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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BERKLEY COUNTY  
Court of Common Pleas

FEB 07 2017

SC Court of Appeals

R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2016-001825  
Trial Court Case No. 2015-CP-08-01213

Christopher Duvall and Natalie Duvall, Plaintiffs,

v.

The Ryland Group, Inc., Defendant.

And

The Ryland Group, Inc., Third-Party Plaintiff,

v.

Land Site Services, Inc., Carolina Consulting Engineers,  
Inc., Higdon Concrete, LLC, A.C. Construction, Inc., and  
Stark Truss Company, Inc. a/k/a Stark Truss Company of  
Summerville, Ltd. a/k/a Stark Truss, Inc. d/b/a Carolina  
Truss Systems, Inc., Third-Party Defendants,

Of which The Ryland Group, Inc. is the Appellant,

And

Of which Christopher Duvall and Natalie Duvall, Land Site  
Services, Inc., Carolina Consulting Engineers, Inc., A.C.  
Construction, Inc., and Stark Truss Company, Inc. a/k/a Stark  
Truss Company of Summerville, Ltd. a/k/a Stark Truss, Inc.  
d/b/a Carolina Truss Systems, Inc. are the Respondents.

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**APPELLANT'S MOTION TO STRIKE PORTIONS OF RESPONDENTS  
CHRISTOPHER DUVALL AND NATALIE DUVALL'S DESIGNATION OF  
MATTER TO BE INCLUDED IN THE RECORD ON APPEAL**

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Appellant The Ryland Group, Inc. ("Appellant"), pursuant to Rules 209(b) and 210(c), SCACR, respectfully submits this Motion to Strike Portions of Respondents Christopher Duvall and Natalie Duvall's ("Duvalls") Designation of Matter To Be Included in the Record on Appeal ("Duvalls' Designation of Matter"), as the designation includes matters that were not raised or presented to the lower court.

In Duvalls' Designation of Matter, Duvalls have listed numerous documents that were not presented to the lower court:

1. Defendant The Ryland Group, Inc.'s Answers to Plaintiffs' Interrogatories, dated December 4, 2015;
2. Defendant The Ryland Group, Inc.'s Responses to Plaintiffs' Request for Production, dated December 4, 2015;
3. Defendant Land Site Services, Inc.'s First Set of Interrogatories to Plaintiffs, dated December 10, 2015;
4. Defendant Land Site Services, Inc.'s First Requests for Production of Documents to Plaintiffs, dated December 10, 2015;
5. Stark Truss Company, Inc.'s Interrogatories to Plaintiffs, dated January 19, 2016;
6. Stark Truss Company, Inc.'s Requests to Produce to Plaintiffs, dated January 19, 2016;
7. Stark Truss Company, Inc.'s Subpoena to Volkmar Consulting Services, LLC, dated March 2, 2016;
8. Stark Truss Company, Inc.'s Subpoena to R-K Engineers, dated March 2, 2016;
9. Stark Truss Company, Inc.'s Subpoena to Applied Building Sciences, dated March 2, 2016;

10. Stark Truss Company, Inc.'s Subpoena to Thornhill Inspections d/b/a HouseMaster, dated April 22, 2016;
11. Stark Truss Company, Inc.'s Subpoena to Russell Appraisal Services, Inc., dated April 22, 2016; and
12. Stark Truss Company, Inc.'s Subpoena to Hawk Construction of Charleston, Inc., dated April 22, 2016.

A copy of Duvalls' Designation of Matter is attached hereto as Exhibit A.

With regard to items 1 and 2 referenced above, while Duvalls filed Motions to Compel Appellant's full discovery responses on March 31, 2016, and again on August 3, 2016, copies of which are attached hereto as Exhibits B and C, Duvalls in fact failed to enclose Appellant's discovery responses to their Motions to Compel. As a result, Appellant's responses to Duvalls' discovery requests identified by Duvalls as items 14 and 15 in Duvalls' Designation of Matter constitute matters that were not presented to the lower court and, therefore, cannot be considered on appeal. *See* Rules 209(b) and 210(c), SCACR.

Similarly, items 3 through 12 referenced above, which are identified as items 16-25 in Duvalls' Designation of Matter, consist of discovery requests, discovery responses, and subpoenas that were issued by parties other than Appellant and that were not filed with the trial court. *See* Exhibit D, which is a copy of the public index reflecting all documents filed with the trial court in this action. As a result, these materials were not presented to the lower court and, therefore, cannot be considered on appeal. *See* Rules 209(b) and 210(c), SCACR.

In further support of Appellant's Motion, please refer to Duvalls' and other parties' memoranda filed with the trial court in opposition to Appellant's efforts to enforce arbitration in this matter, copies of which are attached hereto as Exhibit E, which

materials further reflect the fact that items 1 through 12 referenced above, which are identified as items 14-25 in Duvalls' Designation of Matter, consist of materials that were not presented to the lower court and, therefore, cannot be considered on appeal. See Rules 209(b) and 210(c), SCACR.

Rule 210(c), SCACR, provides that "[t]he Record shall not...include matter which was not presented to the lower court or tribunal." See also *Cobb v. Benjamin*, 325 S.C. 573, 482 S.E.2d 589 (Ct. App. 1997) (insurance policy that was not part of the record could not be considered by the court on appeal); *Reed v. Becka*, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999) (pursuant to SCACR, matter would not be given substantive consideration if it is not presented to the trial court). Further, Rule 209(b), SCACR, provides that "the Designation may only propose to include . . . materials which may be properly included in the Record on Appeal [See Rule 210(c)]."

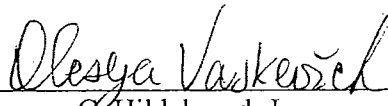
Because Duvalls' Initial Brief includes arguments based on materials that were not presented to the trial court and that cannot be considered by this Court on appeal, Appellant further submits that the Court should either (a) strike portions of Duvalls' Initial Brief that include arguments that rely on or cite to such materials or (b) order that Duvalls refile their Initial Brief and remove all arguments that rely on or reference such materials.

In light of the foregoing, Appellant respectfully requests that the Court grant its Motion to Strike Portions of Duvalls' Designation of Matter and strike those materials listed in Duvalls' Designation of Matter that were not presented to the lower court and that cannot be considered by this Court on Appeal. Appellant further requests that the Court either (a) strike portions of Duvalls' Initial Brief that include arguments that rely

on or cite to such materials or (b) order that Duvalls refile their Initial Brief and remove all arguments that rely on or reference such materials.

Respectfully submitted,

February 6, 2017



Thomas C. Hildebrand, Jr.

Olesya V. Vaskevich

PARKER POE ADAMS & BERNSTEIN LLP

200 Meeting Street, Suite 301

Charleston, SC 29401

(843) 727-2653

Attorneys for Appellant The Ryland Group, Inc.

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And

Of which Christopher Duvall and Natalie Duvall, Land Site  
Services, Inc., Carolina Consulting Engineers, Inc., A.C.  
Construction, Inc., and Stark Truss Company, Inc. a/k/a Stark  
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d/b/a Carolina Truss Systems, Inc. are the Respondents.

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**PROOF OF SERVICE**

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I certify that I have served Appellant's Motion to Strike Portions of Respondents Christopher Duvall and Natalie Duvall's Designation of Matter to be Included in the Record on Appeal on all Respondents by depositing a copy of it in the United States Mail, postage prepaid, on February 6, 2017, addressed to the following:

James Taylor Anderson, III  
KERNODLE COLEMAN  
914 Folly Road, Suite 2  
P.O. Box 13897 (29422)  
Charleston, SC 29412  
Attorneys for Respondents Christopher  
and Natalie Duvall


John E. Rogers, II  
C. Reed Teague  
THE WARD LAW FIRM, P.A.  
233 S. Pine Street  
P.O. Box 5663 (29304)  
Spartanburg, SC 29302  
Attorneys for Respondent Land Site  
Services, Inc.

Kevin W. Mims  
Caroline C. McIntosh  
LUZURIAGA MIMS, LLP  
50 Immigration Street, Suite 200  
Charleston, SC 29403  
Attorneys for Respondent A.C.  
Construction, Inc.

Patrick T. Morrissey  
CLAWSON AND STAUBES LLC  
126 Seven Farms Drive, Suite 200  
Charleston, SC 29492  
Attorneys for Respondent A.C.  
Construction, Inc.

Mark S. Barrow  
Christy E. Mahon  
SWEENEY, WINGATE & BARROW, P.A.  
1515 Lady Street (29201)  
P.O. Box 12129  
Columbia, SC 29211  
Attorneys for Respondent Stark Truss  
Company, Inc. a/k/a Stark Truss Company  
of Summerville, Ltd. a/k/a Stark Truss,  
Inc. d/b/a Carolina Truss Systems, Inc.

R. Michael Ethridge  
Robert B. Hawk  
Matthew T. Hemingway  
CARLOCK, COPELAND & STAIR LLP  
40 Calhoun Street, Suite 400  
Charleston, SC 29401  
Attorneys for Respondent Carolina  
Consulting Engineers, Inc.



Thomas C. Hildebrand, Jr.  
Olesya V. Vaskevich  
PARKER POE ADAMS & BERNSTEIN LLP  
200 Meeting Street, Suite 301  
Charleston, SC 29401  
(843) 727-2653  
Attorneys for Appellant The Ryland Group, Inc.