THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Clifton Newman, Circuit Court Judge

Trial Court Case No. 2014CP2607634
Appellate Case No. 2017-02146

RECEIVED
JUL 26 2018
S.C. SUPREME COURT

Ex Parte:

Hartford Fire Insurance Company, Hartford Casualty Insurance Company, National Fire & Marine Insurance Company, Bitco General Insurance Corporation, Selective Insurance Company of South Carolina, and Nationwide Mutual Insurance Company f/k/a Harleysville Insurance Company, Appellants,

In Re:

The Harbour Cove Condominium Association, Plaintiff,

v.

Centex Homes, a Nevada General Partnership, Centex Construction Company, Inc., Centex Construction, LLC, Centex-Rooney Construction Co., Inc., Centex-Rodgers, Inc., Right Way Group, Inc., RWG, Inc., RWGR, Inc., South Carolina State Plastering, LLC, Georgia State Plastering, LLC, Florida State Plastering, LLC, Coastal Drywall, Inc., d/b/a Coastal Plaster Systems, Lundy Dowell d/b/a Coastal Plaster Systems, Martin Masonry, Inc., Roof Doctor of the Carolinas, Inc., Richard Blackwell d/b/a Synthetic Designs, Ferst Plastering, Inc., a/k/a Ferst Exteriors, Inc., Coastal Tinting, Inc., BR Brick & Masonry, Inc., Model Home Interiors, Inc., Gary Hunnell d/b/a Grand Strand Roofing, Steven Bosch d/b/a The Roofer Man, Frank Harris d/b/a Frank Harris Construction, Carl Williamson d/b/a Williamson Construction & Waterproofing, Stock Building Supply, LLC, f/k/a Stock Building Supply, Inc., and Morningstar Consultants, Inc., Defendants,

Of whom The Harbour Cove Condominium Association is the Respondent.

REPLY BRIEF OF APPELLANT BITCO GENERAL INSURANCE CORPORATION

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BITCO hereby replies to the issues raised in the brief of the Respondent Harbour Cove Homeowners' Association as follows:

I. THE *HARLEYSVILLE* DECISION IS AUTHORITY FOR INTERVENTION

The Respondent argues that the decision in *Harleysville Group. Ins. v. Heritage Communities, Inc.*, 420 S.C. 321, 803 S.E.2d 288 (2017) focuses solely on whether the reservation of rights letters in that case were sufficient to preserve the right to contest coverage, and that the decision "merely stated that a generic 'we may contest coverage at a later date' [letter] on the part of an insurer is insufficient to put the insured on notice that it may need to seek an allocated verdict for any damages to be covered under the policy." Respondents further argue that "no reading of the *Harleysville* decision supports the position that an insurer can or must intervene in a tort trial to contest coverage."

The Respondent's argument fails to give effect to this Court's statement that 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.'" *Harleysville*, 420 S.C. at 341, 803 S.E.2d at 299 (quoting *Magnum Foods, Inc. v. Cont'l Cas. Co.*, 36 F.3d 1491, 1498 (10th Cir. 1994). Although the Respondents argue that coverage determinations can and should be done in separate and later litigation, the reference to "failing to request special interrogatories or a special verdict" clearly applies to the underlying litigation, and references intervention such as sought by the Appellants here.

Only the original jury in the original trial assessing liability and damages will know exactly how the verdict was fashioned, and what components were included in the final calculation and how those components fit in relation to the causes of action raised by the claimant, considering such factors as the date those damages arose or the identity of parties legally at fault for bringing them about. Construction defect cases involve numerous contractors, subcontractors, trades, and components, along with a wide variety of types of damages. For the same reason that the Special Referee in *Harleysville* was unable to parse the verdict in that case, a subsequent factfinder which has not heard the original evidence and arguments will be left to construct its own view of the facts in parsing the prior factfinder's verdict. This problem was stated specifically in footnote 11:

> In addition to finding [the insurer's] attempted reservation of rights to be insufficient, the Special Referee also found 'the Court has no basis upon which to make a logical assessment of the jury's purpose when it awarded the general verdict' as to the negligent construction, breach of warranty, and breach of fiduciary duty claims, and the Special Referee refused to 'engage in unguided speculation with respect to this issue of [allocating losses], particularly when the dilemma now confronting Harleysville is of its own making.' *See Newman*, 385 S.C. at 198, 684 S.E.2d at 547 (finding that even though arbitrator's award improperly included amounts for replacing and repairing faulty workmanship itself, there was insufficient evidence in the record to allow the Court to determine which costs were solely attributable to the non-covered faulty workmanship and finding that the insurer's duty to indemnify therefore covered the entire award).

Harleysville at 343 n.11, 803 S.E.2d at 300 n.11.

The dilemma referenced in this footnote is not fairly resolved by deferring the question to a separate legal action if that separate action is incapable of carrying forth that function. This Court in *Harleysville* has identified a problem that can only be addressed either by consulting the original jury which arrived at a general verdict, or by consulting a second factfinder which is empowered with the legal authority to determine its own view of the evidence and from that in-

dependent determination resolve the issue of what parts of the verdict are covered by insurance. Unless this Court directs otherwise, insurers are compelled to seek limited intervention as they have sought here.

II. STANDING TO INTERVENE EXISTS UNDER SCRCP 24

The Respondent argues that the insurer appellants lack standing to intervene in the underlying matter. BITCO contends that the legal standards applicable to the right sought here under rule SCRCP 24(a)(2), and especially SCRCP 24(b) are amply established. The ultimate flaw in the analysis advanced by the Respondent is that the Respondent's position presumes that an alternate remedy is available to the insurers, while the current law of *Harleysville* indicates clearly that such a remedy is not available. The absence of a forum in which the general jury verdict can be allocated between covered and non-covered portions means that the insurers have no alternative but to seek limited intervention.

The Respondent bases its argument largely on *Ex parte Gov't Employee's Ins. Co.*, 373 S.C. 132, 644 S.E.2d 699 (2007) ("*Ex parte GEICO*"). *Ex parte GEICO* does not bar the insurers' request in this matter because in that case the decision being rendered by the Family Court answered the precise question which GEICO needed to know in order to apply its policy: whether its insured was married. GEICO had no legitimate interest in participating in litigation of the requirements for common law marriage in South Carolina - it simply needed to know whether South Carolina deemed its insured to be married or not. As the court noted, "GEICO has no real interest in whether Cooper and Goethe have a valid common law marriage." *Id.* at 138–139, 644 S.E.2d at 702. Once this precise question was answered, no further information about the details of the Family Court order was necessary or appropriate. Once the lower court

found whether the insured was married, application of the GEICO policy provisions would be clear and would require no further facts for proper interpretation of coverage.

The Respondent also cites *S.C. Tax Commission v. Union County Treasurer*, 295 S.C. 257, 262. 368 S.E.2d 72, 75 (Ct. App. 1988) for the proposition that permissive intervention should be denied. To the contrary, *S.C. Tax Commission* clearly turns on the finding of the appellate court that the interest of the Tax Commission was adequately represented in the underlying action by the Auditor and Treasurer, which is a fact pattern not present in the case at bar. There, the Auditor and Treasurer had essentially the same interest as the Commission, leading the court to find that "The Commission conceded at oral argument that the County Officers' objective was to retain the tax for the county and its objective is to have the court rule the tax was not a county tax from which Milliken's property is exempt. We see no difference of interest." *S.C. Tax Commission*, at 74. In the case at bar the divergence in interest between the existing parties and the Insurers who seek to intervene is clear. If Insurers are deemed to be estopped from contesting coverage matters by their failure to preserve evidence in an underlying trial in which it is inappropriate that they appear as parties, other parties gain unfair access to coverage which was not contemplated and otherwise would not be available under the policies as written. This result would not only unfairly extinguish the right of insurers to apply policies as written, but would jeopardize public policy interests in maintaining a balanced legal framework for interpretation of insurance policies, which is necessary to ensure the continuing availability of insurance to consumers in this state at a reasonable cost and on reasonable terms.

The remaining factors cited by the Respondent from *S.C. Tax Commission* also support the Appellants' position. Common questions of fact are present, in that the parties in the underlying action have an interest in proving many of the same facts as to the nature of the underlying

claims and defenses. The standard construction defect case includes as direct and cross-claim defendants numerous subcontractors who are responsible only for certain aspects of the work, presented in complex cases over multi-week trials. Many of those claims are not reducible to joint and several liability and already require detailed presentation of evidence and allocated verdicts. The interests of judicial economy strongly support that common questions of the nature and extent of a damages be examined award in a single proceeding to avoid duplication and inconsistent results.

The Insurers do not seek to turn the underlying trial into coverage litigation, but only to preserve such matters of fact as to the composition of any verdict about which only the jury which assesses the initial award will know the full facts.

The Respondent has also cited a number of cases from other jurisdictions which have affirmed denial of limited intervention in similar cases. The distinction between the case at bar and the New York case of *Restor-A-Dent Dental Labs, Inc., v. Certified Alloy Products, Inc.*, 725 F.2d 871 (2nd Cir. 1984) is that the New York court held that because the nature of each cause of action was clear, "This is not a case in which the insurer has any great need for the relief sought."

On the other hand, even in finding against intervention the *Restor-A-Dent* court itself noted that, "[I]n view of the economy of time and effort inherent in the use of interrogatories in this situation, it would likewise not have been an abuse of discretion had the trial judge permitted the insurer to intervene under Rule 24(b)(2) for the limited purpose of proposing interrogatories to the court for submission to the jury." *Restor-A-Dent*, at 877. The necessity of intervention as

established by *Harleysville* and the loss of rights which will occur if intervention is not granted distinguishes the result in *Restor-A-Dent* from this action.

The Respondent likewise cites *High Plains Coop Ass'n v. Mel Jarvis Constr. Co. Inc.* 137 F.R.D. 285 (D.Neb. 1991), but that case also is not controlling for the same core reason as *Restore-A-Dent* –the court found in both cases that the insurer had no need for the relief sought because the trial judge would require a separate verdict on each cause of action, which would provide the essential facts necessary to determine coverage, a situation which is the opposite of that presented under the current facts. Likewise the result in *Nat'l Union Fire Ins. Co. of Pittsburgh PA v Bakker*, 917 F.2d 22, 1990 US App LEXIS 18390 (4th Cir. 1990) (Unpublished Disposition) turns on facts present in that case (delay as well as the availability of litigation at a later date) that are not present here.

The Respondent also cites *Universal Underwriters ins. Co. v. E. Cent. Alabama Ford-Mercury, Inc.*, 574 So.2d 716 (Ala. 1990). While the court in that case denied intervention under the facts before it, that court also recognized "the dilemma faced by insurers" and remanded the case for further proceedings consistent with its guidance that the underlying trial be bifurcated and the coverage issue be allowed to be tried in a separate second component of the same proceeding. Once again, the ruling in that case turns on the availability of a remedy which is not currently available to the Appellants here.

Further, contrary to the position urged by the Respondent are cases such as *Thomas v. Henderson*, 297 F.Supp. 1311 (S.D. Ala., 2003), which considered the holding in *Restor-A-Dent* and nevertheless allowed the insurer to intervene. In *Thomas,* the insurer sought to intervene in an action brought to determine liability for a claim in tort arising from sale of an aircraft. The

complaint contained sixteen causes of action, and the insurer sought to intervene under conditions very similar to the case at bar:

> Notwithstanding its belief that no coverage exists, Old Republic asserts that because of the specific terms, conditions and exclusions of the Policy, certain of Thomas's claims against its insureds may be covered while certain others may not. Likewise, according to Old Republic, certain categories of damages sought by Thomas from its insureds may be subject to coverage under the Policy, while certain others may not. Based on these factors, Old Republic expresses concern that a general damages award in this action would effectively preclude it and its insureds from sorting out which components of that award against Sky King and/or Linner were covered by the Policy and which were not. To avoid such a result (in which neither Old Republic nor its insureds would be able to assess whether the jury had awarded categories of damages based on claims for which the Policy affords coverage), Old Republic seeks permission to intervene in this action "for the limited purpose of submitting special jury interrogatories and/or a special verdict form for the Court's consideration and requesting submission of same to the jury." Old Republic asserts that its requested interrogatories or verdict form would ask the jury, in the event of a verdict in Thomas's favor, "to specify the claim or claims forming the basis for the verdict" and "would also ask the jury to itemize any damage award in terms of compensatory damages for economic losses, mental anguish, and any other injury alleged, and punitive damages."

The court in *Thomas* granted leave to intervene under conditions in which the trial court would address and resolve objections such as are advanced by the Respondent here:

> After due consideration of the objections registered by Henderson and Thomas, and careful weighing of the potential of delay or prejudice in the adjudication of the rights of the parties in the original action, the Court is of the opinion that Old Republic should be granted leave to intervene. Old Republic has filed a separate declaratory judgment action in this District Court against its insureds. Absent an itemized jury verdict in this case, resolution of the coverage issues at stake in the declaratory judgment action could be complicated considerably, as there would be no way to distinguish among the types of claims and damages embraced by any damages award the jury might render. Besides, even if a general verdict in this case could be separately disaggregated in the declaratory judgment action, "the possibility that relitigation of the same issue may be avoided is a strong reason to permit intervention." [cite omitted] The Court recognizes that there may be a slight possibility of prejudice or delay if Old Republic is permitted to intervene, given the potential that a conflict might emerge between insurer and insured, that the insured's counsel may be placed in an untenable position, or that these pro-

ceedings may otherwise be disrupted. However, this contingency may be obviated or at least minimized through imposition of procedural safeguards.

> In concluding that Old Republic may intervene, the Court concurs with the *Fidelity* court that it is appropriate to "condition intervention upon certain particulars." [cite omitted] As in *Fidelity*, the Court will allow Old Republic to intervene provided that: (1) "[i]n this action any right to proffer special interrogatories or verdicts would not infer or imply that the Court would feel obligated to submit them to the jury"; and (2) Old Republic "may not compromise the interests of [its] insureds herein." [cite omitted] Additionally, all parties should understand that insurance coverage or Policy interpretation issues will not be litigated in this case, that Old Republic may not interfere with Sky King and Linner's defense against Thomas's claims, and that any concerns regarding potential violations of these conditions should be brought to the Court's attention immediately. Subject to strict compliance with these conditions, Old Republic's Motion for leave to intervene is granted.

Thomas, at 1327.

Other cases subsequent to *Restor-A-Dent* which found intervention to be the appropriate course of action include *Pharmacists Mut. Ins. Co. v. Myer*, 993 A.2d 413, 419 (Vt. 2010) (absent contemporaneous allocation, insurer "cannot meet its burden to demonstrate that the award was for [claims] entirely excluded from coverage under the policy"); *Liquor Liab. Joint Underwriting Ass'n of Mass. v. Hermitage Ins. Co.*, 644 N.E.2d 964, 969 (Mass. 1995) ("Hermitage cannot satisfy [its] burden, and any attempt on its part to do so would be speculative and arbitrary, essentially amounting to an attempt to determine the particular amount that happened to be in the jur[ors'] mind[s] as [they] returned the verdict."); and *Butterfield v. Giuntoli*, 670 A.2d 646, 658 (Pa. Super. Ct. 1995) (where insurer "fully participated in litigation short of entering [its] appearance" but did not "pursue any means available to [it]" to obtain an allocated verdict, it cannot, as a matter of law, prove that an exclusion applies).

In sum, the Respondent's argument that intervention is not proper under these circumstances fails because otherwise the insurers have no ability to parse a general verdict and there-

fore no remedy for the enforcement of the policy terms and conditions which are essential to the existence and availability of policies of general liability insurance.

III. ISSUES AS TO CONFLICTS OF INTEREST ARE RESOLVABLE

The Respondent argues that intervention is impermissible because it creates insurmountable conflicts of interest, citing *Sims v. Nationwide Mut. Ins. Co.*, 247 S.C. 82, 145 S.E.2d 523 (1965) as controlling authority for the proposition that an insurer cannot defend its insured and assert its own defenses to coverage in the same action. The restatement of facts from *Sims* by the Respondent reinforces the considerations which render it necessary for the insurer to participate in the framing of special interrogatories if the jury verdict in the underlying proceeding is to be the only forum in which the components of a general jury verdict can be determined. No one argues that insurers have the right to issue policies which cover damages of some types but not others, and causes of some types but not others. If a general verdict which lumps together disparate types of damages cannot be parsed to disentangle the various elements, the underwriting factors which determine premiums and availability of insurance will become impossible to incorporate, and insurance will either become less available, or available only at much higher cost.

The dilemma of how to preserve the ability to apply an insurance policy to a general verdict, however, is not fairly resolved by denying the motions for limited intervention, but by determining either (1) that the motions for limited intervention to preserve evidence should be allowed by the trial judge, with sufficient safeguards so that the interest of no party is prejudiced, or (2) that there is an alternate available procedure in which a subsequent factfinder is authorized

to receive additional evidence from sources other than the original jury by which to parse a general verdict in subsequent litigation.

The Respondent also argues that a separate declaratory judgment is sufficient to protect an insurer's interests even without an allocated verdict. The Respondent argues that existing law "permits the insurer to introduce additional facts in a declaratory judgment action to defend its coverage positions" and that insurers can contest coverage in a separate action "without an allocated verdict and thus, without intervention." This contention does not follow directly from the holding in the *Harleysville* decision, which emphasizes the absence of evidence available to a later factfinder by which to parse a general award. Given that the Court stated in footnote eleven that there was "no basis upon which to make a logical assessment of the jury's purpose when it awarded the general verdict," and that the Special Referee "refused to 'engage in unguided speculation with respect to this issue," existing law is to the contrary of the position argued by the Respondent.

Until and unless the existing legal framework established by *Harleysville* is revised, the prudent insurer has no practical choice but move to intervene to preserve the logical basis for application of policy provisions and to make "unguided speculation" unnecessary.

IV. PRESERVATION OF EVIDENCE SUFFICIENT TO ALLOW LATER DETERMINATION OF INSURANCE ISSUES IS NOT UNDULY CONFUSING

The Respondent argues that intervention to request an allocated verdict will result in "confusion to the jury and undue burden on existing parties" which will "outweigh any benefit derived from an allocated verdict." In *Harleysville,* however, this Court's discussion assumes that an allocated verdict is a viable option in construction defect litigation. Further, the *Duke v.*

Hoch, 468 F.2d 973 (5th Cir. 1972) decision cited in *Harleysville* had this to say about the practicality of an allocated verdict:

> The risks to the insurer in requesting an allocated verdict are of no such magnitude, if of any consequence at all. A request for identification of the two types of damages reveals neither the presence of insurance nor the amount of coverage. Assuming as we must that the jury will follow instructions and make a correct allocation, the insurance company loses no benefit to which it is validly entitled from having the jury earmark the losses. Arguably the jury might, while complying with instructions, at its option throw damages into that category which it will speculate is insured. This is too tenuous to deserve more than mention. There may, however, be some awkwardness in argument to the jury, but this is nominal when balanced against the consequences to the insureds.
>
> *Duke*, 468 F.2d at 979.

As concluded in *Duke,* the additional requirements involved in preserving the information necessary to apply insurance terms and conditions are not unmanageable. Approaches tailored to both preserve evidence and avoid conflicts of interest are best fashioned by the underlying trial court as appropriate under the facts and circumstances of each case.

V. INTERVENTION DOES NOT INFRINGE UPON RESPONDENT'S DUE PROCESS RIGHTS

The Respondent argues that allowing intervention would deprive it of procedural due process rights to present evidence and cross-examine witnesses. More fully, the Respondent argues that it would be deprived of due process rights if it were not allowed to engage in discovery as to the terms of conditions of insurance policies, depose and call witnesses from insurance companies, and essentially litigate coverage issues in the underlying action so that it can properly participate in the process of framing special interrogatories.

The Respondent's arguments in this section do not raise any issues which cannot be addressed properly by the trial judge in the underlying case. The general issue of what questions should be asked of the jury via special interrogatories, and how verdicts should be allocated, is already a standard part of every construction defect case. The requirement that damages be described with sufficient specificity to allow application of matters of law is not unique to the coverage context. Already issues such as the date on which damages arose, or the date on which damages were discovered, and the party or parties responsible for particular aspects of the claim, are matters which the parties and trial judge must sort out in a charging conference prior to submission of a construction defect case to a jury. Identification of further details as to what causes of action give rise to what damages, and how those damages are computed, is not an unduly burdensome additional step.

The Insurers do not seek to inform the jury of any policy terms or provisions or of any fact that is uniquely a matter of insurance coverage, such as (for example) whether the insured has paid its premium or cooperated in defense of the case. Matters such as those are relevant and appropriate for coverage litigation entirely separate from the underlying trial. The matters on which the Insurers seek to preserve evidence are matters which are factual aspects of the underlying case regardless of whether any insurance is present whatsoever. Questions of who is responsible for damages, when those damages arose, what steps are involved in repairing the damages, and how each component of damages gives rise to the various claims of monetary losses are not matters of unique facts between the insurer and insured, but matters which arise from facts which transpired between the insured and the underlying claimant.

The concerns of the Respondent in properly participating in the framing of special interrogatories can be addressed by the trial judge in addressing motions to intervene under the

unique circumstances of each case. The trial judge is in the best position to ensure that all parties are adequately aware of any requests for special interrogatories and verdict forms, and in the best position to address whether discovery on these issues is appropriate for the underlying case, or whether detailed questions about coverage provisions are better reserved for separate and distinct coverage litigation after the underlying trial is complete.

VI. THIS APPEAL IS NEITHER INTERLOCUTORY NOR IMPERMISSIBLE

The Respondent argues that the denial of the motion to intervene is not immediately appealable and is impermissible because the Appellants have no standing to appeal.

First, the Respondent argues that denial of the order neither substantially aggrieves the insurer nor bears directly on its interests, as it can satisfactorily protect those interests in a subsequent declaratory action. This argument turns on the ultimate issue in this case – whether *Harleysville* requires that the record in a case be protected by preserving information sufficient to allow the components of a general verdict to be parsed by a later factfinder after a new review of the evidence interpreted in light of terms and conditions of insurance policies which were not part of the evidence in the original action.

If indeed the interpretation of *Harleysville* indicated by the insurers is correct, then insurers must intervene to protect the record or lose the right to apply the terms and conditions of its policies. This is a substantive right which will be lost if the motion to intervene is denied. "An order affects a substantial right and is *immediately appealable* when it '(a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action .... " *Hagood v. Sommerville*, 362 S.C. 191, 195, 607 S.E.2d 707, 709 (2005) (quoting S.C. Code §14-3-330(2) (emphasis added).

Second, the Respondent argues that the Appellants have no standing to appeal because the Insurers are not "parties" to the instant action, as they do not seek to intervene as a party but only appear for limited purposes of participating in the verdict. This question is resolved by *Ex parte Johnson,* in which this Court held that an order denying a motion to intervene is immediately appealable—even though "the merits of the action hereinbefore mentioned [had] not been determined and as the trial of that action will still be necessary"—because insofar "as the rights of the [movant] are involved, the order [denying intervention] affects a substantial right, and in effect determines the action and prevents a judgment from which an appeal might be taken." *Ex parte Johnson, in re Rutledge v. Tunno*, 63 S.C. 205, 208, 41 S.E. 308, 309 (1902); *see* 15 S.C. Jur. Appeal and Error § 23 (September 2017 Update) ("The refusal of a petition to intervene is directly appealable '[i]n so far as the rights of appellant are involved, the order affects a substantial right, and in effect determines the action and prevents a judgment from which an appeal might be taken.'"). Because the denial of the Insurers' motions to intervene "in effect determine[d] the action and prevent[ed] a judgment from which an appeal might be taken," the order appealed from is immediately appealable under S.C. Code § 14-3-330(2).

CONCLUSION

The Respondent concludes its brief with the statement that "[a]t this point in evolving South Carolina tort law, insurers and litigants alike are faced with a need for confirmation and clarification of the steps an insurer must take to protect its interests." The Appellant agrees with that contention and requests that this Court review *Harleysville* and rule that the lower court should have granted the motions to intervene.

In the alternative, this Court should rule that, if *Harleysville* does not require intervention, that general verdicts can be parsed as to their components in subsequent coverage litigation through the introduction of new evidence not a part of the original underlying trial. To the extent that the Court determines that intervention is necessary as indicated in footnote eleven of *Harleysville*, the Court should reverse and remand for further consistent proceedings. In the event that this Court determines that general verdicts can be parsed later without intervention in the underlying trial, the Appellant requests that the decision below be affirmed with the provision that the right to litigate coverage issues is available and capable of determination in a separate coverage action.

July 24, 2018

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Of whom The Harbour Cove Condominium Association is the Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief complies with Rule 211(b), SCACR.

July 24, 2018

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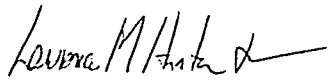

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Of whom The Harbour Cove Condominium Association is the Respondent.

PROOF OF SERVICE

I hereby certify that I served the Final Brief of Appellant BITCO General Insurance Corporation and the Final Reply Brief of Appellant BITCO General Insurance Corporation by depositing a copy of same in the U.S. Mail, postage prepaid, on July 23, 2018, addressed to the counsel of record as follows:

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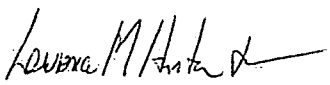

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