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THE STATE OF SOUTH CAROLINA
In The Supreme Court

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JUL 14 2014

SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable J. Mark Hayes, Circuit Court Judge

Supreme Court Case Number: 2014-001329

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

v.

Eagle Windows & Doors, Inc. Appellant.

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

Pre-bankruptcy Eagle, referred to in Respondents' Return, was the wholly owned subsidiary of American Architectural Products Company (AAPC). AAPC/Eagle & Taylor Company was the selling entity and the purchasing entity was Linsalata Capital Partners Fund IV, L.P. (Lin Cap IV) through its subsidiary EWD Acquisition Co., a Delaware corporation.


Simmons established that the test for determining whether there can be liability for a successor company for claims against a selling company, is whether or not, pre-bankruptcy, there was Commonality of Ownership between those two entities, i.e., they had the same officers, directors, and shareholders. The affidavits of two officers of AAPC and one officer of Lin Cap IV conclusively establish that there was no Commonality of Ownership between the two entities. Those affidavits were uncontested.

The trial Judge did not apply the test promulgated by Simmons. Indeed, the test he applied would amount to adoption of the Continuity of Enterprise Doctrine which this Court expressly rejected in Simmons. Two lower court judges in this case have failed to

apply the test enunciated in Simmons, and as this Court was the author of Simmons it should clarify its holding.

Respectfully submitted,

G. Dana Sinkler
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Suite 110
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(843) 224-1758

By: 
G. DANA SINKLER, SC BAR #5138

Attorney for Appellant

Charleston, South Carolina

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Proof of Service

I certify that I have served the Reply to the Return to Motion for Certification on Jason M. Imhoff, attorney for Respondents, by depositing a copy in the United States Mail, postage prepaid, on July 14, 2014, addressed as follows:

Jason M. Imhoff
The Ward Law Firm, P.A.
Post Office Box 5663
Spartanburg, SC 29304


G. Dana Sinkler

July 14, 2014

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Suite 110
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Charleston, SC 29401
(843) 224-1758

July 14, 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

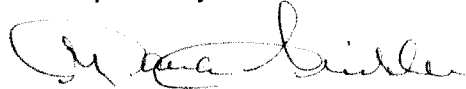
Dear Mr. Shearouse:

I enclose herewith the original and seven copies of the Appellant's Reply to Respondents' Return to Motion for Certification by the Supreme Court along with Proof of Service.

By copy of this letter, I am serving the same upon Respondents' 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,



G. Dana Sinkler

Enclosures

cc: Jason M. Imhoff, Esquire

Honorable Jenny Abbott Kitchings

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