

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

The Honorable J. Mark Hayes, Circuit Court Judge

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Supreme Court Case Number: 2014-001329

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Nationwide Mutual Insurance Company and Gilliam Construction Company, Inc...Respondents,

v.

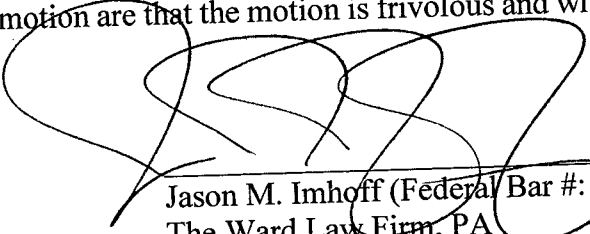
Eagle Windows & Doors, Inc.....Appellant.

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RETURN TO MOTION FOR CERTIFICATION  
By The Supreme Court for Review by the Supreme Court

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I, Jason M. Imhoff, counsel for Nationwide Mutual Insurance Company and Gilliam Construction Company, Inc., hereby move the Court in compliance with Rules 204 and 242 SCACR for dismissal of Appellant's Motion For Certification as set forth in the attached memorandum. Further grounds for this motion are that the motion is frivolous and without merit.



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July 7, 2014  
Spartanburg, South Carolina

**RECEIVED**

JUL 09 2014

**SC Court of Appeals**

COUNSEL FOR APPELLANT:

G. Dana Sinkler, Esquire  
171 Church Street, Suite 340  
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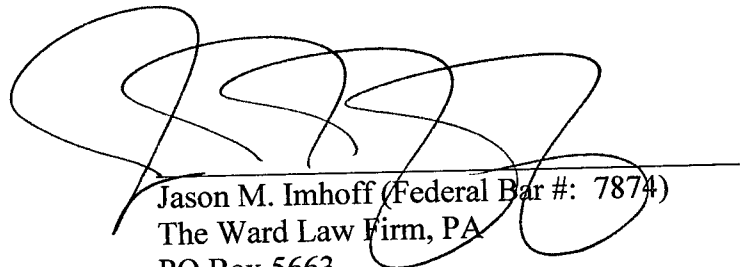
MEMORANDUM IN SUPPORT OF RETURN TO APPELLANT'S MOTION FOR  
CERTIFICATION BY THE SUPREME COURT

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Appellant's Motion For Certification should be denied because the Circuit Court correctly identified and applied the correct test employed to determine whether there is successor liability of a company which purchased the assets of an unrelated company as set forth in Simmons v. Marklift Industries, Inc., 366 S.C. 308, 622 S.E.2d 213 (2005) and Brown v. American Ry. Express Co., 128 S.C. 428, 123 S.E. 97 (1924). The Circuit Court specifically found that of the eight officers appointed to represent Eagle after the sale, five of the eight were officers of pre-sale Eagle. Specifically, individuals that were officers of Eagle prior to the bankruptcy sale held the following positions at Eagle post-bankruptcy: President, Vice President, Vice President of Finance, Vice President of Engineering and Controller. Further, the court found that "the Plaintiffs have proven, and the Defendant has not refuted, that officers, directors, and stockholders remained

in the successor corporation from the predecessor corporation. Specifically, President and Director of both the predecessor and successor corporation was David Beeken.”

Contrary to Appellant’s Motion for Certification, there are no issues of significant public interest or legal principles of major importance which have not already been addressed by the Circuit Court or the Supreme Court. The test set forth in Simmons and Brown was applied by the Circuit Court after findings of fact, which were not refuted by Appellant. Therefore, the Appellant’s Motion for Certification should be denied.



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July 7, 2014  
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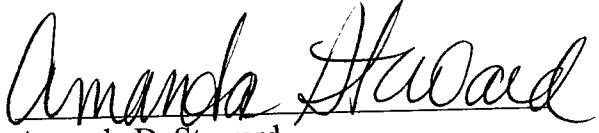
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PROOF OF SERVICE

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I certify that I have served the Return to Motion for Certification and Memorandum in Support of Return to Motion for Certification on G. Dana Sinkler, attorney for Appellant, by depositing a copy of it in the United States Mail, postage prepaid, on July 7, 2014, addressed as follows:

G. Dana Sinkler, Esquire  
171 Church Street, Suite 340  
Charleston, SC 29401

  
Amanda D. Steward  
Paralegal to Jason M. Imhoff

July 7, 2014

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July 7, 2014

The Honorable Daniel E. Shearouse  
Clerk, South Carolina Supreme Court  
PO Box 11330  
Columbia, SC 29211-1330

Re: Nationwide Mutual Insurance Company and Gilliam Construction Company,  
Inc. vs. Eagle Windows & Doors, Inc.,  
SC Supreme Court CA#: 2014-001329  
Court of Appeals CA#: 2014-001151

Dear Mr. Shearouse:

I am enclosing herewith the original and seven copies of Respondents' Return to Motion for Certification by the Supreme Court and Memorandum along with Proof of Service.

By a copy of this letter, I am serving the same upon Appellant's counsel and a copy is being sent to the South Carolina Court of Appeals.

Please file the documents and return our stamped copies in the envelope provided.

Respectfully submitted,

THE WARD LAW FIRM, P.A.

Jason M. Imhoff

JMI/ads  
Enclosure  
cc: G. Dana Sinkler, Esquire

Honorable Jenny Abbott Kitchings

**RECEIVED**

JUL 09 2014

**SC Court of Appeals**