor, whether a party or not, contributed to the alleged injury or damages'—which necessarily contemplates lawsuits in which an allegedly culpable person or entity is not a party to the litigation (hence the chair in question being 'empty').

*Smith v. Tiffany*, 419 S.C. 548, 557, 799 S.E.2d 479, 484 (2017) (quoting § 15-38-15(D)).

"Despite a defendant's entitlement to setoff, whether at common law or under section 15-38-50, any 'reduction in the judgment must be from a settlement for the same cause of action.'" *Riley*, 414 S.C. at 196, 777 S.E.2d at 830 (quoting *Hawkins v. Pathology Assocs. of Greenville, P.A.*, 330 S.C. 92, 113, 498 S.E.2d 395, 407 (Ct. App. 1998)). "Thus, where a settlement involves more than one claim, the allocation of settlement proceeds between various causes of action impacts the amount a non[settlement] defendant may be entitled to offset." *Id.*

"When the settlement is for the same injury, the nonsettling defendant's right to a setoff arises by operation of law. Under this circumstance, '[s]ection 15-38-50 grants the court no discretion . . . in applying a set-off.'" *Smith v. Widener*, 397 S.C. 468, 472, 724 S.E.2d 188, 190 (Ct. App. 2012) (alterations in original) (citation omitted) (quoting *Ellis v. Oliver*, 335 S.C. 106, 112-13, 515 S.E.2d 268, 271-72 (Ct. App. 1999)). Nevertheless, the trial court has discretion in

determining the amount of setoff when the settlement involves more than one claim. *See Glenn v. 3M Co.*, Op. No. 5975 (S.C. Ct. App. filed Apr. 5, 2023) (Howard Adv. Sh. No. 13 at 102, 143) ("*Riley* [,414 S.C. at 196, 777 S.E.2d at 830] indicates that the circuit court has discretion as to merely the amount to be setoff against the verdict when the settlement involves multiple claims.>").

As to allocation of settlement funds by and between settling parties, our supreme court has agreed with the following approach taken by the Illinois Court of Appeals:

A plaintiff who enters into a settlement with a defendant gains a position of control and acquires leverage in relation to a nonsettling defendant. This posture is reflected in the plaintiff's ability to apportion the settlement proceeds in the manner most advantageous to it. Settlements are not designed to benefit nonsettling third parties. They are instead created by the settling parties in the interests of these parties. If the position of a nonsettling defendant is worsened by the terms of a settlement, this is the consequence of a refusal to settle. A defendant who fails to bargain is not rewarded with the privilege of fashioning and ultimately extracting a benefit from the decisions of those who do.

*Riley*, 414 S.C. at 197, 777 S.E.2d at 831 (quoting *Lard v. AM/FM Ohio, Inc.*, 901 N.E.2d 1006, 1019 (Ill. App. Ct. 2009)).

When a plaintiff removes certain elements of damages from its case because of a pretrial settlement, the court may find the defendant tortfeasor has received the benefit of a setoff based on the plaintiff's lowered request for damages. *See Oaks at Rivers Edge Prop. Owners Ass'n. v. Daniel Island Riverside Devs., LLC*, 420 S.C. 424, 442, 803 S.E.2d 475, 484 (Ct. App. 2017) (affirming the trial court's denial of setoff, reasoning "Appellants already received the benefit of the settlements" totaling \$4,260,497.93 when the plaintiffs reduced their damages request by that amount).

## ANALYSIS

### I. Setoff For Posttrial Settlement With CBC

To examine the setoff of the posttrial settlement between CBC and Plaintiffs, the \$2,137,500 at issue must be broken down into separate components. First, the \$1 million in insurance proceeds from a July 2018 agreement between Plaintiffs, CBC, and an insurer of CBC's was allocated by those parties as follows:<sup>10</sup>

- \$900,000 - HVAC and electrical
- \$100,000 - concrete, flooring, interior handrails, fireplaces, and drainage<sup>11</sup>

Second, an additional \$1,137,500 was allocated as follows:

- \$137,500 - exterior railings<sup>12</sup>
- \$100,000 - fire separation penetrations other than those caused by the location of the fire sprinkler distribution system within the fire rated wall separating the units within each building
- \$400,000 - framing work to provide code-compliant access to HVAC equipment
- \$500,000 - punitive damages

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<sup>10</sup> This agreement was denominated a "Mediated Partial Payment" and incorporated a "Covenant-Not-to-Execute." The insurer paid \$1 million, which "constitute[ed] a credit in the same amount against any judgement obtained against CBC." The agreement released the insurer from any further obligation to CBC under the policy, primarily a duty to defend, and provided Plaintiffs would not execute against CBC's assets or its officers' personal assets in collecting any judgment. The agreement did not release CBC as a defendant and specifically reserved Plaintiffs' right to pursue its claims against CBC and all other parties. All necessary signatures—Plaintiffs', CBC's, and the insurer's—were obtained at that time; the document, according to its terms, became irrevocable at that time, and the \$1 million was paid to Plaintiffs at that time.

<sup>11</sup> The settlement denotes these were "items not included at trial."

<sup>12</sup> Plaintiffs conceded and the trial court allowed this portion of the CBC settlement as a setoff to TCR.

In declining to grant TCR a setoff for the entirety of the settlement, the trial court relied on *Riley v. Ford Motor Co.*, 414 S.C. 185, 197, 777 S.E.2d 824, 831 (2015), for the proposition that a plaintiff is entitled to allocate settlement funds in the most advantageous way to it, even if that may disadvantage a nonsettling tortfeasor like TCR.<sup>13</sup> The trial court also stated TCR was not entitled to a setoff for the portion of the settlement allocated to punitive damages. We will address each component of the CBC postverdict settlement in turn.

#### **A. The \$1 Million Insurance Proceeds from July 2018 Mediated Partial Payment/Covenant-Not-to-Execute**

TCR contends the \$1 million insurance payment allocated to HVAC, electrical, drainage, and fireplaces—matters for which damages were not sought at trial—was a settlement for the same injury represented by the verdict in the case. Therefore, it was entitled to a setoff. *See* § 15-38-50 (explaining right to setoff arises when two parties are liable in tort for the same injury). Plaintiffs claim these damages did not represent the same injury and because they did not seek damages for HVAC, electrical, drainage, and fireplaces at trial, TCR is not entitled to a setoff. We agree with Plaintiffs.

In *Oaks at Rivers Edge*, 420 S.C. at 432, 803 S.E.2d at 479, the developer and the construction manager of condominiums sought a setoff for a pretrial settlement with other tortfeasors in the construction defect case. The settlement contemplated

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<sup>13</sup> We caution the trial bench that allocations in settlements are not simply to be accepted but are to be examined to ensure a measure of fairness to all parties. As the trial court and Plaintiffs have pointed out, our courts have generally recognized Plaintiffs are permitted to allocate settlement proceeds as they determine, even if that might be detrimental to a nonsettling defendant. *Riley*, and the Illinois case on which it relies, contemplate the possibility that agreed-upon settlement allocations, largely driven by plaintiffs, may not always be appropriate. *See Riley*, 414 S.C. at 197, 777 S.E.2d at 831 ("Although the manipulation of an allocation can be evidence of bad faith in a settlement negotiation, it is not *per se* bad faith to engage in the advantageous apportioning of a settlement." (quoting *Lard*, 901 N.E.2d at 1018)). *See also Rutland*, 400 S.C. at 220, 734 S.E.2d at 147 (Pleicones, J., dissenting) (suggesting the court's reallocation of settlement proceeds is inappropriate when "*there is no suggestion of fraud or other wrongdoing by the plaintiff*" (emphasis added)).

damages resulting from the "design, manufacture, sale, and installation of the windows, window units, exterior doors, exterior door units, railings, balustrades, framing, and caulking." *Id.* at 434, 803 S.E.2d at 480. "However, [because the plaintiffs] removed from their claim the repairs necessitated by the damage caused by the window installation," the court determined the developer and construction manager "have already received a reduction in claims as contemplated by section 15-38-50 . . . ." *Id.* at 441, 803 S.E.2d at 484.

As in *Oaks at Rivers Edge*, by eliminating repair costs for HVAC, electrical, drainage, and fireplaces from its damages estimate, Plaintiffs effectively gave TCR (and all the defendants at trial) a setoff and thus the trial court did not err in declining to give a second reduction by setting off this amount from the verdict. Therefore, we find the trial court did not err in denying the \$1 million payment as a setoff.<sup>14</sup>

**B. \$637,500 of CBC Settlement Allocated for HVAC access, fire separation penetration, and exterior railings**

Here, unlike the \$1 million payment allocation, the \$637,500 allocation was for issues that Plaintiffs put before the jury.<sup>15</sup> In discussing pretrial matters, Plaintiffs indicated the issue regarding lack of access to the HVAC units due to framing mistakes was "still in the case." Furthermore, during trial, Plaintiffs questioned their expert, Mease, about the lack of access to the HVAC units due to improper framing and introduced photographs documenting the issue, noting it was a code violation. Likewise, Plaintiffs questioned Mease regarding fire separation penetrations. Mease testified numerous firewall penetrations were visible in the attics of the condominium units due to sprinkler installation, framing, ducting, and plumbing. Plaintiffs introduced photographs documenting instances of these errors. Because these issues were raised and discussed at trial, Plaintiffs cannot

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<sup>14</sup> TCR does not maintain the \$1 million payment was actually unallocated based on the fact this document was executed and the sum paid to Plaintiffs in July 2018—well before the full posttrial settlement between Plaintiffs and CBC. Likewise, TCR does not allege apportioning this part of the funds to matters not discussed at trial was in bad faith. Regardless, TCR was not found liable for damages related to HVAC, electrical, flooring, concrete, drainage, or interior railings as those were not included in Plaintiff's request for damages at trial.

<sup>15</sup> Plaintiffs concede a setoff of the full \$137,500 allocated to exterior railings.



make the same pretrial damages reduction argument they persuasively made in section IA.

TCR contends the entirety of Plaintiffs' settlement with CBC should be set off from the verdict against it because the settlement is in reality a satisfaction of a judgment, as opposed to an allocated settlement. We agree. Responding to this contention, Plaintiffs maintain that by settling prior to the entry of judgment, CBC was never subject to a judgment and therefore TCR's argument fails. Plaintiffs misconstrue the crux of TCR's argument. While CBC was not technically subject to a judgment, that is not what is required for TCR to be entitled to setoff. Setoff is premised on a settlement corresponding to the same injury. *See Widener*, 397 S.C. at 471-72, 724 S.E.2d at 190 ("[B]efore entering judgment on a jury verdict, the court must reduce the amount of the verdict to account for any funds previously paid by a settling defendant, so long as the settlement funds were paid to compensate the same plaintiff on a claim for the same injury."). In this case, TCR and CBC were found jointly and severally liable for *all* the injuries put before the jury including damages related to framing for HVAC access and fire separation penetrations not related to sprinkler installation. The injuries addressed by the jury's verdict cannot now be parsed out and separated simply because Plaintiffs settled their claim against CBC prior to the entry of judgment. *See Armstrong v. Collins*, 366 S.C. 204, 227, 621 S.E.2d 368, 379 (Ct. App. 2005) (declining to "speculate as to how the jury allocated damages resulting from a general verdict"). Therefore, Plaintiffs would receive a double recovery if both TCR were to pay for these injuries and CBC's settlement compensated them for the same injuries. Accordingly, we conclude the trial court erred in denying a setoff to TCR for the remaining \$500,000 of the CBC settlement allocated to framing for HVAC access and fire separation penetrations not related to sprinkler installation.

### **C. Punitive Damages**

Finally, TCR argues it should receive a \$500,000 setoff for the punitive damages portion of the CBC settlement because, pursuant to *Widener*, punitive damages are part of the same injury as actual damages in the context of setoff. Plaintiffs contend the punitive damages award against CBC and TCR constitute two separate injuries so that the trial court properly denied TCR's setoff request. We agree with Plaintiffs.

In *Widener*, the plaintiff sued several defendants under several theories, all seeking \$35,410.38 in damages for wrongfully denying her access to funds from her late husband's retirement account. 397 S.C. at 471, 724 S.E.2d at 190. The plaintiff settled with one defendant for \$35,410.38 and proceeded to trial against two other defendants. *Id.* The jury returned a verdict of \$35,410.38, and the two nonsettling defendants asked for a setoff. *Id.* The plaintiff claimed her settlement had been solely for punitive damages. *Id.* at 472, 724 S.E.2d at 190-91. In reversing the denial of the setoff request, this court, in a 2-1 opinion stated: "[W]e hold that when a plaintiff seeks actual and punitive damages arising out of the same injury, the two types of damages are part of the same claim for purposes of determining whether a nonsettling defendant is entitled to a setoff to account for funds paid to the plaintiff by a settling defendant." *Id.* at 470, 724 S.E.2d at 189. The court further found the plaintiff's position the settlement was solely for punitive damages was not credible. *Id.* at 474, 724 S.E.2d at 191-92.

In this case, if the jury's verdict evidenced a single punitive damages award against TCR and CBC jointly and severally, *Widener* might dictate TCR is entitled to a setoff and the funds would not be insulated by the fact that the punitive damages award against CBC was not carried to final judgment. However, the form of the jury's verdict indicates it found TCR and CBC each individually liable for a punitive damages award. Although section 15-32-520(G) of the South Carolina Code (Supp. 2022) addresses a bifurcated damages trial, it is still relevant: "In an action with multiple defendants, a punitive damages award must be specific to each defendant, and each defendant is liable only for the amount of the award made against that defendant." Furthermore, in *McGee v. Bruce Hosp. Sys.*, 344 S.C. 466, 545 S.E.2d 286 (2001), the court addressed the situation in which two joint tortfeasors face punitive damages.

While "it is almost universally held that there can be only one satisfaction for an injury or wrong," allowing petitioner to seek punitive damages against respondent will not result in petitioner having a double recovery. Although [one co-defendant] has paid the punitive damages levied against him, those punitive damages do not reflect the amount of punitive damages for which a jury may find that respondent is responsible.

*Id.* at 471-72, 545 S.E.2d at 288-89 (footnote omitted).



The facts of this case call for application of the principles set forth in section 15-32-520(G) and *McGee* because both TCR and CBC proceeded to a verdict on the punitive damages issue *and* the verdict indicated separate exemplary damages for each tortfeasor's conduct. Accordingly, we agree with the trial court's refusal to set off the punitive damages award.

## II. Setoff For Pretrial Settlements

Next, we turn our attention to setoff involving pretrial settlements. TCR maintains the trial court erred in failing to set off the jury verdict with the full amount of the settlements for damages not specifically removed from the trial of the case as issue release items. It asserts whatever damages were not explicitly removed from trial by the issue releases were presented to the jury through testimony and exhibits. It contends because a general contractor is responsible for the entire construction project and CBC was a defendant throughout the entire trial, any area not covered by an issue release was necessarily included.<sup>16</sup> We disagree. The trial court awarded the following setoffs:

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<sup>16</sup> Plaintiffs contend any argument TCR asserts suggesting it is entitled to setoff as a matter of equity or pursuant to the common law is unpreserved. We disagree. At the posttrial hearing, near the beginning of TCR's setoff argument, TCR stated, "back to setoff. As Your Honor is aware, for over 180 years from the common law and at least since the [19]80's according to statutory law, setoff is a required by the law." Even though the trial court did not explicitly refer to common law setoff in its order, the point was sufficiently addressed so as to preserve it for appellate review. *See Johnson v. Roberts*, 422 S.C. 406, 412, 812 S.E.2d 207, 210 (Ct. App. 2018) ("It cannot be said that Appellant's arguments are clearly preserved. But in light of the foregoing, it also cannot be said that Johnson's arguments are clearly unpreserved. In these situations, 'where the question of issue preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation.'" (quoting *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 333, 730 S.E.2d 282, 287 (2012) (Toal, C.J., concurring in result in part and dissenting in part))).

| <b>Party</b>                | <b>Settlement</b> | <b>Plaintiffs Concede for Setoff</b> |
|-----------------------------|-------------------|--------------------------------------|
| Atlantic Building (framing) | \$700,000         | \$75,000                             |
| Novus (architect)           | \$650,000         | \$65,000                             |
| Cohen's (drywall)           | \$125,000         | \$62,500                             |
| H and A (framing)           | \$500,000         | \$50,000                             |

Plaintiffs assert TCR cannot prove the verdict overlaps with the same damages or claims compensated by these settlements. They argue TCR is not entitled to any further setoff for pretrial settlements than was already awarded and that TCR has already benefited from three damage reductions, to wit: (1) Plaintiffs reduced their damages at trial and only asked the jury for compensation related to defects and damages resulting from work performed by the defendants who remained in the case at the time of trial (to the exclusion of settled issues), and further reduced their damages by an additional \$1 million during closing arguments to account for untried issues; (2) the defendants asserted the empty chair defense to the jury, which awarded Plaintiffs a further reduced amount; and (3) TCR received a \$1.67 million setoff from the trial court to account for any overlap between pretrial and posttrial settlements and the jury's verdict. Plaintiffs also assert they have not received a double recovery because their expert attributed \$8.375 million in damages to TCR and the trial court entered the judgment against TCR for \$4.83 million.

As an initial point, the trial court's order alludes to caselaw involving the *settling parties'* allocation of settlement funds, and suggests that the allocation by those parties is entitled to a certain amount of deference. The trial court's order, quoting *Riley* concluded it could not "disturb the settling parties' agreed-upon allocation solely because the apportionment may have been advantageous to the [plaintiff]." 414 S.C. at 196, 777 S.E.2d at 831. However, in this case, no allocations appeared in the pretrial settlement agreements. Rather, these amounts were concessions Plaintiffs made in response to TCR's setoff motion. In spite of this potential conflation, we do not believe the trial court abused its discretion in awarding the setoffs for the pretrial settlements as it did.

Defendants mentioned the work of the architect, Novus, a number of times at trial, ostensibly as part of the empty-chair defense.<sup>17</sup> There were references to the way the roof was designed as being one cause of leaking.<sup>18</sup> Also, testimony was given that the subcontractors made requests for information to the architect that were never answered. Additionally, there was testimony about the complicated intersections of the posts and roofs and decks.<sup>19</sup> The testimony presented supports a finding that some measure of negligence by Novus in its planning impacted TCR's performance resulting in leaking in the condominiums. However, in the absence of further testimony or evidence as to the extent of Novus's responsibility for injuries encompassed in the jury's verdict, we find the trial court did not abuse its discretion in granting a 10% setoff.

Regarding the Atlantic and H and A settlements, framing was mentioned briefly at trial although the parties disagree as to how much that issue was actually before the jury.<sup>20</sup> Plaintiffs argue the framing settlements covered two principle issues—

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<sup>17</sup> In particular, Plaintiffs maintain TCR pointed the finger at the architect repeatedly during closing arguments and referenced the original damages estimate to assert certain parts of the damages should be ignored.

<sup>18</sup> The record contains testimony that the amount of slope of the roofs was an architectural design and was unusual. This is a separate issue from the slope of the decks, which is discussed in regards to the framers next.

<sup>19</sup> Elkin testified "my initial takeaway was that some of these were some pretty challenging intersections. . . . [A]ny time you have two different materials interface it gets to be -- it is a hard -- it can be a hard transition to make to keep it watertight. In this instance when you have three different materials coming together in different planes it becomes that much harder to make sure it is constructed in a watertight manner."

<sup>20</sup> Poyner, of TCR, testified as follows:

Q. Do you recall what it looked like out there at this time period with some of the siding coming off?

A. Well, the -- when this came out, obviously some of the buildings were -- the exteriors were fairly far along, even having been painted, and the siding had to be -- they asked me to remove a section of the siding.

Q. Now, was the siding being removed for your installation issues?

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A. It was not.

Q. Was it a framing issue?

A. Yes, sir, it was.

Q. Okay, and you weren't involved in the framing issue, right?

A. No, sir.

Q. And so you don't -- you're not going to offer any testimony as to what they were looking at with the framing?

A. No, sir.

He also testified:

A piece of plywood does not do weather -- does not do well when it's weathered. So, very early on when they would frame up those decks, we would come in and actually put the base coat on and get the product up the post.

Now, in, in going back and looking, I know that there were some posts that were structural and some that were just ornamental. You couldn't tell the difference, but the difference was the structural posts were put in at the beginning when the building was framed. The ornamental posts weren't always put in at the same time that they built the deck. Were, you know, framing up the house and even when the waterproofing on -- some, some instances they came back and put those posts after we had already waterproofed the deck.

Q. And you were not a framer who installed those posts?

A. No, sir.

Q. The lumber that is out there on the decks, is that pressure treated?

A. I do not believe it was. I think the first one they did - - once again on the River Birch -- I think they had tried to

shear walls and window installation—and that these issues were not presented to the jury at all. According to Plaintiffs, the record shows the only possible framing scope litigated that might relate to TCR's "siding work" was the installation of the windows' caulk joint. Plaintiffs conceded and the trial court accepted a 10% setoff of the verdict for the Atlantic and H and A settlements, respectively, to allow for any potential overlap; accordingly, the jury verdict was set off by \$75,000 for Atlantic and \$50,000 for H and A. While TCR asserts some testimony was presented that framing contributed to the faulty waterproofing of the decks, we cannot conclude the trial court abused its discretion in declining to award TCR a setoff for the full amounts of the Atlantic and H and A settlements.<sup>21</sup>

---

install treated lumber, but the manufacturer's instructions say, I believe, not to use treated lumber.

Q. You're talking about the sheathing on the ---

A. That's correct.

Q. --- the posts? Are those treated?

A. They are.

Q. Okay, and the, the, the actual framing parts of the, the joists, those are treated?

A. As far as I know.

<sup>21</sup> Poyner testified on cross-examination by one of the codefendants:

Q. So, this is simply if any work that's found not to in conformance with the plans and specifications is discovered, it is to be redone and done correctly, correct?

A. That's correct.

Q. All right, and, in fact, you witnessed such a situation with regard to the slope of the decks on this project, did you not?

A. That is correct.

Q. Is it true that a gentleman named Gary Stanley was the superintendent for [CBC]?

A. Yes, he was.

Q. And he was the one that was on-site most of the time for [CBC]?

A. That and later they had brought Joe Brown as well.

Finally, regarding the Cohen's settlement, Plaintiffs assert it involved drywall and insulation issues. Plaintiffs contend drywall issues were litigated at trial but insulation issues were not and thus they proposed the \$125,000 settlement be divided equally between the drywall and insulation so that each was attributed \$62,500. The court reduced the final judgment by \$62,500 due to the potential of drywall overlap. The testimony included in the record only contains a few references to insulation.<sup>22</sup> Accordingly, we conclude the trial court did not abuse its discretion in awarding a setoff in this amount for this settlement.

## CONCLUSION

In sum, we conclude the trial court did not abuse its discretion in refusing to set off the entirety of the pretrial settlements between Plaintiffs and Novus, Atlantic, H and A, and Cohen's. Further, we find the trial court did not err in denying TCR's request for setoff as to the \$1 million of the CBC settlement allocated to matters not raised at trial or for the \$500,000 allocated for punitive damages. We reverse the portion of the trial court's order denying TCR a setoff for the \$500,000 of the

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Q. Okay, and Mr. Stanley, at least as part of his duties, would also spot check and come behind each of the subcontractors to look at their work, did he not?

A. Yes, sir.

Q. Okay, and isn't it true that Mr. Stanley, before the waterproofing was put down, he would check the slope of the decks? Isn't that, correct?

A. I believe so, yes, sir.

Q. And, in fact, you saw him use a level to look at the decks to make sure they had proper slope?

A. I did.

Q. And, in fact, there was -- if a deck was discovered not to have a proper slope, Mr. Stanley would make the framer redo it before you put your waterproofing on the deck, correct?

A. That's correct.

<sup>22</sup> Elkin's testimony refers to insulation but it does not appear to be referencing any problem with insulation. Schweickhardt mentioned damaged insulation in his testimony but he appears to have attributed the damage to the leaking from flashing, not due to any issue with the insulation.

\$637,500 portion of the CBC settlement not already setoff for exterior railings.  
Accordingly, the trial court's order is

**AFFIRMED IN PART AND REVERSED IN PART.**

**HEWITT and VINSON, JJ., concur.**

|                                            |   |                                        |
|--------------------------------------------|---|----------------------------------------|
| STATE OF SOUTH CAROLINA                    | ) | IN THE COURT OF COMMON PLEAS           |
|                                            | ) |                                        |
| COUNTY OF CHARLESTON                       | ) | NINTH JUDICIAL CIRCUIT                 |
|                                            | ) |                                        |
| Palmetto Pointe at Peas Island             | ) | Civil Action No.: 2015-CP-10-00955     |
| Condominium Property Owners                | ) |                                        |
| Association, Inc. and Elizabeth A. Bushey, | ) |                                        |
| individually, and on behalf of all others  | ) |                                        |
| similarly situated,                        | ) |                                        |
|                                            | ) | <b>DEFENDANT</b>                       |
| Plaintiffs,                                | ) | <b>TRI-COUNTY ROOFING, INC'S</b>       |
| v.                                         | ) | <b>RESPONSE IN OPPOSITION TO</b>       |
|                                            | ) | <b>PLAINTIFFS' MOTION FOR ENTRY OF</b> |
| Tri-County Roofing, Inc., et al.           | ) | <b>JUDGMENT AND</b>                    |
|                                            | ) | <b>CROSS MOTION TO STAY</b>            |
| Defendants.                                | ) |                                        |
|                                            | ) |                                        |
|                                            | ) |                                        |

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Defendant Tri-County Roofing, Inc. (TCR) submits the following Response in Opposition to Plaintiffs' Motion for Entry of Judgment and Disbursement of Bond.

In the trial of this matter, the jury found Defendant TCR jointly and severally liable for \$6,500,000.00 in actual damages, and individually liable for \$500,000.00 in punitive damages.

After post-trial motions and a hearing on the same, this Court awarded TCR a set-off in the amount of \$1,670,000.00, resulting in an initial trial court judgment against TCR in the amount of \$5,330,000.00.

On appeal, TCR was granted an additional set-off of \$500,000.00 by the Court of Appeals and a further set-off of \$1,000,000.00 by the Supreme Court, resulting in a judgment in the amount of \$3,830,000.00.

However, while these appeals were pending, Plaintiffs received a total of \$2,250,000.00 in partial settlements, consisting of \$1,500,000.00 on July 14, 2021 and \$750,000.00 on May 15, 2023, further reducing the judgment amount to \$1,580,000.00.



Plaintiffs request that this Court enter judgment in the amount of \$1,080,000.00 in actual damages and \$500,000.00 in punitive damages, along with post-judgment interest in the amount of \$1,906,317.70 as calculated in Exhibit A. Defendant TCR does not oppose Plaintiffs' calculations as set forth in their calculations via the accompanying Exhibit A. They appear correct. However, TCR does not affirmatively join in or stipulate to the entry of judgment.

TCR further opposes Plaintiffs' request that the \$1,000,000.00 supersedeas bond "be immediately released and disbursed to Plaintiffs' counsel of record." TCR seeks a stay of the same.

A supersedeas/appellate bond is unlike a sum of money being deposited in the Court under Rule 67, SCRCF. TCR posted a surety bond in the amount of \$1,000,000.00 that would pay out if TCR and/or its insurers failed to pay the judgment amount. (See 01/28/2020 Order; 02/04/2020 Supersedeas Bond/Appellate Bond.) A coverage action relating to this case is currently pending; consequently, it cannot be determined if the carrier should issue payment. See Palmetto Pointe at Peas Island Condominium Property Owners v. Lloyds London, et al., 2021-CP-10-04380. The conditions precedent for the payment of the bond have not been met because the coverage matter has not been disposed of. Consequently, TCR respectfully seeks a stay and that this Court not order the release and disbursement of the supersedeas bond until such time as the coverage action has been resolved.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT  
TRI-COUNTY ROOFING, INC.

**DEFENDANT TRI-COUNTY  
ROOFING, INC'S RESPONSE IN  
OPPOSITION TO PLAINTIFFS'  
MOTION FOR ENTRY OF JUDGMENT  
AND CROSS MOTION TO STAY**

July 28, 2025  
Columbia, South Carolina

|                                            |   |                                    |
|--------------------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA                    | ) | IN THE COURT OF COMMON PLEAS       |
|                                            | ) |                                    |
| COUNTY OF CHARLESTON                       | ) | NINTH JUDICIAL CIRCUIT             |
|                                            | ) |                                    |
| Palmetto Pointe at Peas Island             | ) | Civil Action No.: 2015-CP-10-00955 |
| Condominium Property Owners                | ) |                                    |
| Association, Inc. and Elizabeth A. Bushey, | ) |                                    |
| individually, and on behalf of all others  | ) |                                    |
| similarly situated,                        | ) |                                    |
|                                            | ) | <b>DEFENDANT</b>                   |
| Plaintiffs,                                | ) | <b>TRI-COUNTY ROOFING, INC'S</b>   |
| v.                                         | ) | <b>NOTICE OF MOTION AND</b>        |
|                                            | ) | <b>MOTION TO STAY</b>              |
| Tri-County Roofing, Inc., et al.           | ) |                                    |
|                                            | ) |                                    |
| Defendants.                                | ) |                                    |
|                                            | ) |                                    |
|                                            | ) |                                    |

Defendant Tri-County Roofing, Inc. ("TCR"), by and through undersigned counsel, respectfully moves this Court for an Order staying any disbursement of the \$1,000,000.00 supersedeas bond currently held in connection with this matter.

This Motion is based upon the applicable law, the pleadings, and the following:

### **1. Background**

TCR posted a \$1,000,000.00 supersedeas bond following the jury verdict in the above-captioned case and while appeals were pending. Subsequent appellate rulings by the Court of Appeals and the Supreme Court resulted in the reduction of the judgment to \$3,830,000.00. After crediting Plaintiffs' post-verdict settlements totaling \$2,250,000.00, the judgment is presently \$1,580,000.00.

### **2. In a Related Appeal, the Supreme Court Held that the Insurer's Obligation to Indemnify Must be Determined After Final Judgment is Entered**

Prior to the trial in this matter, several Insurers motioned to intervene, seeking to participate in the preparation of a verdict form and special interrogatories that would result in the jury determine which portions of the damages were covered by the applicable GCL policies and

negating the need for a subsequent declaratory judgment action. See Builders Mut. Ins. Co. v. Island Pointe, LLC, 431 S.C. 93, 98, 847 S.E.2d 87, 89-90 (2020). This Court denied the Motions to Intervene. In upholding this court's decision, our Supreme Court held that intervention by the Insurers in this action would shift the burden of proving coverage from the Insured and Insurers, where it properly belongs, to the Plaintiffs. See id. at 102, 847 S.E.2d at 92 (2020). The Court then held that the proper way for an insurer to contest coverage is through a subsequent declaratory judgment action, whereby the parties would be bound by the existence and extent of any jury verdict, but would be able to contest the portion of damages that are covered by any applicable CGL policy. See id. at 110-11, 847 S.E.2d at 96 (2020).

### **3. A Related Coverage Action is Pending**

TCR is a named party in a pending declaratory judgment and coverage action styled Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. v. Certain Underwriters at Lloyd's London, et al., Case No. 2021-CP-10-04380. That action directly implicates whether TCR's insurers must fund any portion of the judgment. Specifically, Plaintiff seeks a judicial declaration that Certain Underwriters at Lloyd's owes indemnity, plus interest and bond renewal costs. (See Exhibit A.) An Amended Consent Scheduling Order in this companion action, entered July 16, 2025, confirms the case is subject to trial on or after November 13, 2025. (See Exhibit B.)

### **4. Disbursement of the Supersedeas Bond is Premature**

The supersedeas bond is not a Rule 67, SCRPC deposit; it is a conditional surety instrument that only becomes payable if the judgment debtor fails to satisfy the judgment following all appeals and fulfillment of coverage determinations. Until the related insurance action is adjudicated, and the obligation to pay issue has been completely resolved, the conditions for bond disbursement

have not been met. Plaintiff clearly knows and understands this condition, as evinced by its filing of the companion declaratory judgment and coverage action pending in Charleston County.

#### **5. Granting a Stay Will Prevent Prejudice and Protect the Integrity of the Process**

The court has broad discretion in its supervision over the progression and disposition of a Circuit Court case in the interests of justice and judicial economy. See Williams v. Bordon's, Inc., 274 S.C. 275, 279, 262 S.E.2d 881, 883 (1980) (“The authority of the court to grant continuances and to determine the order in which cases shall be heard is derived from its power to hear and decide cases. This adjudicative power of the court carries with it the inherent power to control the order of its business to safeguard the rights of litigants.”) quoted in Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 103, 674 S.E.2d 574, 530 (Ct. App. 2009). In the case at bar, premature disbursement of the bond would create unnecessary risk of duplicative litigation, including the need for an additional appeal, or other reimbursement disputes. A stay will preserve the status quo and allow the related litigation to reach final resolution before any funds are distributed.

WHEREFORE, Defendant Tri-County Roofing, Inc. respectfully requests that this Court stay any release or disbursement of the supersedeas bond until final resolution of Palmetto Pointe v. Lloyd's London, Case No. 2021-CP-10-04380, and for such other relief as the Court deems just and proper.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

COLLINS & LACY, P.C.

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ATTORNEYS FOR DEFENDANT  
TRI-COUNTY ROOFING, INC.

**DEFENDANT TRI-COUNTY  
ROOFING, INC'S NOTICE OF  
MOTION AND MOTION TO STAY**

July 29, 2025  
Columbia, South Carolina

## EXHIBIT A

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON ) NINTH JUDICIAL CIRCUIT  
  
PALMETTO POINTE AT PEAS ) CASE NO. 2021-CP-10-\_\_\_\_\_  
ISLAND CONDOMINIUM PROPERTY )  
OWNERS ASSOCIATION, INC., )  
PLAINTIFF, )  
vs. )  
CERTAIN UNDERWRITERS AT )  
LLOYD'S, LONDON, INSURERS )  
THROUGH POLICY NO. ART002591; )  
CERTAIN UNDERWRITERS AT )  
LLOYDS, LONDON, INSURERS )  
THJROUGH POLICY NO. ART004630; )  
and TRI-COUNTY ROOFING, INC., )  
DEFENDANTS. )

**SUMMONS**

TO: THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Plaintiff's Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint upon the subscriber at his office at 25 Calhoun Street, Suite 400, Charleston, South Carolina 29401 within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer within the prescribed time, a judgment by default will be rendered against you for the amount or other remedy requested in the attached Complaint.



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Charleston, South Carolina

September 23, 2021

|                                |   |                              |
|--------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA        | ) | IN THE COURT OF COMMON PLEAS |
|                                | ) |                              |
| COUNTY OF CHARLESTON           | ) | NINTH JUDICIAL CIRCUIT       |
|                                | ) |                              |
| PALMETTO POINTE AT PEAS        | ) | CASE NO. 2021-CP-10-_____    |
| ISLAND CONDOMINIUM PROPERTY    | ) |                              |
| OWNERS ASSOCIATION, INC.,      | ) |                              |
|                                | ) |                              |
| PLAINTIFF,                     | ) |                              |
|                                | ) |                              |
| vs.                            | ) |                              |
|                                | ) |                              |
| CERTAIN UNDERWRITERS AT        | ) |                              |
| LLOYD'S, LONDON, INSURERS      | ) |                              |
| THROUGH POLICY NO. ART002591;  | ) |                              |
| CERTAIN UNDERWRITERS AT        | ) |                              |
| LLOYDS, LONDON, INSURERS       | ) |                              |
| THJROUGH POLICY NO. ART004630; | ) |                              |
| and TRI-COUNTY ROOFING, INC.,  | ) |                              |
|                                | ) |                              |
| DEFENDANTS.                    | ) |                              |
|                                | ) |                              |

**COMPLAINT  
(DECLARATORY JUDGMENT)  
Jury Trial Demanded**

The Plaintiff, complaining of the Defendants, alleges the following:

1. The Plaintiff is a South Carolina nonprofit corporation organized and existing under the laws of the State of South Carolina.
2. The Defendants identified above as Certain Underwriters at Lloyd's, London are, upon information and belief, groups of underwriters who issued the Commercial General Liability ("CGL") policies numbered ART002591 to Tri-County Roofing, providing CGL coverage for the periods July 24, 2007 to July 24, 2008 under policy number ART002591 and policy period July 24, 2008 to July 24, 2009 for policy ART004630.

3. The Plaintiff is informed and believes that the two (2) policies were issued by separate and distinct groups of underwriters such that underwriters for each policy are not one and the same and are properly identified as separate Defendants, hereafter, collectively identified as Underwriters.

4. Tri-County Roofing (“TCR”) is the insured under each of these policies and is a necessary and indispensable party, as its rights under the subject policies will be adjudicated through this declaratory judgment action.

5. The Plaintiff is a judgment creditor of TCR, having obtained a judgment in the amount of \$5,330,000.00 which was entered on July 23, 2019. That judgment has accrued post-judgment interest at the legal rate, compounded annually and continues to accrue interest until the judgment is satisfied.

6. The above referenced judgment was entered in a Civil Action captioned Palmetto Pointe at Peas Island Condominium Owners Association, Inc., et al. v. Island Pointe, LLC, et al., Case No. 2015-CP-10-0085 (“Underlying action”).

7. The Plaintiff’s judgment for actual damages in the amount of \$4,830,000.00 includes damages covered by one or both of the above-described policies of insurance.

8. There exists an actual controversy between Plaintiff and Defendants as to the duty that the Lloyd’s Underwriters have to indemnify TCR for damages included within the Plaintiff’s judgment in the underlying action, and the Plaintiff seeks a declaration of the damages, accrued interest and other sums covered by the above described policies.

9. The Plaintiff seeks a declaration that one or both of the Lloyd’s Underwriter defendants misrepresented to TCR the coverage available to TCR by falsely stating that “The policy provides that the insurance only applies to property damage that occurs during the policy

period,” because the policies expressly provide coverage for property damage which continues, changes or resumes after the end of the policy period.

10. The Lloyd’s Underwriters omitted from their coverage analysis a key provision of Paragraph 1. Insuring Agreement of Section 1 – Coverage A – Bodily Property Damage Liability, Amendment of Insuring Agreement – Known Injury or damage, directing TCR’s attention to portions of Paragraph 1.a. and b., but omitting Paragraph 1.c which reads as follows:

1.c. ”Bodily Injury” or “property damage” which occurs during the policy period and was not, prior to the policy period, known to have occurred by an insured listed under Paragraph 1. of Section II – Who is an Insured or “Employee” authorized by you to give or receive notice of an “occurrence” or claim, includes any continuation, changes or resumption of that “bodily injury” or “property damage” after the end of the policy period. (Emphasis added.)

11. The Plaintiff seeks a declaration that the plain language of Paragraph 1.c. provides coverage to TCR for unknown property damage which occurred during the policy periods July 24, 2007 to July 24, 2009 and for property damages which continued, changed or resumed after the end of the policy periods for Underwriter’s policies, up to each policy’s \$1,000,000 coverage limit.

12. The Plaintiff seeks a declaration that by virtue of its misrepresentations and material omissions, regarding its policies’ coverages, Underwriters’ Reservation of Rights should be deemed null and void.

13. The Plaintiff seeks a declaration that Underwriters’ policies are primary.

14. The Plaintiff seeks a declaration that Underwriters owes the duty to indemnify TCR for \$2,000,000 of the Plaintiff’s judgment and for the cost of TCR’s Appellate Bond

renewals and post judgment interest on the entire judgment pursuant to the Supplementary Payments – Coverages A and B, such sums being supplemental to the coverage limits under the Underwriters’ policies.

WHEREFORE, the Plaintiff prays for a declaratory judgment as follows:

- a) That Underwriters’ policies provide coverage for the damages comprising the Plaintiff’s Judgment in the underlying action in the full amount of their completed operations policy limits of \$1,000,000 per policy period for a total of \$2,000,000;
- b) That Underwriters’ policies require that TCR be indemnified for the cost of TCR’s Appellate Bond and for post judgement interest on the entire judgment pursuant to Paragraphs 1.c and g. SUPPLEMENTARY PAYMENTS;
- c) That Underwriters’ conduct in misleading TCR regarding the coverages afforded by their policy renders the Reservation of Rights null and void;
- d) That the Plaintiff be awarded the costs and expenses of this action; and
- e) For such other and further relief as this Court deems just and proper.

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**[ADDITIONAL SIGNATURE ON FOLLOWING PAGE]**

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Attorneys for the Plaintiff

Charleston, South Carolina

Dated: September 23, 2021

## **EXHIBIT B**

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) NINTH JUDICIAL CIRCUIT  
COUNTY OF CHARLESTON ) CASE NO. 2021-CP-10-04380

PALMETTO POINTE AT PEAS ISLAND )  
CONDOMINIUM PROPERTY OWNERS )  
ASSOCIATION, INC., )

PLAINTIFF,

V.

CERTAIN UNDERWRITERS AT )  
LLOYD'S, LONDON, INSURERS )  
THROUGH POLICY NO. ART002591; )  
CERTAIN UNDERWRITERS AT )  
LLOYDS, LONDON, INSURERS )  
THROUGH POLICY NO. ART004630; )  
and TRI-COUNTY ROOFING, INC., )

DEFENDANTS.

## AMENDED CONSENT SCHEDULING ORDER

The parties hereby request entry of the following Amended Consent Scheduling Order in order to continue to manage discovery and the trial date in this case. Consent of all parties having been given, the Court finds that the Consent Scheduling Order as proposed is reasonable and in the interests of all parties.

**ACCORDINGLY, IT IS ORDERED** that the case be scheduled for trial not before **November 13, 2025**.

**IT IS SO ORDERED.**

Chief Administrative Judge  
Ninth Judicial Circuit

Date: \_\_\_\_\_  
Charleston, South Carolina



**WE SO CONSENT:**

/s/Justin Lucey

Justin O. Lucey, Esq.  
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/s/Richard Zelonka

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London, Insurers Through Policy No.  
ART002591; Certain Underwriters at Lloyd's,  
London, Insurers Through Policy No.  
ART004630*



Charleston Common Pleas

**Case Caption:** Palmetto Pointe At Peas Island Condominium Property Owners VS  
Lloyds London , defendant, et al  
**Case Number:** 2021CP1004380  
**Type:** Order/Scheduling Order

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2025-07-16 15:04:45 page 3 of 3

## Hines, Russell

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**From:** Lee Weiland <lweiland@lucy-law.com>  
**Sent:** Wednesday, July 30, 2025 6:22 PM  
**To:** Stephanie Drawdy; Evan M. Gessner; Sohayla Townes; Buckley, Edward D. (Ed); Justin Lucey; DeMato, Amanda; Anna McCann; Christian Stegmaier  
**Subject:** Case No. 2015-CP-10-00955 Palmetto Pointe at Peas Island POA, Inc. et al. v. Tri-County Roofing, Inc., et al.  
**Attachments:** 20250730 Proposed Final Order and Judgment on Remand.pdf; Exhibit A - 20250723 Palmetto Pointe Interest and Judgment Spreadsheet .pdf; Exhibit B - Affidavit of J. Zambriczki.pdf

Good evening:

Please find attached the Proposed Final Order and Judgment on Remand, along with the two Exhibits, that were filed earlier today regarding the above-referenced matter.

Sincerely,  
Lee

*Lee Weiland  
Senior Paralegal  
Justin O'Toole Lucey, P.A.  
Direct: (912) 228-8427  
[www.lucey-law.com](http://www.lucey-law.com)*

---

**From:** Christian Stegmaier <cstegmaier@collinsandlacy.com>  
**Sent:** Wednesday, July 30, 2025 2:42 PM  
**To:** McCoy, Jennifer B. Law Clerk (Katelyn Simmons) <jmccoyle@sccourts.org>; McCoy, Jennifer B. Secretary (Brooke Slade) <jmccoysc@sccourts.org>  
**Cc:** Stephanie Drawdy <sdrawdy@lucy-law.com>; Evan M. Gessner <egessner@collinsandlacy.com>; Sohayla Townes <stownes@lucy-law.com>; Buckley, Edward D. (Ed) <ebuckley@ycrlaw.com>; Justin Lucey <jlucy@lucy-law.com>; ademato@ycrlaw.com; Lee Weiland <lweiland@lucy-law.com>; Anna McCann <amccann@lucy-law.com>  
**Subject:** Case No. 2015-CP-10-00955 Palmetto Pointe at Peas Island POA, Inc. et al. v. Tri-County Roofing, Inc., et al.

Dear Judge McCoy:

Good afternoon.

We write on behalf of Defendant Tri-County Roofing, Inc. ("TCR").

Attached are two filings made in the above-referenced matter: (1) TCR's Response in Opposition to Plaintiffs' Motion for Entry of Judgment and Cross Motion to Stay, and (2) TCR's Motion to Stay filed separately.

As an initial matter where there does not appear to be opposition: Plaintiff's judgment calculations appear to be in line. We appreciate counsel forwarding the various spreadsheets, etc. in conjunction with the final numbers.

Second: Both of our recent filings request that this Court defer any order of disbursement relating to the \$1,000,000.00 supersedeas bond previously posted by TCR. As explained in the motions, we maintain this bond is not an ordinary Rule 67, SCRPC deposit, but rather a conditional surety instrument triggered only after final judgment and resolution of indemnity obligations.

A declaratory judgment and coverage action directly addressing those obligations is currently pending in Charleston County (*Palmetto Pointe at Peas Island Condo. Assoc. v. Certain Underwriters at Lloyd's, et al.*, Case No. 2021-CP-10-04380). That matter is scheduled for trial after November 13, 2025.

We respectfully submit that premature disbursement of the bond would risk conflicting outcomes, potentially invite further appeals, and undermine judicial efficiency. A brief stay would preserve the status quo while allowing the related insurance litigation to run its course.

Thank you for time and attention; we will see everyone in Charleston tomorrow at 1130.

Respectfully,

Christian Stegmaier  
Cell 803-467-9699

---

**From:** Anna McCann <[amccann@lucey-law.com](mailto:amccann@lucey-law.com)>

**Sent:** Wednesday, July 23, 2025 3:49 PM

**To:** McCoy, Jennifer B. Law Clerk (Katelyn Simmons) <[jmccoyle@sccourts.org](mailto:jmccoyle@sccourts.org)>; McCoy, Jennifer B. Secretary (Brooke Slade) <[jmccoysc@sccourts.org](mailto:jmccoysc@sccourts.org)>

**Cc:** Christian Stegmaier <[cstegmaier@collinsandlacy.com](mailto:cstegmaier@collinsandlacy.com)>; Kelsey J. Brudvig <[kbrudvig@collinsandlacy.com](mailto:kbrudvig@collinsandlacy.com)>; Christopher Adams <[cadams@collinsandlacy.com](mailto:cadams@collinsandlacy.com)>; Stephanie Drawdy <[sdrawdy@lucey-law.com](mailto:sdrawdy@lucey-law.com)>; Henry D. McMaster, Jr. <[hcmcmaster@collinsandlacy.com](mailto:hcmcmaster@collinsandlacy.com)>; Evan M. Gessner <[egessner@collinsandlacy.com](mailto:egessner@collinsandlacy.com)>; Michael C. Bunda <[mbunda@collinsandlacy.com](mailto:mbunda@collinsandlacy.com)>; Sohayla Townes <[stownes@lucey-law.com](mailto:stownes@lucey-law.com)>; Buckley, Edward D. (Ed) <[ebuckley@ycrlaw.com](mailto:ebuckley@ycrlaw.com)>; Justin Lucey <[jlucey@lucey-law.com](mailto:jlucey@lucey-law.com)>; [ademato@ycrlaw.com](mailto:ademato@ycrlaw.com); Lee Weiland <[lweiland@lucey-law.com](mailto:lweiland@lucey-law.com)>

**Subject:** RE: Case No. 2015-CP-10-00955 Palmetto Pointe at Peas Island POA, Inc. et al. v. Tri-County Roofing, Inc., et al.

**Caution:** This is an external email. Please take care when clicking links or opening attachments.

Judge McCoy,

In anticipation of our hearing in this matter on July 31, 2025, at 11:30 a.m., Plaintiffs elected to compose and submit a proposed order rather than a memorandum in support of their self-explanatory motion. Therefore, attached please find a proposed order which has been e-filed with the Court. Additionally, attached please find Exhibit A to the proposed order, the calculation of post judgment interest and credits, as well as Exhibit B to the proposed order, which is an affidavit from my office regarding the deposits of settlement funds. Lastly, please find copies of the appellate orders referenced in the proposed order. The holdings regarding setoff in each order have been highlighted for the Court's convenience.

Counsel of record are copied on this email. Plaintiffs' counsel will follow this email with a second one to chambers submitting the proposed order in Word format in accordance with the Court's preferences.

Respectfully submitted,

Justin Lucey

Anna S. McCann, Esq.

**Justin O'Toole Lucey, P.A.**

415 Mill Street

Mount Pleasant, SC 29464

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**Christian Stegmaier**

Certified South Carolina Circuit Court Mediator

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1330 Lady Street, 6th Floor  
Columbia, SC 29201



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In light of the Amended Order of the S.C. Supreme Court effective February 4, 2022 (Order 2020-04-03-01), we will be serving discovery via e-mail only.

Links contained in this email have been replaced. If you click on a link in the email above, the link will be analyzed for known threats. If a known threat is found, you will not be able to proceed to the destination. If suspicious content is detected, you will see a warning.

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON ) NINTH JUDICIAL CIRCUIT  
 ) CASE NO. 2015-CP-10-0955

PALMETTO POINTE AT PEAS ISLAND )  
CONDOMINIUM PROPERTY OWNERS )  
ASSOCIATION, INC. and JACK LOVE, Co- )  
Trustee on behalf of the LOVE-MCKIM )  
LIVING TRUST and Attorney-in-Fact for his )  
wife, Janet I. McKim, and Co-Trustee, )  
individually, and on behalf of all others )  
similarly situated, )

Plaintiffs, )

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; )  
TALLENT AND SONS, INC.; W C SERVICES, )  
INC KELLY FLOORING PRODUCTS, INC., )  
D/B/A CARPET BAGGERS; MIRACLE )  
SIDING, LLC AND WILSON LUCAS SALES )  
D/B/A MIRACLE SIDING, LLC; MARK )  
PALPOINT A/K/A MICAH PALPOINT; )  
ELROY ALONZO VASQUEZ; CHRIS A/K/A )  
JOHN DOE 61 STANLEY'S VINYL FENCE )  
DESIGNS; MOSLEY CONCRETE; JMC )  
CONSTRUCTION, INC.; JMC )  
CONSTRUCTION, LLC; VICTOR HUGO )  
HERNANDEZ; HERNANDEZ ELECTRIC, )  
LLC; LILIANA ROJAS FLORES; MARTIN )  
BARR D/B/A PORT CITY STRUCTURED )  
WIRING; KELLER ELECTRIC, LLC; JOHN )  
TOOLIN D/B/A JOHN F. TOOLIN HEAT AND)

**(PROPOSED)**  
**FINAL ORDER AND JUDGMENT ON**  
**REMAND**

AIR; RUSSELL "RUSTY" HILL D/B/A )  
RUSTY'S HEATING & AIR; WARREN )  
ANDERSON; and JOHN DOE 10-15, )  
 )  
 )  
 )  
 )  
Defendants. )

This matter came before the Court at a hearing on July 31, 2025, on Plaintiffs' Motion for Entry of Judgment and Disbursement of Bond, which was filed on June 5, 2025. Defendant Tri-County Roofing, Inc. ("TCR"), submitted a response in opposition to Plaintiffs' Motion on July 28, 2025, which concedes that Plaintiffs' calculations regarding the total amount of judgment to be entered, including post-judgment interest, "appear to be correct." (TCR Resp. at 2.) Therefore, there is no dispute as to the amount of judgment to be enrolled. TCR does not affirmatively join in or stipulate to the entry of judgment in the amount it concedes to be correct, and TCR opposes Plaintiffs' Motion to collect the \$1,000,000.00 supersedeas bond upon the ground that an insurance coverage case is currently pending.<sup>1</sup>

Having reviewed the parties' submissions and heard arguments of counsel, and for the reasons set forth below, the Court GRANTS Plaintiffs' Motion and ENROLLS judgment against TCR in the amount of **\$3,486,317.70**, inclusive of post-judgment interest owed to Plaintiffs in the amount of \$1,906,317.70 *as of July 31, 2025*. Post-judgment interest will continue to accrue until the judgment is satisfied.

The Court further GRANTS Plaintiffs' motion to disburse the full amount of the February 7, 2025, bond, or \$1,000,000, as partial satisfaction of the judgment hereunder. This matter was remitted to this Court by the South Carolina Supreme Court; therefore, TCR's appeal

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<sup>1</sup> On July 29, 2025, at 5:02 p.m., TCR filed a Motion to Stay Release or disbursement of the supersedeas bond until final resolution of a pending insurance coverage action.



is final. TCR has not satisfied the judgment, and the bond is now due and payable to the Plaintiffs.

### **BACKGROUND**

The facts and procedural history of this nearly ten (10) year-old litigation are set out fully in the opinion of the South Carolina Supreme Court in *Palmetto Pointe at Peas Island v. Tri-County Roofing, Inc.*, 445 S.C. 543, 915 S.E.2d 501 (2025). The undersigned presided over the two-week trial of this matter which began on May 6, 2019. The jury returned a verdict in Plaintiffs' favor against TCR in the amount of \$7,000,000 (including \$500,000 in punitive damages). After considering post-trial briefing and arguments, the Court allowed a set-off in favor of TCR in the amount of \$1,670,000. Judgment against TCR was entered on July 23, 2019, in the amount of \$5,330,000. Defendant TCR appealed, principally arguing that the total set-off should be \$5,392,500, and that the judgment against TCR should be reformed to \$1,607,500.

The Court of Appeals issued its opinion on June 28, 2023. *See Palmetto Pointe at Peas Island Condo. Prop. Owners Ass'n, Inc. v. Island Pointe, LLC*, 440 S.C. 190, 890 S.E.2d 603 (Ct. App. 2023). The Court of Appeals affirmed this Court's set-off rulings in all respects except that it granted TCR an additional \$500,000 in set-off for post-trial settlements reached with TCR's co-Defendant at trial, CBC. *See id.* This effectively resulted in a 2019 judgment in the amount of \$4,830,000.00.

The South Carolina Supreme Court granted *certiorari* on two issues: first, whether TCR was entitled to a full dollar-for-dollar set-off for pre-trial settlements reached with four Defendants, as opposed to the partial set-off (10-50%) granted by this Court and upheld by the Court of Appeals; and, second, whether TCR was entitled to an additional \$1,000,000 set-off credit for a pre-trial covenant-not-to-execute reached with one of CBC's insurers. *See Palmetto*

*Pointe at Peas Island Condo. Prop. Owners Ass'n, Inc. v. Island Pointe, LLC*, 445 S.C. 543, 915 S.E.2d 501 (2025).

As to the first issue, the South Carolina Supreme Court, on *certiorari*, agreed with the Court of Appeals and affirmed this Court's partial set off allocation of Plaintiffs' pre-trial settlements with four defendants. *See id.* at 552 ("For the reasons stated by the court of appeals, we hold the trial court properly exercised its discretion. [...] We affirm the court of appeals; holding on the Novus, Atlantic, H and A, and Cohen's settlements."). As to the second issue, the Supreme Court held that TCR was entitled to an additional set-off of \$1,000,000 to account for the pre-trial covenant-not-to-execute because "the covenant stipulates the \$1,000,000 is a credit in the same amount against any judgment obtained against CBC." *See id.* at 550, 915 S.E.2d at 505 (2025). This effectively resulted in a 2019 judgment in the amount of \$3,830,000.00, after both appellate rulings. However, the Supreme Court left it to this Court to calculate and enter the amended judgment, as follows: "We remand to the trial court for calculation of the amount of judgment to be entered against TCR." *See id.*

### **AMENDED JUDGMENT**

Considering the foregoing holdings which grant an additional set-off of \$1,500,000 to TCR, the Court's July 23, 2019, judgment is modified to \$3,830,000, after all setoffs. Additionally, Plaintiffs are entitled to have the post-judgment interest liquidated and added to this amount. Further, this Court grants Plaintiffs' request that the bond posted by TCR and U.S. Specialty Insurance Company, surety, be released and disbursed because the judgment exceeds the bond amount of \$1,000,000, and TCR has not satisfied in full the judgment which is now final.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### ***I. Post-Judgment Interest***

On July 23, 2019, Plaintiffs obtained a monetary judgment against Defendant TCR in the amount of \$5,330,000, which amount has now been adjusted to \$3,830,000. As it relates to post-judgment interest for monetary judgments, South Carolina law is clear:

A money decree or judgment of a court enrolled or entered *must* draw interest according to law. The legal rate of interest is equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year for which the damages are awarded, plus four percentage points, compounded annually. The South Carolina Supreme Court shall issue an order by January 15 of each year confirming the annual prime rate. This section applies to all judgments entered on or after July 1, 2005. For judgments entered between July 1, 2005, and January 14, 2006, the legal rate of interest shall be the first prime rate as published in the first edition of the Wall Street Journal after January 1, 2005, plus four percentage points.

S.C. Code Ann. § 34-31-20 (B) (emphasis added). The Supreme Court has stated that post-judgment interest under § 34-31-20 (B) is mandatory, such that a plaintiff does not need to request it or otherwise plead its entitlement. *Parker v. Shecut*, 359 S.C. 143, 153, 597 S.E.2d 793, 799 (2004) (“A party need not plead for such interest; it is due as a matter of course.”).

When a judgment is modified on appeal, the interest on the monetary judgment, whether modified up, down, or not at all, runs from the date of the original judgment. *Calhoun v. Calhoun*, 339 S.C. 96, 104, 529 S.E.2d 14, 18–19 (2000) (“[W]hen a money judgment is finalized, whether in a lower court or in an appellate court, *the interest on that amount*, whether it has been modified upward or downward or remains the same, runs from the date of the original judgment.”) (emphasis added).

Therefore, post-judgment interest on the \$3,830,000 judgment runs from July 23, 2019, to the date of remittance, at the statutory rates mandated by § 34-31-20 (B) and the annual orders of the South Carolina Supreme Court. Plaintiffs submitted, and the Court now adopts, a

spreadsheet reflecting that \$1,906,317.70<sup>2</sup> of interest has accrued since July 23, 2019, and a total of \$3,486,317.70 is owed as of July 31, 2025. (*See* Exhibit “A”.) Exhibit A fully accounts for two (2) partial settlements reached in this matter by various insurers of Defendant TCR, during the pendency of the appeal, thereby reducing the judgment which was accruing interest while on appeal each time a payment was received.<sup>3</sup>

TCR agrees that Plaintiffs’ calculations in Exhibit “A” are correct and does not contest the judgment amount Plaintiffs ask this Court to enroll. (*See* TCR Resp. at 2.) It is unclear, however, whether TCR opposes the entry of judgment, even though TCR agrees with the total amount to be enrolled. Regardless, the undersigned takes into account TCR’s lack of opposition to the calculations and its failure to include any legal precedent or rationale which would prevent this Court from enrolling judgment. To the extent TCR does oppose enrollment of judgment, that opposition is overruled, as the judgment to be entered is merely a mathematical calculation TCR concedes to be accurate.

## ***II. Supersedeas/Appeal Bond***

On January 28, 2020, the undersigned issued a Form 4 Order setting the amount of the Appellate Bond at the sum of One Million Dollars (\$1,000,000.00). The bond amount was set by the application of S.C. Code § 18-9-130.

On February 4, 2020, Defendant TCR filed the above-referenced Supersedeas/Appellate Bond, whereby TCR and the participating insurance carriers agreed to post the bond in order to stay execution of the judgment during the pendency of TCR’s appeal. In the interim, two of the carriers providing a defense to Defendant TCR reached settlements on behalf of TCR and were

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<sup>2</sup> This figure is as of July 31, 2025.

<sup>3</sup> The first partial settlement was received on July 14, 2021 (\$1,500,000), and the second partial settlement was received on May 15, 2023 (\$750,000). (*See* Aff. of J. Zambriczki, attached hereto as Exhibit “B”.)

released. The Court issued a consent order revoking the February 4, 2020, supersedeas bond previously posted by TCR but required that TCR post a substitute bond to continue the stay of execution and to provide security for partial satisfaction of Plaintiffs' judgment in the event TCR's appeal was unsuccessful. This bond was filed on February 7, 2025, secured by U.S. Specialty Insurance Company, Surety.

An appeal bond is merely a contract and must be enforced in accordance with its own terms. "An appeal bond is a voluntary obligation entered into by the appellant and his sureties, as obligor, and the appellees, as obligees, conditioned that the obligors shall prosecute the appeal with effect or answer to the liability created by the bond." 5 C.J.S. 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. A supersedeas bond is designed to maintain the status quo and protect the judgment holder against any loss it may sustain as a result of an unsuccessful appeal. It protects appellee from losing the benefit of the judgment through delay or ultimate nonperformance by appellant.

5 C.J.S. Appeal and Error § 1202 (footnotes omitted).<sup>4</sup>

Here, TCR's and its sureties' obligations are spelled out in the terms of the bond itself and require that the bond amount be paid to the Plaintiffs unless TCR or its insurer "shall satisfy in full such judgment or modification of the judgment and such costs, attorney's fees, interest, and damages as this Circuit Court of Charleston County, South Carolina or the South Carolina Supreme Court may adjudge and award [...]." (*See Supersedeas Bond/Appellate Bond*, filed Feb. 7, 2025.) The obligation under the bond is limited to the amount of the bond, or \$1,000,000. (*See id.*) As explained above, the current outstanding judgment this Court is entering exceeds the amount of the bond. TCR has not satisfied the judgment. Therefore, this Court finds that

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<sup>4</sup> Further, in 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).

disbursement of the full amount of the bond to Plaintiffs in partial satisfaction of the total judgment due is appropriate.

***III. TCR's Opposition to Plaintiffs' Motion to Disburse the Bond Is Overruled and TCR's Accompanying Motion(s) to Stay Are Denied***

TCR's response filed on July 28, 2025, included a "cross-motion to stay" disbursement of the supersedeas/appellate bond. Subsequently, TCR filed a "Motion to Stay" on July 29, 2025, which, again, asks the Court to stay any release or disbursement of the bond until the declaratory judgment action (*Palmetto Pointe v. Lloyd's London*, C.A. No. 2021-CP-10-04380) is resolved.

The Court notes for the record that remittitur in this case was filed on June 5, 2025, thereby transferring jurisdiction over the matter to this Court.<sup>5</sup> On the same day, Plaintiffs filed the instant Motion for Enrollment of the Judgment and Disbursement of Bond. Conversely, TCR waited until 5:02 p.m. on July 29, 2025—less than three business days before the hearing on Plaintiffs' motion—to formally seek a stay of this Court's consideration of the bond disbursement. TCR was aware as of June 5, 2025, that Plaintiffs sought disbursement of the bond and, for reasons unknown, waited until the eve of the hearing to seek a stay. TCR's motion is untimely.

Even if the motion was timely and to be considered by the Court, TCR fails to illustrate, through law or fact, why the pending declaratory judgment action prevents the release of the bond. The validity of the bond itself is not conditioned on a finding or adjudication of insurance coverage, nor does it refer in any manner to the pending declaratory judgment action; rather, it is a stand-alone, contractual document which this Court must construe according to its plain terms.

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<sup>5</sup> "[O]nce the remittitur is issued from an appellate court, the circuit court acquires jurisdiction to enforce the judgment and take any action consistent with the appellate court's ruling." *Martin v. Paradise Cove Marina, Inc.*, 348 S.C. 379, 385, 559 S.E.2d 348, 351–52 (Ct. App. 2001).

It is of no moment to this Court that TCR's insurers who are presently contesting coverage in a separate action have intertwined themselves into the bond's obligations, through side agreements with the surety or otherwise. The bond is intended to protect the judgment holder, not the judgment debtor or its surety. (*See* 5 C.J.S., § 1202, *supra*.)

The plain terms provide that, unless the judgment is satisfied by TCR or its insurers, or unless the judgment is set aside or otherwise extinguished on appeal, the bond "remains in full effect." Further, the bond provides that TCR and its surety, U.S. Specialty Insurance Company, "firmly bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally" to the payment of the total amount of the appellate bond. (*See* Supersedeas Bond/Appellate Bond, filed Feb. 7, 2025.) None of the conditions which would nullify or void the bond have occurred, and TCR has not offered any legal authority or compelling reason for this Court to alter the plain terms of the bond and extend an additional stay. The bond itself stayed execution of the judgment pending appeal. The Plaintiffs have waited nearly six (6) years to execute upon their judgment. The appeal is over; remittitur has issued; and the judgment holder, here, Plaintiffs, are entitled to execute on the bond. TCR's motion is, therefore, denied.

### **CONCLUSION**

IT IS THEREFORE ORDERED that judgment be entered in favor of the Plaintiffs against Defendant TCR for the total sum of \$3,486,317.70, which is inclusive of interest accruing from July 23, 2019, through July 31, 2025, and accounts for post-trial payments in TCR's behalf by two insurance carriers. Post-judgment interest will continue to accrue from July 31, 2025, forward on any unpaid balance until the judgment is satisfied in full.

IT IS FURTHER ORDERED that, by virtue of the Supersedeas/Appellate Bond executed by U.S. Specialty Insurance Company, Surety, on behalf of Judgment Debtor TCR, the full

amount of the bond, or \$1,000,000, be disbursed to Plaintiffs as partial satisfaction of the judgment hereunder. Upon receipt of the \$1,000,000, Plaintiffs shall file a partial satisfaction of judgment.

IT IS SO ORDERED.

---

The Honorable Jennifer B. McCoy  
Judge, Ninth Judicial Circuit

\_\_\_\_\_, 2025

Charleston, South Carolina



| Exhibit "A"                                                   |      |        |                    |                            |                        |                       |                |            |  |
|---------------------------------------------------------------|------|--------|--------------------|----------------------------|------------------------|-----------------------|----------------|------------|--|
| Amount of Judgment: \$3,830,000.00                            |      |        |                    | Judgment Entered 7/23/2019 |                        |                       |                |            |  |
|                                                               | Year | Rate   | Amount of Judgment | Days                       | Interest Owed Per Day  | Total Interest Earned | Total Due      |            |  |
| 7/24/2019-1/14/2020                                           | 2019 | 0.095  | \$3,830,000.00     | 175                        | \$996.85               | \$174,448.63          | \$4,004,448.63 |            |  |
| 1/15/2020-7/23/2020                                           | 2020 | 0.0875 | \$3,830,000.00     | 191                        | \$915.64               | \$174,887.64          | \$4,179,336.27 | Leap Year  |  |
| 7/24/2020-1/14/2021                                           | 2020 | 0.0875 | \$4,179,336.27     | 175                        | \$999.16               | \$174,852.70          | \$4,354,188.96 |            |  |
| 1/15/2021-7/14/2021                                           | 2021 | 0.0725 | \$4,179,336.27     | 181                        | \$830.14               | \$150,255.73          | \$4,504,444.69 |            |  |
| 7/14/2021                                                     |      |        | (\$1,500,000.00)   |                            |                        |                       | \$3,004,444.69 | Settlement |  |
| 7/15/2021-7/23/2021                                           | 2021 | 0.0725 | \$3,004,444.69     | 9                          | \$596.77               | \$5,370.96            | \$3,009,815.65 |            |  |
| 7/24/2021-1/14/2022                                           | 2021 | 0.0725 | \$3,009,815.65     | 175                        | \$597.84               | \$104,622.02          | \$3,114,437.66 |            |  |
| 1/15/2022-7/23/2022                                           | 2022 | 0.0725 | \$3,009,815.65     | 190                        | \$597.84               | \$113,589.62          | \$3,228,027.28 |            |  |
| 7/24/2022-1/14/2023                                           | 2022 | 0.0725 | \$3,228,027.28     | 175                        | \$641.18               | \$112,207.11          | \$3,340,234.40 |            |  |
| 1/15/2023-5/15/2023                                           | 2023 | 0.115  | \$3,228,027.28     | 121                        | \$1,017.05             | \$123,063.01          | \$3,463,297.41 |            |  |
| 5/15/2023                                                     |      |        | (\$750,000.00)     |                            |                        |                       | \$2,713,297.41 | Settlement |  |
| 5/16/2023-7/23/2023                                           | 2023 | 0.115  | \$2,713,297.41     | 69                         | \$854.87               | \$58,986.34           | \$2,772,283.75 |            |  |
| 7/24/2023-1/14/2024                                           | 2023 | 0.115  | \$2,772,283.75     | 175                        | \$873.46               | \$152,855.37          | \$2,925,139.12 |            |  |
| 1/15/2024-7/23/2024                                           | 2024 | 0.125  | \$2,772,283.75     | 191                        | \$946.82               | \$180,842.28          | \$3,105,981.40 | Leap Year  |  |
| 7/24/2024-1/14/2025                                           | 2024 | 0.125  | \$3,105,981.40     | 175                        | \$1,060.79             | \$185,637.55          | \$3,291,618.95 |            |  |
| 1/15/2025-7/23/2025                                           | 2025 | 0.115  | \$3,105,981.40     | 190                        | \$978.60               | \$185,933.41          | \$3,477,552.36 |            |  |
| 7/24/2025-7/31/2025                                           | 2025 | 0.115  | \$3,477,552.36     | 8                          | \$1,095.67             | \$8,765.34            | \$3,486,317.70 |            |  |
| Total as of 7/31/2025: \$3,486,317.70                         |      |        |                    |                            | Total Interest Earned: |                       | \$1,906,317.70 |            |  |
|                                                               |      |        |                    |                            |                        |                       |                |            |  |
| \$3,830,000.00-\$2,250,000.00=\$1,580,000.00 left on judgment |      |        |                    |                            |                        |                       |                |            |  |
|                                                               |      |        |                    |                            |                        |                       |                |            |  |
| \$3,486,317.70-\$1,580,000.00=\$1,906,317.70 interest owed    |      |        |                    |                            |                        |                       |                |            |  |



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS  
) NINTH JUDICIAL CIRCUIT  
) CASE NO. 2015-CP-10-0955

PALMETTO POINTE AT PEAS ISLAND )  
CONDOMINIUM PROPERTY OWNERS )  
ASSOCIATION, INC. and JACK LOVE, Co- )  
Trustee on behalf of the LOVE-MCKIM )  
LIVING TRUST and Attorney-in-Fact for his )  
wife, Janet I. McKim, and Co-Trustee, )  
individually, and on behalf of all others )  
similarly situated, )

Plaintiffs, )

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; )  
TALLENT AND SONS, INC.; W C SERVICES, )  
INC KELLY FLOORING PRODUCTS, INC., )  
D/B/A CARPET BAGGERS; MIRACLE )  
SIDING, LLC AND WILSON LUCAS SALES )  
D/B/A MIRACLE SIDING, LLC; MARK )  
PALPOINT A/K/A MICAH PALPOINT; )  
ELROY ALONZO VASQUEZ; CHRIS A/K/A )  
JOHN DOE 61 STANLEY'S VINYL FENCE )  
DESIGNS; MOSLEY CONCRETE; JMC )  
CONSTRUCTION, INC.; JMC )  
CONSTRUCTION, LLC; VICTOR HUGO )  
HERNANDEZ; HERNANDEZ ELECTRIC, )  
LLC; LILIANA ROJAS FLORES; MARTIN )  
BARR D/B/A PORT CITY STRUCTURED )  
WIRING; KELLER ELECTRIC, LLC; JOHN )  
TOOLIN D/B/A JOHN F. TOOLIN HEAT AND )  
AIR; RUSSELL "RUSTY" HILL D/B/A )

**AFFIDAVIT OF  
JENNIFER ZAMBRICZKI**



RUSTY'S HEATING & AIR; WARREN )  
ANDERSON; and JOHN DOE 10-15, )  
 )  
Defendants. )

PERSONALLY appeared before me, Jennifer Zambriczki, who, being first duly sworn, deposes and says as follows:

1. I am employed as the Firm Manager at Justin O'Toole Lucey, PA. In this capacity, I maintain the financial and accounting records for the firm, including directing and overseeing the financial deposits into the firm's bank accounts.

2. The firm maintains two IOLTA Trust Accounts: one at United Community Bank, and the other at First Reliance Bank.

3. On or about July 13, 2021, the firm received a total of One Million Five Hundred Thousand Dollars (\$1,500,000.00) in settlement funds from Builders Mutual Insurance Company as follows: 1) check number 199402 in the amount of One Million Dollars (\$1,000,000.00); 2) check number 199403 in the amount of Two Hundred Forty-Two Thousand Dollars (\$242,000.00) and 3) check number 199404 in the amount of Two Hundred Fifty-Eight Thousand Dollars (\$258,000.00).

4. On July 13, 2021, the three (3) checks were presented to First Reliance Trust for deposit into the firm's Trust Account and subsequently cleared the Bank on July 14, 2021.

5. On or about May 15, 2023, the firm received check number 1724102 from Nationwide in the amount of Seven Hundred Fifty Thousand Dollars (\$750,000) for settlement funds on behalf of Scottsdale Insurance Company.

6. On May 15, 2023, the check was presented to United Community Bank Trust for deposit into the firm's Trust Account and subsequently cleared the bank on the same day.

FURTHER THE AFFIANT SAYETH NOT!

  
\_\_\_\_\_  
Jennifer Zambriczki  
Justin O'Toole Lucey, PA  
415 Mill Street  
Mount Pleasant, SC 29464  
(843) 849-8400

SWORN TO AND SUBSCRIBED before me  
this 23 day of July, 2025

  
\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: 3/17/32

---

**From:** Christian Stegmaier <cstegmaier@collinsandlacy.com>  
**Sent:** Wednesday, July 30, 2025 2:42 PM  
**To:** McCoy, Jennifer B. Law Clerk (Katelyn Simmons); McCoy, Jennifer B. Secretary (Brooke Slade)  
**Cc:** Stephanie Drawdy; Evan M. Gessner; Sohayla Townes; Buckley, Edward D. (Ed); Justin Lucey; DeMato, Amanda; Lee Weiland; Anna McCann  
**Subject:** Case No. 2015-CP-10-00955 Palmetto Pointe at Peas Island POA, Inc. et al. v. Tri-County Roofing, Inc., et al.  
**Attachments:** TCRs Motion to Stay (filed).pdf; TCR Opposition Entry Judgment (filed).pdf

Dear Judge McCoy:

Good afternoon.

We write on behalf of Defendant Tri-County Roofing, Inc. ("TCR").

Attached are two filings made in the above-referenced matter: (1) TCR's Response in Opposition to Plaintiffs' Motion for Entry of Judgment and Cross Motion to Stay, and (2) TCR's Motion to Stay filed separately.

As an initial matter where there does not appear to be opposition: Plaintiff's judgment calculations appear to be in line. We appreciate counsel forwarding the various spreadsheets, etc. in conjunction with the final numbers.

Second: Both of our recent filings request that this Court defer any order of disbursement relating to the \$1,000,000.00 supersedeas bond previously posted by TCR. As explained in the motions, we maintain this bond is not an ordinary Rule 67, SCRPC deposit, but rather a conditional surety instrument triggered only after final judgment and resolution of indemnity obligations.

A declaratory judgment and coverage action directly addressing those obligations is currently pending in Charleston County (*Palmetto Pointe at Peas Island Condo. Assoc. v. Certain Underwriters at Lloyd's, et al.*, Case No. 2021-CP-10-04380). That matter is scheduled for trial after November 13, 2025.

We respectfully submit that premature disbursement of the bond would risk conflicting outcomes, potentially invite further appeals, and undermine judicial efficiency. A brief stay would preserve the status quo while allowing the related insurance litigation to run its course.

Thank you for time and attention; we will see everyone in Charleston tomorrow at 1130.

Respectfully,

Christian Stegmaier  
Cell 803-467-9699

---

**From:** Anna McCann <amccann@lucey-law.com>

**Sent:** Wednesday, July 23, 2025 3:49 PM

**To:** McCoy, Jennifer B. Law Clerk (Katelyn Simmons) <jmccoyle@sccourts.org>; McCoy, Jennifer B. Secretary (Brooke Slade) <jmccoysc@sccourts.org>

**Cc:** Christian Stegmaier <cstegmaier@collinsandlacy.com>; Kelsey J. Brudvig <kbrudvig@collinsandlacy.com>; Christopher Adams <cadams@collinsandlacy.com>; Stephanie Drawdy <sdrawdy@lucey-law.com>; Henry D. McMaster, Jr. <hcmaster@collinsandlacy.com>; Evan M. Gessner <egessner@collinsandlacy.com>; Michael C. Bunda <mbunda@collinsandlacy.com>; Sohayla Townes <stownes@lucey-law.com>; Buckley, Edward D. (Ed) <ebuckley@ycrlaw.com>; Justin Lucey <jlucey@lucey-law.com>; ademato@ycrlaw.com; Lee Weiland <lweiland@lucey-law.com>

**Subject:** RE: Case No. 2015-CP-10-00955 Palmetto Pointe at Peas Island POA, Inc. et al. v. Tri-County Roofing, Inc., et al.

**Caution:** This is an external email. Please take care when clicking links or opening attachments.

Judge McCoy,

In anticipation of our hearing in this matter on July 31, 2025, at 11:30 a.m., Plaintiffs elected to compose and submit a proposed order rather than a memorandum in support of their self-explanatory motion. Therefore, attached please find a proposed order which has been e-filed with the Court. Additionally, attached please find Exhibit A to the proposed order, the calculation of post judgment interest and credits, as well as Exhibit B to the proposed order, which is an affidavit from my office regarding the deposits of settlement funds. Lastly, please find copies of the appellate orders referenced in the proposed order. The holdings regarding setoff in each order have been highlighted for the Court's convenience.

Counsel of record are copied on this email. Plaintiffs' counsel will follow this email with a second one to chambers submitting the proposed order in Word format in accordance with the Court's preferences.

Respectfully submitted,

Justin Lucey

Anna S. McCann, Esq.

**Justin O'Toole Lucey, P.A.**

415 Mill Street  
Mount Pleasant, SC 29464  
Office: 843.849.8400  
Direct Line: 843.375.0792  
Fax: 843.849.8406  
[www.lucey-law.com](http://www.lucey-law.com)

**Christian Stegmaier**

Certified South Carolina Circuit Court Mediator

Direct: 803.255.0454  
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Fax: 803.771.4484  
Vcard: [download vcard](#)  
Web: [www.collinsandlacy.com](http://www.collinsandlacy.com)

1330 Lady Street, 6th Floor  
Columbia, SC 29201



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In light of the Amended Order of the S.C. Supreme Court effective February 4, 2022 (Order 2020-04-03-01), we will be serving discovery via e-mail only.

|                                            |   |                                    |
|--------------------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA                    | ) | IN THE COURT OF COMMON PLEAS       |
|                                            | ) |                                    |
| COUNTY OF CHARLESTON                       | ) | NINTH JUDICIAL CIRCUIT             |
|                                            | ) |                                    |
| Palmetto Pointe at Peas Island             | ) | Civil Action No.: 2015-CP-10-00955 |
| Condominium Property Owners                | ) |                                    |
| Association, Inc. and Elizabeth A. Bushey, | ) |                                    |
| individually, and on behalf of all others  | ) |                                    |
| similarly situated,                        | ) |                                    |
|                                            | ) | <b>DEFENDANT</b>                   |
| Plaintiffs,                                | ) | <b>TRI-COUNTY ROOFING, INC'S</b>   |
| v.                                         | ) | <b>REPLY IN OPPOSITION TO</b>      |
|                                            | ) | <b>PLAINTIFFS' PROPOSED ORDER</b>  |
| Tri-County Roofing, Inc., et al.           | ) |                                    |
|                                            | ) |                                    |
| Defendants.                                | ) |                                    |
|                                            | ) |                                    |
|                                            | ) |                                    |

Defendant Tri-County Roofing & Sheet Metal, Inc. ("TCR") respectfully submits this reply in opposition to Plaintiff's proposed order seeking entry of judgment and immediate disbursement of the supersedeas bond.

### **INTRODUCTION/PREFACE**

While TCR does not oppose entry of judgment consistent with the Supreme Court's remittitur, Plaintiff's request for immediate disbursement of the supersedeas bond is premature and improper. Plaintiff's pursuit of immediate disbursement places TCR and its counsel in an impermissible and untenable position. Specifically, Plaintiff's pursuit prejudices TCR's insurer without due process and violates the very procedural boundaries Plaintiff previously insisted upon.

Disbursement should not be ordered unless and until the pending declaratory judgment action concerning coverage is resolved, or the bond's guarantor (TCR's insurer) is properly joined and afforded an opportunity to be heard.



## **LAW/ANALYSIS**

### **I. Plaintiff's Motion Places TCR and Its Counsel in an Untenable Position**

TCR is represented by counsel appointed and funded by its insurer. This insurer is involved as a named defendant in a companion coverage action in this Court. In the case at bar, TCR and its counsel cannot prejudice the insurer or take legal positions adverse to the insurer's interests in any related matter, including the pending coverage action.

Plaintiff's motion now seeks to compel TCR's counsel to facilitate the disbursement of funds guaranteed solely by the insurer. But if indemnity is ultimately denied or reduced in the declaratory judgment action, the insurer will have paid \$1 million without legal obligation or recourse. That is not just prejudicial, it is irreversible.

This is a trap scenario: Comply and prejudice the insurer, or resist and violate a court order. This Court should not place a represented defendant or its counsel in such a conflicting impossible position.

### **II. Plaintiff Cannot Have It Both Ways**

As this Court knows, in Ex parte Builders Mutual, the South Carolina Supreme Court ruled that TCR's insurer could not intervene in the underlying liability action—a position Plaintiff actively advocated. The insurers were therefore excluded from participation in the case, consistent with Plaintiff's argument that coverage questions must be resolved separately.

Equity bars a party from simultaneously asserting and denying a legal right to the prejudice of another. It is inconsistent for Plaintiff now to seek disbursement of a bond funded solely by that same insurer, which remains precluded from defending its interests in this proceeding.

Plaintiff cannot bar the insurer from participation in litigation at the merits stage, then turn around and collect directly from the insurer's funds. If disbursement is sought, at the very least, basic fairness requires that the bond's guarantor be allowed to intervene to this matter at this stage.

### **III. Disbursement Would Irreparably Harm a Non-Party**

Respectfully, Defendant avers the Supreme Court's remittitur in the instant case does not empower this Court to compel payment by a non-party to the case. Yet that is exactly what Plaintiff seeks: an order that would trigger payment from TCR's insurer, a party who has been given no voice and no venue in which to object or defend.

If disbursement is ordered and the insurer is later found to owe no (or partial) indemnity, there is no legal mechanism for recovering the funds. The harm is permanent. That alone justifies a temporary stay under principles of equity, judicial restraint, and due process.

#### **4. The Court Should Stay Enforcement Pending Resolution of the Coverage Action**

Entry of judgment is procedurally proper now that remittitur has issued. However, any enforcement—specifically, any order compelling disbursement of the supersedeas bond—should be stayed until:

1. The declaratory judgment action on coverage is fully resolved; or alternatively,
2. TCR's insurer, as the bond's guarantor, is allowed to intervene in this matter and be heard.

This approach maintains fairness, preserves the status quo, avoids ethical conflicts, and ensures that no party is bound without due process.

### **CONCLUSION**

For these reasons, Defendant TCR respectfully requests that this Court:

1. Enter judgment consistent with the Supreme Court's remittitur;
2. Deny Plaintiff's request for immediate disbursement of the supersedeas bond; and

3. Stay any bond enforcement pending final resolution of the declaratory judgment action or until the insurer is allowed to intervene and given an opportunity to respond.

Respectfully submitted,

COLLINS & LACY, P.C.

By: s/Christian Stegmaier  
CHRISTIAN STEGMAIER  
SC Bar No.: 68648  
cstegmaier@collinsandlacy.com  
EVAN M. GESSNER  
SC Bar No: 77704  
egessner@collinsandlacy.com  
Post Office Box 12487  
Columbia, SC 29211  
803.256.2660 (voice)  
803.771.4484 (fax)

ATTORNEYS FOR DEFENDANT  
TRI-COUNTY ROOFING, INC.

**DEFENDANT TRI-COUNTY  
ROOFING, INC'S REPLY IN  
OPPOSITION TO PLAINTIFFS'  
PROPOSED ORDER**

July 31, 2025  
Columbia, South Carolina

**From:** Christian Stegmaier <cstegmaier@collinsandlacy.com>  
**Sent:** Friday, August 15, 2025 5:35 PM  
**To:** Jennifer B. McCoy  
**Cc:** Jennifer B. Secretary McCoy; Lee Weiland; Stephanie Drawdy; Evan M. Gessner; Sohayla Townes; Buckley, Edward D. (Ed); Justin Lucey; DeMato, Amanda; Anna McCann  
**Subject:** 2015-CP-10-00955 Palmetto Pointe at Peas Island POA, Inc. et al. v. Tri-County Roofing, Inc., et al.  
**Attachments:** Palmetto Pointe - Proposed Order re Bond (TCR) (002) (002).docx

Judge McCoy-

We appreciate the Court's attention to the parties' competing motions concerning disbursement of the appellate bond. As you well know, this matter has a long procedural history, but at this stage, the dispute is no longer between Plaintiffs and TCR personally. As we understand it, Plaintiffs have released TCR from individual liability, and the only funds in question are those provided by the subscribing insurers of Certain Underwriters at Lloyd's London.

Given the pending declaratory judgment action—which will determine whether and to what extent those insurers are obligated to indemnify—forcing immediate disbursement of the bond would necessarily bind a non-party insurer before its coverage obligations are adjudicated. If the insurers prevail in whole or in part, recovery of prematurely disbursed funds from Plaintiffs arguably would be difficult, if not impossible.

Importantly, I have express and direct confirmation from the subscribing insurers in London that they are amenable to and agreeable with the proposed solution, as articulated within the attached proposed order. Stated succinctly, the subscribing insurers will deposit the full \$1,000,000 bond amount into the registry of the Court, where it will accrue interest and remain secure. This arrangement preserves the purpose of the supersedeas bond—ensuring funds are available if Plaintiffs ultimately prevail—while fully protecting the insurers' due process rights during the pendency of the coverage action. It also includes a release of the appellate bond, thereby clearing that obligation from the record while keeping the underlying funds safely in the Court's control.

The Court is faced with a novel imbroglio because of the pending coverage case and the release being injected into the mix. This takes creative thinking. We respectfully maintain this approach avoids unnecessary prejudice, maintains the status quo, protects everyone concerned, and provides certainty to all involved. Respectfully, we maintain it is the most fair and balanced course for the Court to take under these circumstances.

Thank you for your time and attention. Please let us know your questions or if the Court desires a follow WebEx/live consultation regarding this matter.

Have a good weekend.

Very Respectfully,

Christian Stegmaier  
Cell: 803-467-9699

**Christian Stegmaier**  
Certified South Carolina Circuit Court Mediator

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In light of the Amended Order of the S.C. Supreme Court effective February 4, 2022 (Order 2020-04-03-01), we will be serving discovery via e-mail only.

|                                     |   |                                    |
|-------------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA             | ) | IN THE COURT OF COMMON             |
|                                     | ) | PLEAS                              |
| COUNTY OF CHARLESTON                | ) |                                    |
|                                     | ) | NINTH JUDICIAL CIRCUIT             |
| Palmetto Pointe at Peas Island      | ) |                                    |
| Condominium Property Owners         | ) | Civil Action No.: 2015-CP-10-00955 |
| Association, Inc. and Elizabeth A.  | ) |                                    |
| Bushey, individually, and on behalf | ) |                                    |
| of all others similarly situated,   | ) |                                    |
|                                     | ) | <b>ORDER</b>                       |
| Plaintiffs,                         | ) |                                    |
| v.                                  | ) |                                    |
|                                     | ) |                                    |
| Tri-County Roofing, Inc., et al.    | ) |                                    |
|                                     | ) |                                    |
| Defendants.                         | ) |                                    |

---

This matter arises from a two-week construction defect jury trial in May 2019, in which Plaintiffs obtained a verdict against Defendant Tri-County Roofing, Inc. (“TCR”) in the amount of \$7,000,000, including \$500,000 in punitive damages. Following post-trial motions, this Court entered judgment on July 23, 2019, in the amount of \$5,330,000 after applying certain set-offs.

TCR appealed. The South Carolina Court of Appeals affirmed this Court’s rulings in part but granted an additional \$500,000 set-off for a post-trial settlement.

On certiorari, the South Carolina Supreme Court affirmed the Court of Appeals on set-off allocation and granted TCR an additional \$1,000,000 set-off for a pre-trial covenant-not-to-execute, resulting in a final principal judgment amount of \$3,830,000. The Supreme Court remitted the matter to this Court for calculation and entry of the amended judgment with applicable post-judgment interest.

Following remittitur, Plaintiffs sought entry of judgment and for immediate disbursement of the \$1,000,000.00 supersedeas bond. In response, TCR moved to stay disbursement pending resolution of a related insurance coverage action.

Plaintiffs maintain the judgment far exceeds the bond amount and that the purpose of the bond is to protect the judgment holder from loss through delay or nonperformance. Plaintiffs contend that because TCR's appeals have concluded, they are entitled to immediate payment of the bond proceeds in partial satisfaction of the judgment.

TCR opposes immediate disbursement because it cannot bind the Lloyd's Market subscribing insurers, which serve as the guarantor of the appellate bond. Instead, TCR has moved to stay enforcement of the bond until the related declaratory judgment action—Palmetto Pointe at Peas Island Condo. Prop. Owners Ass'n, Inc. v. Certain Underwriters at Lloyd's London, et al., Case No. 2021-CP-10-04380—is resolved. TCR contends that the bond is backed by its insurer, that Plaintiffs have released TCR from any personal liability (leaving insurance proceeds as the sole potential source of payment), and that forcing payment now would impair the insurer's rights before coverage issues are decided. Having reviewed the submissions and concordant argument, and considered the equities, the Court finds and orders as follows:

## **FINDINGS**

### **1. Judgment Amount and Interest**

Pursuant to the South Carolina Supreme Court's decision and remittitur, the principal judgment against TCR is \$3,830,000.00. After post-verdict settlements totaling \$2,250,000.00, the remaining principal is \$1,580,000.00. Post-judgment interest calculated under S.C. Code Ann. § 34-31-20(B) totals \$1,906,317.70 through July 31, 2025, making the total judgment as of that date \$3,486,317.70.

### **2. Release of TCR from Personal Liability**

Upon information and belief, through previous agreement, Plaintiffs have released TCR from any individual or personal liability for the judgment balance. The present dispute concerns only funds sought from the remaining not-settling insurers, which are the subscribing insurers of Certain Underwriters at Lloyd's London.

### **3. Pending Declaratory Judgment Action**

Plaintiffs have filed Palmetto Pointe at Peas Island Condo. Prop. Owners Ass'n, Inc. v. Certain Underwriters at Lloyd's London, et al., Case No. 2021-CP-10-04380, seeking a declaration of the remaining insurers' coverage obligations. That case is set for trial no earlier than November 13, 2025.



#### **4. Purpose of Supersedeas Bond**

In South Carolina, a supersedeas bond exists to ensure funds are available to satisfy the judgment when due. Ordinarily, the bond would become due and subject to disbursement upon remittitur of the case by the appellate court and entry of judgment by the trial court. With that said, where the defendant has no personal liability for the judgment, the defendant's insurers are the guarantors of the bond, and there has not been an adjudication of the companion coverage action (which was brought by Plaintiffs), the equitable and prudent course is to preserve the bond proceeds within the custody of the Court until the coverage dispute is finally adjudicated, thereby ensuring that the funds remain available for satisfaction of the judgment should Plaintiffs prevail, while safeguarding the insurer's due process rights and avoiding the potential for disbursements that may not be recoverable.

#### **5. Defendant's Insurers' Proposed Resolution**

The subscribing insurers agree to deposit \$1,000,000.00—the bond amount—into the Charleston County Clerk of Court's registry, in an interest-bearing account, pending resolution of the coverage action. This arrangement:

- Secures funds for Plaintiffs if they prevail, with accrued interest;

- Preserves funds for return to insurers if coverage is denied in whole or part;
- Avoids the need for post-payment recovery actions.

### **ORDER**

Based upon the foregoing, it is ordered:

#### **1. Entry of Judgment**

Judgment is entered in favor of Plaintiffs and against TCR in the amount of \$3,486,317.70 as of July 31, 2025, inclusive of post-judgment interest.

#### **2. Deposit into Registry**

Within **[X]** days of entry of this Order, the subscribing insurers for TCR shall deposit \$1,000,000.00 with the Charleston County Clerk of Court. The Clerk shall place the funds into an interest-bearing account pursuant to Rule 67, SCRPC.

#### **3. Release of Existing Appellate Bond**

Upon deposit of the \$1,000,000.00 into the registry of the Court in accordance with Paragraph 2 above, the existing supersedeas bond posted by TCR's subscribing insurers in connection with its appeal shall be cancelled/released. The Clerk is directed to discharge the surety and close the bond on the Court's records.

#### **4. Retention and Disbursement**

The funds shall remain in the registry until the earlier of:

- a. Final resolution (including appeals) of Case No. 2021-CP-10-04380; or
- b. Further order of this Court.

If Plaintiffs prevail in the coverage action, the funds and accrued interest 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.

#### **5. Preservation of Rights**

This Order does not adjudicate the merits of the coverage action and preserves all rights of the parties therein.

**IT IS SO ORDERED.**

---

The Honorable Jennifer B. McCoy  
Presiding Judge of the Ninth Judicial Circuit

Dated: \_\_\_\_\_  
Charleston, South Carolina

## Hines, Russell

---

**From:** Lee Weiland <lweiland@lucy-law.com>  
**Sent:** Monday, August 18, 2025 12:05 PM  
**To:** Justin Lucey; McCoy, Jennifer B.  
**Cc:** McCoy, Jennifer B. Secretary (Brooke Slade); McCoy, Jennifer B. Law Clerk (Eliza Lay); Stephanie Drawdy; Evan M. Gessner; Sohayla Townes; Buckley, Edward D. (Ed); DeMato, Amanda; Anna McCann; Christian Stegmaier  
**Subject:** RE: 2015-CP-10-00955 Palmetto Pointe at Peas Island POA, Inc. et al. v. Tri-County Roofing, Inc., et al.  
**Attachments:** 20250817 Proposed Final Order and Judgment on Remand.pdf

Judge McCoy,

Plaintiffs respond regarding this matter which was remitted in June and noticed for argument and entry of judgment to occur on July 31, 2025.

Plaintiffs object to the proposed Order submitted by TCR and request Plaintiffs' proposed order be entered.

Defendant is attempting to inject issues relating to insurance coverage into the Court's decision – and in so doing, Defendants are seeking to violate the sanctity of the prior order(s), bond process, and the terms of the filed bond in this matter.

At issue here is the surety bond posted, without condition, to protect plaintiffs from damage caused by the delay in the appeal. Statutorily, and by the terms of this Court's prior Order(s) and the terms of the surety bond itself, the bond amount is unconditionally due upon remitter.

Plaintiffs are resubmitting Plaintiffs' July 31<sup>st</sup> proposed Order to you herewith. The last paragraph above the conclusion and the Conclusion have been modified to reflect that the motion to stay is overruled.

Respectfully submitted,  
*Justin Lucey & Ed Buckley*

*Lee Weiland*  
*Senior Paralegal*  
*Justin O'Toole Lucey, P.A.*  
*Direct: (912) 228-8427*  
[www.lucey-law.com](http://www.lucey-law.com)

---

**From:** Justin Lucey <jlucey@lucy-law.com>  
**Sent:** Monday, August 18, 2025 10:30 AM  
**To:** McCoy, Jennifer B. <jmccoyj@sccourts.org>; Christian Stegmaier <cstegmaier@collinsandlacy.com>

**Cc:** McCoy, Jennifer B. Secretary (Brooke Slade) <jmccoysc@sccourts.org>; McCoy, Jennifer B. Law Clerk (Eliza Lay) <jmccoyle@sccourts.org>; Lee Weiland <lweiland@lucey-law.com>; Stephanie Drawdy <sdrawdy@lucey-law.com>; Evan M. Gessner <egessner@collinsandlacy.com>; Sohayla Townes <stownes@lucey-law.com>; Edward D. Buckley <ebuckley@ycrlaw.com>; ademato@ycrlaw.com; Anna McCann <amccann@lucey-law.com>  
**Subject:** RE: 2015-CP-10-00955 Palmetto Pointe at Peas Island POA, Inc. et al. v. Tri-County Roofing, Inc., et al.

Good morning,

Plaintiffs are in the process of completing a response which will be submitted momentarily.

Justin Lucey

**Justin O'Toole Lucey, P.A.**

415 Mill Street  
Mount Pleasant, SC 29464  
Office: 843.849.8400  
Direct: 843.849.8406  
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**From:** McCoy, Jennifer B. <jmccoyle@sccourts.org>  
**Sent:** Monday, August 18, 2025 9:46 AM  
**To:** Christian Stegmaier <cstegmaier@collinsandlacy.com>  
**Cc:** McCoy, Jennifer B. Secretary (Brooke Slade) <jmccoysc@sccourts.org>; McCoy, Jennifer B. Law Clerk (Eliza Lay) <jmccoyle@sccourts.org>; Lee Weiland <lweiland@lucey-law.com>; Stephanie Drawdy <sdrawdy@lucey-law.com>; Evan M. Gessner <egessner@collinsandlacy.com>; Sohayla Townes <stownes@lucey-law.com>; Edward D. Buckley <ebuckley@ycrlaw.com>; Justin Lucey <jlucey@lucey-law.com>; ademato@ycrlaw.com; Anna McCann <amccann@lucey-law.com>  
**Subject:** RE: 2015-CP-10-00955 Palmetto Pointe at Peas Island POA, Inc. et al. v. Tri-County Roofing, Inc., et al.

Thank you for your email and proposed Order. I will consider both and issue a ruling promptly. I hope everyone has a good week.

Jennifer B. McCoy  
Circuit Court, 9<sup>th</sup> Judicial Circuit  
100 Broad Street  
Charleston, SC  
(843) 958-5066

---

**From:** Christian Stegmaier <cstegmaier@collinsandlacy.com>  
**Sent:** Friday, August 15, 2025 5:35 PM  
**To:** McCoy, Jennifer B. <jmccoyle@sccourts.org>  
**Cc:** McCoy, Jennifer B. Secretary (Brooke Slade) <jmccoysc@sccourts.org>; Lee Weiland <lweiland@lucey-law.com>; Stephanie Drawdy <sdrawdy@lucey-law.com>; Evan M. Gessner <egessner@collinsandlacy.com>; Sohayla Townes <stownes@lucey-law.com>; Edward D. Buckley <ebuckley@ycrlaw.com>; Justin Lucey <jlucey@lucey-law.com>;

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

Judge McCoy-

We appreciate the Court's attention to the parties' competing motions concerning disbursement of the appellate bond. As you well know, this matter has a long procedural history, but at this stage, the dispute is no longer between Plaintiffs and TCR personally. As we understand it, Plaintiffs have released TCR from individual liability, and the only funds in question are those provided by the subscribing insurers of Certain Underwriters at Lloyd's London.

Given the pending declaratory judgment action—which will determine whether and to what extent those insurers are obligated to indemnify—forcing immediate disbursement of the bond would necessarily bind a non-party insurer before its coverage obligations are adjudicated. If the insurers prevail in whole or in part, recovery of prematurely disbursed funds from Plaintiffs arguably would be difficult, if not impossible.

Importantly, I have express and direct confirmation from the subscribing insurers in London that they are amenable to and agreeable with the proposed solution, as articulated within the attached proposed order. Stated succinctly, the subscribing insurers will deposit the full \$1,000,000 bond amount into the registry of the Court, where it will accrue interest and remain secure. This arrangement preserves the purpose of the supersedeas bond—ensuring funds are available if Plaintiffs ultimately prevail—while fully protecting the insurers' due process rights during the pendency of the coverage action. It also includes a release of the appellate bond, thereby clearing that obligation from the record while keeping the underlying funds safely in the Court's control.

The Court is faced with a novel imbroglio because of the pending coverage case and the release being injected into the mix. This takes creative thinking. We respectfully maintain this approach avoids unnecessary prejudice, maintains the status quo, protects everyone concerned, and provides certainty to all involved. Respectfully, we maintain it is the most fair and balanced course for the Court to take under these circumstances.

Thank you for your time and attention. Please let us know your questions or if the Court desires a follow WebEx/live consultation regarding this matter.

Have a good weekend.

Very Respectfully,

Christian Stegmaier

Cell: 803-467-9699

**Christian Stegmaier**

Certified South Carolina Circuit Court Mediator

Direct: 803.255.0454

Main: 803.256.2660

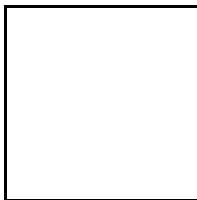
Fax: 803.771.4484

Vcard: [download vcard](#)

Web: <https://link.edgepilot.com/s/ab018826/> -

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1330 Lady Street, 6th Floor  
Columbia, SC 29201



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In light of the Amended Order of the S.C. Supreme Court effective February 4, 2022 (Order 2020-04-03-01), we will be serving discovery via e-mail only.

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-10-0955

PALMETTO POINTE AT PEAS ISLAND)
CONDOMINIUM PROPERTY OWNERS)
ASSOCIATION, INC. and JACK LOVE, Co-)
Trustee on behalf of the LOVE-MCKIM)
LIVING TRUST and Attorney-in-Fact for his)
wife, Janet I. McKim, and Co-Trustee,)
individually, and on behalf of all others)
similarly situated,)

Plaintiffs,)

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;)
TALLENT AND SONS, INC.; W C SERVICES,)
INC KELLY FLOORING PRODUCTS, INC.,)
D/B/A CARPET BAGGERS; MIRACLE)
SIDING, LLC AND WILSON LUCAS SALES)
D/B/A MIRACLE SIDING, LLC; MARK)
PALPOINT A/K/A MICAH PALPOINT;)
ELROY ALONZO VASQUEZ; CHRIS A/K/A)
JOHN DOE 61 STANLEY'S VINYL FENCE)
DESIGNS; MOSLEY CONCRETE; JMC)
CONSTRUCTION, INC.; JMC)
CONSTRUCTION, LLC; VICTOR HUGO)
HERNANDEZ; HERNANDEZ ELECTRIC,)
LLC; LILIANA ROJAS FLORES; MARTIN)
BARR D/B/A PORT CITY STRUCTURED)
WIRING; KELLER ELECTRIC, LLC; JOHN)
TOOLIN D/B/A JOHN F. TOOLIN HEAT AND)

**FINAL ORDER AND JUDGMENT ON
REMAND**

AIR; RUSSELL "RUSTY" HILL D/B/A)
RUSTY'S HEATING & AIR; WARREN)
ANDERSON; and JOHN DOE 10-15,)
)
)
Defendants.)

This matter came before the Court at a hearing on July 31, 2025, on Plaintiffs' Motion for Entry of Judgment and Disbursement of Bond, which was filed on June 5, 2025. Defendant Tri-County Roofing, Inc. ("TCR"), submitted a response in opposition to Plaintiffs' Motion on July 28, 2025, which concedes that Plaintiffs' calculations regarding the total amount of judgment to be entered, including post-judgment interest, "appear to be correct." (TCR Resp. at 2.) Therefore, there is no dispute as to the amount of judgment to be enrolled. TCR does not affirmatively join in or stipulate to the entry of judgment in the amount it concedes to be correct, and TCR opposes Plaintiffs' Motion to collect the \$1,000,000.00 supersedeas bond upon the ground that an insurance coverage case is currently pending.¹

Having reviewed the parties' submissions and heard arguments of counsel, and for the reasons set forth below, the Court GRANTS Plaintiffs' Motion and ENROLLS judgment against TCR in the amount of **\$3,486,317.70**, inclusive of post-judgment interest owed to Plaintiffs in the amount of \$1,906,317.70 *as of July 31, 2025*. Post-judgment interest will continue to accrue until the judgment is satisfied.

The Court further GRANTS Plaintiffs' motion to disburse the full amount of the February 7, 2025, bond, or \$1,000,000, as partial satisfaction of the judgment hereunder. This matter was remitted to this Court by the South Carolina Supreme Court; therefore, TCR's appeal

¹ On July 29, 2025, at 5:02 p.m., TCR filed a Motion to Stay Release or disbursement of the supersedeas bond until final resolution of a pending insurance coverage action.

is final. TCR has not satisfied the judgment, and the bond is now due and payable to the Plaintiffs.

BACKGROUND

The facts and procedural history of this nearly ten (10) year-old litigation are set out fully in the opinion of the South Carolina Supreme Court in *Palmetto Pointe at Peas Island v. Tri-County Roofing, Inc.*, 445 S.C. 543, 915 S.E.2d 501 (2025). The undersigned presided over the two-week trial of this matter which began on May 6, 2019. The jury returned a verdict in Plaintiffs' favor against TCR in the amount of \$7,000,000 (including \$500,000 in punitive damages). After considering post-trial briefing and arguments, the Court allowed a set-off in favor of TCR in the amount of \$1,670,000. Judgment against TCR was entered on July 23, 2019, in the amount of \$5,330,000. Defendant TCR appealed, principally arguing that the total set-off should be \$5,392,500, and that the judgment against TCR should be reformed to \$1,607,500.

The Court of Appeals issued its opinion on June 28, 2023. *See Palmetto Pointe at Peas Island Condo. Prop. Owners Ass'n, Inc. v. Island Pointe, LLC*, 440 S.C. 190, 890 S.E.2d 603 (Ct. App. 2023). The Court of Appeals affirmed this Court's set-off rulings in all respects except that it granted TCR an additional \$500,000 in set-off for post-trial settlements reached with TCR's co-Defendant at trial, CBC. *See id.* This effectively resulted in a 2019 judgment in the amount of \$4,830,000.00.

The South Carolina Supreme Court granted *certiorari* on two issues: first, whether TCR was entitled to a full dollar-for-dollar set-off for pre-trial settlements reached with four Defendants, as opposed to the partial set-off (10-50%) granted by this Court and upheld by the Court of Appeals; and, second, whether TCR was entitled to an additional \$1,000,000 set-off credit for a pre-trial covenant-not-to-execute reached with one of CBC's insurers. *See Palmetto*

Pointe at Peas Island Condo. Prop. Owners Ass'n, Inc. v. Island Pointe, LLC, 445 S.C. 543, 915 S.E.2d 501 (2025).

As to the first issue, the South Carolina Supreme Court, on *certiorari*, agreed with the Court of Appeals and affirmed this Court's partial set off allocation of Plaintiffs' pre-trial settlements with four defendants. *See id.* at 552 ("For the reasons stated by the court of appeals, we hold the trial court properly exercised its discretion. [...] We affirm the court of appeals; holding on the Novus, Atlantic, H and A, and Cohen's settlements."). As to the second issue, the Supreme Court held that TCR was entitled to an additional set-off of \$1,000,000 to account for the pre-trial covenant-not-to-execute because "the covenant stipulates the \$1,000,000 is a credit in the same amount against any judgment obtained against CBC." *See id.* at 550, 915 S.E.2d at 505 (2025). This effectively resulted in a 2019 judgment in the amount of \$3,830,000.00, after both appellate rulings. However, the Supreme Court left it to this Court to calculate and enter the amended judgment, as follows: "We remand to the trial court for calculation of the amount of judgment to be entered against TCR." *See id.*

AMENDED JUDGMENT

Considering the foregoing holdings which grant an additional set-off of \$1,500,000 to TCR, the Court's July 23, 2019, judgment is modified to \$3,830,000, after all setoffs. Additionally, Plaintiffs are entitled to have the post-judgment interest liquidated and added to this amount. Further, this Court grants Plaintiffs' request that the bond posted by TCR and U.S. Specialty Insurance Company, surety, be released and disbursed because the judgment exceeds the bond amount of \$1,000,000, and TCR has not satisfied in full the judgment which is now final.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Post-Judgment Interest

On July 23, 2019, Plaintiffs obtained a monetary judgment against Defendant TCR in the amount of \$5,330,000, which amount has now been adjusted to \$3,830,000. As it relates to post-judgment interest for monetary judgments, South Carolina law is clear:

A money decree or judgment of a court enrolled or entered *must* draw interest according to law. The legal rate of interest is equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year for which the damages are awarded, plus four percentage points, compounded annually. The South Carolina Supreme Court shall issue an order by January 15 of each year confirming the annual prime rate. This section applies to all judgments entered on or after July 1, 2005. For judgments entered between July 1, 2005, and January 14, 2006, the legal rate of interest shall be the first prime rate as published in the first edition of the Wall Street Journal after January 1, 2005, plus four percentage points.

S.C. Code Ann. § 34-31-20 (B) (emphasis added). The Supreme Court has stated that post-judgment interest under § 34-31-20 (B) is mandatory, such that a plaintiff does not need to request it or otherwise plead its entitlement. *Parker v. Shecut*, 359 S.C. 143, 153, 597 S.E.2d 793, 799 (2004) (“A party need not plead for such interest; it is due as a matter of course.”).

When a judgment is modified on appeal, the interest on the monetary judgment, whether modified up, down, or not at all, runs from the date of the original judgment. *Calhoun v. Calhoun*, 339 S.C. 96, 104, 529 S.E.2d 14, 18–19 (2000) (“[W]hen a money judgment is finalized, whether in a lower court or in an appellate court, *the interest on that amount*, whether it has been modified upward or downward or remains the same, runs from the date of the original judgment.”) (emphasis added).

Therefore, post-judgment interest on the \$3,830,000 judgment runs from July 23, 2019, to the date of remittance, at the statutory rates mandated by § 34-31-20 (B) and the annual orders of the South Carolina Supreme Court. Plaintiffs submitted, and the Court now adopts, a

spreadsheet reflecting that \$1,906,317.70² of interest has accrued since July 23, 2019, and a total of \$3,486,317.70 is owed as of July 31, 2025. (*See* Exhibit “A”.) Exhibit A fully accounts for two (2) partial settlements reached in this matter by various insurers of Defendant TCR, during the pendency of the appeal, thereby reducing the judgment which was accruing interest while on appeal each time a payment was received.³

TCR agrees that Plaintiffs’ calculations in Exhibit “A” are correct and does not contest the judgment amount Plaintiffs ask this Court to enroll. (*See* TCR Resp. at 2.) It is unclear, however, whether TCR opposes the entry of judgment, even though TCR agrees with the total amount to be enrolled. Regardless, the undersigned takes into account TCR’s lack of opposition to the calculations and its failure to include any legal precedent or rationale which would prevent this Court from enrolling judgment. To the extent TCR does oppose enrollment of judgment, that opposition is overruled, as the judgment to be entered is merely a mathematical calculation TCR concedes to be accurate.

II. Supersedeas/Appeal Bond

On January 28, 2020, the undersigned issued a Form 4 Order setting the amount of the Appellate Bond at the sum of One Million Dollars (\$1,000,000.00). The bond amount was set by the application of S.C. Code § 18-9-130.

On February 4, 2020, Defendant TCR filed the above-referenced Supersedeas/Appeal Bond, whereby TCR and the participating insurance carriers agreed to post the bond in order to stay execution of the judgment during the pendency of TCR’s appeal. In the interim, two of the carriers providing a defense to Defendant TCR reached settlements on behalf of TCR and were

² This figure is as of July 31, 2025.

³ The first partial settlement was received on July 14, 2021 (\$1,500,000), and the second partial settlement was received on May 15, 2023 (\$750,000). (*See* Aff. of J. Zambriczki, attached hereto as Exhibit “B”.)

released. The Court issued a consent order revoking the February 4, 2020, supersedeas bond previously posted by TCR but required that TCR post a substitute bond to continue the stay of execution and to provide security for partial satisfaction of Plaintiffs' judgment in the event TCR's appeal was unsuccessful. This bond was filed on February 7, 2025, secured by U.S. Specialty Insurance Company, Surety.

An appeal bond is merely a contract and must be enforced in accordance with its own terms. "An appeal bond is a voluntary obligation entered into by the appellant and his sureties, as obligor, and the appellees, as obligees, conditioned that the obligors shall prosecute the appeal with effect or answer to the liability created by the bond." 5 C.J.S. 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. A supersedeas bond is designed to maintain the status quo and protect the judgment holder against any loss it may sustain as a result of an unsuccessful appeal. It protects appellee from losing the benefit of the judgment through delay or ultimate nonperformance by appellant.

5 C.J.S. Appeal and Error § 1202 (footnotes omitted).⁴

Here, TCR's and its sureties' obligations are spelled out in the terms of the bond itself and require that the bond amount be paid to the Plaintiffs unless TCR or its insurer "shall satisfy in full such judgment or modification of the judgment and such costs, attorney's fees, interest, and damages as this Circuit Court of Charleston County, South Carolina or the South Carolina Supreme Court may adjudge and award [...]." (*See Supersedeas Bond/Appellate Bond*, filed Feb. 7, 2025.) The obligation under the bond is limited to the amount of the bond, or \$1,000,000. (*See id.*) As explained above, the current outstanding judgment this Court is entering exceeds the amount of the bond. TCR has not satisfied the judgment. Therefore, this Court finds that

⁴ Further, in 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).

disbursement of the full amount of the bond to Plaintiffs in partial satisfaction of the total judgment due is appropriate.

III. TCR's Opposition to Plaintiffs' Motion to Disburse the Bond Is Overruled and TCR's Accompanying Motion(s) to Stay Are Denied

TCR's response filed on July 28, 2025, included a "cross-motion to stay" disbursement of the supersedeas/appellate bond. Subsequently, TCR filed a "Motion to Stay" on July 29, 2025, which, again, asks the Court to stay any release or disbursement of the bond until the declaratory judgment action (*Palmetto Pointe v. Lloyd's London*, C.A. No. 2021-CP-10-04380) is resolved.

The Court notes for the record that remittitur in this case was filed on June 5, 2025, thereby transferring jurisdiction over the matter to this Court.⁵ On the same day, Plaintiffs filed the instant Motion for Enrollment of the Judgment and Disbursement of Bond. Conversely, TCR waited until 5:02 p.m. on July 29, 2025—less than three business days before the hearing on Plaintiffs' motion—to formally seek a stay of this Court's consideration of the bond disbursement. TCR was aware as of June 5, 2025, that Plaintiffs sought disbursement of the bond and, for reasons unknown, waited until the eve of the hearing to seek a stay. TCR's motion is untimely.

In any event, the motion fails on the merits. TCR fails to illustrate, through law or fact, why the pending declaratory judgment action prevents the release of the bond. The validity of the bond itself is not conditioned on a finding or adjudication of insurance coverage, nor does it refer in any manner to the pending declaratory judgment action; rather, it is a stand-alone, contractual document which this Court must construe according to its plain terms. It is of no moment to this

⁵ "[O]nce the remittitur is issued from an appellate court, the circuit court acquires jurisdiction to enforce the judgment and take any action consistent with the appellate court's ruling." *Martin v. Paradise Cove Marina, Inc.*, 348 S.C. 379, 385, 559 S.E.2d 348, 351–52 (Ct. App. 2001).

Court that TCR's insurers who are presently contesting coverage in a separate action have intertwined themselves into the bond's obligations, through side agreements with the surety or otherwise. The bond is intended to protect the judgment holder, not the judgment debtor or its surety. (*See* 5 C.J.S., § 1202, *supra*.)

The plain terms provide that, unless the judgment is satisfied by TCR or its insurers, or unless the judgment is set aside or otherwise extinguished on appeal, the bond "remains in full effect." Further, the bond provides that TCR and its surety, U.S. Specialty Insurance Company, "firmly bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally" to the payment of the total amount of the appellate bond. (*See* Supersedeas Bond/Appellate Bond, filed Feb. 7, 2025.) None of the conditions which would nullify or void the bond have occurred, and TCR has not offered any legal authority or compelling reason for this Court to alter the plain terms of the bond and extend an additional stay. The bond itself stayed execution of the judgment pending appeal. The Plaintiffs have waited nearly six (6) years to execute upon their judgment. The appeal is over; remittitur has issued; and the judgment holder, here, Plaintiffs, are entitled to execute on the bond. TCR's motion is, therefore, denied.

At and after the July 31, 2025, hearing, TCR was granted additional time to submit a competing proposed order and or further opposition. The Court has considered the points raised by TCR in both its opposition and its Motion to Stay; and these points are overruled.

CONCLUSION

IT IS THEREFORE ORDERED that judgment be entered in favor of the Plaintiffs against Defendant TCR for the total sum of \$3,486,317.70, which is inclusive of interest accruing from July 23, 2019, through July 31, 2025, and accounts for post-trial payments in

TCR's behalf by two insurance carriers. Post-judgment interest will continue to accrue from July 31, 2025, forward on any unpaid balance until the judgment is satisfied in full.

IT IS FURTHER ORDERED that, by virtue of the Supersedeas/Appellate Bond executed by U.S. Specialty Insurance Company, Surety, on behalf of Judgment Debtor TCR, the full amount of the bond, or \$1,000,000, be disbursed to Plaintiffs as partial satisfaction of the judgment hereunder. Upon receipt of the \$1,000,000, Plaintiffs shall file a partial satisfaction of judgment.

IT IS FURTHER ORDERED that TCR's Motion for a Stay and requests for other relief are denied.

IT IS SO ORDERED.

The Honorable Jennifer B. McCoy
Judge, Ninth Judicial Circuit

_____, 2025

Charleston, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-10-00955

PALMETTO POINTE AT PEAS ISLAND)
CONDOMINIUM PROPERTY OWNERS)
ASSOCIATION, INC. and ELIZABETH A.)
BUSHEY, individually, and on behalf of all)
others similarly situated,)

Plaintiffs,)

v.)

TRI-COUNTY ROOFING, INC., et al.,)

Defendants.)

PLAINTIFFS' MOTION TO ALTER,
AMEND, AND/OR RECONSIDER
ORDER FILED AUGUST 28, 2025

*****Hearing Requested*****

TO: THE HONORABLE JENNIFER B. MCCOY, Presiding Judge

NOW COME Plaintiffs, by and through their undersigned counsel, pursuant to Rule 59(e), SCRCF, and, on the grounds set forth below, hereby respectfully move this Honorable Court to alter, amend, and/or reconsider its order filed August 28, 2025 (the "Subject Order") on Plaintiffs' motion filed June 5, 2025, for entry of judgment against Defendant Tri-County Roofing, Inc. ("TCR") in an amount consistent with the Supreme Court's opinion filed April 30, 2025, and for an order compelling the disbursement of the \$1,000,000 supersedeas bond that TCR posted pending the outcome of its now-concluded appeal and TCR's countervailing motion filed July 29, 2025, to stay disbursement of the bond proceeds pending the outcome of separate insurance coverage litigation.

1. Plaintiffs' right to receive the bond proceeds is unrelated to any question of insurance coverage for the judgment against TCR.

The fundamental problem with the Subject Order is that it conflates the question of whether the proceeds of the bond are now payable with the question of whether, and to what extent, there

is insurance coverage for the judgment against TCR. As is clear from the language of the statute under which the bond was required by this Court, the purpose of the bond is to “*guarantee* the payment of the judgment pending the appeal” (up to the amount of the bond). S.C. Code Ann. § 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 § 18-9-130(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, the Subject Order correctly provides for the 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. (Subject Order 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 U.S. Specialty Insurance Company (“US Specialty”), as surety. The whole reason the substitute bond was posted was to make TCR’s insurer Lloyd’s the sole guarantor of the bond following Plaintiffs’ settlement with TCR’s other insurers, Scottsdale and Builders Mutual. 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”¹ 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 insurance coverage declaratory judgment action

¹ Consent Order Regarding Supersedeas/Appellate Bond filed January 2, 2025, p. 5.

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 "Tri-County and/or its insurer" not satisfying such judgment. The appeal has been concluded and the case remitted to this Court for months, and neither TCR nor Lloyd's has satisfied the judgment against TCR. Under the express terms of the bond, there is simply no other condition precedent to Plaintiffs' recovery under the bond.

The Subject Order states that it "[s]ecures [the bond] funds for Plaintiffs if they prevail" (Subject Order p. 5.) But insofar as Plaintiffs' entitlement to the bond proceeds is concerned, Plaintiffs have already prevailed. 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 US Specialty—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. Indeed, by tying Plaintiffs' ability to recover under the bond to the outcome of the insurance coverage dispute, the Subject Order has rendered 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 there is no risk of duplicative payment being made if US Specialty (or Lloyd's) is made to pay the bond amount to the Plaintiffs in advance of the outcome of the insurance coverage dispute. If \$1,000,000 is now paid to Plaintiffs under the bond, this amount will simply be 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. And assuming, *arguendo*, Lloyd's succeeded in obtaining a declaratory judgment that none of the Plaintiffs' judgment against TCR is covered, the \$1,000,000 under the bond would be all that Plaintiffs would recover.

To be clear, however, Lloyd's cannot possibly be found to owe nothing under the insurance policies it issued to TCR. The Lloyd's policies at issue provide that Lloyd's "will pay . . . [a]ll interest on the full amount of any judgment that accrues after entry of judgment and before [Lloyd's] ha[s] paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance." (See **Exhibit 1** [CGL Coverage Form for Lloyd's Policy No. ART002591 for the Policy Period 7/24/07 to 7/24/08] p. 8 (Supplementary Payments – Coverages A and B at 1.g.); **Exhibit 2** [CGL Coverage Form for Lloyd's Policy No. ART004630 for the Policy Period 7/24/08 to 7/24/09] p. 8 (Supplementary Payments – Coverages A and B at 1.g.); *see also, Mora v. Lancet Indemnity Risk Retention Group, Inc.*, 773 Fed. Appx. 113, 121–22 (4th Cir. 2019) ("And under the 'Supplemental Payments' portion of the Coverage Section, the Policy provides that Lancet agrees to pay '[a]ll interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable Limit of Liability.' J.A. 108 (emphasis added). Courts routinely interpret materially indistinguishable provisions in insurance contracts as requiring payment of interest in full, despite any limitation on liability. *See Wilkerson v. Md. Cas. Co.*, 119 F. Supp. 383, 388 (E.D. Va. 1953), *aff'd*, *Md. Cas. Co. v. Wilkerson*, 210 F.2d 245, 246 (4th Cir.

1954); *see also Fratus v. Republic W. Ins. Co.*, 147 F.3d 25, 28 (1st Cir. 1998) (noting that the contract terms ‘could not be clearer’ and that “‘all interest’ does not mean ‘partial interest’”). Notably, these courts have held that such provisions require that the insurer pay interest in full even when the award of interest would render the total payment in excess of the policy’s limit.”). As the Subject Order correctly finds, as of July 31, 2025, \$1,906,317.70 in post-judgment interest has already accrued on the judgment against TCR. (Subject Order p. 3.) Having not yet paid, offered to pay, or deposited in court any part of the judgment against TCR, Lloyd’s is, at a minimum, obligated to pay some \$2,000,000 (and counting) in post-judgment interest under the insurance policies at issue.

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 Subject Order should be altered, amended, and/or reconsidered to provide that Plaintiffs are entitled to the immediate, unconditional payment of the \$1,000,000 bond proceeds (i.e., with no strings whatsoever attached and Plaintiff’s entitlement to such funds in no way contingent upon or subject to the outcome of the insurance coverage litigation) by US Specialty (or Lloyd’s). Provided the Court does so, upon receipt of the \$1,000,000 bond proceeds, Plaintiffs will file a partial satisfaction of judgment in that amount.

2. The underlying motions do not call for consideration of the equities—but even if they did, the equities favor Plaintiffs.

The Subject Order references the Court’s consideration of the “equities.” (Subject Order p. 3; *see also id.* at p. 4 (“the equitable and prudent course is to . . .”).) Equity, however, follows

the law,² and the question presented here is one of law regarding a statutory appeal bond posted under § 18-9-130. But even if the equities are properly considered, they favor Plaintiffs here, because, as explained above, what Plaintiffs are asking for is not any form of double recovery but simply not to be deprived of the very security they were promised under the bond, and at a minimum, Lloyd's is already obligated to pay some \$2,000,000 (and counting) in post-judgment interest under the insurance policies at issue.

3. The Subject Order erroneously relies on facts not in evidence about Plaintiffs' settlement agreement with TCR's other insurers.

The Subject Order includes a 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.” (Subject Order p. 3.) But 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 are 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* before this Court that supports a finding that Plaintiffs have released TCR. Accordingly, this finding is erroneous because there is no evidence to support it.³

² *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.”).

³ Indeed, the very fact that this finding is based “[u]pon information and belief” confirms that it is not based upon evidence.

4. **Even assuming, *arguendo*, the Court does not fully correct its ruling as elsewhere requested herein, it should clarify that the Clerk of Court is to disburse the \$1,000,000 on deposit, plus all accrued interest, in no less than 120 days from the date of the Subject Order, August 28, 2025, i.e., by December 29, 2025.**

The Subject Order directs “the subscribing insurers for TCR,” i.e., Lloyd’s, to deposit \$1,000,000 with the Clerk of Court and the Clerk of Court to place these funds into an interest-bearing account. (Subject Order p. 5.) The Subject Order further directs that the funds deposited into (and thereafter accrued in) this account are to remain in the account until the earlier of (a) the final resolution (including appeals) of the coverage action or (b) 120 days from the issuance of the Subject Order on August 28, 2025 and that “[i]f the coverage case is not reached within 120 days of th[e] [Subject Order], *TCR* shall disburse the funds.” (Subject Order p. 6 (emphasis added).) Even assuming, *arguendo*, the Court does not fully correct its ruling as elsewhere requested herein, it should clarify that the *Clerk of Court*, not *TCR*, is to disburse the \$1,000,000 on deposit, plus all accrued interest, in no less than 120 days from August 28, 2025, i.e., by December 29, 2025, to Plaintiffs.⁴

5. **At a minimum, Plaintiffs ask the Court to reconsider and expressly rule on each and every distinct issue/argument raised in support of Plaintiffs’ position with respect to the underlying motions, including arguments set forth in any written submission Plaintiffs filed or otherwise submitted to the Court with respect to the motions and/or via oral argument, all of which are hereby incorporated herein by reference.**

See Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (“[O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully

⁴ The actual 120th day after August 28, 2025, is Friday, December 26, 2025, which is a holiday, so pursuant to Rule 6(a), SCRCPP, the deadline carries over to Monday, December 29, 2025.

consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.”) (emphasis in original).

- (a) **Taking nothing away from the all-encompassing scope of No. 5 above, Plaintiffs would expressly, albeit without limitation, ask the Court to expressly rule upon the following issues/arguments:**
 - (i) **The obligation undertaken via the subject appeal bond, and in turn the security to which Plaintiffs are guaranteed thereunder, is separate from and unrelated to any question of whether, or to what extent, insurance coverage exists under the Lloyd’s policies for Plaintiffs’ judgment against TCR.**
 - (ii) **Because the appeal is concluded with judgment in favor of Plaintiffs against TCR in an amount that exceeds the \$1,000,000 bond amount and TCR has not paid Plaintiffs in satisfaction of the judgment, Plaintiffs are entitled to immediate recourse under the subject appeal bond, i.e., Plaintiffs are now entitled to the full and unconditional payment of the \$1,000,000 bond amount.**

WHEREFORE, Plaintiffs ask that the Court alter, amend, and/or reconsider the Subject Order.

PLEASE NOTE: Plaintiffs reserve all rights to provide further support for this motion via such briefing, argument (to include oral argument), and/or additional submissions as the Court may permit or require.

Signature on following page.

Respectfully submitted,
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September 8, 2025

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V - Definitions.

SECTION I - COVERAGES**COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY****1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- (2) The "bodily injury" or "property damage" occurs during the policy period; and
- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

EXHIBIT

1

- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
 - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

(1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:

(i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

(ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

(i) Any insured; or

(ii) Any person or organization for whom you may be legally responsible; or

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

(i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;

(ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".

(e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

(2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 26 feet long; and
 - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

(5) "Bodily injury" or "property damage" arising out of:

- (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
- (b) the operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. War

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III - Limits Of Insurance.

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and

- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages A and B.

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

g. Quality Or Performance Of Goods - Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

i. Infringement Of Copyright, Patent, Trademark Or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights.

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web-sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions Section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-Related

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

o. War

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

COVERAGE C MEDICAL PAYMENTS**1. Insuring Agreement**

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations;
- provided that:

- (1) The accident takes place in the "coverage territory" and during the policy period;
- (2) The expenses are incurred and reported to us within one year of the date of the accident; and
- (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage A.

SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

- a. All expenses we incur.
- b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All costs taxed against the insured in the "suit".
- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

- 2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
 - a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
 - b. This insurance applies to such liability assumed by the insured;
 - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
 - d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
 - e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
 - f. The indemnitee:
 - (1) Agrees in writing to:
 - (a) Cooperate with us in the investigation, settlement or defense of the "suit";

- (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
- (c) Notify any other insurer whose coverage is available to the indemnitee; and
- (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(2) Provides us with written authorization to:

- (a) Obtain records and other information related to the "suit"; and
- (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I - Coverage A - Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II - WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
 - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
2. Each of the following is also an insured:
- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:
 - (1) "Bodily injury" or "personal and advertising injury":
 - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
 - (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
 - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
 - (d) Arising out of his or her providing or failing to provide professional health care services.
 - (2) "Property damage" to property:
 - (a) Owned, occupied or used by,
 - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
 - b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
 - c. Any person or organization having proper temporary custody of your property if you die, but only:
 - (1) With respect to liability arising out of the maintenance or use of that property; and
 - (2) Until your legal representative has been appointed.
 - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
 - 3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
 - a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
 - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III - LIMITS OF INSURANCE

- 1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".

2. The General Aggregate Limit is the most we will pay for the sum of:
 - a. Medical expenses under Coverage C;
 - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
 - c. Damages under Coverage B.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage A; and
 - b. Medical expenses under Coverage C because of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
 - (1) How, when and where the "occurrence" or offense took place;
 - (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- b. If a claim is made or "suit" is brought against any insured, you must:
 - (1) Immediately record the specifics of the claim or "suit" and the date received; and
 - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other involved insured must:
 - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
 - (2) Authorize us to obtain records and other information;
 - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
 - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
 - (b) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
 - (c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
 - (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I - Coverage A - Bodily Injury And Property Damage Liability.
- (2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.

When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V - DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
- b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

2. "Auto" means:

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or

- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

4. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or
- c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in a. above;
 - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement we agree to.

5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or

- b. Your fulfilling the terms of the contract or agreement.
- 9. "Insured contract" means:
 - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
 - b. A sidetrack agreement;
 - c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
 - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
 - e. An elevator maintenance agreement;
 - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

11. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b. While it is in or on an aircraft, watercraft or "auto"; or
- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

- 13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- 14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
 - a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
 - f. The use of another's advertising idea in your "advertisement"; or
 - g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".
- 15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, re-conditioned or reclaimed.

16. "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b. Does not include "bodily injury" or "property damage" arising out of:
 - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
 - (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

- 18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
 - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
- 19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
- 20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

21. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- (2) The providing of or failure to provide warnings or instructions.

- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

22. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- (2) The providing of or failure to provide warnings or instructions.

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V - Definitions.

SECTION I - COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- (2) The "bodily injury" or "property damage" occurs during the policy period; and
- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.



- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
 - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

(1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:

(i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

(ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

(i) Any insured; or

(ii) Any person or organization for whom you may be legally responsible; or

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

(i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;

(ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".

(e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

(2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 26 feet long; and
 - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

(5) "Bodily injury" or "property damage" arising out of:

- (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
- (b) the operation of any of the machinery or equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment".

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. War

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

(1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or

(2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

(1) "Your product";

(2) "Your work"; or

(3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III - Limits Of Insurance.

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and

- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages **A** and **B**.

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

g. Quality Or Performance Of Goods - Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

i. Infringement Of Copyright, Patent, Trademark Or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights.

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web-sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **14.a.**, **b.** and **c.** of "personal and advertising injury" under the Definitions Section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-Related

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

o. War

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

COVERAGE C MEDICAL PAYMENTS**1. Insuring Agreement**

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
 - (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations; provided that:
 - (1) The accident takes place in the "coverage territory" and during the policy period;
 - (2) The expenses are incurred and reported to us within one year of the date of the accident; and
 - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage A.

SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:
 - a. All expenses we incur.
 - b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All costs taxed against the insured in the "suit".
- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
 - a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
 - b. This insurance applies to such liability assumed by the insured;
 - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
 - d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
 - e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
 - f. The indemnitee:
 - (1) Agrees in writing to:
 - (a) Cooperate with us in the investigation, settlement or defense of the "suit";

- (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";

- (c) Notify any other insurer whose coverage is available to the indemnitee; and

- (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(2) Provides us with written authorization to:

- (a) Obtain records and other information related to the "suit"; and

- (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I - Coverage A - Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or

- b. The conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II - WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.

- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.

- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
 - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
2. Each of the following is also an insured:
- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:
 - (1) "Bodily injury" or "personal and advertising injury":
 - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
 - (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
 - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
 - (d) Arising out of his or her providing or failing to provide professional health care services.
 - (2) "Property damage" to property:
 - (a) Owned, occupied or used by,
 - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
 - b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
 - c. Any person or organization having proper temporary custody of your property if you die, but only:
 - (1) With respect to liability arising out of the maintenance or use of that property; and
 - (2) Until your legal representative has been appointed.
 - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
 - b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.
- No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III - LIMITS OF INSURANCE

- 1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".

2. The General Aggregate Limit is the most we will pay for the sum of:
 - a. Medical expenses under Coverage **C**;
 - b. Damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
 - c. Damages under Coverage **B**.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage **A** for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to **2.** above, the Personal and Advertising Injury Limit is the most we will pay under Coverage **B** for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to **2.** or **3.** above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage **A**; and
 - b. Medical expenses under Coverage **C** because of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to **5.** above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to **5.** above, the Medical Expense Limit is the most we will pay under Coverage **C** for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
 - (1) How, when and where the "occurrence" or offense took place;
 - (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against any insured, you must:
 - (1) Immediately record the specifics of the claim or "suit" and the date received; and
 - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other involved insured must:
 - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
 - (2) Authorize us to obtain records and other information;
 - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
 - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

- b.** To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in **c.** below.

b. Excess Insurance

This insurance is excess over:

- (1)** Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (a)** That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
 - (b)** That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
 - (c)** That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
 - (d)** If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **I** - Coverage **A** - Bodily Injury And Property Damage Liability.
- (2)** Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.

When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1)** The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2)** The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

- a.** We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b.** Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c.** The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V - DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
 - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
 - b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
2. "Auto" means:
 - a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or

- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

4. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or
- c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in a. above;
 - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement we agree to.

5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
 - b. You have failed to fulfill the terms of a contract or agreement;
 if such property can be restored to use by:
 - a. The repair, replacement, adjustment or removal of "your product" or "your work"; or

- b. Your fulfilling the terms of the contract or agreement.
9. "Insured contract" means:
- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
 - b. A sidetrack agreement;
 - c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
 - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
 - e. An elevator maintenance agreement;
 - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
- Paragraph f. does not include that part of any contract or agreement:
- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
 - (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
 - (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.
10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
11. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
 - e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
 - f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
 - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
- However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".
- 13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
 - 14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
 - a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
 - f. The use of another's advertising idea in your "advertisement"; or
 - g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".
 - 15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, re-conditioned or reclaimed.

- 16. "Products-completed operations hazard":
 - a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
 - b. Does not include "bodily injury" or "property damage" arising out of:
 - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
 - (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.
- 17. "Property damage" means:
 - a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

- b.** Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

- 18.** "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
 - a.** An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b.** Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
- 19.** "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
- 20.** "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

21. "Your product":

- a.** Means:
 - (1)** Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a)** You;
 - (b)** Others trading under your name; or
 - (c)** A person or organization whose business or assets you have acquired; and
 - (2)** Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
- b.** Includes
 - (1)** Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
 - (2)** The providing of or failure to provide warnings or instructions.
- c.** Does not include vending machines or other property rented to or located for the use of others but not sold.

22. "Your work":

- a.** Means:
 - (1)** Work or operations performed by you or on your behalf; and
 - (2)** Materials, parts or equipment furnished in connection with such work or operations.
- b.** Includes
 - (1)** Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and
 - (2)** The providing of or failure to provide warnings or instructions.

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| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | |
| COUNTY OF CHARLESTON |) | NINTH JUDICIAL CIRCUIT |
| |) | |
| Palmetto Pointe at Peas Island |) | Civil Action No.: 2015-CP-10-00955 |
| Condominium Property Owners |) | |
| Association, Inc. and Elizabeth A. Bushey, |) | |
| individually, and on behalf of all others |) | |
| similarly situated, |) | |
| |) | DEFENDANT TRI-COUNTY ROOFING, |
| Plaintiffs, |) | INC.'S RESPONSE IN OPPOSITION TO |
| |) | PLAINTIFF'S MOTION TO ALTER, |
| |) | AMEND, AND/OR RECONSIDER |
| v. |) | |
| |) | |
| Tri-County Roofing, Inc., et al. |) | |
| |) | |
| Defendants. |) | |

Defendant Tri-County Roofing, Inc. ("TCR"), by and through undersigned counsel, responds in opposition to Plaintiffs' Motion to Alter, Amend, and/or Reconsider the Order Filed August 28, 2025, as follows:

[O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.

Elam v. SCDOT, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004).

In their motion, Plaintiffs seek both a reconsideration of this court's ruling, and to preserve for appellate review any arguments that were not addressed in the Subject Order. The facts and arguments currently at issue have been extensively briefed and argued before this court and a rehash of the same is not necessary. TCR craves reference to and incorporate herein the arguments and evidence previously submitted by motion and/or prior argument. See Rule 10(c), SCRCP.

This Court has heard and considered all evidence and arguments, *considered the equities*, and granted the requested relief proposed by TCR. TCR contends the crux of the issue before the

Court is that the supersedeas bond at issue is a *conditional* surety instrument and, as this Court has already correctly determined, the conditions precedent have not yet been met. Plaintiffs' assertion that the balance of equities tips in their favor simply because there is no danger for a double recovery is irrelevant and unavailing. TCR's insurers were denied the opportunity to challenge coverage at an earlier time. To the extent equity is a valid consideration, the balance of equities requires that the insurer not be forced to decide whether to pay a judgment before a coverage action to determine whether the insurer has a duty to pay reaches its conclusion. Plaintiffs' argument that this court improperly considered facts not in evidence is equally unavailing because such facts were not contested and may therefore be considered. Moreover, even if those facts were not before the court, that would amount to at most harmless error.

Finally, with respect to Plaintiffs' request that the Subject Order be amended to clarify that the Clerk of Court, and not TCR, may direct the disbursement of funds, TCR believes that such an amendment is proper and does not contest Plaintiffs' request. Otherwise, TCR submits that this Court's Order is correct and is properly supported by existing law and the evidence in this case.

WHEREFORE, Defendant Tri-County Roofing, Inc. respectfully requests that this Court deny Plaintiffs' Motion to Alter, Amend, and/or Reconsider the Order Filed August 28, 2025.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,
COLLINS & LACY, P.C.

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ATTORNEYS FOR TRI-COUNTY
ROOFING, INC.

**DEFENDANT TRI-COUNTY
ROOFING, INC.'S RESPONSE IN
OPPOSITION TO PLAINTIFF'S
MOTION TO ALTER, AMEND,
AND/OR RECONSIDER**

September 26, 2025
Columbia, South Carolina

| | | |
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| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | |
| COUNTY OF CHARLESTON |) | NINTH JUDICIAL CIRCUIT |
| |) | |
| Palmetto Pointe at Peas Island |) | Civil Action No.: 2015-CP-10-00955 |
| Condominium Property Owners |) | |
| Association, Inc. and Elizabeth A. Bushey, |) | DEFENDANT |
| individually, and on behalf of all others |) | TRI-COUNTY ROOFING, INC.'S |
| similarly situated, |) | MOTION TO RECONSIDER AND |
| |) | EXTEND THE APPLICABLE DEADLINE |
| Plaintiffs, |) | GOVERNING THE STAY OF |
| v. |) | DISBURSEMENT UNTIL SUCH TIME AS |
| |) | THE MASTER IN EQUITY TAKES UP |
| Tri-County Roofing, Inc., et al. |) | THE COVERAGE ACTION AND SETS A |
| |) | SCHEDULE FOR ITS RESOLUTION |
| Defendants. |) | |
| |) | |

Defendant Tri-County Roofing, Inc. ("TCR") respectfully moves the Court for an order, pursuant to Rules 59(e) and 60(b) of the South Carolina Rules of Civil Procedure, granting a stay of the disbursement of the funds held by the Clerk of Court under the Order filed December 30, 2025, and extend the applicable deadline governing the disbursement of the funds until such time as the Charleston County Master-in-Equity takes up the coverage action entitled Palmetto Point at Peas Island Condominium Property Owners Association, Inc. v. Certain Underwriters at Lloyd's, London, et al, Case No. 2021-CP-10-04380, solely for the purpose of determining all insurance coverage claims alleged in this matter. The grounds for this motion are as follows.

The original Order regarding the appellate bond and payment of the \$1 Million into the Court contemplated resolution of the underlying coverage action entitled Palmetto Point at Peas Island Condominium Property Owners Association, Inc. v. Certain Underwriters at Lloyd's, London, et al, Case No. 2021-CP-10-04380, ("underlying coverage action") by December 2025. See Exhibit A. For various reasons, this did not occur. Earlier this month, counsel for all parties in the companion coverage action participated in an online roster/status conference conducted by the

Charleston County Clerk of Court. At that conference, the Clerk advised the parties that the coverage action will be referred to the Charleston County Master-in-Equity for disposition, rather than proceeding on the Circuit Court trial roster. See Order of Reference dated December 22, 2025, and attached as Exhibit B. This Order was received from coverage counsel the morning of December 30, 2025. Based on that guidance, the coverage action has not yet been reached for adjudication and will instead proceed on the Master's calendar, with initial consideration anticipated early in the new year. On December 30, 2025, the Court issued its Form 4 Order granting the release of the funds that was deposited with the clerk of court's office, and the accrued interest, to the counsel of record for Plaintiffs. See attached Exhibit C.

In light of this referral, and consistent with the equitable principles underlying the Court's August 28th Order, Defendant Tri-County Roofing, Inc. respectfully requests that the Court extend the applicable deadline governing the stay of disbursement until such time as the Master-in-Equity takes up the coverage action and sets a schedule for its resolution. This request is made to preserve the status quo and ensure that the Court's intent—preserving the funds while coverage is adjudicated—is effectuated in light of the revised procedural posture.

This motion is based upon Rules 55(c) and 60(b), the statutory and common laws of South Carolina, any memorandum of law, additional evidence, or additional affidavits offered by Defendant, and any oral argument heard by the Court.

WHEREFORE, Defendant Tri-County Roofing, Inc. respectfully requests that this Court reconsider its Order filed December 30, 2025, and extend the applicable deadline governing the disbursement of the funds until such time as the Charleston County Master-in-Equity takes up the coverage action entitled Palmetto Point at Peas Island Condominium Property Owners

Association, Inc. v. Certain Underwriters at Lloyd's, London, et al, Case No. 2021-CP-10-04380,
solely for the purpose of determining all insurance coverage claims alleged in this matter.

Respectfully submitted,

COLLINS & LACY, P.C.

By: s/Christian Stegmaier
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ATTORNEYS FOR DEFENDANT
TRI-COUNTY ROOFING, INC.

**DEFENDANT TRI-COUNTY
ROOFING, INC.'S MOTION TO
RECONSIDER AND EXTEND THE
APPLICABLE DEADLINE
GOVERNING THE STAY OF
DISBURSEMENT UNTIL SUCH TIME
AS THE MASTER IN EQUITY TAKES
UP THE COVERAGE ACTION AND
SETS A SCHEDULE FOR ITS
RESOLUTION**

December 30, 2025
Columbia, South Carolina

EXHIBIT B

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
CASE NO. 2021-CP-10-04380

PALMETTO POINTE AT PEAS ISLAND)
CONDOMINIUM PROPERTY OWNERS)
ASSOCIATION, INC.,)

PLAINTIFF,)

v.)

CERTAIN UNDERWRITERS AT)
LLOYD’S, LONDON, INSURERS)
THROUGH POLICY NO. ART002591;)
CERTAIN UNDERWRITERS AT)
LLOYDS, LONDON, INSURERS)
THROUGH POLICY NO. ART004630;)
and TRI-COUNTY ROOFING, INC.,)

DEFENDANTS.)

**ORDER REFERRING COVERAGE
ISSUES TO MASTER IN EQUITY**

This matter came before the Court during a December 12, 2025, trial roster meeting. Justin Lucey, Ed Buckley, and Sohayla Townes appeared on behalf of Plaintiff. George Smythe and Richard Zelonka appeared on behalf of Defendants Certain Underwriters at Lloyd’s, London Insurers Through Policy No. ART002591 and Certain Underwriters at Lloyd’s, London Insurers Through Policy No. ART004630 (“Underwriters”). Counsel for Defendant Tri-County Roofing, Inc. (“TCR”), Stanley Rodgers, notified the Court via December 11, 2025, email that Justin Lucey was authorized to speak on his behalf at the roster meeting.

The above-captioned case includes claims for declaratory relief concerning insurance coverage under commercial general liability policies issued by Certain Underwriters at Lloyd’s, London (“insurance coverage claims”), as well as claims sounding in bad faith and other extra-contractual or non-coverage theories.

During the roster meeting, Underwriters’ consented to the referral of this case to the

Master. Plaintiff consented to referral of the insurance coverage claims to the Master and indicated TCR's consent to defer its bad faith claim until the insurance coverage claims have been decided by the Master.

After consideration of the record, the representations of counsel, and for good cause shown, the Court finds and orders as follows:

The Court **HEREBY FINDS** that judicial prudence will be served by referring only the insurance coverage claims to the Master for determination.

ACCORDINGLY, this matter is hereby referred to the Master solely for the purpose of determining all insurance coverage claims alleged in this matter. The Master is authorized to conduct hearings, receive evidence, rule on motions, and issue findings of fact and conclusions of law limited to the coverage issues.

This Court expressly retains jurisdiction over the adjudication of TCR's bad faith, claim and any remaining issues following a determination of the coverage claims by the Master.

IT IS SO ORDERED.

The Honorable Dale E. Van Slambrook
Ninth Judicial Circuit

Date: _____
Charleston, South Carolina



Charleston Common Pleas

Case Caption: Palmetto Pointe At Peas Island Condominium Property Owners VS
Lloyds London , defendant, et al

Case Number: 2021CP1004380

Type: Order/Other

And It Is So Ordered!

s/Dale E. Van Slambrook S.C. Circuit Court Judge
#2781

Electronically signed on 2025-12-19 10:11:47 page 3 of 3

ELECTRONICALLY FILED - 2025 Dec 22 9:23 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004380
ELECTRONICALLY FILED - 2025 Dec 30 2:53 PM - CHARLESTON - COMMON PLEAS - CASE#2015CP1000955

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

Appeal from Charleston County
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2015-CP-10-00955

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.

NOTICE OF APPEAL

**Counsel identified on the following page*

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Attorneys for Appellants

Other Counsel of Record:

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Evan M. Gessner (SC Bar No. 77704)
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(803) 256-2660

Attorneys for Respondent

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 (“Appellants”), hereby appeal the following orders of the Honorable Jennifer B. McCoy, Circuit Court Judge:

- **Order filed August 28, 2025, regarding entry of judgment and disbursement of appeal bond; and**
- **Order filed December 11, 2025, regarding Appellant’s motion to alter, amend, and/or reconsider.**

Copies of the appealed orders are attached hereto and incorporated herein by reference. Appellants received written notice of entry of the most recent order on December 11, 2025.

Respectfully submitted,

s/Russell G. Hines

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Attorneys for Appellants

Charleston, South Carolina

January 8, 2026

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

Appeal from Charleston County
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2015-CP-10-00955

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.

PROOF OF SERVICE

**Counsel identified on the following page*

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Attorneys for Appellants

I, Russell G. Hines, of Clement Rivers, LLP, attorneys for Appellants, hereby certify that, on January 8, 2026, Appellants' **NOTICE OF APPEAL** was served on Respondent by emailing (see attached email) a copy of the same to its counsel of record:

Christian Stegmaier, Esquire
cstegmaier@collinsandlacy.com
Evan M. Gessner, Esquire
egessner@collinsandlacy.com
COLLINS & LACY, P.C.
Attorneys for Respondent

I also certify that a copy of Appellants' **NOTICE OF APPEAL** was today, January 8, 2026, E-Filed with the lower court (see attached NEF), which also, i.e., in addition to service by email, effected service of the notice today on all counsel of record via the E-Filing System.

Respectfully submitted,

s/Russell G. Hines

Russell G. Hines (SC Bar No. 72100)
CLEMENT RIVERS, LLP
Attorneys for Appellants

Charleston, South Carolina

January 8, 2026

Hines, Russell

From: Hines, Russell
Sent: Thursday, January 8, 2026 12:07 PM
To: 'Christian Stegmaier'; Evan M. Gessner
Cc: Lee Weiland; Stephanie Drawdy; Justin Lucey; Sohayla Townes; Buckley, Edward D. (Ed); DeMato, Amanda; Anna McCann; Glover, Sherry; Richard E. Zelonka; Justman, Aimee
Subject: Palmetto Pointe POA v. Island Pointe, LLC, et al. (2015-CP-10-00955) -- Notice of Appeal
Attachments: Palmetto Pointe POA v. Island Pointe, LLC et al. (2015-CP-10-00955) -- Notice of Appeal.pdf; 2025 08-28 -- Appealed Order 1.pdf; 2025 12-11 -- Appealed Order 2.pdf

Attached for service in the above-referenced matter please find Plaintiffs/Appellants' **Notice of Appeal** and **copies of the appealed orders** attached thereto.

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f the S.C. Supreme Court effective February 4, 2022 (Order 2020-04-03-01), we will be serving discovery via e-mail only.



***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2015CP1000955

Official File Stamp: 01-08-2026 12:13:09 PM
Court: CIRCUIT COURT
Common Pleas
Charleston
Case Caption: Palmetto Pointe at Peas Island Condominium Property Owners A , plaintiff, et al VS Island
Pointe LLC , defendant, et al
Document(s) Submitted: Appeal/Notice of Appeal to Court of Appeals
- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits
Filed by or on behalf of: Russell Grainger Hines

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Bachman S. Smith, IV for Russell Rusty Hill, Rustys Heating and Air, Rustys Heating & Air
Ian Scott Ford for John Toolin, John F Toolin Heat and Air
Case Party Info Protected
Case Party Info Protected for Builders Mutual Insurance Co
Hunter H James for John Toolin, John F Toolin Heat and Air
Joshua Fletcher Evans for Palmetto Pointe at Peas Island Condominium Property Owners A,
Jack Love, Kathy Milner, Elizabeth A Bushey
James H. Elliott, Jr. for Keller Electric LLC
O. Carlisle Edwards, Jr.
Stephanie D. Drawdy for Palmetto Pointe at Peas Island Condominium Property Owners A
Edward D Buckley, Jr. for Palmetto Pointe at Peas Island Condominium Property Owners A,
Jack Love, Kathy Milner, Elizabeth A Bushey
Justin O'Toole Lucey for Palmetto Pointe at Peas Island Condominium Property Owners A,
Jack Love, Kathy Milner, Elizabeth A Bushey
Brent Morris Boyd
Brandon Todd Reeser for Miracle Siding LLC, Wilson Lucas Sales
Heather Alicia Chiovaro
John Gwilym Tamasitis
David Allen Anderson
Bonum Sams Wilson, III for Miracle Siding LLC
Eric G. Fosmire
David Starr Cobb for Complete Building Corporation
Robert Michael Ethridge for Liliana Rojas Flores
Shanna Milcetic Stephens
Richard Edward Mclawhorn, Jr. for Complete Building Corporation
Francis Cordes Ford, IV
Everett Augustus Kendall, II for Complete Building Corporation
Patrick J. McDonald for Island Pointe LLC
Dunn Denson Hollingsworth
Russell Grainger Hines for Palmetto Pointe at Peas Island Condominium Property Owners A,
Jack Love, Kathy Milner, Elizabeth A Bushey

Valerie Rains Lowndes for Doe, John 1-15, John 1-15 Doe, Doe John 61, John 61 Doe
Carter R. Massingill
William Duffie Powers
Michael Edward Wright
George Troy Thames
Robert Batten Farrar
James A. Atkins for W C Services Inc
Michael B.T. Wilkes
James Alexander Joyner
Michal Kalwajtyś for Builders Mutual Insurance Co
Joshua P. Cantwell for Palmetto Pointe at Peas Island Condominium Property Owners A,
Kathy Milner
Christian Stegmaier for Tri County Roofing Inc
Kelsey Jan Brudvig for Tri County Roofing Inc
Robert Mills Kennedy, Jr. for Scottsdale Insurance Company
Jason Alan Daigle for Palmetto Pointe at Peas Island Condominium Property Owners A, Jack
Love, Kathy Milner, Elizabeth A Bushey
Jasmine Wyman Thomas
Christopher M. Adams for Martin Barr, Port City Structured Wiring, Tri County Roofing Inc
James Lynn Werner
Suzanne Elizabeth Chapman for Liliana Rojas Flores
Christopher Michael Ramsey for Island Pointe LLC
Michael R. Daniel
Joseph Scott McCue
Lewis Gregory Cook Horton
Dana Woodrum Lang
Case Party Info Protected
Samuel Melvil Wheeler for Tri County Roofing Inc
Case Party Info Protected
James Lloyd Williams for Martin Barr, Port City Structured Wiring, JMC Construction Inc, JMC
Construction LLC
Jonathan Lee Anderson for Keller Electric LLC
Erin DuBose Dean for Warren Anderson
Megan C White for Keller Electric LLC
Case Party Info Protected

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Litchfield Seamless Gutters
Hernandez Electric LLC
Victor Hugo Hernandez
Case Party Info Protected
Mark Palpoint
Micah Palpoint
Eloy Vasquez
TriCounty Roofing
Chris
Elroy Alonzo Vasquez

| | | |
|------------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | |
| COUNTY OF CHARLESTON |) | NINTH JUDICIAL CIRCUIT |
| |) | |
| Palmetto Pointe at Peas Island |) | Civil Action No.: 2015-CP-10-00955 |
| Condominium Property Owners |) | |
| Association, Inc. and Elizabeth A. |) | DEFENDANT |
| Bushey, individually, and on |) | TRI-COUNTY ROOFING, INC.’S |
| behalf of all others similarly |) | MEMORANDUM IN SUPPORT OF |
| situated, |) | MOTION TO RECONSIDER AND |
| |) | EXTEND THE APPLICABLE |
| Plaintiffs, |) | DEADLINE GOVERNING THE |
| v. |) | STAY OF DISBURSEMENT UNTIL |
| |) | SUCH TIME AS THE MASTER IN |
| Tri-County Roofing, Inc., et al. |) | EQUITY TAKES UP THE |
| |) | COVERAGE ACTION |
| Defendant. |) | |

On December 30, 2025, Defendant Tri-County Roofing, Inc. (“TCR”) moved the Court for an order, pursuant to Rules 59(e) and 60(b) of the South Carolina Rules of Civil Procedure, granting a stay of the disbursement of the funds held by the Clerk of Court under the Order filed December 30, 2025, and extend the applicable deadline governing the disbursement of the funds until such time as the Charleston County Master-in-Equity takes up the coverage action entitled Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. v. Certain Underwriters at Lloyd’s, London, et al, Case No. 2021-CP-10-04380, solely for the purpose of determining all insurance coverage claims alleged in this matter.

This Court held hearing on this matter via WebEx on Friday, January 30. All parties were represented and participated in the same.

At the hearing, counsel for Defendant sought permission to file the instant memorandum in support of its motion, which was granted. This memorandum follows.

Defendants incorporate by reference all arguments and exhibits included in their motion for reconsideration, filed December 30, 2025, and subsequently transmitted to chambers via email.

Bottom Line Up Front/Summary of Argument

This Court entered an August 28, 2025 Order, which required Underwriters to deposit \$1,000,000 into the Clerk's registry to preserve the status quo pending resolution of a companion coverage action. This order required disposition of the coverage action by the Circuit Court within 120 days of the order; otherwise, the sums on deposit were subject to disbursement to Plaintiff. However, the coverage action was not resolved by late December. Instead, it was formally referred to the Master in Equity, extending the adjudicative timeline.

On December 30, 2025, the Court entered a Form 4 order directing release of the funds. Defendant timely moved for reconsideration of that release order because the factual predicate for disbursement no longer existed.

Notwithstanding the pending motion for reconsideration, Plaintiffs caused the funds to be removed from the Clerk's registry. Upon information and belief, the funds are now secured in Plaintiffs' appellate counsel's trust account. Defendant respectfully requests that the Court reaffirm its original equitable intent and order that the funds remain preserved—either with the Clerk or in a court-designated custodial account—pending resolution of coverage.

Factual Scenario/Argument

A. Original Context: August 28, 2025 Order

The Court's August 28, 2025 Order addressed the narrow issue of how to secure the equivalent of a supersedeas bond following remittitur. Rather than forcing immediate payment of bond proceeds, the Court exercised its equitable authority to require Certain Underwriters to deposit \$1,000,000 into the Charleston County Clerk of Court's registry in an interest-bearing account.

The stated purpose was clear and careful: to preserve the status quo while a companion declaratory judgment action concerning insurance coverage

proceeded. The Court expressly declined to adjudicate coverage, entitlement, bad faith, or ultimate ownership of the funds. The deposit mechanism was procedural insurance, not substantive relief.

B. The December 2025 Timing Assumption

The August order contemplated that the coverage action would likely be reached by late December 2025. That expectation was based on then-existing docket projections. It was not a merits determination, nor a ruling that funds should automatically be released if the coverage case was delayed for reasons outside the parties' control. Critically, the order preserved the Court's underlying objective: safeguarding disputed funds until coverage was adjudicated.

C. Referral of Coverage Case to the Master in Equity

In late December 2025, the coverage action was not reached on the Circuit Court jury roster. By order dated December 22, 2025, the Court formally referred the insurance coverage claims to the Charleston County Master in Equity.

That referral was a court-directed change in procedural posture, not gamesmanship by the insurers or Tri-County Roofing. It necessarily extended the timeline for resolving coverage beyond the December window referenced

in the August order. This development materially altered the factual assumptions underlying any automatic disbursement tied to that timeframe.

D. The Late-December Form 4 Order

On December 30, 2025, the Court entered a Form 4 order directing the Clerk of Court to release the funds, including accrued interest, to Plaintiffs' counsel. That order addressed payment mechanics only. It did not address:

- the Master-in-Equity referral,
- the altered coverage timeline, or
- whether the original equitable purpose of preserving the status quo had been frustrated by events beyond the parties' control.

It was this late-December release order—**not** the August 28 order—that triggered Defendant's present motion for reconsideration.

E. Pending Motion for Reconsideration

Defendant timely moved for reconsideration under Rules 59(e) and 60(b), SCRCPP. The motion does not seek to relitigate coverage, reargue the judgment, or disturb the appellate posture of the underlying case.

Its request is narrow and equitable: extend the stay of disbursement originally contemplated by the August 28 order until the Master in Equity sets

and conducts proceedings on coverage. That motion remains pending and undecided.

F. Appeal Filed by Plaintiffs

On January 8, 2026, Plaintiffs filed an appeal to the South Carolina Court of Appeals, challenging the August 28, 2025, order governing the deposit framework. That appeal confirms—rather than resolves—that entitlement to the funds remains disputed and unsettled.

Notwithstanding Plaintiffs’ averments this appeal obviates this Court’s jurisdiction over the instant motion, Rule 241(a), SCACR supports this Court’s jurisdiction to dispose of this motion.

G. Removal of Funds from the Clerk’s Registry

On the evening of Friday, January 23, 2026, Defendant learned that sometime after the subject Form 4 order had been filed, Plaintiffs presented the Form 4 order to the Clerk and obtained release of the registry funds. The funds were not distributed to Plaintiffs themselves.

H. Current Custody and Preservation of Funds

The \$1,000,000 is currently held in the trust account of Plaintiffs’ appellate counsel, Clement Rivers. Appellate counsel has confirmed that the full amount remains on deposit. This fact eliminates any claim of prejudice to

Plaintiffs while underscoring the continued need for judicial oversight of the funds.

I. Why Reconsideration Is Appropriate

The equities that drove the August 28 order remain unchanged. Coverage has not been decided. The insurers' rights have not been adjudicated. The referral to the master was court-directed. Allowing the funds to remain outside the Clerk's registry while entitlement is actively litigated undermines the very purpose of the original order. Reconsideration is warranted to realign the procedural posture with the Court's original intent: preservation, neutrality, and fairness.

J. Relief Requested

At this time, no substantive merits decision is required. Defendant respectfully requests only that the Court:

Order that the \$1,000,000 remain preserved under court control—either returned to the Clerk's registry or maintained in a court-designated custodial account—pending resolution of the coverage action and related appellate proceedings.

Applying equitable principles alone, this Court possesses the authority and concordant jurisdiction to modify its initial deadlines contained within its

August 28, 2025 order and extend the same, as well mandate the preservation of funds as requested above.

Conclusion

WHEREFORE, Defendant Tri-County Roofing, Inc. respectfully requests that this Court reconsider its Order filed December 30, 2025, and extend the applicable deadline governing the disbursement of the funds until such time as the Charleston County Master-in-Equity takes up the coverage action entitled Palmetto Point at Peas Island Condominium Property Owners Association, Inc. v. Certain Underwriters at Lloyd's, London, et al, Case No. 2021-CP-10-04380, solely for the purpose of determining all insurance coverage claims alleged in this matter.

[SIGNATURE PAGE ATTACHED]

Respectfully submitted,

COLLINS & LACY, P.C.

By: s/Christian Stegmaier
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ATTORNEYS FOR DEFENDANT
TRI-COUNTY ROOFING, INC.

**DEFENDANT TRI-COUNTY
ROOFING, INC.'S
MEMORANDUM IN SUPPORT
OF MOTION TO
RECONSIDER**

February 2, 2026
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Case No. 2015-CP-10-00955

Tri-County Roofing, Inc.,.....Appellant,

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

vs.

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; W C 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 Siding, LLC; Mark
Palpoint a/k/a Micah Palpoint; Elroy Alonzo Vasquez; Chris a/k/a John Doe
61; Alderman Construction; Stanley's Vinyl Fence Designs; Cohen's Drywall
Company, Inc; Mosely 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 Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Elizabeth A. Bushey, individually, and on behalf of all others similarly situated are the Respondents.

**APPELLANT TRI-COUNTY ROOFING, INC.'S
NOTICE OF APPEAL**

TO: EDWARD D. BUCKLEY, JR., ESQUIRE; RUSSELL G. HINES, ESQUIRE; JUSTIN O. LUCEY, ESQUIRE; STEPHANIE D. DRAWDY, ESQUIRE; ANNA S. MCCANN, ESQUIRE; AND SOHAYLA R. TOWNES, ESQUIRE, COUNSEL FOR RESPONDENTS:

Tri-County Roofing, Inc. ("Appellant"), appeals the attached orders of The Honorable Jennifer B. McCoy: The filed Form 4 Order filed December 30, 2025, regarding disbursement of post-judgment funds from the Clerk of Court; and the February 3, 2026, denying Defendant Tri-County Roofing, Inc.'s Motion to Reconsider to issuance of the December 30, 2025, Form 4 Order.

The undersigned counsel for Tri-County Roofing, Inc. received written notice of the entry of the Order denying Defendant Tri-County Roofing, Inc.'s Motion to Reconsider on February 3, 2026, which was the trigger date for the instant appeal.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

COLLINS & LACY, P.C.

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ATTORNEYS FOR APPELLANT
TRI-COUNTY ROOFING, INC.

**APPELLANT TRI-COUNTY
ROOFING, INC.'S
NOTICE OF APPEAL**

March 5, 2026
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Case No. 2015-CP-10-00955

Tri-County Roofing, Inc.,..... Appellants,

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

vs.

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; W C 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 Siding, LLC; Mark
Palpoint a/k/a Micah Palpoint; Elroy Alonzo Vasquez; Chris a/k/a John Doe
61; Alderman Construction; Stanley's Vinyl Fence Designs; Cohen's Drywall
Company, Inc; Mosely 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 Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Elizabeth A. Bushey, individually, and on behalf of all others similarly situated are the Respondents.

PROOF OF SERVICE

I hereby certify that I have served **APPELLANT TRI-COUNTY ROOFING, INC.'S NOTICE OF APPEAL** upon all parties by electronic mail to the below listed counsel on March 5, 2026, at the following addresses:

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***Counsel for Palmetto Pointe At Peas Island
Condominium Property Owners Association, Inc.
And Elizabeth A. Bushey, Individually, and on
behalf of all others similarly situated***

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

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ATTORNEYS FOR APPELLANT
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**PROOF OF SERVICE - APPELLANT
TRI-COUNTY ROOFING, INC.'S
NOTICE OF APPEAL**

March 5, 2026
Columbia, South Carolina

CERTIFICATE OF COUNSEL

The undersigned counsel for Appellants certifies that, in accordance with Rule 210(c), SCACR, this **Record on Appeal** contains all material proposed to be included by any party that was presented to the lower court and not any other material. The undersigned also certifies that this **Record on Appeal** complies with the Supreme Court of South Carolina's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings issued April 15, 2014.

Respectfully submitted,

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Oct 07 2026

SC Court of Appeals

Charleston, South Carolina

October 7, 2026