

87031

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**  
JUN 15 2018  
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court Of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Case No: 2016-CP-10-4055

Ex Parte: Frankenmuth Mutual Insurance Company  
and Employers Mutual Casualty Company.....Appellants,

In re: Phillip Jefferson.....Respondent,

v.

James White Construction, LLC and James White, Individually..... Respondents,

APPELLANT FRANKENMUTH MUTUAL INSURANCE  
COMPANY'S PETITION FOR WRIT OF SUPERSEDEAS TO  
STAY TRIAL SCHEDULED FOR JUNE 18, 2018  
IMMEDIATE ACTION REQUIRED: 1 BUSINESS DAY  
UNTIL TRIAL

Appellant Frankenmuth Mutual Insurance Company ("Frankenmuth") petitions this Court to stay the trial scheduled for June 18, 2018, until the underlying appeal is resolved because the issues on appeal have a substantial effect on the trial of this matter. Significantly, Appellant has timely appealed an order denying its motion to intervene in this action for the purpose of requesting, outside the presence of the jury, that special interrogatories and/or a special verdict or a general verdict form accompanied by interrogatories be submitted to the jury from which the parties can make a determination of the apportionment of damages for each cause of action, if any, awarded to Respondent Phillip Jefferson and resolve issues of fact, from

which a determination of insurance coverage (or lack thereof) may be made. *See* Rule 49, South Carolina Rules of Civil Procedure; *Harleysville Grp. Ins. Co. v. Heritage Cmtys., Inc.*, 420 S.C. 321, 341, 803 S.E.2d 288, 299 (S.C. 2017) (“The right to control the litigation carries with it certain duties,” including “the duty not to prejudice the insured’s rights by failing to request special interrogatories, or a special verdict in order to clarify coverage of damages.”). Due to the limited time until the current trial date, Appellant requests immediate review by this Court.<sup>1</sup>

### **FACTUAL/PROCEDURAL HISTORY**

Appellant Frankenmuth, along with Appellants Employers Mutual Casualty Company (“EMC”) and Firemen’s Insurance Company of Washington, D.C. (“Firemen’s”), issued a series of commercial general liability policies of insurance to Respondent James White Construction, LLC (“JWC”) which were in effect from September 10, 2009 to September 10, 2017. On August 4, 2016, Respondent Jefferson commenced a lawsuit in the Charleston County Court of Common Pleas against Respondents JWC and James White, individually, in which he alleges that, from 2010 or 2011 until 2016, JWC has been dumping fill dirt on his property which JWC knew or should have known was not suitable for building upon. The plaintiff asserts negligence, negligent misrepresentation, nuisance, and trespass claims against JWC. Appellants are providing a defense to JWC in this action under a full and complete reservation of rights under their respective policies.

Because there are questions as to whether some or all of the claims made and damages claimed by Respondent Jefferson in this matter are covered by their respective policies of insurance, Appellants each filed motions to intervene pursuant to Rule 24 of the South Carolina

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<sup>1</sup> Because of the exceptional circumstances of this matter and the limited time for review, Appellant has included the order as provided to it by the Court. Appellant will provide a certified copy of the order when it is made available by the Charleston County Clerk’s Office pursuant to Rules 241(1) and 241(4)(C).

Rules of Civil Procedure for the limited purpose of protecting their interests under their policies by requesting special interrogatories and/or a special verdict form be submitted to the jury if this matter proceeds to trial. (Ex. 1, Frankenmuth's Motion to Intervene). The motions were heard by Judge R. Markley Dennis, Jr, on January 12, 2018. By order dated May 16, 2018, Judge Dennis denied Appellants' motions to intervene. (Ex. 2, Order Denying Insurers' Motions to Intervene).

On June 13, 2018, Appellants filed a notice of appeal of Judge Dennis' May 16, 2018, order. Appellants informed Judge Roger Young, the trial judge set to preside over the June 18, 2018 trial of this matter, via email that a notice of appeal had been filed. (Ex. 3, Email correspondence between counsel and the trial court, dated June 13, 2018). Thereafter, Respondent Jefferson filed a motion to lift any stay generated by the notice of appeal pursuant to Rule 241 of the South Carolina Appellate Court Rules. (Ex. 4, Plaintiff's Motion to Lift Stay). On June 14, 2018, Judge Young informed the parties that the appeal did not automatically stay the trial and that, unless the appellate court ruled otherwise, the matter would proceed to trial on June 18, 2018. (Ex. 5, Email correspondence between trial court and counsel, dated June 14, 2018).

Appellant now petitions this Court and seeks a writ to stay the upcoming trial until resolution of the appeal.

### **STANDARD OF REVIEW**

A supersedeas is an extraordinary writ, which appellate courts use only when necessary to preserve the fruits of a meritorious appeal, to avoid irreparable harm, or to prevent a miscarriage of justice. *See Graham v. Graham*, 301 S.C. 128, 130, 390 S.E.2d 469, 470 (Ct. App. 1990) (“[T]he purpose...of a supersedeas...is to...preserve to appellant the fruits of a

meritorious appeal where they might otherwise be lost to him.”); *Andrews v. Sumter Commercial & Real Estate Co.*, 87 S.C. 301, 304, 69 S.E. 604, 606 (1910) (explaining that a supersedeas should be issued “only to the extent clearly made to appear to be necessary to prevent irreparable injury or a miscarriage of justice.”).

### ARGUMENT

The June 18, 2018 trial should be stayed pending the outcome of the appeal because (1) the filing of a notice of appeal automatically stays the trial and (2) a stay of the trial is necessary to preserve the fruits of a meritorious appeal and to avoid irreparable harm to Appellant.

Rule 205, SCACR, provides an appellate court with exclusive jurisdiction over matters on appeal. The lower court may only proceed with matters not affected by the appeal. Rule 241(a), SCACR, in governing matters which are stayed while on appeal, provides as follows:

As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.

Thus, a lower court may not act or issue orders that affect an issue on appeal, which would include, but not be limited to, proceeding to trial.

In *Tillman v. Oakes*, the Court acknowledged that the question of determining whether a lower court may proceed with a case once an order has been appealed is “a difficult one to answer.” 398 S.C. 245, 254, 728 S.E.2d 45, 50 (2012). The inquiry for this Court is whether Appellant and its appeal are affected by proceeding with the trial of this matter. The answer must be yes.

Appellant is an insurer providing a defense to Respondents-Defendants under a

reservation of rights. In *Harleysville Group Ins. v. Heritage Cmtys., Inc.*, the South Carolina Supreme Court set forth certain duties of an insurer providing a defense to an insured under a reservation of rights, including the duty to ensure that a verdict entered against its insured is allocated between covered and non-covered damages. 420 S.C. 321, 341, 803 S.E.2d 288, 299 (2017) (quoting *Magnum Foods, Inc. v. Cont'l Cas. Co.*, 36 F.3d 1491, 1498 (10th Cir. 1994) (“The right to control the litigation carries with it certain duties,” including “the duty not to prejudice the insured’s rights by failing to request special interrogatories or a special verdict in order to clarify coverage of damages.”).<sup>2</sup> Pursuant to this obligation, Appellant moved to intervene in this action solely to make such a request. The order denying this motion is at issue in this appeal.

If the matter proceeds to trial prior to a decision on Appellant’s appeal, the jury will not be presented with a special verdict form and/or special interrogatories. Rather, to the extent a verdict is entered against Respondents-Defendants, the verdict will be a general verdict. If faced with a general verdict, Appellant faces the possibility of having to indemnify its insureds for the entire verdict if at least one of several claims submitted to the jury is covered. *See Owners Ins. Co. v. Clayton*, 364 S.C.555, 561-62, 614 S.E.2d 611, 614-15 (2005). To prevent this inequity, the Court in *Harleysville* established that an allocated verdict must be obtained in the underlying trial. Appellant is attempting to comply with *Harleysville* but will be deprived of that opportunity

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<sup>2</sup> It should be noted that *Harleysville* may also be construed to place a similar burden on the insured to request an allocated verdict. *See Harleysville*, 420 S.C. 321, 338-39, 803 S.E.2d 288, 297-98 (citing *Remodeling Dimensions, Inc. v. Integrity Mut. Ins. Co.*, 819 N.W.2d 602, 618 (Minn. 2012) (holding that “when an insurer notifies its insured that it accepts the defense of a claim under a reservation of rights that includes covered and non-covered claims, the insurer not only has a duty to defend the claim, but also to disclose to its insured the insured’s interest in obtaining a written explanation of the award that identifies the claims or theories of recovery actually proved and the portions of the award attributable to each”). The Respondents-Defendants, however, have opposed Appellant’s motion to intervene to request such an allocation.

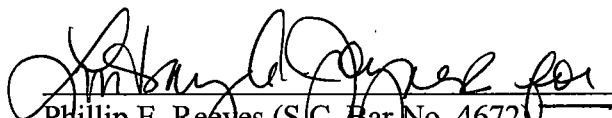
should this matter proceed to trial prior to a resolution of its appeal.

Appellant has a substantial interest in the outcome of the trial and preserving the ability to request that the jury be presented with a special verdict form and/or special interrogatories to obtain a determination of the damages, if any, attributable to covered and non-covered claims. Proceeding with a trial which may result in a general verdict if Respondents-Defendants are found liable to Respondent Jefferson prior to a decision on the merits of the appeal may either (1) render Appellant's appeal moot, leaving Appellant with the possibility of having to indemnify its insureds for an unallocated general verdict that includes covered and non-covered claims or (2) result in having to try the case a second time in the event Appellant's appeal is successful. As such, a supersedeas should be granted to preserve the fruits of a meritorious appeal, to avoid irreparable harm, and to prevent a miscarriage of justice. Further, Appellant contends that no bond or undertaking is required as a judgment has as a monetary judgment has not been entered in this matter.

### CONCLUSION

For these reasons, Appellant respectfully requests this Court to issue a stay and to continue the trial of this matter until the appeal is resolved.

Respectfully submitted,



Phillip E. Reeves (S.C. Bar No. 4672)

Nicholas A. Farr (S.C. Bar No. 78769)

Gallivan, White & Boyd, P.A.

Post Office Box 10589

Greenville, South Carolina 29603

(864) 271-9580

Attorneys for Appellant

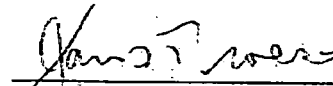
Greenville, South Carolina

June 15, 2018

STATE OF Michigan )  
COUNTY OF Saginaw )

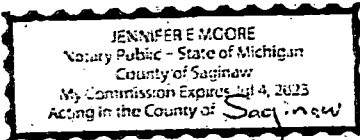
VERIFICATION

PERSONALLY APPEARED before me, James Troester, who after being duly sworn, says that he has read the foregoing Petition, knows the contents thereof, and that the same are true and correct to the best of his own knowledge, saving and excepting as to those matters alleged therein on information and belief, and, as to those, he believes them to be true.

  
James Troester

SWORN to before me this  
15<sup>th</sup> day of June, 2018.

  
Notary Public for Saginaw County  
My Commission Expires: July 4, 2023



# EXHIBIT 1

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
Frankenmuth Mutual Casualty Company,  
√ Petitioner,

v.

IN RE:

Phillip Jefferson,  
Plaintiff,

vs.

James White Construction, LLC and  
James White, Individually,

Defendant

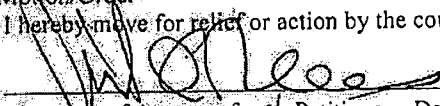
IN THE COURT OF COMMON PLEAS

C.A. No.: 2016-CP-10-4055

MOTION INFORMATION AND COVER  
SHEET

Check box above indicating submitting party

<u>Name and address of plaintiff's attorney</u>	<u>Name and address of petitioner's attorney</u>
Brent S. Halversen 17 Church Street, Ste. 330 Charleston, SC 29401 Phone: : (843) 277-2970 Fax: (864)-326-4844	Phillip E. Reeves (S.C. Bar No. 4672) Nicholas A. Farr (S.C. Bar No. 78769) GALLIVAN, WHITE & BOYD, P.A. P.O. Box 10589 Greenville, SC 29603 Phone: (864) 271-9580 Fax: (864) 271-7502
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)	
<input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)	
<input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	

<b>SECTION I: Hearing Information</b>	
Nature of Motion: Petitioner's Notice of Motion and Motion to Intervene	
Estimated Time Needed: _____	Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO
<b>SECTION II: Motion/Order Type</b>	
<input checked="" type="checkbox"/> Written motion attached	
<input type="checkbox"/> Form Motion/Order	
I hereby move for relief or action by the court as set forth in the attached proposed order.	
	January 4, 2017
Signature of Attorney for <input checked="" type="checkbox"/> Petitioner <input type="checkbox"/> Defendant	Date submitted
<b>SECTION III: Motion Fee</b>	
<input checked="" type="checkbox"/> PAID – AMOUNT: \$25.00	
<input type="checkbox"/> EXEMPT: (check reason)	<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> 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: _____ <input type="checkbox"/> Other:
<b>JUDGE'S SECTION</b>	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.	_____
<input type="checkbox"/> Other:	JUDGE CODE: _____ DATE: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____	<u>DATE FILED</u>
(print name)	
<input type="checkbox"/> MOTION FEE COLLECTED: _____	
<input type="checkbox"/> CONTESTED – AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 Frankenmuth Mutual Insurance )  
 Company, )  
 )  
 Petitioner, )  
 )  
 IN RE: )  
 )  
 Phillip Jefferson, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 James White Construction, LLC and )  
 James White, Individually, )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS

C.A. No.: 2016-CP-10-4055\*

**PETITIONER'S NOTICE OF  
 MOTION AND MOTION TO  
 INTERVENE**

FILED  
 2018 JAN -8 PM 2:53  
 JUDIE J. AMSTRONG  
 CLERK OF COURT  
 BY \_\_\_\_\_

YOU WILL PLEASE TAKE NOTICE that ten (10) days after the service hereof, exclusive of the date of service, or at such time as the Court may determine, the undersigned attorneys for the proposed intervenor, Frankenmuth Mutual Insurance Company ("Frankenmuth"), will move the Court for an order pursuant to Rule 24 of the South Carolina Rules of Civil Procedure, permitting Frankenmuth to intervene in the above-captioned action, outside the presence of the jury and for the limited purpose of protecting its interest under certain commercial general liability policies and commercial umbrella policies issued by it to James White Construction Co., LLC ("JWC"). Specifically, Frankenmuth seeks to intervene in this action solely for the purpose of requesting, outside the presence of the jury, that special interrogatories and/or a special verdict or a general verdict form accompanied by interrogatories be submitted to the jury from which the parties can make a determination of the apportionment

of damages for each cause of action, if any, awarded to the plaintiff and against JWC and resolve issues of fact, from which a determination of insurance coverage (or lack thereof) may be made. See Rule 49, South Carolina Rules of Civil Procedure; *Harleysville Grp. Ins. Co. v. Heritage Cmty., Inc.* No. 27698, 2017 LEXIS 8 (S.C. Jan. 11, 2017) (“The right to control the litigation carries with it certain duties,” including “the duty not to prejudice the insured’s rights by failing to request special interrogatories, or a special verdict in order to clarify coverage of damages.”).

This motion is based on the following grounds:

1. Frankenmuth issued a commercial general liability policy of insurance to JWC with a policy period spanning from September 10, 2013 to September 10, 2015.

2. In this action, the plaintiff alleges that, from 2010 or 2011 until 2016, JWC has been dumping fill dirt on his property which JWC knew or should have known was not suitable for building. The plaintiff asserts negligence, negligent misrepresentation, nuisance, and trespass claims against JWC. See Amended Complaint. Frankenmuth is providing a defense to JWC in this action under a full and complete reservation of rights under the policies.

3. Frankenmuth maintains that there may not be coverage for some or all of the claims made by the plaintiff in the action because the claims and/or damages, if any, do not constitute an occurrence resulting in property damage within its policy period and/or coverage is otherwise excluded under the policy.

4. Frankenmuth does not seek to actively participate in the pretrial or trial of this action other than to make a motion, at the appropriate time, to submit a special verdict form and/or special interrogatories to the jury, after the close of evidence. By proceeding in this manner, there will be no mention of insurance coverage during the trial and, therefore, no

resulting prejudice to the insured. Frankenmuth's intervention will also not cause delay or interference with the trial of this case.

5. Frankenmuth's interests are not adequately nor completely represented by other parties to the action. As discussed above, Frankenmuth has an interest in the litigation separate from the actual defense of its insured. Frankenmuth also has an interest with regard to its obligation to indemnify JWC if a verdict is returned on any non-covered claims or damages.

6. Intervention as a matter of right in this case is warranted because Frankenmuth has an interest relating to the subject matter of this case and is so situated that in the absence of such intervention, the disposition of the action may, as a practical matter, impair or impede Frankenmuth's ability to protect that interest. Moreover, Frankenmuth's interest is not adequately represented by the existing parties, in that defense counsel retained to represent Frankenmuth may not advocate any position which would be against the interest of JWC and may not attempt to protect Frankenmuth's coverage position.

7. Alternatively, Frankenmuth is entitled to permissive intervention in that a determination of Frankenmuth's policies, coverages, exclusions and defenses in this action have common questions of fact relating to the damages, if any, that may be awardable to the plaintiff.

This motion is made pursuant to Rules 24(a) and 24(b) of the South Carolina Rules of Civil Procedure and is supported by the pleadings in this matter, a supporting memorandum, if filed, and all applicable statutory and common law.

*Signature on following page.*



Phillip E. Reeves (S.C. Bar No. 4672)  
Nicholas A. Farr (S.C. Bar No. 78769)  
GALLIVAN, WHITE & BOYD, P.A.  
Post Office Box 10589  
Greenville, South Carolina 29603  
(864) 271-9580

Attorneys for Petitioner,  
Frankenmuth Mutual Insurance Company

Greenville, SC  
January 4, 2018

The undersigned certified that consultation with counsel would serve no useful purpose.



Phillip E. Reeves





Phillip E. Reeves (S.C. Bar No. 4672)  
Nicholas A. Farr (S.C. Bar No. 78769)  
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(864)271-9580

Attorneys for Petitioner,  
Frankenmuth Mutual Insurance Company



Complex experience for complex matters

Phillip E. Reeves  
A member of the South Carolina and  
Georgia Bars  
PReeves@GWBlawfirm.com

January 4, 2017

The Honorable Julie J. Armstrong  
Charleston Clerk of Court  
100 Broad Street, Suite 106  
Charleston, South Carolina 29401-2258

Re: Phillip Jefferson vs. James White Construction, LLC and  
James White, Individually  
C.A. No.: ~~2017~~-CP-10-4055

Dear Ms. Armstrong: <sup>2016</sup>

I am enclosing herein the original and two copies of Frankenmuth Mutual Insurance Company's notice of motion and motion to intervene, along with the original and two copies of a certificate of service by mail in the above-captioned case. Also enclosed is our firm check in the amount of \$25.00 for the filing fee for this motion.

I would appreciate you filing the original motion and certificate, clocking the two copies thereof and returning them to me in the enclosed envelope.

Thank you in advance your assistance and cooperation in doing so.

Sincerely yours,

GALLIVAN, WHITE & BOYD, P.A.

Phillip E. Reeves

PER/sea  
Enclosures

# EXHIBIT 2

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

PHILLIP JEFFERSON,

Plaintiff,

vs.

JAMES WHITE CONSTRUCTION, LLC, and  
JAMES WHITE, individually,

Defendants.

2016-CP-10-4055  
IN THE COURT OF COMMON PLEAS

Case No. 2016-CP-10-04055

**ORDER DENYING NON-PARTY  
INSURERS' MOTIONS TO INTERVENE**

FILED  
2018 MAY 16 PM 3:07  
JULIE J. AUSTIN  
CLERK OF COURT

The matter came before the Court upon separate Motions to Intervene filed by insurance carriers Employers Mutual Casualty Company, Firemen's Insurance Company of Washington, D.C. and Frankenmuth Mutual Insurance Company ("Insurers"). These carriers are insurers for Defendants James White Construction, LLC and James White, individually ("Defendants") and seek to intervene in this action, pursuant to Rule 24, SCRCP, for the limited purpose of submitting special interrogatories and/or verdict questions to the jury related to the allocation of covered and non-covered damages during the upcoming trial. I heard the motion in open court on January 12, 2018 at which time all parties and non-party Insurers appeared through their attorneys. I have reviewed the file along with all submissions and applicable law and considered arguments of counsel as well. Based upon the record and applicable law, I deny Insurers' Motions to Intervene for the reasons explained below.

**FACTS**

This case concerns allegations that unsuitable quality fill dirt was delivered and deposited on Plaintiff's property located on Huro Road in Mount Pleasant, South Carolina. Plaintiff filed his Amended Complaint on August 31, 2016. Insurers insured Defendants under a series of

*Amel*

policies applicable to Plaintiff's claims and hired counsel to represent Defendants under a reservation of rights at the onset of this litigation. On December 29, 2017 – almost 16 months after this action was commenced – Insurers filed the present motions, pursuant to Rule 24, SCRPC. This case is now set for a date certain trial beginning on June 18, 2018.

### LAW

Rule 24(a), SCRPC, provides for intervention as of right (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties. Rule 24(b), SCRPC, allows permissive intervention when (1) a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties. Rule 24(b), SCRPC.

"The granting of intervention is wholly discretionary with the trial court and will be reversed only for abuse of discretion." Sauner v. Public Service Authority, 354 S.C. 397, 411, 581 S.E.2d 161, 169 (2003) (citing South Carolina Tax Commission v. Union Co. Treasurer, 295 S.C. 257, 260, 368 S.E.2d 72, 74 (Ct. App. 1988)). The court should consider the practical implications of a decision allowing intervention. Ex parte Government Employee's Ins. Co. (GEICO) v. Goethe, 373 S.C. 132, 138, 644 S.E.2d 699, 702 (2007) (affirming the family court's denial of an insurer's motion to intervene). "However, a party must have standing to intervene in an action pursuant to Rule 24, SCRPC." Id. A party has standing if the party has a personal stake in the subject matter of a lawsuit and is a "real party in interest." Id. "A real party in interest

BNJ/2

... is one who has a real, actual, material or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with, the action." Id.

### ANALYSIS

Since the South Carolina Supreme Court published its opinion in the case of Harleysville Grp. Ins. V. Heritage Communities, Inc., 420 S.C. 321, 803 S.E.2d 288 (2017), insurers have attempted to intervene in cases on the eve of trial for the purpose of submitting special interrogatories and/or verdict questions to the jury related to the allocation of covered and non-covered damages. However, the court's opinion in Harleysville opinion does not mandate that insurers have a right to intervene to ask special interrogatories or request special verdict forms.

In this matter, Insurers cannot meet the requirements for intervention under Rule 24, SCRPC. First, Insurers have not proffered a statutory right to intervene, conditional or otherwise. Second, Insurers do not have an interest in the property that is the subject of this action, located on Huro Road in Mount Pleasant, South Carolina, and Insurers do not have an interest in the underlying interactions between Plaintiff and Defendants that is the subject of this litigation. Insurers' interests arise solely out of their contracts of insurance with Defendants and those interests are not appropriate to be litigated or interjected into this action. Finally, if Insurers were to be permitted to intervene at this stage of the litigation then it would be to the detriment of Defendants, their insureds, as a result of an impermissible conflict of interest that would be created and the likelihood of confusing the jury.

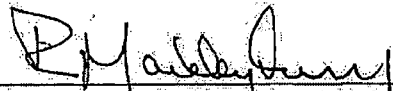
R. J.

**ORDER**

Accordingly, and based upon the foregoing, it is therefore

**ORDERED, ADJUDGED AND DECREED** that Non-Party Insurers Employers Mutual Casualty Company; Firemen's Insurance Company of Washington, D.C. and Frankenmuth Mutual Insurance Company's Motions to Intervene are Denied.

**AND IT IS SO ORDERED.**



The Honorable R. Markley Dennis, Jr.  
Presiding Judge

May 16, 2018  
Charleston, South Carolina

Rmd/4

# EXHIBIT 3

## Nick Farr

---

**From:** Nick Farr <nfarr@gwblawfirm.com>  
**Sent:** Wednesday, June 13, 2018 2:52 PM  
**To:** ryoungj@sccourts.org; ryounglc@sccourts.org  
**Cc:** John Rogers; Brent Halversen (Brent@halversenlaw.com); Dan (dan@slotchiverlaw.com); rteague@wardfirm.com; ayount@hsblawfirm.com; Phil Reeves; Tim J. Newton  
**Subject:** Phillip Jefferson v. James White Construction, LLC and James White, Individually (C.A. No. 2016-CP-10-4055) [GWB-IMANMAIN.FID604552]  
**Attachments:** James White Construction - Notice of Appeal efiled copy.pdf

Judge Young,

The above-referenced matter is currently set for trial before you beginning Monday, June 18. We wish to bring to your attention that we have filed the attached notice of appeal on behalf of Frankenmuth Mutual Insurance Company and Employers Mutual Casualty Company appealing the order denying the insurers' motions to intervene which was entered on May 16, 2018. The notice of appeal is also being hand-delivered to the Court of Appeals for filing.

All counsel of record have been copied on this email.



**Nicholas A. Farr**  
Partner  
nfarr@GWBlawfirm.com

**Gallivan, White & Boyd P.A.**  
**Office** 55 Beattle Place | Suite 1200 | Greenville SC 29601  
864 271 5347 Direct | 864 271 9580 Main | 864 271 7502 Fax  
**Mailing** Post Office Box 10589 | Greenville SC 29603  
vCard | BioURL | Website

This message is from the law firm Gallivan, White & Boyd, PA and may be a confidential and privileged legal communication to the named recipient(s). If you receive this message in error or are not the named recipient(s), please notify the sender and delete this email. Thank you.

# **EXHIBIT 4**

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON )

CASE NO.: 2016-CP-10-4055

PHILLIP JEFFERSON )

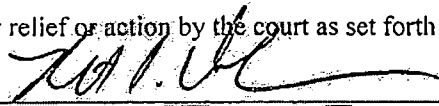
**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

Plaintiff, )

vs. )

JAMES WHITE CONSTRUCTION, LLC and  
JAMES WHITE, individually )

Defendant. )

Plaintiff's Attorney: Brent S. Halversen, Bar No. _____ Address: Halversen & Associates 171 Church Street, Suite 330 Charleston, SC 29401 Phone: 843-284-5790 Fax _____ E-mail: brent@halversenlaw.com Other: _____	Defendant's Attorney: John Rogers, II, Bar No. _____ Address: PO Box 5663 Spartanburg, SC 29304 Phone: 864-591-2366 Fax _____ E-mail: jrogers@wardlawfirm.com Other: _____
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: Motion to Lift Stay Estimated Time Needed: 5 mins      Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> 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 <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant	June 13, 2018 Date submitted
<b>SECTION III: Motion Fee</b>	
<input checked="" type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> 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: _____ <input type="checkbox"/> Other: _____	
<b>JUDGE'S SECTION</b>	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS  
) FOR THE NINTH JUDICIAL CIRCUIT  
) CASE NO. 2016-CP-10-4055

PHILLIP JEFFERSON,  
Plaintiffs,

vs.

JAMES WHITE CONSTRUCTION, LLC  
and JAMES WHITE, individually  
Defendants.

**MOTION TO LIFT STAY**  
(Priority Matter)


2018 JUN 19 PM 3:36  
CLERK OF COURT

Pursuant to Rule 241 of the South Carolina Rules of Appellate Procedure, Plaintiff, Phillip Jefferson (hereinafter, "Mr. Jefferson") moves for an order to lift any stay associated with the Notices of Appeal filed on June 13, 2018 by non-parties Frankenmuth Mutual Insurance Company, Employers Mutual Casualty Company, and Firemen's Insurance Company of Washington, D.C . Pursuant to Rule 11, the undersigned counsel certifies that communication with opposing counsel could not timely be had and/or would serve no useful purpose.

The grounds for this motion is that the motions appealed upon involve non-parties to this action, and that the matters decided in the Orders have no bearing on any of the claims and defenses between the Plaintiff and Defendants.

WHEREFORE, Mr. Jefferson respectfully requests that the Court lift the stay as it may pertain to the Plaintiffs and Defendants, allow the trial to proceed on Monday, June 18, 2018, and/or require the non-parties post a bond in the amount of Plaintiff's demand.

**HALVERSEN & ASSOCIATES, LLC**

By: 

Brent S. Halversen  
171 Church Street, Suite 330  
Charleston, SC 29401  
T: 843-284-5790  
F: 864-326-4844  
Email: [brent@halversenlaw.com](mailto:brent@halversenlaw.com)

*Attorneys for the Plaintiff*

June 15<sup>th</sup>, 2018  
Charleston, South Carolina

2016 CPD-4055

**CERTIFICATE OF SERVICE**

I certify that I served the foregoing Motion to Lift Stay upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to the parties and counsel's last known address on this 13<sup>th</sup> day of June, 2018.

HALVERSEN & ASSOCIATES, LLC

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

  
Brent S. Halversen  
171 Church Street, Suite 330  
Charleston, SC 29401  
T: 843-284-5790  
F: 864-326-4844  
Email: [brent@halversenlaw.com](mailto:brent@halversenlaw.com)

2018 JUN 13 PM 3:56  
U.S. DEPARTMENT OF JUSTICE  
CLERK OF COURT

Charleston, SC  
June 13, 2018

# **EXHIBIT 5**

## Nick Farr

---

**From:** Young, Roger <ryoungj@sccourts.org>  
**Sent:** Thursday, June 14, 2018 2:10 PM  
**To:** Dan  
**Cc:** Yount, Adam; Brent Halversen; Emily Medlin; Young, Roger Law Clerk (Taylor Grooms); Nick Farr; Rogers; rteague@wardfirm.com; Phil Reeves; Tim J. Newton; paralegal@slotchiverlaw.com  
**Subject:** Re: Phillip Jefferson v. James White Construction, LLC and James White, Individually (C.A. No. 2016-CP-10-4055) M&G File No.: 1465-0021

The word I get from Columbia is that this is one of those cases where the appellant thinks the appeal automatically stays the pending trial, and it is up to me to decide if I agree or not. They will only act if someone files something asking them to tell me to stop the trial.

I am of the opinion this appeal does not automatically stay the trial.

Therefore, unless I get something from the appellate courts telling me to stop, be ready to go to trial Monday. Please send me pre-trial briefs, voir dire and proposed jury charges by the end of the day Friday.

Roger Young

On 6/14/18, 12:52 PM, "Dan" <dan@slotchiverlaw.com> wrote:

Thank you Judge. We will await word from you. In the interim, please let us know if you want a Pre trial brief in advance of trial, assuming we are going forward.

Dan

Daniel S Slotchiver  
Slotchiver & Slotchiver LLP  
44 State Street  
Charleston SC 29401  
843-577-6531

This communication may be attorney-client privileged or otherwise confidential. If you are not the intended recipient, please delete this message and notify the sender of this error

> On Jun 14, 2018, at 11:00 AM, Young, Roger <ryoungj@sccourts.org> wrote:

>

> I have someone at the COA looking out for the appeal so they can make a decision as to whether the appeal stays the case. As of a few minutes ago the notice of appeal has not been filed with the COA. I will let you know what they decide when they get it and make a decision.

>

> RY

>

> From: "Yount, Adam" <ayount@hsblawfirm.com>

> Date: Wednesday, June 13, 2018 at 4:24 PM  
> To: Brent Halversen <Brent@halversenlaw.com>, Emily Medlin <emedlin@murphygrantland.com>, Roger Young <ryoungj@sccourts.org>, Taylor Grooms <ryounglc@sccourts.org>  
> Cc: "nfarr@gwblawfirm.com" <nfarr@gwblawfirm.com>, Rogers <JRogers@wardfirm.com>, "dan@slotchiverlaw.com" <dan@slotchiverlaw.com>, "rteague@wardfirm.com" <rteague@wardfirm.com>, "preeves@gwblawfirm.com" <Preeves@gwblawfirm.com>, "Tim J. Newton" <newton@murphygrantland.com>  
> Subject: RE: Phillip Jefferson v. James White Construction, LLC and James White, Individually (C.A. No. 2016-CP-10-4055) M&G File No.: 1465-0021

>  
> Judge Young,  
>  
> Please have this confirm that Defendants join in the referenced Motion to Lift Stay.

>  
> Thanks,  
>  
> Adam

>  
> [Haynsworth Sinkler Boyd, P.A.]<[https://urldefense.proofpoint.com/v2/url?u=http-3A\\_\\_www.hsblawfirm.com\\_home.php&d=DwMFAg&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=gIX2g4ctOFJAM0d-MqMR-XsuVclXWkmM4xiiWcK\\_xvM&m=-XQTIKOs7fskfWqhggGqnEJ-TtIXUKBhwLOeZhpRZDk&s=5n5qmcZzCei8EA1ZF98idbOo3Ab\\_zwJZGhoRV7nLcwe&e=>](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.hsblawfirm.com_home.php&d=DwMFAg&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=gIX2g4ctOFJAM0d-MqMR-XsuVclXWkmM4xiiWcK_xvM&m=-XQTIKOs7fskfWqhggGqnEJ-TtIXUKBhwLOeZhpRZDk&s=5n5qmcZzCei8EA1ZF98idbOo3Ab_zwJZGhoRV7nLcwe&e=>)>

>  
> Adam N. Yount | Attorney | Haynsworth Sinkler Boyd, P.A.  
>  
> 134 Meeting Street, 3rd Floor (29401) | Post Office Box 340 (29402) | Charleston, South Carolina  
> Phone: 843.722.3366 | Fax: 843.722.2266 | Direct: 843.720.4484  
> website<[https://urldefense.proofpoint.com/v2/url?u=http-3A\\_\\_www.hsblawfirm.com\\_home.php&d=DwMFAg&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=gIX2g4ctOFJAM0d-MqMR-XsuVclXWkmM4xiiWcK\\_xvM&m=-XQTIKOs7fskfWqhggGqnEJ-TtIXUKBhwLOeZhpRZDk&s=5n5qmcZzCei8EA1ZF98idbOo3Ab\\_zwJZGhoRV7nLcwe&e=>](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.hsblawfirm.com_home.php&d=DwMFAg&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=gIX2g4ctOFJAM0d-MqMR-XsuVclXWkmM4xiiWcK_xvM&m=-XQTIKOs7fskfWqhggGqnEJ-TtIXUKBhwLOeZhpRZDk&s=5n5qmcZzCei8EA1ZF98idbOo3Ab_zwJZGhoRV7nLcwe&e=>) |  
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email<<mailto:ayount@hsblawfirm.com>>

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>  
>  
> From: Brent Halversen [<mailto:Brent@halversenlaw.com>]  
> Sent: Wednesday, June 13, 2018 4:22 PM

> To: Emily Medlin; ryoungj@sccourts.org; ryounglc@sccourts.org  
> Cc: nfarr@gwblawfirm.com; Rogers; dan@slotchiverlaw.com; rteague@wardfirm.com; Yount, Adam; preeves@gwblawfirm.com; Tim J. Newton  
> Subject: RE: Phillip Jefferson v. James White Construction, LLC and James White, Individually (C.A. No. 2016-CP-10-4055) M&G File No.: 1465-0021

>  
> Judge Young,  
>  
> Attached is the Plaintiff's Motion to Lift Stay associated with any of these notices of appeal that the various insurance companies have just filed this afternoon in our case. The Defendants in the case, through Adam Yount, have just indicated to me that they also join in this motion.

>  
> Given that we have a one week date certain before your Honor that starts on Monday of next week, I am sure I speak for everyone in asking that the Court rule upon the motion as soon as possible in light of the number of people involved in trial preparation, travelling etc. We believe that any stay invoked by the filing of the notices should be lifted consistent with the rulings of other courts in South Carolina. I have attached one such ruling from Judge Newman to that effect. Thank you for your consideration.

>  
> Brent  
>  
>  
>  
> \_\_\_\_\_  
> Brent Souther Halversen, Esq.  
> Halversen & Associates, LLC  
> 171 Church Street, Suite 330  
> Charleston, South Carolina 29401  
> (843) 284-5790 tel.  
> (864) 326-4844 fax.  
> brent@halversenlaw.com<mailto:brent@halversenlaw.com>  
> www.halversenlaw.com<https://urldefense.proofpoint.com/v2/url?u=http-

3A\_www.halversenlaw.com\_&d=DwMFAG&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=gIX2g4ctOFJAM0d-MqMR-XsuVcIXWkmM4xiiWcK\_xvM&m=-XQTIKOs7fskFwqhggGqnEJ-TtIXUKBhwLOeZhpRZDK&s=M3WBaXYFWDIaS-yMM6XN1yieWkPjoiX9eFI77ItWS4&e=>

> [Company logo]  
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>  
>  
>  
>

> From: Emily Medlin <emedlin@murphygrantland.com<mailto:emedlin@murphygrantland.com>>  
> Sent: Wednesday, June 13, 2018 3:25 PM  
> To: ryoungj@sccourts.org<mailto:ryoungj@sccourts.org>; ryounglc@sccourts.org<mailto:ryounglc@sccourts.org>  
> Cc: nfarr@gwblawfirm.com<mailto:nfarr@gwblawfirm.com>; Rogers  
<jrogers@wardfirm.com<mailto:jrogers@wardfirm.com>>; Brent Halversen  
<Brent@halversenlaw.com<mailto:Brent@halversenlaw.com>>;  
dan@slotchiverlaw.com<mailto:dan@slotchiverlaw.com>; rteague@wardfirm.com<mailto:rteague@wardfirm.com>;  
ayount@hsblawfirm.com<mailto:ayount@hsblawfirm.com>;  
preeves@gwblawfirm.com<mailto:preeves@gwblawfirm.com>; Tim J. Newton  
<tnewton@murphygrantland.com<mailto:tnewton@murphygrantland.com>>  
> Subject: Phillip Jefferson v. James White Construction, LLC and James White, Individually (C.A. No. 2016-CP-10-4055)  
M&G File No.: 1465-0021

>  
> Judge Young,  
>  
> I hope this email finds you well! The above-case matter is currently set for trial starting Monday morning, June 18, 2018. We have attached our Notice of Appeal filed on behalf of Firemen's Insurance Company of Washington, D.C. appealing the Order Denying our Motion to Intervene which was Ordered on May 16, 2018. Our Notice of Appeal is being hand-delivered today to the Court of Appeals for filing. All parties have been emailed and mailed a hard copy of the attached also.

>  
> Thank you,  
> Emily  
> [cid:image003.png@01D28B5E.CB6890A0]  
> Murphy & Grantland, P.A.  
> Emily Medlin, CP  
> Paralegal/Legal Assistant to Chris Majure  
> Legal Assistant to Tim Newton  
> emedlin@murphygrantland.com<mailto:bpierce@murphygrantland.com>  
> Post Office Box 6648  
> Columbia, South Carolina 29260  
> 803-782-4100 ext. 1307  
> 803-782-4140 fax

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 15th day of June, 2018, a true and correct copy of the foregoing PETITION FOR WRIT OF SUPERSEDEAS TO STAY TRIAL SCHEDULED FOR JUNE 18, 2018 has been duly served upon all counsel of record via first-class mail and *Electronic Mail* to the following:

Mr. Brett S. Halverson  
Halverson & Associates, LLC  
171 Church Street, Suite 300  
Charleston, SC 29401

Mr. John E. Rogers, II  
Ms. Ginger D. Goforth  
Mr. C. Reed Teague  
The Ward Law Firm, P.A.  
P.O. Box 5663  
Spartanburg, SC 29304

**RECEIVED**  
JUN 15 2018  
SC Court of Appeals