

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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SEP 15 2014

**SC Court of Appeals**

73551

APPEAL FROM HORRY COUNTY  
Court of Common Pleas  
John M. Milling, Special Referee

Case No. 2009-CP-26-10053  
Appellate Case No. 2013-001291

Harleysville Group Insurance, a Pennsylvania corporation, ..... Appellant/Respondent,

v.

Heritage Communities, Inc., a South Carolina corporation;  
Heritage Riverwalk, a South Carolina corporation; Buildstar  
Corp., a South Carolina corporation; Riverwalk at  
Arrowhead Country Club Horizontal Property Regime;  
Riverwalk at Arrowhead Country Club Property Owners  
Assoc., Inc., a South Carolina Corporation; National Surety  
Corp.; and Tony L. Pope and Lynn Pope, individually and  
representing as a class all unit owners at Riverwalk at  
Arrowhead Country Club Horizontal Property Regime, ..... Defendants,

Of whom Heritage Communities, Inc., a South Carolina  
corporation; Heritage Riverwalk, a South Carolina  
corporation; Buildstar Corp., a South Carolina corporation;  
National Surety Corp.; and Tony L. Pope and Lynn Pope,  
individually and representing as a class all unit owners at  
Riverwalk at Arrowhead Country Club Horizontal Property  
Regime are ..... Respondents,

And Riverwalk at Arrowhead Country Club Horizontal  
Property Regime and Riverwalk at Arrowhead Country Club  
Property Owners Assoc., Inc., are..... Respondent/Appellants.

**CONSENT MOTION TO CONSOLIDATE  
APPEALS FOR ORAL ARGUMENT**

Pursuant to Rules 214 and 240, SCACR, Appellant/Respondent Harleysville  
Group Insurance (“Harleysville”), hereby renews its Motion for an Order consolidating  
this appeal and cross appeal (appellate case no. 2013-001291, *i.e.*, “Riverwalk”) with a  
similar and simultaneously filed appeal and cross-appeal (appellate case no. 2013-

001281, *i.e.*, “Magnolia North”).<sup>1</sup> The grounds for this Motion are that both of these appeals arise from similar orders and raise similar issues. Counsel for the opposing parties in both of the appeals to be consolidated has been consulted and consented to this motion. (*See Ex. A.*)

Both declaratory judgment actions were consolidated for a bench trial before the Honorable John M. Milling, Special Referee, and he disposed of both actions and their related motions with very similar rulings and orders filed on the same day in both cases. In the appeals pending before this Court, the ten issues raised in Harleysville’s briefs as Appellant in the Riverwalk appeal are identical to the ten issues raised in its brief in the Magnolia North appeal.<sup>2</sup> Likewise, the four issues raised in the home owners’ association’s briefs as Cross-Appellant in the Riverwalk suit are identical to the four issues raised in their brief in the Magnolia North appeal.

In light of the fact that the issues to be reviewed by this Court in the two appeals are substantially identical, there is no need to have separate and largely duplicative oral arguments. Accordingly, Harleysville respectfully requests the above-referenced appeals (and their respective cross-appeals) be consolidated for oral argument.

[SIGNATURE PAGE ATTACHED]

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<sup>1</sup> Harleysville’s counsel filed a consent motion on February 18, 2014, requesting, among other things, consolidation of these appeals for oral argument before a single panel. (*See Ex. B.*) In an Order dated March 13, 2014, this Court ordered the consolidation of the Record on Appeal, but stated that a decision regarding “whether the cases will be consolidated for oral argument will be decided after final briefing.” (*See Ex. C.*)

<sup>2</sup> The sole substantive differences between the briefs is that the Riverwalk appeal argues that the Special Referee erred by (1) relying on an incorrect policy date when performing the “time on risk” risk calculation, and (2) refusing to apply the “time on risk” calculation to the underlying loss of use damages. *See Appellant/Respondent’s Final Brief* (in Riverwalk appeal) at 18-20.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: \_\_\_\_\_

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Attorneys for Appellant

Columbia, South Carolina

September 15, 2014

***Exhibit A***

**Lisa Whitehurst**

---

**Subject:** FW: draft motion

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**From:** Pat Henry [mailto:PHenry@thompsonlaw.com]

**Sent:** Sunday, September 14, 2014 11:20 AM

**To:** Mitch Brown

**Subject:** Re: draft motion

Mitch, I consent to consolidating the two appeals for oral argument. I also consent to moving the oral arguments to January.

*Sent from my Verizon Wireless 4G LTE DROID*

Mitch Brown <[mitch.brown@nelsonmullins.com](mailto:mitch.brown@nelsonmullins.com)> wrote:

Pat:

Please see the attached. I was reminded we did already file this motion in the Court of Appeals, but it was denied without prejudice. The Court did not want to rule on the motion until the briefing was completed. Thus, in this draft we are stating we "renew" the motion to consolidate for oral argument. Please let me know if we have authority to indicate your consent and also please let me know if you will consent to moving oral argument to January. Thank you in advance.

Mitch

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If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

***Exhibit B***

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas  
John M. Milling, Special Referee

Case No. 2009-CP-26-10053; Appellate Case No. 2013-001291

Harleysville Group Insurance, a Pennsylvania corporation, Appellant/Respondent,

v.

Heritage Communities, Inc., a South Carolina corporation;  
Heritage Riverwalk, a South Carolina corporation;  
Buildstar Corp., a South Carolina corporation; Riverwalk  
at Arrowhead Country Club Horizontal Property Regime;  
Riverwalk at Arrowhead Country Club Property Owners  
Assoc., Inc., a South Carolina Corporation; National  
Surety Corp.; and Tony L. Pope and Lynn Pope,  
individually and representing as a class all unit owners at  
Riverwalk at Arrowhead Country Club Horizontal  
Property Regime,.....

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FEB 18 2014

**SC Court of Appeals**

Defendants,

Of whom Heritage Communities, Inc., a South Carolina  
corporation; Heritage Riverwalk, a South Carolina  
corporation; Buildstar Corp., a South Carolina  
corporation; National Surety Corp.; and Tony L. Pope and  
Lynn Pope, individually and representing as a class all unit  
owners at Riverwalk at Arrowhead Country Club  
Horizontal Property Regime are .....

Respondents,

And Riverwalk at Arrowhead Country Club Horizontal  
Property Regime and Riverwalk at Arrowhead Country  
Club Property Owners Assoc., Inc., are ..... Respondents/Appellants.

---

**CONSENT MOTION TO CONSOLIDATE APPEALS AND  
TO FILE A SINGLE RECORD ON APPEAL**

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Pursuant to Rules 214 and 240, SCACR, Appellant Harleysville Group Insurance (“Harleysville”), hereby moves this Court for an Order consolidating this appeal and cross appeal (appellate case no. 2013-001291, *i.e.*, “Riverwalk”) with a similar and simultaneously filed appeal and cross-appeal (appellate case no. 2013-

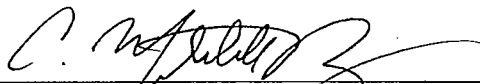
001281, *i.e.*, "Magnolia North"). Counsel for the opposing parties in both of the appeals to be consolidated have been consulted and consent to this motion. See attached consents.

The grounds for this Motion are that both of these appeals arise from similar orders and raise similar issues. Both declaratory judgment actions were consolidated for a bench trial before the Honorable John M. Milling, Special Referee, and he disposed of both actions and their related motions with very similar rulings and orders filed on the same day in both cases. Accordingly, Harleystown moves that these appeals (along with their respective cross-appeals) be consolidated for oral argument.

In addition, Harleystown moves this Court for an Order permitting Harleystown to file one Record on Appeal bearing the captions of both of the appeals being consolidated and containing all of the materials designated by both parties in both appeals. The ground for this motion is that a significant amount of identical material is designated to be included in both the Riverwalk Record and the Magnolia North Record. Rather than filing two largely duplicative Records, Harleystown requests an Order that it file a single Record containing all materials for both appeals. This will result in simplicity and the avoidance of several volumes of needless duplicative material filed with the Court.

For the foregoing reasons, Harleystown respectfully request that the above-referenced appeals be consolidated. Harleystown further requests that the current deadline for service of the Record on Appeal be held in abeyance until this Court issues an Order on this motion.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

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(843) 448-3500

Attorneys for Appellant/Respondent

Columbia, South Carolina

February 18<sup>th</sup>, 2014

*Attachment*

## **Miles Coleman**

---

**Subject:** RE: 2014 02 10--motion for consolidation of Mag North and Riverwalk argument and Record - 4837-3540.docx

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**From:** Laura Evans  
**Sent:** Thursday, February 13, 2014 9:37 AM  
**To:** Mitch Brown  
**Subject:** RE: 2014 02 10--motion for consolidation of Mag North and Riverwalk argument and Record - 4837-3540.docx

yes

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**From:** Mitch Brown [<mailto:mitch.brown@nelsonmullins.com>]  
**Sent:** Wednesday, February 12, 2014 11:42 PM  
**To:** Pat Henry <[PHenry@thompsonlaw.com](mailto:PHenry@thompsonlaw.com)> ([PHenry@thompsonlaw.com](mailto:PHenry@thompsonlaw.com)); Laura Evans  
**Subject:** 2014 02 10--motion for consolidation of Mag North and Riverwalk argument and Record - 4837-3540.docx

Hi Pat and Laura:

Would you please reply to this email indicating your consent to the attached motion to consolidate and to file one Record on Appeal? Thank you.

Mitch

### Confidentiality Notice

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure.

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To ensure compliance with the requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including the attachments) is not intended or written to be used, for the purpose of (a) avoiding penalties under the Internal Revenue Code or (b) promoting, marketing or recommending to another party any transaction or tax-related matter[s]. To provide you with a communication that could be used to avoid penalties under the Internal Revenue Code will necessarily entail additional investigations, analysis and conclusions on our part.

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IRS CIRCULAR 230 NOTICE: To ensure compliance with the requirements of IRS Circular 230, we inform you that any U.S. tax advice contained in this communication or attachment hereto is not intended or written to be used and cannot be used for the purpose of avoiding penalties under the Internal Revenue Code or for promoting, marketing or recommending to another party any transaction or matter addressed in this communication or attachment.

**Miles Coleman**

---

**Subject:** FW:

---

**From:** Pat Henry [mailto:PHenry@thompsonlaw.com]

**Sent:** Thursday, February 13, 2014 1:35 PM

**To:** Mitch Brown

**Cc:** Laura Evans

**Subject:**

Please be advised that I consent to the consolidation of the Riverwalk appeal and cross appeal with the Magnolia appeal and cross appeal so there will be only one record on appeal.

Sent from my Verizon Wireless 4G LTE Smartphone

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas  
John M. Milling, Special Referee

Case No. 2009-CP-26-10053  
Appellate Case No. 2013-001291

Harleysville Group Insurance, a Pennsylvania corporation, ..... Appellant/Respondent,

v.

Heritage Communities, Inc., a South Carolina corporation; Heritage Riverwalk, a South Carolina corporation; Buildstar Corporation, a South Carolina corporation; Riverwalk at Arrowhead Country Club Horizontal Property Regime; Riverwalk at Arrowhead Country Club Property Owners Association, Inc., a South Carolina corporation; National Surety Corp., and Tony L. Pope and Lynn Pope, individually and representing as a class all unit owners at Riverwalk at Arrowhead Country Club Horizontal Property Regime, .....

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**SC Court of Appeals**

Defendants.

Of whom Heritage Communities, Inc., a South Carolina corporation; Heritage Riverwalk, a South Carolina corporation; Buildstar Corporation, a South Carolina corporation; National Surety Corp., and Tony L. Pope and Lynn Pope, individually and representing as a class all unit owners at Riverwalk at Arrowhead Country Club Horizontal Property Regime, .....

Respondents,

And Riverwalk at Arrowhead Country Club Horizontal Property Regime; Riverwalk at Arrowhead Country Club Property Owners Association, Inc. are, ..... Respondents/Appellants.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellant/Respondent, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Consent Motion to Consolidate Appeals and to File a Single Record on Appeal

Counsel Served:

John P. Henry, Esquire  
Philip C. Thompson, Esquire  
Thompson & Henry  
1300 Second Avenue, 3<sup>rd</sup> Floor  
Conway, SC 29528

Laura Johnson Evans, Esquire  
Smith Moore Leatherwood, LLP  
25 Calhoun Street, Suite 250  
Charleston, SC 29401

Karin McCarthy, Esquire  
Rivkin Radler  
926 RXR Plaza  
Uniondale, NY 11556



Lisa P. Whitehurst  
Administrative Assistant

February 18, 2014

*Exhibit C*

cc'd 3/14/14  
00470/01581

# The South Carolina Court of Appeals

Harleysville Group Insurance, a Pennsylvania Corporation, Appellant/Respondent,

v.

Heritage Communities, Inc., a South Carolina Corporation; Heritage Riverwalk, a South Carolina Corporation; Buildstar Corporation, a South Carolina Corporation; Riverwalk at Arrowhead Country Club Horizontal Property Regime; Riverwalk at Arrowhead Country Club Property Owners Association, Inc., a South Carolina Corporation; National Surety Corp., and Tony L. Pope and Lynn Pope, individually and representing as a class all unit owners at Riverwalk at Arrowhead Country Club Horizontal Property Regime, Defendants,

Of whom Heritage Communities, Inc., a South Carolina Corporation; Heritage Riverwalk, a South Carolina Corporation; Buildstar Corporation, a South Carolina Corporation; National Surety Corp., and Tony L. Pope and Lynn Pope, individually and representing as a class all unit owners at Riverwalk at Arrowhead Country Club Horizontal Property Regime are Respondents,

And Riverwalk at Arrowhead Country Club Horizontal Property Regime; Riverwalk at Arrowhead Country Club Property Owners Association, Inc. are Respondents/Appellants.

Appellate Case No. 2013-001291

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ORDER

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First, the joint motion for an extension of time to file initial reply briefs is granted. Second, Appellant/Respondent's motion to exceed the page limits for the reply brief is granted. Appellant/Respondent's initial reply brief is accepted as filed.

Third, Appellant Harleysville Group Insurance filed a motion requesting to consolidate this appeal with the appeal in Appellate Case Number 2013-001281. After careful consideration, the parties shall be permitted to serve and file a consolidated record on appeal that contains all matters designated by the parties in both appeals. The parties in each appeal shall continue the briefing process separately. A decision regarding whether the cases will be orally argued and whether the cases will be consolidated for oral argument will be decided after final briefing.

  
FOR THE COURT

Columbia, South Carolina

cc:

C. Mitchell Brown, Esquire  
William C. Wood, Jr., Esquire  
Allen Mattison Bogan, Esquire  
Robert Curt Calamari, Esquire  
John P. Henry, Esquire  
Philip Coleman Thompson, Sr., Esquire  
Laura Johnson Evans, Esquire  
Karin McCarthy, Esquire  
Miles Edward Coleman, Esquire  
H. Michael Bowers, Esquire  
Mary Barnwell Ramsay, Esquire

**FILED**  
3/13/14 

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas  
John M. Milling, Special Referee

Case No. 2009-CP-26-10053  
Appellate Case No. 2013-001291

Harleysville Group Insurance, a Pennsylvania corporation, ..... Appellant/Respondent,

v.

Heritage Communities, Inc., a South Carolina corporation; Heritage Riverwalk, a South Carolina corporation; Buildstar Corporation, a South Carolina corporation; Riverwalk at Arrowhead Country Club Horizontal Property Regime; Riverwalk at Arrowhead Country Club Property Owners Association, Inc., a South Carolina corporation; National Surety Corp., and Tony L. Pope and Lynn Pope, individually and representing as a class all unit owners at Riverwalk at Arrowhead Country Club Horizontal Property Regime, .....

Defendants.

Of whom Heritage Communities, Inc., a South Carolina corporation; Heritage Riverwalk, a South Carolina corporation; Buildstar Corporation, a South Carolina corporation; National Surety Corp., and Tony L. Pope and Lynn Pope, individually and representing as a class all unit owners at Riverwalk at Arrowhead Country Club Horizontal Property Regime, .....

Respondents,

And Riverwalk at Arrowhead Country Club Horizontal Property Regime; Riverwalk at Arrowhead Country Club Property Owners Association, Inc. are, ..... Respondents/Appellants.

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SEP 18 5 2014  
SC Court of Appeals

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellant/Respondent, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Consent Motion to Consolidate Appeals for Oral Argument

Counsel Served:

John P. Henry, Esquire  
Philip C. Thompson, Esquire  
Thompson & Henry  
1300 Second Avenue, 3<sup>rd</sup> Floor  
Conway, SC 29528

Laura Johnson Evans, Esquire  
Smith Moore Leatherwood, LLP  
25 Calhoun Street, Suite 250  
Charleston, SC 29401

Karin McCarthy, Esquire  
Rivkin Radler  
926 RXR Plaza  
Uniondale, NY 11556



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Lisa P. Whitehurst  
Administrative Assistant

September 15, 2014

# Nelson Mullins

## Nelson Mullins Riley & Scarborough LLP

Attorneys and Counselors at Law

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September 15, 2014

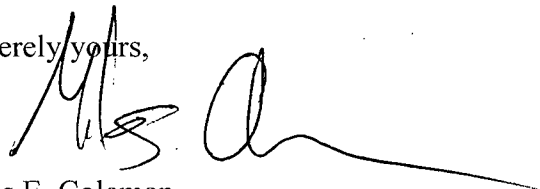
Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, SC 29201

RE: Harleysville Group Insurance v. Heritage Communities, Inc., a South Carolina Corporation; Heritage Riverwalk, a South Carolina Corporation; et al.  
C.A. No.: 2009-CP-26-10053  
Appellate Case No.: 2013-001291  
Our File No.: 00470/01581

Dear Ms. Kitchings:

Enclosed please find the original and seven copies of Appellant/Respondent's Consent Motion to Consolidate Appeals for Oral Argument in the above-captioned matter with a similar and simultaneously filed appeal and cross-appeal (Appellate Case No. 2013-001281) for hearing before a single panel of the Court. We would ask that you file the original and return a clocked-in copy to us via our courier. We enclose our check in the amount of \$25.00 for the motions fee.

Sincerely yours,



Miles E. Coleman

MEC:lpw

Enclosures

cc: John P. Henry, Esquire  
Philip C. Thompson, Esquire  
Laura Johnson Evans, Esquire  
Karin McCarthy, Esquire

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**SC Court of Appeals**